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The Surrender of Children under the European Arrest Warrant in a Nordic Perspective

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Abstract

This article examines the legal challenges surrounding the surrender of minors under the European and Nordic Arrest Warrants. It argues that the principle of mutual trust, which is central to the effectiveness of both instruments, may be strained when the requested person is a child, given the differing national approaches to criminal responsibility and child protection. The article analyses the implications of the CJEU's judgment in *Piotrowski* for the interpretation of Article 3(3) of the European Arrest Warrant and considers how Sweden's proposal to lower the age of criminal responsibility to 13 for certain serious crimes may be affected by this interpretation. It further explores how fundamental rights considerations under Articles 4 and 24 of the Charter may require child-specific assessments by executing judicial authorities. Finally, the article highlights the potential tension created by Denmark's opt-out with regard to the surrender of minors to Denmark.

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1. Introduction

The issue of children and, in some cases, very young children crossing Nordic borders to commit crimes has become a matter of growing public concern across the Nordic countries in recent years. News media have described Swedish gang criminals recruiting minors to commit serious offences, including murder, in Norway and Denmark.[1] In certain instances, such children may need to be surrendered in order to face criminal proceedings across Nordic borders.[2] Although such cases are not specifically analysed in this article, the involvement of children in serious cross-border crime within the Nordic region provides an important contextual background for the article, which underscores the need for legal research into the surrender of minors.

This article examines the surrender of offenders under the age of 18 (minor offenders) pursuant to the Framework Decision on the European Arrest Warrant (the European Arrest Warrant) from a Nordic perspective.[3] However, given that all three Nordic EU Member States (Denmark, Finland, and Sweden) are also parties to the Convention on the Surrender of Offenders between the Nordic Countries (the Nordic Arrest Warrant),[4] it is necessary to address, at least to some extent, the scope of the Nordic Arrest Warrant and its relationship with the European Arrest Warrant. Furthermore, the growing number of reports concerning children involved in serious crimes has led the Swedish Government to propose new legislation temporarily lowering the age of criminal liability for such offences to 13.[5] This article argues that, if adopted, the proposal may challenge the simplified procedure of surrender established under the European and Nordic Arrest Warrants.

The article applies a legal doctrinal methodology, under which the legal framework governing the surrender of children under the European and Nordic Arrest Warrants is identified, analysed, and synthesised with the aim of determining the applicable law.[6]

1 Moe (2025) and Jensen (2024).

2 A Europol Press Release describes how a total of seven individuals aged between 14 and 26 have been arrested or surrendered to Danish authorities from abroad in a coorodinated effort between Danish and Swedish police under the Europol Operational Taskforce (OTF), Europol (2025).

3 Council Framework Decision (JHA) 2002/584 as amended by Council Framework Decision (JHA) 2009/299

4 Konvention om overgivelse for strafbare forhold mellem de nordiske lande (Nordisk Arrestordre), 2005.

5 Utk. till lagrådsremiss (2025), Sänkt straffbarhetsålder för allvarliga brott.

6 Hutchinson (2025), p. 13.

The article is structured in six main sections. Section 1 is this introduction. Section 2 provides a general introduction to the European and Nordic Arrest Warrants and the relationship between the two instruments. Section 3 examines the grounds for non-execution found in arts. 3–4 of the European Arrest Warrant and focuses on non-execution on the basis that the requested person had not reached the age of criminal liability in the executing state at the time, when the offence was committed. Section 4 analyses the possibility of refusing the execution of an arrest warrant on grounds relating to the fundamental rights of the child. Section 5 addresses challenges to the simplified procedure of surrender established by the European and Nordic Arrest Warrants, focusing on the Swedish Government's proposal to lower the age of criminal liability for serious crimes and on Denmark's opt-out from EU cooperation in criminal law matters, which has resulted in Denmark's non-participation in Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (the Children's Procedural Rights Directive). Section 6 presents some concluding remarks.

The status of Norway will not be examined independently in this article. Norway is a party to the Nordic Arrest Warrant but, as a non-EU Member State, is not part of the European Arrest Warrant system. However, Norway has (together with Iceland) concluded an agreement with the European Union that is comparable to the European Arrest Warrant (the Surrender Agreement).[7] Some of the issues raised in section 5.3 in relation to Denmark's non-participation in the Children's Procedural Rights Directive may therefore also be relevant in a Norwegian context.[8]

2. The European and Nordic Arrest Warrants

2.1 The European Arrest Warrant

In this section, the article will cover the main features of the system of surrender established by the European and Nordic Arrest Warrant and the relationship between the two.

7 Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway, OJ 2006 L 292, pp. 2-19 (The Surrender Agreement). The Surrender Agreement entered into force on November 1, 2019.

8 See on the Surrender Agreement in comparision with the European Arrest Warrant, Klimek (2015), p. 191 and Suominen (2017) and from the case law of the Court of Justice of the European Union (CJEU) C-71/21 *KT,* paras. 33-34 and Case C-202/24 *Alchaster I* paras. 66-67.

The European Arrest Warrant was adopted by the Council on 13 June 2002.[9] It marked a significant step forward in the cooperation between EU Member States on criminal law matters.[10] The European Arrest Warrant establishes a simplified procedure for the surrender of individuals between Member States, covering both surrender for the purpose of prosecution for a criminal offence and surrender for the execution of a custodial sentence or detention order, cf. art. 1(1) of the European Arrest Warrant. It abolishes the formal system of extradition between Member States and replaces it with a simplified system of surrender between judicial authorities, cf. recital (5).[11]

The European Arrest Warrant plays a significant role in the practical, day-to-day work of the authorities in the Member States. In 2022, judicial authorities across the EU issued a total of 13,335 European Arrest Warrants, of which 5,125 resulted in the effective surrender of the person sought.[12] The most common categories of offences in 2022 were theft, drug-related offences, and fraud and corruption.[13] The Commission's questionnaire to Member States on the practical operation of the European Arrest Warrant does not include any questions regarding the age of the persons sought. The Danish Prosecution Service (*Rigsadvokaten*) has informed me that it does not keep statistics on the age of individuals sought under arrest warrants issued by Denmark. However, the International Office of the Prosecution Service informed me in a telephone conversation that it is rare for Danish authorities to issue arrest warrants against minors.[14] The Swedish Prosecution Service (*Åklagarmyndigheten*) has reported that eight individuals under the age of 18 were surrendered to Sweden on the basis of a European Arrest Warrant between 2020 and 2024, while one person under the age of 18 was surrendered from Sweden during the same period.[15]

All twenty-seven EU Member States are parties to the European Arrest Warrant,[16] which was adopted on the legal bases of arts. 31(a) and 34(2)(b) of the Treaty on European Union (Amsterdam).[17] Accordingly, the European Arrest Warrant originally belonged

9 See on the genesis of the Framework Decision, Klimek (2015) pp. 11-27.

10 Klimek (2015), p. 32.

11 See Case C-399/11 *Melloni* pr. 36.

12 SWD(2024) 137 final, pp. 6-9.

13 SWD(2024) 137 final, p. 8.

14 Telephone conversation with the International Office of the Danish Prosecution Service, 13 October 2025. The prosecutor I spoke with did not recall any cases in which a person under the age of 18 had been sought through *Schengen Information System* (SIS) or Interpol on the basis of a European Arrest Warrant.

15 Data received from the Swedish Prosecution Service, 1 July 2025.

16 Since the withdrawal of the United Kingdom from the EU, the surrender of requested persons between EU and the United Kingdom is regulated by the Trade and Cooperation Agreement (TCA) (2025), arts. 596-632.

17 The European Arrest Warrant has been amended once by Framework Decision (JHA) 2009/299 concerning trials *in absentia*.

to the so-called third pillar of EU law and was intergovernmental in nature. However, as of 1 December 2014, the European Arrest Warrant has been fully integrated into the supranational structure of EU law, cf. Protocol No. 36 on Transitional Provisions to the Lisbon Treaty, art. 10(3). It nevertheless remains intergovernmental in nature in relation to Denmark, cf. Protocol No. 22 on the Position of Denmark, art. 2.

The European Arrest Warrant entails an obligation for the judicial authorities of the Member States to execute 'any' European Arrest Warrant on the basis of the principle of mutual recognition[18] – meaning that the question of whether to execute a European Arrest Warrant does not entail any room for political discretion.[19] The duty to execute a European Arrest Warrant also applies against a citizen of the executing state, which marked a significant break from former instruments of extradition including the European Convention on Extradition.[20]

It follows from the art. 2 of the European Arrest Warrant, that a European arrest warrant can be issued by a Member State in two cases. Firstly, for acts punishable by a custodial sentence for a maximum period of at least 12 months by the law of the issuing state. Secondly, where sentence has been passed, or a detention order has been made, for sentences of at least four months, cf. art. 2(1). Art. 2(2) of the European Arrest Warrant contains a list of 32 core offences for which the executing state shall not verify the existence of double criminality. The abolition of the verification of double criminality for core crimes is a cornerstone in the simplified (and faster) procedure set in place by the European Arrest Warrant.

The European Arrest Warrant does not include any specific mentions of children or the surrender of children, except for the mandatory ground for non-execution found in art. 3(3), which states that a European arrest warrant must be refused, if the subject has not reached the age of criminal liability in the executing state. However, it may be inferred *a contrario* from art. 3(3), that Member States can issue arrest warrants of minors (under 18 years of age). Member states are obliged to execute such arrest warrants. [21]

18 See on the requirement that the issuing and execution of a European arrest warrant is proportional to the objective pursued, Ghigheci et al. (2024), p. 588.

19 Case C-399/11 *Melloni* para. 38.

20 The European Convention on Extradition (1957) provided the Contracting States with the right to refuse extradition of its nationals, cf. art. 6. Under the Surrender Agreement Norway and Iceland, on the one hand, and the EU, on behalft of any of its Member States, on the other hand, may make a declaration to the effect that nationals will not be surrendered, cf. art. 7(2) of the agreement.

21 Case C-367/16 *Piotrowski*, para. 29.

Art. 31(2) of the European Arrest Warrant provides that '[m]ember states may conclude new bilateral or multilateral agreements or arrangements' on surrender after the entry into force of the European Arrest Warrant. Such agreements or arrangements, however, may only be applied

> 'in so far as such agreements or arrangements allow the prescriptions of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons...'

This means that bilateral or multilateral agreements may only be concluded insofar as they simplify the procedures laid down by the European Arrest Warrant – for example, by fixing shorter time limits, limiting the grounds for refusal, or extending the list of offences for which verification of double criminality are not required. Conversely, bilateral or multilateral agreements cannot introduce new grounds for non-execution or other limitations not provided for in the European Arrest Warrant.[22]

2.2 The Nordic Arrest Warrant

The Nordic Arrest Warrant is a multilateral convention between Denmark, Norway, Finland, Iceland and Sweden, signed on the 15. December 2005. The Convention entered into force 16 October 2012.[23] The Nordic Arrest Warrant establishes a less complex procedure for the surrendering of requested persons than the European Arrest Warrant, cf. recital (3) of the Nordic Arrest Warrant.[24]

A European Arrest Warrant issued by Denmark, Finland or Sweden will be considered a Nordic Arrest Warrant if the executing state is also a party to the Nordic Arrest Warrant, cf. art. 1(2) of the Nordic Arrest Warrant. This means that such an arrest warrant will be executed if the requirements of the Nordic Arrest Warrant are met, even if it could not be executed under the European Arrest Warrant. The Nordic Arrest Warrant may be issued for the prosecution of any offence punishable by a custodial sentence under the national law of the issuing state, or where a custodial sentence has been imposed or another measure involving deprivation of liberty has been ordered, cf. art. 2(1). As a general rule the Nordic Arrest Warrant does not entail any requirement for verification of double criminality.

22 It follows from art. 31(2) that the Council and the Commission must be notified of any new or existing bilateral or multilateral agreements.

23 The Nordic Arrest Warrant replaced all former instruments on extradition between the contracting states.

24 Suominen (2014).

2.3 The relationship between the two instruments

The Nordic Arrest Warrant takes precedence over the European Arrest Warrant in cases of surrender between the Nordic countries. However, it cannot be interpreted in a way that imposes stricter conditions for surrender than those laid down in the European Arrest Warrant, cf. also art. 31(2) European Arrest Warrant. Sweden and Finland have both formally notified the Commission and the Council of the entry into force of the Nordic Arrest Warrant, underscoring that it 'stipulates a closer cooperation between the Nordic countries' than the European Arrest Warrant.[25] Art. 31(2) of the European Arrest Warrant is substantially mirrored in art. 28(2) of the Nordic Arrest Warrant, which provides that the Nordic Arrest Warrant does not affect the obligations of the Nordic countries under the European Arrest Warrant, thereby ensuring normative consistency between the two instruments.

The European Arrest Warrant exhaustively defines the grounds for non-execution between EU Member States.[26] As the Nordic Arrest Warrant, with regard to non-execution, merely seeks to narrow the grounds for refusal in accordance with art. 31(2) of the European Arrest Warrant, it cannot be interpreted as permitting the refusal of an arrest warrant that could not be refused under the European Arrest Warrant. This is evident with regard to the mandatory and facultative grounds for non-execution set out in arts. 4 and 5 of the Nordic Arrest Warrant, which are almost identical to those of the European Arrest Warrant.[27]

However, the same interpretation should also apply to refusals based on fundamental rights concerns. In its judgment in the well-known *Melloni* case, the CJEU held that the Spanish authorities could not make the surrender of a requested person, who had been convicted in absentia in Italy, conditional upon the conviction being open to review in the issuing Member State, a possibility not provided for under art. 4(a) of the European Arrest Warrant.[28] The Court found that Spain was not permitted, under EU law, to apply a higher standard of protection of fundamental rights than that derived from the Charter, as this would undermine both the principle of primacy of EU law and the purpose of the European Arrest Warrant.[29]

25 Council Document 14200(2012) and Council Document 14440(2012). I have not been able to find any record of a formal notification from Denmark.

26 Case C-123/08 *Wolzenburg* para. 57 and Case C-699/21 *E.D.L.* para. 34.

27 With the excepton of the grounds found in art. 4(1), 4(4) and 4(7)(b) of the European Arrest Warrant, which are excluded from the Nordic Arrest Warrant, cf. Suominen (2014).

28 Case C-399/11 *Melloni* para. 55.

29 Case C-399/11 *Melloni* paras. 56-63. The Court reaffirmed this position in C-699/21 *E.D.L.* para. 31.

Since multilateral agreements on surrender concluded on the basis of art. 31(2) of the European Arrest Warrant can only limit, and not extend, the grounds for refusal, the result of the *Melloni* would must remain the same if the surrender had been on the basis of a multilateral agreement concluded pursuant to art. 31(2). This means that the surrender of a requested person between the Nordic countries, where the case falls within the scope of the European Arrest Warrant, cannot be refused on the basis of a fundamental rights concern that would not justify refusal under the European Arrest Warrant, i.e. rights forming part of the EU legal order. On this basis, the analysis in section 4 on non-execution due to fundamental rights concerns is confined to the grounds for non-execution of a European Arrest Warrant, as identified in the case law of the CJEU.

3. Grounds for Non-Execution in the European Arrest Warrant

3.1 Grounds for non-execution

In principle, the European Arrest Warrant exhaustively regulates the circumstances under which the judicial authority of the executing state may refuse to execute an arrest warrant.[30] It distinguishes between mandatory and facultative (optional) grounds for non-execution.

The mandatory grounds for non-execution are set out in art. 3 of the Framework Decision. They apply in three situations: where the offence to which the arrest warrant relates is covered by an amnesty in the executing state, where the requested person has been finally judged by a Member State in respect of the same acts, or where the requested person cannot be held criminally responsible under the law of the executing state owing to his or her age. Of these, only the third ground is directly relevant to the surrender of children and will therefore be examined separately in section 3.2. Arts. 4 and 4a set out the facultative, or optional, grounds for non-execution of a European Arrest Warrant. Art. 4 provides for eight such grounds. Since none of the optional grounds for non-execution in art. 4 and 4(a) are specific to the surrender of children or raise child-specific issues, they will not be analysed further in this article.[31]

3.2 Refusal on the basis that the question person had not reached the age of criminal liability in the executing state

Art. 3(3) of the Framework Decision on the European Arrest Warrant provides that it is mandatory for the executing judicial authority to refuse execution

30 Case C-123/08 *Wolzenburg* para. 57, Case C-367/16 *Piotrowski* and Case C-699/21 *E.D.L.* para. 34.

31 For further information see Klimek (2015) pp. 159ff.

> 'if the person who is the subject of the European arrest warrant may not, owing to his age, be held criminally responsible for the acts on which the arrest warrant is based under the law of the executing State'.

This ground for refusal becomes relevant in situations where the age of criminal liability differs between the issuing and executing states. In 2022, two refusals of surrender were recorded on the basis that the requested person was below the age of criminal responsibility in the executing state; in 2021, four such cases were recorded, and in 2020, two cases. [32] Since EU law leaves it to Member States to determine the age of criminal responsibility,[33] a Member State could in theory set the age of criminal responsibility at 18, thereby completely excluding the possibility of executing a European Arrest Warrant against a minor.

Art. 3(3) leaves several key concepts to be determined by the national law of the executing state. As mentioned, the age of criminal responsibility is a matter of national law of the *executing* state. This also implies that the executing state must refuse to execute an arrest warrant for a person who, at the time of the alleged offence, had not yet reached the age of criminal liability under the law of the executing state – even if the offence was committed in the issuing state, where that person had already attained the age of criminal liability. The obligation to refuse an arrest warrant also applies if the requested minor at the time of surrender has reached the age of criminal liability in the executing state.

Furthermore, the determination of when an offence is considered to have been committed is also governed by the national law of the executing state, as this pertains to the general part of criminal law, an area in which the European Union has no competence.[34] For example, two Member States that both set the age of criminal liability at 15 may nonetheless adopt different approaches to a situation in which a person aged 14 years and 364 days plants a time-activated bomb set to detonate two days later, that is, after the person has reached the age of criminal liability, or where a 14-year-old intentionally shoots a victim who succumbs to the injury only after the offender's fifteenth birthday. Likewise, national laws may differ in their treatment of cases where a 14-year-old participates in an offence that is not completed until

32 SWD (2024) 137 final, p. 18.

33 See also Klimek (2015), p. 159 and The Children's Procedural Rights Directive article 2(5).

34 Case C-176/03 *Commission v. Council* para. 47.

after his or her fifteenth birthday.[35] In such cases, it is again for the executing judicial authority to determine whether the requested person would be held criminally liable under the law of the executing state, even if, under the law of the issuing state, where the offence was committed, the act would be regarded as having been committed after the requested person had reached the age of criminal liability.

The ground for refusal in art. 3(3) is most easily applied in cases where the legislation of the executing state provides a clear and objective cut-off date for establishing criminal liability – for instance, the end of the day on which the suspect turns fifteen, or a similar rule. However, some Member States may have more complex or gradual systems for determining the age of criminal liability, where the question of criminal responsibility for minors above a certain age requires an individual assessment of the minor's mental capacity, or where criminal liability can only be imposed for certain serious offences.[36] In such cases, the requirement for an individual assessment of the minor's capacities or the circumstances of the offence may undermine the effectiveness of the European Arrest Warrant, as the executing judicial authority would need to undertake a substantive review of the case before determining whether the mandatory ground for refusal under art. 3(3) applies. This, in turn, risks creating tension between the rationale underlying art. 3(3) and the overarching objective of establishing a simplified system of surrender between Member States, as reflected in recital (5) of the European Arrest Warrant.[37]

In *Piotrowski*, the CJEU was, for the first time, called upon to interpret art. 3(3) of the European Arrest Warrant.[38] The case concerned the scope of this provision in the context of a system providing for the gradual introduction of criminal liability. The case concerned a polish national (Mr. Piotrowski) who was residing in Belgium. Piotrowski had been sentenced to six months imprisonment in Poland for the theft of a bicycle and the giving of false information concerning a serious attack.[39] At the time of the offences Piotrowski was 17 years old and had thus reached the age of criminal responsibility in Poland. However under Belgian Law a minor over the age of 16 but under the age 18 could only be tried in Juvenile Court, except in limited circumstances, where the Juvenile Court would decline the case and refer it to to the public prosecution.[40] In such instances the minor's capacity for criminal responsibility would be determined *in concreto* by the Belgian judicial authorities.

35 An example could a 14-year-old (A) in a state where the age of criminal liability is 15, who incites his friend (B) to steal a television on his behalf, which B subsequently does after A's fifteenth birthday.

36 Opinion of Advocate General Bot in Case C-367/16 *Piotrowski*, paras. 52-53.

37 Opinion of Advocate General Bot in Case C-367/16 *Piotrowski*, para. 55.

38 Case C-367/16 *Piotrowski.*

39 Case C-367/16 *Piotrowski*, para. 14.

40 Case C-367/16 *Piotrowski,* paras. 15-18.

The Belgian court asked the CJEU whether art. 3(3) was referring to the general age of criminal liability (which in Belgium would be 18), or if the European Arrest Warrant would allow for the surrender of minors who had reached an age, where they could be held criminally responsible only if certain condition were met (which in Belgium would be 16). Furthermore, the Belgian court asked whether the executing judicial authority was required to assess whether the criteria for criminal liability would have been met *in concreto* under Belgian law in relation to the acts referred to in the European Arrest Warrant, or whether it was sufficient to establish that those acts could, *in abstracto*, could give rise to criminal liability under Belgian law.[41]

In his Opinion, Advocate General Bot found it evident that the provision in art. 3(3) referred to the age at which minors *in abstracto* could be held criminally liably under the national law of the executing state.[42] The Advocate General argued that a result to the contrary would in fact reject the principle of mutual trust, since it would require the executing state to due a full evaluation of the case, which warranted the issue of the arrest warrant:

> 'However, this would necessitate an investigation by the authorities of the executing Member State into the personal characteristics of the minor, his past history and whether or not he had the capacity to distinguish right and wrong at the time of committing the offence. Those issues, in particular that of what penalty can be imposed on the minor having regard to his personal characteristics and age, also arise in the issuing Member State, and are therefore to be resolved by means of an assessment which is for that State alone to make. To hold otherwise would amount, from another perspective, to rejecting the principle of mutual trust.'[43]

The Grand Chamber of the CJEU endorsed this interpretation.[44] In its judgment, the Court held that the executing judicial authority

> 'must simply satisfy itself that that person has not reached the minimum age at which he may be prosecuted and convicted under the law of the executing Member State for the same acts as those on which the European arrest warrant is based'.[45]

41 Case C-367/16 *Piotrowski*, para. 26.

42 Opinion of Advocate General Bot in Case C-367/16 *Piotrowski*, paras. 31-32.

43 Opinion of Advocate General Bot in Case C-367/16 *Piotrowski*, para. 61.

44 Case C-367/16 *Piotrowski* para. 54.

45 Case C-367/16 *Piotrowski* para. 42.

Accordingly, the CJEU did not permit the Belgian executing authority to take into account

> 'additional conditions relating to an assessment based on the circumstances of the individual to which the law of its Member State specifically makes the prosecution and conviction of a minor subject'.[46]

Since Belgian law, *in principle*, allowed for the prosecution of minors who had reached the age of 16, the ground for refusal in art. 3(3) did not apply to the surrender of a minor who was 17 years at the time of the offence—even though, under Belgian law, the prosecution of a 17-year-old would in practice depend on an individual assessment of the case.

Another question concerns the execution of a European arrest warrant against a minor, if the law of the executing state allows for the imposition of *educational* measures but not *penal* measures. As an example, the art. 15 of the Danish Criminal Code stipulates that the age of criminal responsibility in Denmark is 15.[47] However, children between the age of 10 and 14 may be subject to a proceeding in front of the Danish Youth Crime Board (*Ungdomskriminalitetsnævnet*) if they are suspect of certain serious crimes, cf. art. 2(2) of the Danish Law on Combatting Youth Crime (*Lov om bekæmpelse af Ungdomskriminalitet*). However, the measures which can be imposed by the Youth Crime Board are not formally intended as punishments, but are *educational* or *preventive* in nature, and the Youth Crime Board does not determine questions of guilt.[48]

The existence of measures such as the Danish Youth Crime Board raises the question of whether Member States that impose non-criminal law measures on minors above a certain age may nonetheless be required to surrender such minors to other Member States that apply criminal law measures to offenders of the same age. The CJEU did not address this issue in its judgment in *Piotrowski*. However, Advocate General Bot offers some reflections on the legal status of non-criminal law measures in his Opinion in that case.

In para. 53, the General Advocate notes that some Member States introduce criminal responsibility gradually. He observes that, for certain age brackets, such Member States may apply sanctions that are neither strictly criminal nor purely educational, or may make the determination of criminal liability dependent on a concrete individual assessment. Where such Member States act as the issuing State of a European arrest

46 Case C-367/16 *Piotrowski* para. 43.

47 The Danish Criminal Code (*Straffeloven*).

48 See LFF 2018-10-26 no. 84, 2.1.2.7. (*preparatory works*). See also on the question of the nature of such measures, Adolphsen and Holst (2024), pp. 40ff.

warrant, they are free to choose '[t]he method by which it will determine the criminal responsibility of minors.'[49] According to the General Advocate, however, this reasoning does not extend to situations in which a Member State acts as the *executing* State:

> 'It would be impossible to accept a situation in which certain Member States, on the ground that their national law takes a case-by-case approach to determining the criminal responsibility of minors, by means of an in concreto assessment (…) could apply that same analysis when acting as the executing Member State.' [50]

Instead, the General Advocate argues that the duty to surrender in such instances would arise where the

> '[p]enalty which could be imposed in the issuing Member State corresponds, in nature and severity, to one which could equally have been imposed in the executing Member State,'[51]

seemingly regardless of whether or the imposed sanction can be characterised as a criminal law measure in the executing state. Such an interpretation would considerably narrow the scope of art. 3(3), as several Member States including Denmark allow for the imposition of non-criminal law measures in cases where a child is suspected of having committed a serious offence, even at a very young age.

In any event, this interpretation of art. 3(3) has not (yet) been endorsed by the CJEU, and in my view, the Court would be well advised to refrain from adopting such an approach. There is, after all, a fundamental difference between a minor who has reached an age at which the law of the executing state recognises that he or she may, at least under certain circumstances, be held criminally liable – as was the case in *Piotrowski*, and a minor who has only reached an age at which the law of the executing state allows for the imposition of preventive and/or educational measures. The latter does not imply that the national legislator has accepted, even in abstract terms, that such minors are capable of bearing criminal responsibility. Furthermore, in some Member States (as in Denmark), the application of educational measures does not necessarily entail a determination of guilt but may be based merely on suspicion of criminal activity – something permissible under art. 6 ECHR only to the extent that such measures are not regarded as constituting a criminal charge or punishment.[52]

49 Opinion of Advocate General Bot in Case C-367/16 *Piotrowski* para. 54.

50 Opinion of Advocate General Bot in Case C-367/16 *Piotrowski* para. 55.

51 Opinion of Advocate General Bot in Case C-367/16 *Piotrowski* para. 62.

52 See W*elch v. The United Kingdom* and *Engel and Others v. The Netherlands* [Plenary] and regarding the assessment of the criminal nature of a penalty within EU law, Case C-40/21 *T.A.C.* paras. 32-46.

Finally, and most decisively, the wording of art. 3(3) refers exclusively to the age of criminal responsibility. After all, the European Arrest Warrant is an instrument of criminal law, which may be issued solely for the purpose of conducting a *criminal* prosecution, cf. art. 1(1). Accordingly, the wording of art. 3(3), read in light of its legislative context, strongly supports an interpretation under which the executing judicial authority must refuse to execute an arrest warrant concerning a minor who, at the time of the offence, could under the law of the executing state only be subjected to non-criminal measures and could under no circumstances incur criminal responsibility.

4. Non-Execution Due to Concerns for the Fundamental Rights of the Child

4.1. Fundamental rights challenges when surrendering minors

The European Arrest Warrant does not explicitly regulate the possibility of refusing execution on the grounds of fundamental rights concerns.[53] However, art. 1(3) provides that the European Arrest Warrant

> 'shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union'.

The CJEU has consistently held that the grounds for refusal under the European Arrest Warrant are exhaustively defined, meaning that Member States cannot rely on national fundamental rights standards when deciding on non-execution.[54] For this reason, the scope of this article is limited to refusals based on fundamental rights that form part of the EU legal order.[55] However, since Article 6 TEU also refers to 'fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights', this does not exclude refusals based on rights contained in the ECHR.[56]

53 In theory the EAW exhaustively defines the grounds for non-execution, Case C-123/08 *Wolzenburg* para. 57, Case C-399/11 *Melloni* para. 55 and Case C-699/21 *E.D.L.* para. 34.

54 Case C-123/08 *Wolzenburg* para. 57, Case C-399/11 *Melloni* para. 55 and Case C-699/21 *E.D.L.* para. 34.

55 Accordingly, this article does not examine child-specific fundamental rights found in the UN legal framework, including those enshrined in the UN Convention on the Rights of the Child (1989) or the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules, 1985).

56 See further on the role of ECHR in section 4.2.

Art. 1(3) must be read in light of the overarching objective of the European Arrest Warrant, namely to establish a simplified and efficient system of surrender between Member States.[57] Accordingly, the CJEU has in *Aranyosi* interpreted Article 1(3) as allowing the executing judicial authority to refuse surrender only in exceptional circumstances.[58] The CJEU has established a two-step test to determine whether such exceptional circumstances exist that would allow the executing judicial authority to refuse the execution of a European Arrest Warrant on grounds related to fundamental rights.[59] As a first step the executing judicial authority must determine whether there is objective, reliable, specific and properly updated information to demonstrate that there is a real risk of infringement in the issuing Member State, of one of those fundamental rights on account of either systemic or generalised deficiencies.[60] Only if such a general risk is identified the executing court must then make a further assessment to determine whether the individual concerned will be exposed to that risk upon surrender.[61] As part of the two-step test, the executing judical authority is required to ask the issuing Member State to provide additional information on the questions leading to the fundamental rights concern in the case at hand. If the issuing judicial authority provides assurances regarding the protection of the requested person's fundamental rights, the executing authority must, in the absence of concrete evidence to the contrary, rely on those assurances.[62]

As seen above the scope for refusing execution of an arrest warrant on the basis of fundamental rights concerns is narrowly confined. Nevertheless, the very possibility of refusing an arrest warrant on such grounds gives rise to particular challenges when the requested person is a minor.[63] This article identifies three specific challenges relating to the refusal to surrender minors under the European Arrest Warrant on the basis of fundamental rights considerations.

57 Joined Cases 404/15 *Aranyosi* & C-659/15 PPU paras. 82-88 and Case C-318/24 *Breian* PPU para. 37. Eurojust (2024) comprises an exhaustive overview of the CJEU's jurisprudence on the European Arrest Warrant, which is updated yearly.

58 Joined Cases 404/15 *Aranyosi* & C-659/15 PPU para. 78. The CJEU has reaffirmed this position in Case C-699/21 *E.D.L.* para. 30, Case C-158/21 *Puig* para. 93 and Case C-318/24 *Breian* PPU para. 36.

59 Ghigheci et al. (2024), p. 592.

60 Case C-202/24 *Alchester,* para. 53 and similarly Joined Cases 404/15 *Aranyosi* & C-659/15 PPU para. 88.

61 Case C-202/24 *Alchester,* para. 54 and similarly Joined Cases 404/15 *Aranyosi* & C-659/15 PPU para. 92.

62 Case C-220/18 PPU *ML* paras. 111-112.

63 Opinion of Advocate General Bot in Case C-367/16 *Piotrowski* para. 43.

1. *Adjusting fundamental rights to the needs of the child*: The fundamental rights that may justify the refusal of a European Arrest Warrant in respect of adult offenders apply equally in cases involving the surrender of children.[64] However, even though children are recognised as individual rights-holders on an equal footing with adults, the interpretation of what constitutes a breach of a child's fundamental rights necessarily differs from a breach of an adult's rights, owing to particular vulnerability of children.[65] In this article, focus will be on child-specific aspects of the right not to be subject to torture or inhuman or degradant treatment found in art. 4 of the Charter.

2. *The existence of child-specific rights:* Children are also bearers of child-specific fundamental rights under EU law. First, art. 24(1) of the Charter states that children have the right 'to such protection and care as is necessary for their well-being.' Second, and of particular relevance in the context of the surrender of child suspects under the European Arrest Warrant, the Children's Procedural Rights Directive sets out an extensive list of procedural rights specific to children, which Member States are obliged to guarantee in criminal proceedings involving minors.

3. *The best interests of the child as a primary consideration:* Finally, art. 24(2) of the Charter provides that the child's best interests must be a primary consideration 'in all actions relating to children, whether taken by public authorities or private institutions.' This obligation on Member States to consider the best interests of the child equally applies to the surrender of minors under the European Arrest Warrant, as a surrender decision clearly constitutes an action relating to the child. The obligation to take the child's best interests into account therefore adds an additional layer of consideration to the decision-making of the executing judicial authority when the requested person is a minor.

These three child-specific challenges concerning the surrender of minors on the basis of fundamental rights considerations will be addressed individually in the following sections.

64 Fenton-Glynn (2020), p. 3.

65 Peers et al. (2021), p. 705.

4.2 Child-specific aspects of refusal based on art. 4 of the Charter

Art. 4 of the Charter states that '[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment'. The provision has the same wording, meaning and scope as art. 3 of the ECHR, cf. art. 52(3) of the Charter.[66] However, the EU is not a party to the ECHR.[67] This means that the rights enshrined in the ECHR are, at least theoretically, not directly applicable within the EU legal order. Nevertheless, 'the rights contained in the ECHR form part of the general principles of EU law', cf. Article 6(3) TEU. Furthermore, Article 52(3) of the Charter provides that the rights contained in the Charter which correspond to those guaranteed by the ECHR shall have the same meaning and scope as those laid down in the Convention, although this provision does not preclude Union law from granting more extensive protection. Finally, the CJEU has relied extensively on the case law of the European Court of Human Rights when interpreting the scope of the Charter's provisions. This reliance is equally evident in the CJEU's case law concerning the possibility of refusing the execution of a European Arrest Warrant on the basis of fundamental rights concerns.[68]

In relation to review from the European Court of Human Rights of decisions taken by Member States on the basis of their EU obligations, the Court operates with a presumption of equivalent protection,[69] meaning that it will only review Member State actions taken in the implementation of EU law if it finds that the protection of Convention rights was 'manifestly deficient' in the specific case.[70] The presumption of equivalent protection also applies when an executing judicial authority in an EU Member State decides on the surrender of a requested person under the European Arrest Warrant.[71]

In the following discussion, the analysis will begin with a brief examination of the obligations arising under Article 3 of the ECHR, before turning to Article 4 of the Charter.

66 Explanations to the Charter, OJ 2007 C 303, 17 and Joined Cases 404/15 *Aranyosi* & C-659/15 PPU, para. 86 and C-128/18 *Dorobantu* para. 58.

67 See TEU art. 6(2). The CJEU famously rejected a proposal for EU accession to the ECHR in its Opinion 2/13. See further Halleskov (2015) and in relation to recent developments Johansen et al. (2024).

68 An illustrative example of the CJEU's reliance on the case law from the European Court of Human Rights can be found in Case C-220/18 *ML* para. 93.

69 Sometimes referred to as the 'Bosphorus presumption', after *Bosphorus Turizm v. Ireland* [GC]. See Ghigheci et al. (2024), p. 586.

70 *Michaud v. France* paras. 102-103. See further European Union Agency for Fundamental Rights (2025), p. 2.

71 *Bivolaru and Moldovan v. France* paras 102-103 and similarly para. 116.

The prohibition of torture and of inhuman or degrading treatment or punishment found in ECHR art. 3 is absolute and admits no derogation, even in times of emergency, cf. art. 15 of the ECHR. The European Court of Human Rights has interpreted this provision as also encompassing a prohibition on extraditing a person who would face a 'real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the requesting country'.[72] Such a risk may concern factors such as the amount of floor space available per inmate (ECHR art. 3 requires a minimum of 3 sq.m. floor area per person), the degree of freedom of movement within the facility, and the availability of out-of-cell activities.[73] In *T v. United Kingdom* and *V v. United Kingdom*, the European Court of Human Rights held that holding two boys criminally responsible for offences committed at the age of ten did not, in itself, constitute a violation of art. 3 of the ECHR.[74] The prohibition under art. 3 also applies to the surrender of individuals under the European Arrest Warrant, if *the presumption of equivalent protection* can be rebutted in the case at hand.[75]

In relation to art. 4 of the Charter, the CJEU has similarly agreed that the consequence of execution of a European arrest warrant 'must not be that that individual suffers inhuman or degrading treatment'.[76] This means that the executing judicial authority is obliged to end the surrender procedure if both elements of *the two-step test* are fulfilled – and if the real risk of violation of art. 4 cannot be dispelled by additional information provided by the issuing judicial authority.[77]

The CJEU has not yet had the opportunity to specifically address the risk of a violation of Article 4 of the Charter in a case concerning the surrender of a minor. However, the Court has held, with reference to the case law of the European Court of Human Rights under Article 3 ECHR, that the assessment of whether a real risk of a violation of Article 4 exists

> 'depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim'.[78]

72 *Soering v. The United Kingdom* [Plenary], para. 91.

73 *Bivolaru and Moldovan v. France* paras. 123-125.

74 *T v. United Kingdom*, paras. 70-72 and *V v. United Kingdom*, paras. 72-74.

75 *Bivolaru and Moldovan v. France* paras. 109-126 and similarly *Ignaoua and other v. United Kingdom* para. 50.

76 Joined Cases 404/15 *Aranyosi* & C-659/15 PPU para. 88.

77 Joined Cases 404/15 *Aranyosi* & C-659/15 PPU para. 104 and C-318/24 PPU *Breian* paras. 104-105. See Peers et al. (2021), p. 62.

78 Case C-220/18 *ML* para. 91. The CJEU repeated this view in C-128/18 *Dorobantu* para. 59.

The reference to age appears to strongly support the view that the assessment of prison conditions in cases involving the surrender of a minor must be child-specific, taking into account the particular needs of the child – such as access to age-appropriate healthcare.[79] However, the surrender of a child to an issuing state where, for example, the child is to reside in a children's home or serve a sentence in a closed youth detention facility would not in itself constitute a violation.[80]

The requirement to consider the detention conditions applicable to minors likely applies at both stages of the two-step test prescribed by the CJEU. This means that child-specific factors should be taken into account both when assessing the existence of general or systemic deficiencies in the prison system of the issuing state and when evaluating the specific risk faced by the individual in the particular case. If necessary, the executing judicial authority would, pursuant to art. 15(2) of the European Arrest Warrant, be required to request supplementary information from the issuing judicial authority regarding the availability of child-specific accommodation in the institution where the requested person would serve their sentence.[81]

4.3 Art. 24(1) of the Charter and the Children's Procedural Rights Directive

The EU legal order encompasses a range of child-specific rights that Member States are required to uphold when acting within the scope of EU law, including in the issuing and execution of European Arrest Warrants.[82] This article focuses in particular on two such rights: the child's right to 'such protection and care as is necessary for their well-being', as set out in the first limb of Article 24(1) of the Charter, and the procedural defence rights of children who are suspects in criminal proceedings, as established in the Children's Procedural Rights Directive. These two areas are considered the most relevant in the context of the non-execution of a European arrest warrant of a minor.

Art. 24(1) of the Charter does not have a corresponding provision in the ECHR. Instead, it follows from the explanations to the Charter, that art. 24(1) is based on the UN Convention on the Rights of the Child.[83] The wording of the first limb; 'such protection and care as is necessary for their well-being' is identitical to the wording

79 Šubic (2020), p. 303. See also art. 12(5)(a) of the Children's Procedural Rights Directive.

80 Kjølbro (2023), p. 389.

81 In that regard Joined Cases 404/15 *Aranyosi* & C-659/15 PPU para. 97.

82 Art. 3(5) of the TEU states, that the Union in it its relations to the wider wold shall uphold and respect human rights, in particular the rights of the child. See also COM(2011) 60 final, An EU agenda for the rights of the child.

83 Explanations to the Charter, OJ 2007 C 303, 17, art. 24.

used in art. 3(2) of the UN Convention on the Rights of the Child. The explanations to the Charter does not encompass any guidance for the interpretation of the provision, nor to the value of the corresponding provisions in the UN Convention on the Rights of the Child in interpreting art. 24.[84]

The scope of the protection and care necessary to ensure a child's well-being under Article 24(1) leaves Member States a broad margin of discretion in its implementation.[85] The assessment must necessarily take into account the age and maturity of the child concerned, cf. art. 12(1) of the UN Convention on the Rights of the Child. Children who have reached the age of criminal responsibility will, as a general rule, require less physical care than younger children. The absence of clearly defined limitations in Article 24(1) has meant that the provision has primarily served as a supporting argument in legal reasoning or as a general policy reference. However, the CJEU's case law does include instances of a more direct application of the provision. In *Dynamic Medien*, for example, the Court expressly referred to Article 24(1) in holding that a German prohibition on the mail-order sale of DVDs not labelled in Germany regarding their suitability for minors was justified by the state's duty to ensure the necessary care and protection of children.[86] Nevertheless, the vagueness of the wording of Article 24(1) and the limited development of case law in this area make it particularly difficult for a child who is the subject of an arrest warrant to demonstrate a real and specific risk of a violation of this provision. As a result, it becomes challenging to imagine that a child subject to an arrest warrant could succeed in rebutting the presumption of mutual trust that all Member States comply with their obligations under the Charter. Instead the child suspect would have to rely on the fact that the duty of care would effectively shift to the issuing Member State, once the decision on surrender has been executed.[87]

In terms of the right to protection and care for children involved in criminal proceedings focus has been on the right to protection for child witnesses and victims of crime.[88] However, secondary EU legislation also aim to strengthen the protection and care for children who are *suspect* in criminal investigations.[89] The most important

84 See on this question Peers et al. (2021), pp. 707 and 711.

85 Case C-244/06 *Dynamic Medien*, para 44, where the CJEU stated: 'As that conception may vary from one Member State to another on the basis of, inter alia, moral or cultural views, Member States must be recognised as having a definite margin of discretion.'

86 Case C-244/06 *Dynamic Medien*, paras 41-44. The CJEU applied a similar direct use of art. 24(2) in Case C-133/15 *Chavez-Vilches* para. 70.

87 Opinion of Advocate General Bot in Case C-367/16 *Piotrowski*, para. 59. The rights of child victims are obviously of great importance also in EAW-cases. However, this article focuses on the rights of child suspects as only child suspects are subjects to forced surrender between states.

88 Margarida and Nunes (2023) and Peers et al. (2021), p. 699.

89 Peers et al. (2021), p. 700.

instrument in this regard is the Children's Procedural Rights Directive. However, reference should also be made to Directive (EU) 2016/343 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings, which explicitly states in recital (43) that '[c]hildren are vulnerable and should be given a specific degree of protection'. The Children's Procedural Rights Directive provides children who are suspects in criminal proceedings with a concrete and directly applicable set of child-specific procedural rights. These include:[90]

- The right to information (Art. 4), which refers to the rights laid down in Directive (EU) 2012/13.[91] Information concerning the criminal proceedings and the rights of the suspect or accused child must be provided in writing, orally, or both, and communicated in simple and accessible language, cf. art. 4(2).[92]

- The right to have the holder of parental responsibility informed about the criminal proceedings, cf. art. 5.

- The right to assistance by a lawyer, cf. art. 6,[93] including the right to meet in private with and communicate with the lawyer, cf. art. 6(4)(a).[94]

- The right to an individual assessment of the specific needs of the child concerning protection, education, training and social integration, in which the child's personality and maturity, the child's economic, social and family background, and any specific vulnerabilities that the child may have, are taken into account, cf. art. 7.

- The right to a medical examination, cf. art. 8.

90 Many of these rights are subject to specific limitations. A detailed examination of the individual rights found in the Children's Procedural Rights Directive, however, falls outside the scope of this article.

91 Directive (EU) 12/13 on the right to information in criminal proceedings.

92 Radić (2018), p. 474, who underscores the connection between the provison and the similar obligations flowing from UN Convention on the Rights of the Child to provide information not only of the charges but also the juvenile justice process and the possible measures and sanctions in a child-friendly manner. See also Case C-603/22 *M.S.* paras. 150-153.

93 The right for the requested person to be assisted by a legal counsel and an interpreter also follows from art. 11(2) of the European Arrest Warrant.

94 Article 6 of the Children's Procedural Rights Directive was interpreted broadly by the CJEU in Case C-603/22 *M.S.*, in light of the particular vulnerability of children in criminal proceedings (paras. 100–114). The Court clarified that this right cannot be waived by the child even in relation to pre-trial questioning, and that any questioning must be postponed until a lawyer is present, unless a concrete assessment establishes valid grounds for derogation, cf. arts. 6(6) and (8) of the directive.

- The right to have questioning of the child by police or other law enforcement authorities audio-visually recorded where this is proportionate in the circumstances of the case, cf. art. 9.[95]
- The right to have deprivation of liberty limited to the shortest appropriate period of time, taking into account the age and individual situation of the child, cf. art. 10(1) and to ensure that deprivation of liberty and in particular detention are only imposed on children as a measure of last resort, cf. art. 10(2).
- The right to be detained separately from adults unless special circumstances apply, cf. art. 12.
- The right to timely and diligent treatment of cases, cf. art. 13.
- The right to protection of privacy, cf. art. 14.
- The right to be accompanied by the the holder of parental responsibility, cf. art. 15.
- The right of children to appear in person and participate in their trial, cf. art. 16.
- The right to legal aid, cf. art. 18.

It follows from art. 17 that the rights referred in arts. 4, 5, 6, 8, 10 to 15 and 18 apply *mutatis mutandis* to execution proceedings under the European Arrest Warrant, where the requested person is a child.[96] In such case the Directive has an extra function as an instrument underpinning mutual trust.[97] The specific trust-enhancing function of the Children's Procedural Rights Directive is explicitly acknowledged in recital (3), which states that:

> 'Although the Member States are parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the International Covenant on Civil and Political Rights, and the UN Convention on the Rights of the Child, experience has shown that this in itself does not always provide a sufficient degree of trust in the criminal justice systems of other Member States.'

95 See also recital (44) of the Directive.

96 The Children's Procedural Rights Directive defines a child as a person below 18 years, cf. art. 3(a). However, it follows from recital (12) of the Directive, that Member States are encouraged to apply the directive until the person reaches the age of 21, if the offence in question was committed, when the person was a child. The CJEU has interpreted this provision to mean that the national court must carry out a concrete assessment of the suspect's maturity and vulnerability in order to determine whether the defence rights provided by the Children's Procedural Rights Directive should continue to apply after the individual's 18th birthday, cf. Case C-603/22 *M.S.* para. 136.

97 Cf. recital (3).

In this context, it is worth remembering, that the CJEU has repeatedly emphasised that the European Arrest Warrant is based on the principle of mutual recognition, which itself rests on the principle of mutual trust.[98] However, it is also commonly acknowledged, that mutual trust cannot be confused with blind trust; it must be grounded in a shared understanding of, and commitment to, common fundamental rights standards among the Member States.[99] As Lenaerts observes: 'In the AFSJ EU legislative measures that prescribe the mutual recognition of judicial decisions are therefore accompanied by "trust-enhancing" legislation.'[100] The EU has adopted a series of such 'trust-enhancing' directives safeguarding the rights of defendants in criminal proceedings, thereby scaffolding the principle of mutual recognition by ensuring that defendants can rely on a uniform level of procedural protection across the Union.[101] The role of secondary 'trust-enhancing' legislation in supporting mutual trust becomes particularly significant in cases concerning the surrender of children, who are recognised as being especially vulnerable to violations of their fundamental rights. [102]

This suggests that the Children's Procedural Rights Directive serves a dual purpose in relation to the European Arrest Warrant. First, it enables Member States to surrender children on the basis of mutual trust that is not blind, but grounded in a shared framework of procedural safeguards. Secondly, it ensures that the rights of the child are respected in the executing state throughout the surrender proceedings themselves.

In conclusion, the Children's Procedural Rights Directive lays down a series of specific procedural rights for children that apply both during criminal proceedings and throughout surrender proceedings. By establishing a common standard for the protection of children's rights within the criminal justice systems of the Member States, the Directive aims to reinforce mutual trust, which, as recognised in recital (3), cannot be sufficiently ensured through Member States' participation in international

98 Joined Cases C-404/15 & C-659/15 PPU *Aranyosi,* para. 77*,* Case C-367/16 *Piotrowski* para. 52*,* C-128/18 *Dorobantu,* para. 46*,* Case C-158/21 *Puig* paras. 93-96 and Case C-318/24 *Breian* PPU, para. 36.

99 C-220/18 *ML,* para. 48 and Lenaerts (2017), p. 808, who underscores that mutual trust itself builds upon the principle of equality of Member States before the Treaties.

100 Lenaerts (2017), p. 811.

101 Cf. Treaty on the Functioning of the European Union (TFEU), art. 82(2) and COM(2009) 262, Stockholm Programme. See as an example Directive (EU) 2012/13 on the right to information, recital (14).

102 Klip (2021), p. 352 and Radić (2018), p. 470, who emphasises that '[c]hildren are at a greater risk of being discriminated against or deprived of their fundamental rights because of their age, incomplete physical or psychologicla development, lack of knowledge or the abilitiy to act by exercising free will'.

instruments outside the EU framework. It may therefore be concluded that the mutual trust underpinning the surrender of children under the European Arrest Warrant today rests, to a considerable extent, on the guarantees provided by the Children's Procedural Rights Directive.[103]

This may also imply that the existence of the Directive makes it more difficult to advance a persuasive argument for the non-execution of an arrest warrant against a child on the basis of concerns regarding the procedural rights afforded to the child in the (subsequent) criminal proceedings in the issuing state. This because there is a strong presumption, rooted in the CJEU's case law, that Member States comply with their obligations under EU law. This presumption can only be rebutted in exceptional circumstances, where there is support by concrete evidence to the contrary.[104] Moreover, even if such compliance was in doubt, the child would be entitled to invoke the rights enshrined in the Directive directly before the criminal court of the issuing state. [105] In this regard, the CJEU has confirmed that the right to information and the right to legal assistance, as provided in arts. 4 and 6 of the Children's Procedural Rights Directive, have direct effect.[106] This line of reasoning, however, applies only to Member States bound by the Children's Procedural Rights Directive. As will be discussed in section 5.3, Denmark constitutes an exception in this regard.

4.4. Best interests of the child as a primary consideration

Article 24(2) of the Charter provides that the best interests of the child must be a primary consideration in all decisions concerning children. This provision reflects art. 3(1) of the UN Convention on the Rights of the Child. [107] The principle of the best interests of the child is a widely recognised foundational norm, playing a central role across all areas of children's rights law.[108] In line with the purpose of this article, however, the article's focus is limited to examining whether this principle may serve as a basis for the non-execution of a European Arrest Warrant against a minor.

First and foremost, there can be no doubt that both the decision to issue and the decision to execute a European Arrest Warrant against a minor constitute actions relating to children. Moreover, as these are decisions through which Member States implement EU law, the obligation to treat the best interests of the child as a primary

103 Case C-367/16 *Piotrowski*, para. 36.

104 Case C-367/16 *Piotrowski* paras. 49-50.

105 Mitsilegas (2022), p. 290 and Klip (2018).

106 Case C-603/22 *M.S.* paras. 119 and 157, meaning that national courts must of their own motion disapply any national provisions which appear to be incompatible with the directive.

107 Explanations to the Charter, OJ 2007 C 303, 17, art. 24.

108 The principle is also underlining other EU law instruments in the area of children's rights including the Children's Procedural Rights Directive, cf. recital (8) of the Directive and Case C-367/16 *Piotrowski,* para. 37.

consideration applies, cf. arts. 24(2) and 51(1) of the Charter. In this context, it could easily be argued that it can never be in a child's best interests to be surrendered to another Member State to face criminal proceedings or to serve a custodial sentence. However, art. 24(2) expressly provides that the best interests of the child must be *a* primary consideration, implying that other considerations of equal weight may also be taken into account.[109] Such considerations may include the obligation of States to combat impunity and punish crime, as well as the need to uphold mutual trust between Member States.[110]

In *GN*, the CJEU considered the refusal of an Italian court to execute a European Arrest Warrant on the basis of considerations relating to art. 24 of the Charter and the best interests of the child.[111] The case did not concern the surrender of a minor offender, but the surrender of a woman who had been sentenced in Belgium to five years' imprisonment for human trafficking.[112] At the time of the proceedings before the CJEU, the woman was the mother of two young children,[113] and the executing court expressed concern that the custodial arrangements in Belgium would not adequately safeguard the convicted mother's right to not to be deprived of her relationship with her children and her right to care for them.[114]

In its judgment, the CJEU emphasised that the European Arrest Warrant system is founded on mutual trust between Member States, which requires each Member State to 'consider all other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law', except in 'exceptional circumstances'.[115] Nonetheless, with reference to art. 1(3) of the European Arrest Warrant, the Court accepted in principle that execution could be refused where concerns arise under art. 7 of the Charter on the right to family and private life,[116] and importantly, under art. 24(2) on the best interests of the child.[117] Facing such concerns, the executing judicial authority must apply the two-step test, first assessing whether systemic or general fundamental rights deficiencies exist of the issuing Member State, and

109 Peers et al. (2021), p. 720.

110 Opinion of Advocate General Bot in Case C-367/16 *Piotrowski,* para. 59, who underlines, that the '*lack of criminal responsibility (…) cannot erase*' the offence commited.

111 Case C-261/22 *GN*. The European Court of Human Rights considered a similar case in *E.B. v. the United Kingdom*, but declared the application inadmissible as manifestly ill-founded, because that final care orders had already been issued in respect of all the children of the mother whose surrender was sought.

112 Case C-261/22 *GN* para. 15.

113 Case C-261/22 *GN* para. 16.

114 Case C-261/22 *GN,* para. 19.

115 Case C-261/22 *GN* para. 33.

116 See on the children's right to respect for private life, Fenton-Glynn (2020), p. 46.

117 Case C-261/22 *GN* para. 43.

second whether, in the particular case, there are substantial grounds to believe that the individual concerned would face a real risk of a fundamental rights violation.[118] In this context, the executing authority may take into account specific factors arising from the individual circumstances of the case, such as the needs of children with disabilities.[119] Where necessary, the executing judicial authority may request supplementary information from the issuing authority to assist in assessing either stage of the test.[120]

Although the CJEU's judgment in *GN* concerned the surrender of a mother of young children rather than that of a minor offender, there is no reason why the Court's reasoning, which allows for the refusal of surrender where there is a real risk of infringing a child's rights under art. 24(2) of the Charter, cannot be transferred to cases involving the surrender of minor offenders.[121] In principle, therefore, an executing judicial authority may refuse to execute a European Arrest Warrant issued against a minor if the two-step examination reveals a real risk of violation of art. 24(2) that cannot be dispelled by additional information provided by the issuing Member State.

5. Challenges

5.1 Two challenges

Both the European and Nordic Arrest Warrants seek to replace the traditional system of extradition between participating states with a more efficient and straightforward mechanism of surrender.[122] However, the simplified and effective surrender procedure established by these instruments does not operate in isolation; it can be affected by legal developments that, at first glance, appear unrelated to the arrest warrant frameworks. This section examines two such developments: first, the Swedish government's proposal to lower the age of criminal liability for serious offences to 13, and second, Denmark's opt-out from EU measures related to the establishment of the Area of Freedom, Security and Justice, including the Children's Procedural Rights Directive.

118 Case C-261/22 *GN* paras. 45-48.

119 Case C-261/22 *GN* para. 45.

120 Case C-261/22 *GN* para. 50.

121 Advocate General Ćapeta in his Opinion provided for a more clear distinction between the right's of the mother and the right's of the child – higlightning the status of art. 24(2) as a right of the child and not the mother, Opinion of Advocate General Ćapeta in Case C-261/22 *GN* para. 14.

122 The European Arrest Warrant, recital (5) and The Nordic Arrest Warrant, recital (3).

5.2 The Swedish proposal to lower the age of criminal liability to 13 for serious crimes

In September 2025, the Swedish Ministry of Justice (*Justitiedepartementet*) published a proposal for a consultation to the Council on Legislation (*Utkast till lagrådsremiss*) proposing to temporarily lower the age of criminal responsibility to 13 for serious offences. [123] According to the accompanying press release, the initiative responds to a doubling in the number of children under 15 suspected of serious violent crimes (*grova våldsbrott*) over the past decade.[124]

The proposal builds on an extensive Swedish Government Official Report (*Statens offentliga utredningar*) examining the age of criminal liability in Sweden. [125] The report recommended that the age of criminal liability for offences carrying a minimum sentence of four years of imprisonment or more should be lowered to 14 years.[126] However, the government in its *Utkast till lagrådsremiss* thus proposes to go even further and lower the age of criminal liability to 13 years for offences carrying a minimum sentence of four years imprisonment or more and attempt, preparation or conspiracy to commit crimes (*försök, förberedelse eller stämpling)*, if such are criminalised.[127] The proposal has given rise to considerable debate in Sweden but this discussion falls outside the scope of the present article.[128] Instead, this article will examine how the proposal may challenge the simplified surrender procedure established under the European and Nordic Arrest Warrants.

In its *Utkast till lagrådsremiss*, the Swedish Government proposes amendments to the national legislation on the European and Nordic Arrest Warrants.[129] It follows from the report that at least the amendment of the European Arrest Warrant Act is considered necessary for Sweden to comply with its obligations under EU law.[130] Under the current framework, a European or Nordic arrest warrant must be refused if the requested person was under 15 years of age at the time the act was committed. [131]

123 Utkast till lagrådsremiss (2025) *Sänkt straffbarhetsålder för allvarliga brott*, published 24.09.2025.

124 Justitiedepartementet (2025) *Pressmeddelande, Förslag om att tillfälligt sänka straffbarhetsåldern till 13 år för allvarliga brott skickas på remiss*. According to SOU 2025:11 *Straffbarhetsåldern*, the overall level of criminal activity among children under the age of 15 has, by contrast, not shown a comparable increase but may in fact have declined, cf. p. 19.

125 SOU 2025:11 *Straffbarhetsåldern*.

126 SOU 2025:11 *Straffbarhetsåldern*, p. 21.

127 *Utkast till lagrådsremiss* (2025), p. 5.

128 See among others, Sveriges Advokatsamfund (2025).

129 *Utkast till lagrådsremiss* (2025), pp. 69, 119, and 122.

130 SOU 2025:11 *Straffbarhetsåldern*, p. 372.

131 Act (2003:1156) and Act (2011:1165) arts. 4(1) and 5(1).

The government now proposes to rephrase these provisions so that they make a direct reference to the new rule on the age of criminal liability in Sweden, set out in Chapter 1, Section 6 of the Swedish Criminal Code (*Brottsbalken*).[132]

These challenges arising from the proposed amendments to Swedish legislation do not concern situations in which Sweden acts as the issuing state of a European Arrest Warrant against a minor. They may, however, become significant where Sweden acts as the executing state in relation to a European arrest warrant issued by another Member State concerning a minor suspect who was 13 or 14 years old at the time of the offence.

Taken at face value, the proposed legislation would require a Swedish judge executing a European Arrest Warrant against a 13- or 14-year-old minor to assess whether the child could have been prosecuted in Sweden for the acts in question. However, this assessment would no longer consist merely of verifying whether the requested person had reached the age of 15 at the time of the offence. Instead, the Swedish judge would have to undertake a substantive review of the circumstances of the case to determine whether the conduct in question would, under Swedish law, amount to an offence carrying a minimum sentence of four years' imprisonment. This includes assessing, in cases where the arrest warrant concerns an attempted offence, whether the attempt would itself constitute a criminal act under Swedish law. Since this review would concern the mandatory ground for refusal under art. 3(3) of the European Arrest Warrant, rather than the scope of the instrument itself, it would also need to be conducted in relation to the offences listed in art. 2(2), for which no verification of double criminality may be undertaken. This, however, risks undermining the very purpose of the simplified procedure of surrender, since it would require the executing Swedish court to conduct a re-examination of the facts in the case at hand.[133]

It follows from the CJEU's judgment in *Piotrowski* that

> 'the executing judicial authority must simply verify whether the person concerned has reached the minimum age required to be regarded as criminally responsible in the executing Member State for the acts on which such a warrant is based, without having to consider any additional conditions'.[134]

The phrase 'for the acts on which such a warrant is based' indicates that Member States may adopt a gradual or differentiated approach to the age of criminal responsibility. However, *Piotrowski* also makes clear that the executing judicial authority must be able to determine whether the individual can be surrendered solely on the basis of the

132 Act (1962:700), 1. kap. 6 §.

133 Case C-367/16 *Piotrowski,* para. 52.

134 Case C-367/16 *Piotrowski,* para. 62.

information contained in the European Arrest Warrant itself, as required by art. 8(1), since requests for supplementary information from the issuing judicial authority under art. 15(2) should only be made as a last resort in exceptional circumstances.[135]

Art. 8 requires, among other things, that a European Arrest Warrant contains information on the nature and legal classification of the offence, as well as a description of the circumstances in which the offence was committed, including the time, place and degree of participation of the requested person, cf. art. 8(1)(d) and (e). The executing Swedish court must be able to determine, on the basis of *this* information, whether the individual could be held criminally liable under Swedish law. This assessment should be limited to a superficial classification of the offence described in the warrant in relation to Swedish law, rather than an in-depth evaluation of whether the conduct in question would in fact fall under a specific Swedish provision, since conducting such an in-depth assessment would not be compatible with the simplified procedure of surrender.

5.3 The Danish opt-out and mutual trust in Denmark

Denmark does not participate in EU legislation concerning the Area of Freedom, Security and Justice. This non-participation results from the Danish opt-out, which has its legal basis in Protocol No. 22 to the Lisbon Treaty.[136] In the context of this article, the opt-out entails that Denmark does not participate in the Children's Procedural Rights Directive. In some cases, the Danish legislator choses to voluntarily implement non-binding EU legislation, however Denmark has not taken any legislative measures to align Danish law with the Children's Procedural Rights Directive.[137]

Section 4.3 of this article concludes that mutual trust in cases involving the surrender of children largely depends on the minimum standard of procedural rights for child suspects or accused persons established by the Children's Procedural Rights Directive. This conclusion is supported by recital (3) of the Directive, which states that international instruments on children's rights have not always provided a sufficient degree of trust. This, however, raises the question of whether Denmark's non-participation in the Children's Procedural Rights Directive may challenge the basis for mutual trust, when other Member States are asked to execute European Arrest Warrants issued by a Danish courts.

If a requested minor were to challenge a European Arrest Warrant issued by a Danish court on fundamental rights grounds, the executing judicial authority might find it difficult to rely solely on the presumption of mutual trust, given that Denmark

135 Case C-367/16 *Piotrowski,* para. 61.

136 Verdoner (2025).

137 Verdoner (2025).

is not bound by the relevant EU fundamental rights instruments. This observation does not imply that children surrendered to Denmark in practice face a real risk of fundamental rights violations. Rather, it highlights that Denmark is not subject to the formal EU legal framework that, from an EU perspective, is designed to ensure minimum procedural safeguards for child suspects.

To date, there have been no cases before the CJEU in which the presumption of mutual trust regarding Denmark has been contested, and it remains uncertain how the Court would respond to such a case. However, some guidance may be drawn from the CJEU's judgments in *Alchaster I* and *II*, in which the Court examined the basis for mutual trust in relation to the surrender of individuals to the United Kingdom under the TCA. [138] In *Alchaster I* the CJEU found that the procedure for judicial review of a surrender to the United Kingdom under the TCA differs from that applicable between Member States under the European Arrest Warrant.[139] Since Member States should presume the United Kingdom to be complying with the fundamental rights recognised by EU law.[140] In that regard the CJEU held that only the second step in the two-step test applied in relation to the surrender of individuals to the United Kingdom – meaning that the executing judicial authority does not need to point to systemic or general deficiencies in the United Kingdom, but can refuse an arrest warrant issued under the TCA, if there are 'valid reasons for believing that that person would run a real risk to the protection of his or her fundamental rights if that person were surrendered to the United Kingdom'.[141]

The CJEU's case law on the surrender of individuals to the United Kingdom under the TCA cannot in general be compared to the surrender of individuals to Denmark, an EU Member State and party to the European Arrest Warrant. This is also evident from the CJEU's judgment in *Alchaster I* itself. Here the Court specifically states that a decision of surrender to the United Kingdom under the TCA is not comparable to a decision to surrender to Norway under the Surrender Agreement. Since Norway has a 'special relationship with the European Union, going beyond economic and commercial cooperation'.[142] In this respect, it is evident that Member States should also trust Denmark to comply with the fundamental rights protected by EU law. However, the CJEU has not yet determined whether this presumption also applies in situations where the fundamental rights allegedly at risk upon surrender to Denmark are not binding on Denmark at all. In such a case, it would be difficult to maintain that

138 Case C-202/24 *Alchaster I* and C-743/24 *Alchaster II*.

139 Case C-202/24 *Alchaster I,* paras. 55-56.

140 Case C-202/24 *Alchaster I,* para. 57.

141 Case C-202/24 *Alchaster I,* para. 78.

142 Pointing to Norway's participation in the European Economic Area, the Common European Asylum System and the Schengen *acquis*, cf. Case C-202/24 *Alchaster I,* paras. 66-67.

Denmark should generally be presumed to comply with rights that are neither legally binding upon it nor subject to any voluntary commitment by the Danish authorities. This situation could, in theory, arise if a minor claimed a risk of a violation of their rights under the Children's Procedural Rights Directive upon surrender to Denmark.

However, it might be necessary to draw a distinction between the mutual trust that exists between EU Member States under the European Arrest Warrant and the mutual trust between the Nordic countries under the Nordic Arrest Warrant. As pointed out by Suominen, mutual recognition between the Nordic states relies not only on shared legal commitments but also on the fact that their criminal legislation is highly similar and grounded in comparable approaches to criminal policy and a long tradition of informal criminal law cooperation.[143] This foundation is further reinforced by a shared basis of to some extent similar societies, culture, languages and geographical proximity.[144] This common understanding may also extend to the role of children in criminal proceedings. Consequently, mutual trust among the Nordic countries may depend less on participation in specific legal instruments and more on a broadly shared legal culture and societal outlook.

6. Concluding Remarks

This article has examined the possibility of surrendering minors under the European and Nordic Arrest Warrants. Children are by nature particularly vulnerable, especially when subject to criminal proceedings or custodial sentences, and Member States may hold differing views on how children should be treated within their criminal justice systems. Consequently, the principle of mutual trust underlying, in particular, the European Arrest Warrant may be put to the test when the requested person is a minor. In principle, the participating states are required to execute both European and Nordic Arrest Warrants against minors, if the requested person has reached the age of criminal responsibility in the executing state.

Under EU law the determination of the age of criminal responsibility is left to the Member States, however it does not remain completley outside the scope of EU law. In *Piotrowski* the CJEU clarified that non-execution on the basis of the age of criminal responsibility found in art. 3(3) of the European Arrest Warrant concerns only the *minimum* age required to be regarded as criminally responsible for the acts in question in the executing state. This interpretation of the art. 3(3) shows that simplified procedure of surrender imposes inherent limits on how complex national rules on criminal responsibility can be if they are also to function within surrender proceedings. The question of a minor's surrender must, by necessity, be capable

143 Suominen (2014), p. 44.

144 Suominen (2014), p. 44.

of determination on the basis of the information required under Article 8 of the European Arrest Warrant. This may affect the interpretation of the Swedish proposal to lower the age of criminal responsibility and the resulting amendments to national legislation on the European Arrest Warrant in situations where Sweden acts as the executing state in respect of a European Arrest Warrant issued against a minor who was between 13 and 14 years of age at the time of the offence.

With regard to non-execution on fundamental rights grounds, the starting point is that the presumption of mutual trust and the two-step test apply equally to children and adults. However, this article has identified and analysed three specific issues relating to the potential non-execution of a European Arrest Warrant issued against a minor. These issues are examined in detail in section 4, which concludes that it may, in certain circumstances, be necessary to apply a child-specific version of the two-step test when the subject of the arrest warrant is a minor, taking into account the rights of the child under art. 24 of the Charter and the Children's Procedural Rights Directive. With regard to Denmark, the country's non-participation in the EU Children's Procedural Rights Directive may, over time, give rise to challenges to the presumption that Denmark fully complies with all fundamental rights guarantees established under EU law. It is, after all, difficult to presume compliance with instruments that are not legally binding upon Denmark. This suggests that the strict application of the presumption of mutual trust may not, in certain cases, be appropriate in relation to Denmark.

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