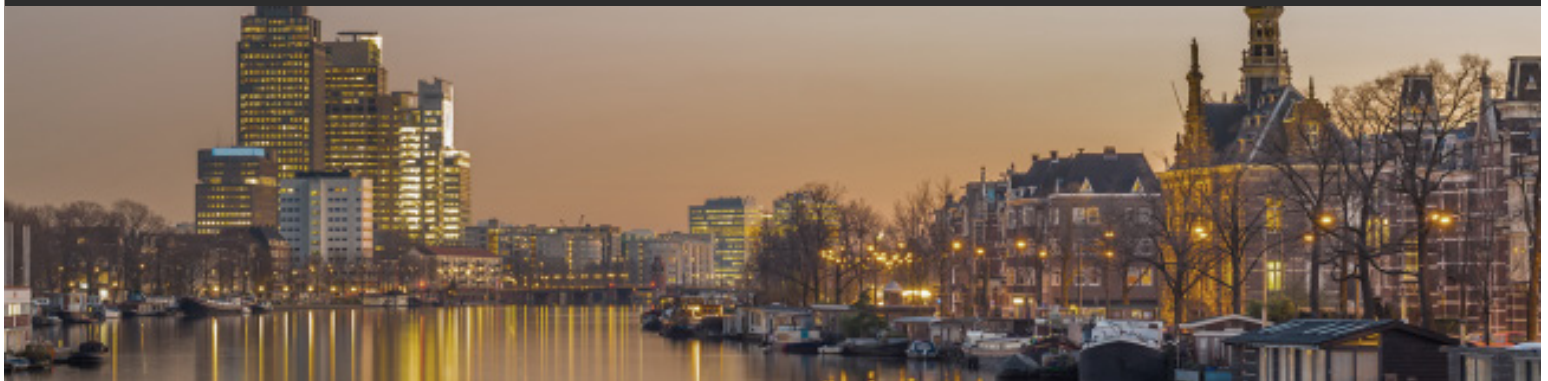


**Alert | Antitrust Litigation & Competition Regulation/  
White Collar Defense & Special Investigations**



April 2018

## **German Extradition of Italian National to the U.S. does not Violate EU Law**

In the United States, cartel infringements can be prosecuted as criminal offences, which may not always be the first thing European managers think of. Living in a country that does not extradite its nationals is however no protection for other EU nationals that live in or travel via other EU Member States. In its [decision](#) of 10 April 2018, the European Court of Justice (ECJ) ruled Germany did not violate EU law by extraditing an Italian to the United States. In addition, the ECJ ruled that Germany does not have to extend to other EU citizens the same protection it offers its own nationals when it comes to extradition as long as Germany (as the requested Member State) has given the competent authorities of the Member State the citizen to be extradited is a national of (in this case, Italy) the opportunity to request surrender of that citizen and the latter Member State has not taken any measures to that effect.

This case concerned an Italian national, Piscioti. He started a case against Germany for extraditing him to the United States where, since 2007, there was a criminal case pending against him for alleged anti-competitive agreements made in relation to tenders and prices from 1999-2006. An arrest warrant was issued against Piscioti in 2010 and he was listed as wanted by Interpol. He was arrested by the German police in 2013 at a stopover at Frankfurt and was extradited to the United States one year later, where he pleaded guilty and was fined and sentenced to two years imprisonment.

After he was released, Piscioti argued that because he was an EU citizen, Germany violated EU law when it extradited him, since the German Constitution prohibits extradition on discriminatory grounds of nationality. Germany, on the other hand, stated that extradition between Germany and third countries does not fall within the material scope of EU law. And even if there was a violation of EU law, this is not a sufficiently qualified violation.

The Bundesverfassungsgericht (the German Federal Constitutional Court) ruled that the prohibition of discrimination on grounds of nationality as referred to in Article 18 Treaty of the Functioning of the European Union (TFEU) does not apply to extradition traffic with third countries, as this matter does not fall within the scope of EU law.

The Landgericht Berlin, as referring court, emphasized that Germany is subject to the German Constitution to verify for itself whether an extradition is lawful and to comply with any international law obligations.

Unlike the Bundesverfassungsgericht, the referring court and advocate-general are both of the opinion that EU law does apply to this case as Pisciotti exercised the right to move freely in the EU, guaranteed by Article 21 TFEU, with the stopover in Frankfurt. In addition, Pisciotti's extradition to the United States can also fall within the substantive scope of EU law because of the EU-US Agreement. The ECJ agrees with this ruling: Pisciotti exercised his right to move freely within the EU through the stopover in Germany and this falls within the scope of Article 18 TFEU. The fact that he was arrested when he was only in transit in Germany, does not cast doubt on that finding.

The referring court asked the ECJ whether Article 18 TFEU must be interpreted as precluding the requested Member State from making a distinction between its nationals and nationals of other Member States under constitutional law when it comes to extradition to third countries. In light of this question, the EU-US Agreement must be considered. Article 17(1) of the EU-US Agreement does expressly provide that a Member State, in its capacity as a requested State, may, pursuant to a bilateral treaty between that State and the United States of America, invoke a ground for refusing extradition relating to a matter not governed by that agreement. In the case of the Germany-United States Extradition Treaty, it should be noted that Article 7(1) thereof allows the contracting parties not to extradite their own nationals. The consular authorities of the Italian Republic were also kept informed of Pisciotti's situation before the request for extradition, but the Italian judicial authorities did not issue a European arrest warrant in respect of Pisciotti. As a result, Articles 18 and 21 TFEU must be interpreted as not precluding in a case such as this one.

Italy was given the opportunity to take over the prosecution of Pisciotti, but did not do so. One reason for this may lie in the different approach between the EU and United States on enforcement of antitrust infringements. The EU enforcement system is more an administrative one, built around financial sanctions against companies, not individuals, while cartels in the United States count as a serious crime. The U.S. approach is based on the idea that jail time is a strong disincentive for individuals to participate in a cartel. The EU fines on the other hand are exclusively set as a deterrent against cartels.

### **Key Takeaways**

As a result of the ECJ ruling, it is clear that EU law applies to a request for extradition to a third country when the citizen has exercised the right to move freely within the EU.

Additionally, a Member State may distinguish between nationals and non-nationals on the grounds of constitutional law when it comes to extradition to third countries. This applies to the extent that the requested Member State has given the competent authorities of the Member State where the citizen is a national the opportunity to request surrender of that citizen and the latter Member State has not taken any measures to that effect.

## Author

This GT Alert was prepared by **Hans Urlus**<sup>¥</sup>. Questions about this information can be directed to:

- **Hans Urlus** | +31 (0) 20.301.7324 | [urlush@gtlaw.com](mailto:urlush@gtlaw.com)
- Or your **Greenberg Traurig attorney**

<sup>¥</sup>Special thanks to *Monisha Sardjoe*\* for her valuable contribution to this Alert.

\*Not admitted to the practice of law.

Albany. Amsterdam. Atlanta. Austin. Boca Raton. Boston. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Germany. <sup>~</sup>Houston. Las Vegas. London. <sup>\*</sup>Los Angeles. Mexico City. <sup>+</sup>Miami. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Sacramento. San Francisco. Seoul. <sup>∞</sup>Shanghai. Silicon Valley. Tallahassee. Tampa. Tel Aviv. <sup>^</sup>Tokyo. <sup>¤</sup>Warsaw. <sup>-</sup>Washington, D.C.. West Palm Beach. Westchester County.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. <sup>~</sup>Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. <sup>\*</sup>Operates as a separate UK registered legal entity. <sup>+</sup>Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. <sup>∞</sup>Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. <sup>^</sup>Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. <sup>¤</sup>Greenberg Traurig Tokyo Law Offices are operated by GT Tokyo Horitsu Jimusho, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. <sup>-</sup>Greenberg Traurig's Warsaw office is operated by Greenberg Traurig Grzesiak sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in Greenberg Traurig Grzesiak sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2018 Greenberg Traurig, LLP. All rights reserved.*