Observatoire ARGA

ARGA Atlas

EU EXTRADITION PRACTICE: SPAIN, FRANCE, ITALY

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Anglet, 8 avril 2026

Purpose of the document:

This report provides a comparative analysis of contemporary extradition practice in the European Union through the example of Spain, France and Italy. Its purpose is not merely to list national rules, but to identify how, in three major jurisdictions, the broader European logic of judicial cooperation interacts with classic extradition vis-à-vis third States, judicial and executive filters, and the human-rights limits connected with non-refoulement, fair trial, prison conditions, proportionality and institutional discretion. The report proceeds from the premise that within the EU extradition has largely been displaced by the European Arrest Warrant system, while in relations with third States classic extradition remains governed by a layered structure composed of the European Convention on Extradition, national criminal procedure, bilateral treaties and supranational human-rights standards. It is within that layered structure that the main practical defence risks arise. (Eur-Lex)

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1. EXECUTIVE SUMMARY

Modern “EU extradition practice” is no longer a single field in any strict sense. Between European Union Member States, classic extradition has largely been replaced by surrender under the European Arrest Warrant. This is not merely a technical change in terminology, but a shift in legal logic: from a largely inter-state political-diplomatic mechanism to an accelerated form of judicial cooperation based on mutual recognition. In relations with third States, however, classic extradition remains in force, and it is precisely here that the national regimes of Spain, France and Italy continue to operate in combination with the 1957 European Convention on Extradition and their own domestic procedural models. (Eur-Lex)

Spain, France and Italy display three related but non-identical approaches. Spain retains a visible executive filter at an early stage, as shown both by the structure of Ley 4/1985 and by practice in which the Council of Ministers decides on the continuation of the judicial phase. The French model is deeply proceduralised in the Code de procédure pénale and centres on the chambre de l’instruction, while the law expressly sets out substantive refusal grounds, including the risk that the person would be tried by a tribunal lacking fundamental guarantees of defence. Italy relies on the codice di procedura penale and institutionally links extradition to both the Ministry of Justice and judicial

procedure, expressly emphasising the priority of international conventions and general international law over ordinary domestic law where applicable. (BOE)

The principal practical conclusion is that defence in these jurisdictions cannot be built on abstract references to "European standards" in general. At least four layers must be distinguished clearly: which mechanism applies at all, EAW or classic extradition; whether the case is intra-EU or involves a third State; who takes the decisive step, the court, the minister, the government or a mixed structure; and which human-rights arguments have the greatest legal force in the forum concerned, Article 3 risk, Article 6 fair-trial concerns, prison conditions, specialty, dual criminality, limitation, nationality or competing requests. (Eurojust)

2. WHY THIS ISSUE HAS LEGAL AND INTERNATIONAL SIGNIFICANCE

The issue is especially significant because in the European space the notion of "extradition" is often used inaccurately. For many practitioners and clients, any transfer of a person from one country to another is treated as extradition, whereas within the EU the primary regime has long shifted toward surrender under the EAW. This has direct consequences for defence strategy: the legal grounds for refusal, the speed of the procedure, the possibilities of challenge, the role of the political element and the structure of competent authorities differ substantially between surrender and extradition. An error at the stage of identifying the applicable mechanism can undermine the entire defence. (Eur-Lex)

The issue's international significance is reinforced by the fact that Spain, France and Italy do not act merely as ordinary requested States. They are also nodal jurisdictions in transnational cases involving North Africa, Latin America, the post-Soviet space, Mediterranean routes and broader judicial-cooperation networks. Their practice therefore matters beyond their borders: it affects how risks of persecution, politicised prosecution, detention conditions, asylum-extradition overlap and competing requests from third States are assessed in real cases. Eurojust's own materials show that these countries remain heavily involved in complex cross-border criminal cooperation, making their practice structurally important. (Eurojust)

Its legal significance is also tied to the tension between cooperation and rights protection. The European legal environment is designed to accelerate transfers and facilitate the fight against serious cross-border crime. At the same time, that same environment requires compliance with Article 3 ECHR, fair-trial guarantees, specialty, proportionality and effective judicial protection. In real practice, this duality forms the main zone of conflict: states want speed and cooperation; defence needs time and scrutiny. Law tends to pretend these values coexist automatically. Practice is less sentimental. (Eur-Lex)

3. NORMATIVE AND INSTITUTIONAL FRAMEWORK

The overall European framework consists of several levels. The first is Framework Decision 2002/584/JHA, which replaced the previous extradition model between Member States with surrender under the European Arrest Warrant. The second is the 1957 European Convention on Extradition and its additional protocols, which remain central in relations with third States and in the wider Council of Europe area. The third is national law, which governs procedure, competent authorities, refusal grounds, timelines and the role of the executive. The fourth is the ECHR, the EU Charter and the associated ECtHR and CJEU case-law, which limit state discretion where transfer creates a risk of torture, inhuman treatment, a flagrantly unfair trial or other serious violations of fundamental rights. (Eur-Lex)

In Spain, the core domestic statute for classic extradition remains Ley 4/1985, de Extradición Pasiva. Its official text confirms that extradition may be granted only where there is dual criminality and the statutory penalty thresholds are met, while the Constitutional Court practice published in the BOE

demonstrates the institutional role of the Council of Ministers in allowing the judicial phase to proceed. This means that the Spanish model is not purely judicial from the outset: it retains a visible executive gateway, which matters for timing, lobbying risks and early-stage defence strategy. (BOE)

In France, the legal framework is set out in detail in Chapter V of the Code de procédure pénale. The law addresses both the conditions of extradition and the ordinary and simplified extradition procedures. Of particular importance is the fact that French law expressly lists refusal grounds, including cases where the requested person would be tried by a tribunal not offering the fundamental guarantees of procedure and defence, or where the requested state's sanction would offend French public order. This makes the French model especially receptive to well-structured fair-trial and defence-rights arguments. (Légifrance)

In Italy, the normative basis is built around Articles 696–722 of the codice di procedura penale, while the Ministry of Justice expressly states that the institution of extradition is governed by the Constitution, ordinary law, international conventions and general international law, with the latter prevailing over ordinary domestic law where Article 696 c.p.p. makes them applicable. Official materials also confirm the link between the ministerial channel and judicial handling, and prosecutorial explanations distinguish clearly between estradizione passiva and attiva. As a result, the Italian model appears as a classic mixed procedure in which both the courts and the Ministry of Justice remain structurally significant. (giustizia.it)

4. KEY MECHANISMS OF PRACTICE AND CONFLICT

The first key mechanism is the distinction between surrender inside the EU and extradition to third States. In practice, many cases in Spain, France and Italy proceed under the accelerated EAW model, and defence that mistakenly frames its submissions as though the matter were one of classic extradition may miss the real procedural battlefield. Within the EAW framework, mutual recognition increases the structural pressure toward surrender, even though it does not abolish rights-based objections. In relations with third States, the space for classic extradition defence is wider, but the political-diplomatic element is stronger as well. (Eur-Lex)

The second mechanism concerns the allocation of roles between the judiciary and the executive. Spain offers the clearest visibility of a governmental filter at the stage where extradition proceedings are allowed to continue. France places greater formal emphasis on the chambre de l'instruction and judicial handling, though the governmental layer does not vanish entirely from the extradition architecture. Italy, for its part, preserves a classic ministerial-judicial articulation. For defence, the implication is simple but regularly ignored: one cannot attack only the court if the real risk is being shaped earlier or later, at the executive level. (BOE)

The third mechanism is the architecture of substantive refusal grounds. In France, the text of the law itself clearly accommodates arguments about the absence of fundamental defence guarantees in the requesting State. In Spain, the emphasis falls more visibly on the classical thresholds and procedural gateways established by Ley 4/1985. In Italy, the official emphasis on the priority of treaties and international law makes treaty-based objections, specialty, compatibility with conventions and constitutional limits especially significant. In other words, the three countries share a European field, but the legal entry points for defence are distributed differently. (BOE)

The fourth mechanism is the management of competing requests. Eurojust has separately issued guidelines on competing requests for surrender and extradition, expressly highlighting that executing authorities may face multiple EAWs and third-State extradition requests at the same time. For Spain, France and Italy as busy cooperation jurisdictions, this is not a theoretical problem. In such conflicts, the fate of the requested person is determined not merely by the abstract legality of one request, but by forum priorities, gravity, chronology, nationality links, the place of the offence, human-rights

concerns and prosecutorial strategy. Extradition here ceases to be a bilateral story and becomes a contest across several legal vectors. (Eurojust)

5. TYPICAL SCENARIOS AND MODELS OF APPLICATION

The first typical scenario is a third-State extradition request where the person is physically present in Spain, France or Italy and parallel issues of asylum, residence or political-risk allegations arise. In such cases, the classic defence mistake is to treat asylum arguments and extradition arguments as though they belonged to separate universes. Council of Europe materials on the interaction between extradition and asylum show that the two fields intersect, and that state practice differs on how one contour affects the other. For defence strategy, this means building a unified factual record from the outset rather than scattering inconsistent narratives across separate procedures. (rm.coe.int)

The second scenario concerns Article 3, prison conditions and ill-treatment objections. Even where the requesting State offers assurances or formal guarantees, the requested State cannot simply switch off scrutiny. Recent ECtHR practice on threatened removal and extradition, including cases against Türkiye and other recent decisions, shows that risk assessment remains intensely fact-sensitive, and that general geopolitics does not replace analysis of foreseeable treatment. For Spain, France and Italy, this is particularly important in cases involving authoritarian or hybrid regimes outside the EU. (HUDOC)

The third scenario involves fair-trial and politicised-prosecution objections. In French law, such an argument finds direct textual support in the statutory refusal ground concerning tribunals lacking fundamental procedural guarantees. In Spain and Italy, analogous arguments more often require a more complex construction through convention law, constitutional principles, ECHR standards and contextual evidence. Practically, this means that the same risk of politically motivated prosecution must often be packaged differently in each of the three countries. (Légifrance)

The fourth scenario is confusion between EAW and extradition in public discourse and sometimes even in legal framing. A person may simultaneously face an EAW within the EU and an extradition request from a third State, and the executing authority must then decide which framework governs priority. Eurojust developed separate guidance precisely for such situations. For defence, this means that the contest is often not only about whether surrender or extradition should occur, but also about to whom, first, under what instrument, and with which downstream consequences. (Eurojust)

6. MAIN RISKS, CONFLICT ZONES AND PROBLEM POINTS

The first risk is false unification. From the outside, Spain, France and Italy may look like “three EU countries, so the logic must be broadly similar.” In practice, differences in executive involvement, statutory drafting, judicial posture and domestic sequencing are significant enough that copy-paste defence across these jurisdictions is strategically dangerous. What works in Paris as a frontal fair-trial objection grounded directly in statutory language may require a different entry point and a different tempo in Madrid or Rome. (BOE)

The second risk is underestimating the executive layer. In classic extradition, defence focused exclusively on the court hearing often misses early ministerial or governmental junctures where the case is already being shaped. This is especially visible in Spain, where the Council of Ministers appears in the continuation of extradition proceedings, and in Italy, where the ministerial channel is structurally important. Politicised cases often begin to acquire the shape desired by the requesting side precisely there, long before the language of “pure justice” appears on the surface. (BOE)

The third risk is overreliance on generalized human-rights rhetoric. General statements about persecution, repression or lack of democracy are rarely enough by themselves. What is needed are

precise submissions on detention conditions, trial guarantees, specialty concerns, sentencing structure, death-penalty exposure where relevant, limitation periods, political context and evidentiary reliability. The French framework, for example, gives textual entry points for fundamental-defence-guarantee arguments, but even there abstract concern does not replace documented risk. (Légifrance)

The fourth risk is competition and sequencing. Where there is both an EAW and a third-State request, or several simultaneous claims, the outcome may be determined not by the "absolute rightness" of one side, but by sequencing logic and priority criteria. This is exactly why Eurojust stresses the need for informed decision-making on competing requests. Defence that does not work with chronology and forum strategy often loses before the substantive hearing begins. (Eurojust)

7. INTERNATIONAL AND EUROPEAN STANDARDS

The first core standard is that inside the EU surrender under the EAW is the default model replacing extradition between Member States. This does not abolish human rights, but it greatly increases the weight of mutual recognition and judicial efficiency. Any strategy directed at Spain, France or Italy must therefore first determine whether the matter still lies in classic extradition at all. (Eur-Lex)

The second standard is the preservation of classic extradition architecture in relations with third States under a multilayered legal basis. Official EU materials expressly note that extradition proceedings between Member States and third States are governed by a multilayered combination of legal bases. This means that the practitioner must read not one code, but a stack: convention, bilateral treaty, national procedural law, constitutional constraints and supranational rights standards. Otherwise, a gap in the case is almost guaranteed. (Eur-Lex)

The third standard is the human-rights ceiling. Whatever the national procedure, the requested State cannot lawfully ignore Article 3 risk and closely related fair-trial concerns where the threshold is engaged. The official text of French law directly reflects that through a refusal ground concerning fundamental defence guarantees, while the broader Council of Europe and ECtHR framework reinforces the same logic. Extradition in Europe can no longer be honestly presented as a purely sovereignty-based favor between states. It is legally surrounded by limits which, at least on paper, stand above diplomatic convenience. (Légifrance)

The fourth standard is specialty and procedural regularity. Official Italian materials separately recall the principle of specialty under Article 14 of the European Convention on Extradition, while French law directly ties the validity of extradition obtained by France to compliance with the statutory conditions of the chapter. In practice, this means that formal defects, overbroad prosecutorial ambitions and post-transfer expansion risks must be monitored from the very beginning, not after surrender has already occurred and everyone suddenly becomes philosophical about it. (giustizia.it)

8. PRACTICAL CONCLUSIONS AND A LEGAL-RESPONSE MODEL

The first practical task in cases involving Spain, France and Italy is correct legal mapping. One must determine immediately: EAW or classic extradition; EU Member State or third State; active or passive extradition; judicial stage or executive gateway; single request or competing requests. Without this map, further defence turns into beautiful but largely useless rhetoric. (Eur-Lex)

The second task is country-specific defence packaging. In France, priority should be given to the direct use of statutory refusal grounds tied to ordre public and fundamental defence guarantees. In Spain, the role of governmental continuation and the threshold logic of Ley 4/1985 must be taken into account. In Italy, it is critical to work with the hierarchy of conventions, the ministerial channel, specialty and the procedural articulation under the codice di procedura penale. Formally these are

three European systems. Practically, they are three different entry points into the same problem of transferring a human being to a state that cannot be trusted without scrutiny. (BOE)

The third task is building a rights record early. Arguments on non-refoulement, Article 3, prison conditions, politically motivated prosecution, denial of a fair trial and downstream chain consequences must be documented before the procedure hardens. Once the case has been packaged by the state as a routine cooperation matter, it becomes much harder to reverse the narrative. In sensitive cases, defence should therefore work simultaneously on domestic submissions, expert country evidence, asylum overlap where relevant, and international escalation options. (HUDOC)

The fourth task is sequencing strategy in competing requests. Where there is both an EAW and a third-State extradition demand, or several simultaneous claims, it is necessary to argue not only against transfer in general, but also against a particular order of consideration, against certain priority criteria, and in favor of the legally safer forum. In many real cases, the decisive battle is not the final hearing but the preliminary ordering of choices. That sounds dry. It is also how people lose years of their lives. (Eurojust)

9. CONCLUSION

The practice of Spain, France and Italy shows that "EU extradition practice" exists as a single whole only to a limited extent. Inside the EU, surrender logic under the EAW predominates; in the external dimension vis-à-vis third States, classic extradition survives, but it passes through different national procedural architectures. That is why comparing these three countries is useful not as a comparative-law exercise for its own sake, but as a map of where the real European points of risk, refusal, delay, political influence and rights-based defence actually lie. (Eur-Lex)

The main conclusion is sharply practical: defence strategy must be simultaneously European and jurisdiction-specific. It is not enough to know the Convention, not enough to know the ECHR, and not enough to know the general rhetoric of rights. One must understand where, precisely, in Madrid, Paris or Rome the state acquires procedural advantage, who takes the relevant decision, which argument legally resonates in that forum, and how to insert human-rights objections into the mechanics of the specific procedure. Otherwise European legal complexity does not help defence. It helps the system. And the system, with touching consistency, prefers confusion. (BOE)

APPENDIX A. TERMINOLOGY

Extradition. The classical inter-state procedure for surrendering a person to the requesting state, especially in relations with third States, governed by treaty law, domestic law and human-rights limitations. (Portal)

Surrender under the European Arrest Warrant. A simplified cross-border judicial surrender procedure between EU Member States, replacing previous extradition instruments in intra-EU relations. (Eur-Lex)

Passive extradition. A procedure in which a foreign state requests the requested State to surrender a person; official Italian materials describe estradizione passiva in exactly this sense. (pg-napoli.giustizia.it)

Specialty. The principle that the surrendered person may not be prosecuted or restricted in liberty for other prior acts than those forming the basis of surrender, unless special conditions are satisfied. (giustizia.it)

Competing requests. A situation in which the executing authority receives multiple EAWs and/or extradition requests concerning the same person and must determine priority. (Eurojust)

APPENDIX B. MATRIX OF RISKS / POWERS / LEGAL CONSEQUENCES

Qualification of the mechanism.
Legal risk: the case is wrongly handled as extradition instead of EAW, or vice versa.
Legal limit: inside the EU, the default rule is surrender under the EAW.
Consequence: wrong defence strategy and loss of relevant refusal grounds.
Practical note: always begin by identifying the governing instrument. (Eur-Lex)

Executive filter.
Legal risk: defence ignores the ministerial or governmental stage.
Legal limit: in Spain and Italy the executive layer remains structurally relevant; in France institutional sequencing still matters.
Consequence: key decisions are shaped before the main judicial confrontation.
Practical note: submissions should not be aimed only at the court, but also at the channels where the continuation logic is formed. (BOE)

Fair-trial objections.
Legal risk: arguments on politicised prosecution and procedural unfairness remain abstract.
Legal limit: concrete indicators of fundamental defence deficiencies are required.
Consequence: the court sees anxiety, not legal risk.
Practical note: in France especially, structure the submission around statutory language and documented facts. (Légifrance)

Competing requests.
Legal risk: defence contests transfer in general but fails to engage priority.
Legal limit: the executing authority must decide between multiple surrender and extradition requests.
Consequence: the person is sent to the least safe forum simply because of sequencing.
Practical note: litigate order, criteria and downstream human-rights consequences. (Eurojust)

Specialty and post-transfer expansion.
Legal risk: after transfer, the prosecutorial scope expands beyond the original basis.
Legal limit: the principle of specialty under extradition law.
Consequence: the person faces broader prosecution than was authorised.
Practical note: identify specialty issues already at the stage of opposing extradition. (giustizia.it)

OFFICIAL SOURCES

- Framework Decision 2002/584/JHA on the European Arrest Warrant and official EUR-Lex / Eurojust materials. The basic source for understanding that classic extradition between EU Member States has largely been replaced by judicial surrender under the EAW. (Eur-Lex)

- European Convention on Extradition 1957 and Council of Europe Treaty Office / PC-OC materials. The key treaty framework for classic extradition, especially in relations with third States, and for specialty and reservation analysis. (Portal)

- Spain's Ley 4/1985, de Extradición Pasiva, and Constitutional Court decisions published in the BOE. The main Spanish internal source on passive extradition and the role of the Council of Ministers. (BOE)

- France's Code de procédure pénale, Chapter V: De l'extradition. The main French domestic source on conditions, procedure and refusal grounds, including ordre public and fundamental defence guarantees. (Légifrance)

- Italy's codice di procedura penale and official materials of the Ministry of Justice. The main Italian framework for estradizione attiva/passiva, the priority of international norms and the institutional procedure. (Normattiva)

- Eurojust Guidelines for deciding on competing requests for surrender and extradition. A practically important source for multi-request situations involving both EAWs and third-State extradition demands. (Eurojust)