



EIPA

European
Institute of
Public
Administration



Mantello Case Law

A case study on the European Arrest
Warrant



Funded by
the European Union



**Case C-261/09, *Mantello*, 16
November 2010**



Case C-261/09, *Mantello*, 16
November 2010

Instructions

Read through the case facts first and consider what you think the issue is from the scenario given

Then read through the question and attempt to answer it from your own understanding based on what you have learned so far.

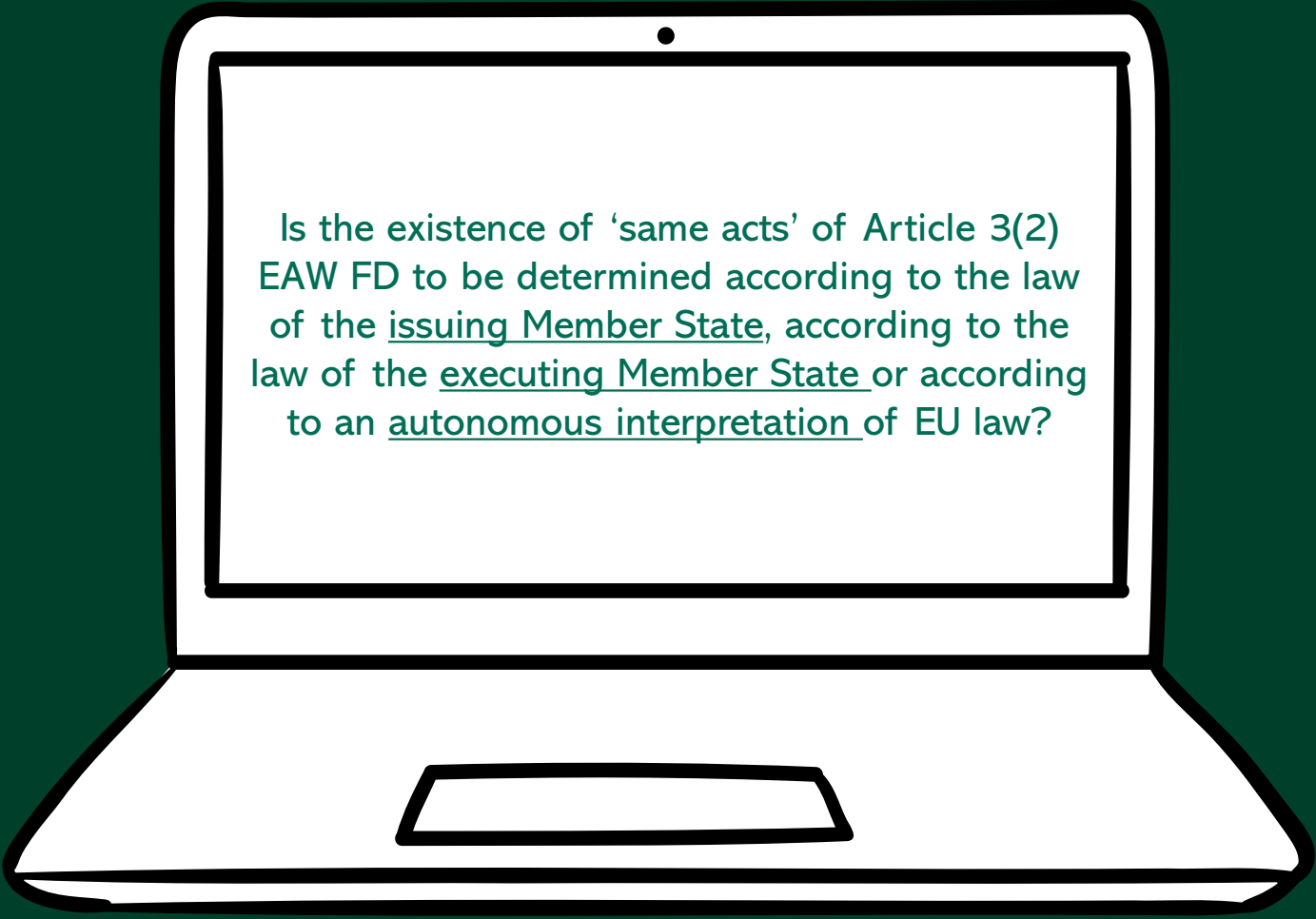
Digest the answer and visit the case law to read it more in depth



Case Facts

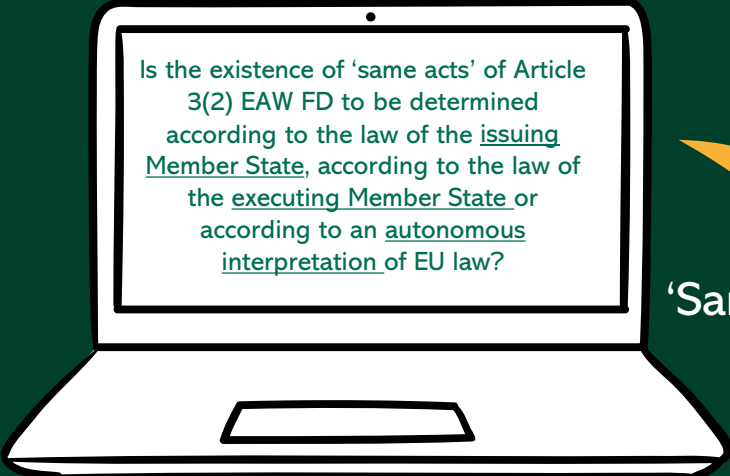
German court received an EAW from an Italian court for the surrender of Mantello, an Italian national, in the context of a prosecution brought against him for drug-related offences and participation in a criminal organisation. The German court considered **whether it should refuse to execute the EAW** based on Article 3(2) EAW FD, particularly in view of the following circumstances.

- » Mantello had been convicted in Italy for possession of cocaine intended for resale while, at the time of the investigation which led to Mantello's conviction, the investigators already had sufficient evidence to charge and prosecute him in connection with the criminal charges set out in the EAW.
- » However, for tactical reasons, such as breaking up the trafficking network and arresting other persons involved, the investigators had refrained from providing the relevant information and evidence to the investigating judge. The German judge wondered whether this was a case of *ne bis in idem*, because under German law, as interpreted by the German Federal Court, a subsequent prosecution for participation in a criminal organisation would be allowed only if the investigators were unaware of this offence at the time of the first conviction, which was not the case.



Is the existence of 'same acts' of Article 3(2) EAW FD to be determined according to the law of the issuing Member State, according to the law of the executing Member State or according to an autonomous interpretation of EU law?

Question 1



Is the existence of 'same acts' of Article 3(2) EAW FD to be determined according to the law of the issuing Member State, according to the law of the executing Member State or according to an autonomous interpretation of EU law?



'Same acts' is interpreted as autonomous concepts of EU Law



This concept cannot be left to the discretion of the judicial authorities of each Member State based on national law. This is in order to meet the need for the uniform application of EU law

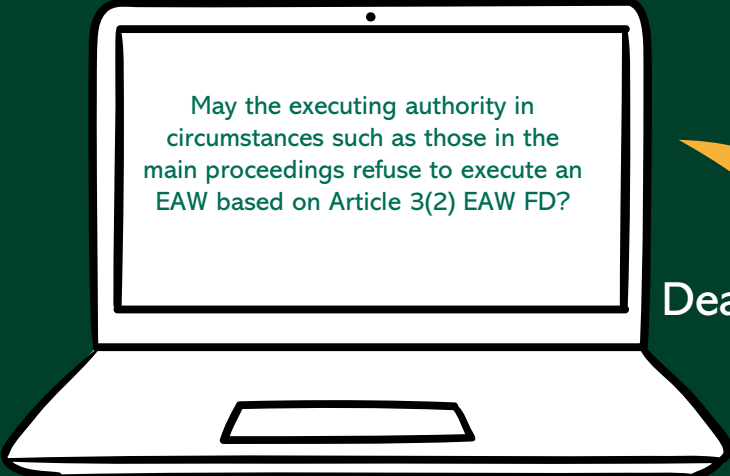


The concept is also present in Article 54 CISA. It is interpreted as referring to “the nature of the acts, encompassing a set of concrete circumstances which are inextricably linked together, irrespective of the legal classification given to them or the legal interest protected.”

Considering the shared objective between Article 54 CISA and Article 3(2) EAW DS, the interpretation must thus be equally applied

Question 2

May the executing authority in circumstances such as those in the main proceedings refuse to execute an EAW based on Article 3(2) EAW FD?



May the executing authority in circumstances such as those in the main proceedings refuse to execute an EAW based on Article 3(2) EAW FD?



Deals with the concept of whether a case has been 'finally judged'



Whether a person has been 'finally judged' for the purposes of Article 3(2) is to be determined by the law of the Member State in which the judgment was delivered



In casu, the Italian authorities stated that the facts on which the EAW is based had not been an object of the trial.

As a result, the German authorities had no reason to apply Article 3(2) EAW based on their assessment

