

# Ministerio de Justicia



Organic Act 2/2003, dated 14th march,  
complementing the European arrest  
warrant Act

Act 3/2003, dated 14th march, on the  
European arrest warrant

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"El presente texto es una traducción de un original en castellano que no tiene carácter oficial en el sentido previsto por el apartado 1º) artículo 6 Real Decreto 2555/1977, de 27 de agosto, por el que se aprueba el Reglamento de la Oficina de Interpretación de Lenguas del Ministerio de Asuntos Exteriores y de Cooperación

## **ORGANIC ACT 2/2003, DATED 14<sup>TH</sup> MARCH, COMPLEMENTING THE EUROPEAN ARREST WARRANT ACT**

### **PREAMBLE**

Act 3/2003, dated 14th March, on the European Arrest Warrant, appoints in Article 2 the executing judicial authorities, attributing to them the power to comply with European Arrest Warrants that are to be executed within Spain. Thus, amendment of Organic Act 6/1985, dated 1st July, on the Judiciary, which lists the competence of Courts of Law, is necessary.

Article 65, Paragraph 4 of the Organic Act on the Judiciary attributes competence judicial procedures of passive extradition to the Criminal Chamber of the National High Court and, therefore, the addition of this provision to confer competence on compliance of European arrest warrants is appropriate. Furthermore, pursuant to Article 88 of the aforesaid Organic Act, the Central Criminal Investigation Courts are appointed to deal with passive extradition proceedings and, thus, as in the previous case, competence over proceedings deriving from European Arrest Warrants must be aggregated.

### **Single Article. Amendment of Articles 65(4) and 88 of Organic Act 6/1985, dated 1st July, on the Judiciary.**

**One.** Paragraph 4 of Article 65 of Organic Act 6/1985 of 1st July on the Judiciary shall henceforth be drafted to read as follows:

“...4) The procedure for the execution of European Arrest Warrants and judicial procedures of passive extradition, regardless of the place of residence or the place where the arrest of the person concerned in the procedure has taken place.”

**Two.** Article 88 of Organic Act 6/1985, dated 1st July, on the Judiciary, shall henceforth be drafted to read as follows:

“In the City of Madrid there may be one or more Central Criminal Investigation Courts with jurisdiction over all of Spain, which shall conduct the criminal investigations in cases to be tried by the Criminal Chamber of the National High Court or the Central Criminal Courts, if applicable, and shall deal with proceedings for the execution of European Arrest Warrants and passive extradition proceedings, pursuant to the terms foreseen in the Law.”

### **Final Provision. Entry into force.**

This Organic Act shall enter into force on the day following the publication thereof in the ‘Official State Gazette’.

## **ACT 3/2003, DATED 14<sup>TH</sup> MARCH, ON THE EUROPEAN ARREST WARRANT**

### **PREAMBLE**

On 13<sup>th</sup> June 2002, the Council of Ministers of Justice and Home Affairs adopted the Framework Decision on the European arrest warrant and the surrender procedures between Member States [OJ L 190/1, 18<sup>th</sup> July 2002], the Union's first legal instrument to apply the principle of mutual recognition set out in the Conclusions of the Tampere European Council.

The mandate to create an area of freedom, security and justice entrusted to the Union by the Amsterdam Treaty has the object of ensuring that the right to free movement of persons can be enjoyed under conditions of safety and justice available to all.

The goal is thus to establish create a true community of Law where the effective legal protection of citizens' rights is ensured and where a judicial system without borders within the Union shall always address the violation of those rights.

In this context, traditional mechanisms of judicial cooperation have to give way to a new way of understanding relations amongst the judicial systems of the Member States to be based on trust.

It is here where the principle of mutual recognition has its place by enabling decisions issued by the judicial authorities of the other States to be enforced practically automatically.

The object of this Act is to comply with the obligations that the Framework Decision establishes for Member States, which consist in replacing extradition procedures with a new procedure for surrendering individuals suspected of having committed an offence or fleeing from justice after having a final sentence ruling has been handed down.

This procedure is based on a model of a Union-wide unified judicial decision, namely the European arrest warrant, which any Spanish judge or court may issue to another Member State requesting the surrender of a person for criminal prosecution or for the service of a sentence handed down. Likewise, the competent judicial authority in Spain must surrender such persons when so required by the judicial authority of another Member State.

The implementation of the principle of mutual recognition involves that, on receiving a European warrant by a judicial authority competent to execute it, execution occurs practically automatically, without the need for the judicial authority that must execute the warrant to conduct any further examination of the request to confirm that such a warrant complies with its internal law. Thus, the grounds on which the judicial authority may refuse execution are set out in the text of the Act, and due to the nature of those grounds the judicial authority can make an objective assessment.

Therefore, grounds for refusal that are customary in extradition procedures, such as elements in respect of the non-surrender of nationals or the consideration of offences as political offences, disappear.

The deeply innovative nature of this procedure is accentuated by the fact of the application thereof to a long list of categories of offences established in the Framework Decision, in respect whereof the existence of double incrimination can no longer be verified. Thus, on receiving a European warrant for one of the types of offences established in that list, provided that the European warrant involves a minimum sentence, the judicial authority must execute the warrant regardless of whether its own criminal law includes such a type of offence.

Another of the important contributions this Act makes to Spanish Law consists in shaping the arrest and surrender procedures as a purely judicial procedure, with hardly any role left for the Executive. This stance makes perfect sense considering that, in an area where the principle of mutual recognition operates, in other words, an area governed by mutual trust, there no longer seems to be much sense in verifying the political situation of the State issuing a European warrant.

As the margin for discretionary evaluation of the State's interest in a matter disappears from the procedure, the power to implement a European arrest warrant can be conferred to the Courts of Law alone.

This entails another great advantage with regards to the speed of the procedure. The European arrest warrant is forwarded directly by the issuing judicial authority to the authority that is to execute it, without the need for the central authority to act.

The surrender of the person is effected after a procedure that the Act has been particularly careful to construct as agile and fast in order to comply with the short deadlines imposed by the Framework Decision. If there is consent to the surrender, the decision shall be taken within ten days after such consent is granted. If the arrested person does not consent to surrender, the decision shall be taken in the sixty days following the arrest. Surrender shall normally occur in both cases in the ten days after the decision is taken.

This Act therefore introduces such material amendments to the classical extradition procedure that the classic extradition procedure may be asserted without caveats that the classical extradition procedure has now vanished from judicial co-operation relations among the Member States of the European Union. The surrender procedure that shall

be applied in lieu thereof shall allow in future this form of direct judicial co-operation to operate effectively and rapidly among States whose constitutional values are based upon respect for fundamental rights and the principles of democracy.

## CHAPTER I

### General Provisions

#### Article 1. Definitions

1. A European arrest warrant (hereinafter the “European warrant”) is a judicial decision issued in a Member State of the European Union with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

2. For the purposes of this Act, the following definitions shall be understood:

‘issuing judicial authority’, the judicial authority of the issuing Member State that is competent to issue a European warrant pursuant to the law of that State;

‘executing judicial authority’, the judicial authority of the Member State of execution that is competent to execute a European warrant pursuant to the law of that State.

#### Article 2. Designation of competent authorities in Spain

1. Within Spain, the ‘issuing judicial authorities’ competent for the purpose of issuing a European warrant are the judge or court hearing the case in which this type of warrant is in appropriate.

2. Within Spain, the ‘executing judicial authorities’ competent for the purpose of implementing a European warrant are the Central Criminal Investigation Court and the Criminal Chamber of the National High Court, in the cases and in the way determined herein.

3. The competent Central Authority is the Ministry of Justice.

#### Article 3. Content of a European arrest warrant

A European warrant shall contain, in one of the official languages of the executing Member State or in any other language accepted by the executing Member State, the following information, set out in accordance with the form contained in the Annexe:

- a) The identity and nationality of the requested person;
- b) The name, address, telephone and fax numbers and e-mail address of the issuing judicial authority;
- c) Evidence of an enforceable judgement, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 5 and 9 hereof;
- d) The nature and legal classification of the offence, particularly in respect of Articles 5 and 9 hereof;
- e) A description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person;

- f) The penalty imposed, if there is a final judgement, or the prescribed scale of penalties for the offence established by legislation;
- g) If possible, other consequences of the offence.

#### **Article 4. Expenses**

Expenses incurred in Spanish territory for the execution of a European arrest warrant shall be borne by the Spanish State. All other expenses shall be borne by the issuing State.

## **CHAPTER II**

### **Issuing a European Warrant**

#### **Article 5. Scope of a European warrant**

1. The Spanish issuing judicial authorities may issue a European warrant in the following cases:
  - a) In order to proceed to a criminal prosecution for acts punishable pursuant to Spanish Criminal Law by a custodial sentence or a detention order for a maximum period of at least 12 months;
  - b) If a sentence has been handed down or a detention order has been made, for sentences of at least four months.
2. In the case of offences punishable by a custodial sentence or a detention order for a maximum period of at least three years that may be subsumed in one of the categories provided for in Article 9(1), the issuing judicial authority shall expressly notify this circumstance.
3. Furthermore, the Spanish issuing judicial authority may request executing authorities to hand over, pursuant to their national law, property which may constitute evidence of the offence or has been acquired as a result thereof.
4. The Spanish issuing judicial authorities shall deduct all periods of detention arising from the execution of a European warrant from the total period of detention to be served in Spain as a result of a custodial sentence or detention order being executed.

#### **Article 6. Transmission of a European warrant**

1. When the location of the requested person is known, the Spanish issuing judicial authority may transmit a European warrant directly to the executing judicial authority.
2. In cases where the location of the requested person is not known, the Spanish issuing judicial authority may decide to issue an alert for the requested person in the Schengen Information System.
3. Without prejudice to the provisions in Paragraph one, the Spanish issuing judicial authority may decide, in any event, to issue an alert for the requested person in the Schengen Information System.
4. Such an alert shall be effected in accordance with the provisions of Article 95 of the Convention of 19<sup>th</sup> June 1990 implementing the Schengen Agreement of 14<sup>th</sup> June 1985 on the gradual abolition of checks at common borders. An alert in the Schengen Information System shall be equivalent to a European arrest warrant to all effects, accompanied by the information set out in Article 3 hereof,
5. If use of the Schengen Information System is not possible, the Spanish issuing judicial authority may call on the services of Interpol to transmit a European warrant.

## **Article 7. Transmission procedure**

The issuing Spanish judicial authority may forward a European warrant by any secure means capable of producing written records under conditions allowing the executing authority to establish its authenticity.

All difficulties concerning the transmission or the authenticity of any document needed for the execution of a European warrant shall be dealt with by direct contacts between the judicial authorities involved.

After transmission of a European warrant, the issuing Spanish judicial authority may forward to the executing judicial authority any additional information that may be useful for execution thereof.

Spanish issuing judicial authorities shall forward to the Ministry of Justice a copy of any European warrant sent.

## **Article 8. Temporary surrenders**

1. If a European warrant has been issued in the case referred to in Article 5(1)(a), the Spanish issuing judicial authority may request the executing judicial authority, before such authority decides on the final surrender, for either transfer of the requested person temporarily to Spain for further criminal proceedings or in order to hold the trial, or for leave to travel to the executing State for the purpose of questioning the requested person.

2. If the executing judicial authority, after having decided to surrender the requested person, were to decide to postpone the surrender until after holding trial or until service of the sentence handed down in the executing State for an act other than that serving as grounds for a European warrant, the Spanish issuing judicial authority may request temporary surrender of the requested person in order to conduct further criminal proceedings or to hold the trial.

## **CHAPTER III**

### **Execution of a European Warrant**

## **Article 9. Acts leading to surrender**

1. If a European warrant has been issued for an offence that, as defined in the law of the issuing State, belongs to one of the categories of offences listed below, and that offence is punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least three years, the requested person shall be surrendered without verification of the double criminality of the act:

- participation in a criminal organisation,
- terrorism,
- trafficking in human beings,
- sexual exploitation of children and child pornography,
- illicit trafficking in narcotic drugs and psychotropic substances,
- illicit trafficking in weapons, munitions and explosives,
- corruption,
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26<sup>th</sup> July 1995 on the protection of the European Communities' financial interests,
- laundering of the proceeds of crime,



- counterfeiting currency, including the euro,
- computer-related crime,
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
- facilitation of unauthorised entry and residence,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage-taking,
- racism and xenophobia,
- organised or armed robbery,
- illicit trafficking in cultural goods, including antiques and works of art,
- swindling,
- racketeering and extortion,
- counterfeiting and piracy of products,
- forgery of administrative documents and trafficking therein,
- forgery of means of payment,
- illicit trafficking in hormonal substances and other growth promoters,
- illicit trafficking in nuclear or radioactive materials,
- trafficking in stolen vehicles,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Court,
- unlawful seizure of aircraft/ships,
- sabotage.

**2.** In all other cases not included in the Paragraph above, provided that they are punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least 12 months, or if a sentence has been handed down or a detention order has been made for sentences of at least four months, surrender may be subject to the condition that he acts for which a European arrest warrant has been issued constitute an offence under Spanish legislation, regardless the constituent elements or the definition of such an offence.

#### **Article 10. Initial proceedings**

**1.** If the Spanish court that receives a European warrant is not competent to act upon it, the Court shall automatically forward the European warrant to the National High Court and shall inform the issuing judicial authority accordingly.



2. The Central Criminal Investigation Court, as the Spanish executing judicial authority, shall verify that the European warrant is translated into Spanish.

Should the warrant forwarded not be translated, the Spanish executing judicial authority shall notify the issuing judicial authority to forward the translation without undue delay. The procedure shall be postponed until receipt of the translation.

If the arrest of the requested person is a consequence of issuing an alert for the requested person in the Schengen Information System, effected in accordance with the provisions of Article 95 of the Convention of 19<sup>th</sup> June 1990 implementing the Schengen Agreement of 14<sup>th</sup> June 1985 on the gradual abolition of checks at common borders, the Central Criminal Investigation Court shall, on its own motion, have the warrant translated, without postponing the procedure.

3. The Central Criminal Investigation Court shall notify the Ministry of Justice forthwith of the receipt of any European warrants forwarded to the Court for execution.

#### **Article 11. Guarantees to be requested of the issuing State in particular cases**

1. If the offence on the basis of which a European warrant has been issued is punishable by custodial life sentence or life-time detention order, the execution of a European arrest warrant by the Spanish judicial authority shall be subject to the condition that the issuing Member State has provisions in its legal system for a review of the penalty or measure imposed, or the application of measures of clemency to which the person is entitled to apply for pursuant to the law or practice of the issuing State, aiming at a non-execution of such penalty or measure.

2. Likewise, where a person who is the subject of a European warrant for the purposes of prosecution is of Spanish nationality, surrender may be subject to the condition that the person, after being heard, is returned to Spain in order to serve the custodial sentence or detention order passed against him in the issuing State.

#### **Article 12. Causes of refusal**

1. The Spanish executing judicial authority shall refuse to execute a European warrant in the following cases:

- a) If the Spanish executing judicial authority is informed that the requested person has been finally judged by a Member State other than the issuing State in respect of the same acts provided that, if there has been sentence, the sentence has been served or is currently being served or may no longer be executed pursuant to the law of the sentencing Member State;
- b) If the person who is the object of a 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 laws of Spain;
- c) If the requested person has been pardoned in Spain for the penalty or measure imposed for the same acts on which a European warrant is based and the Spanish Courts have jurisdiction on such acts.

2. The Spanish executing judicial authority may refuse to execute a European warrant in the following cases:

- a) In the event referred to in Article 9(2); however, in relation to taxes or duties, customs and exchange, execution of a European warrant shall not be refused on the ground that the laws of Spain does not impose the same kind of tax or duty or do not contain the same type of regulation as regards taxes, duties and customs and exchange regulations as the law of the issuing Member State;
- b) If the person who is the subject of a European warrant is being prosecuted in Spain for the same act as that on which a European warrant is based;
- c) If an unconditional decree dismissing the case has been handed down in Spain;
- d) If a final judgement has been handed down on the person who is the subject of a European warrant in another European Union Member State in respect of the same acts, which definitively prevents further criminal proceedings;

- e) If the person who is the subject of a European warrant has been finally judged by a third State not belonging to the European Union in respect of the same acts provided that, when there has been sentence, the sentence has been served or is currently being served or may no longer be executed pursuant to the law of the sentencing country.
- f) If the European arrest warrant has been issued for the purposes of execution of a custodial sentence or detention order, if the requested person is a Spaniard, unless he consents to servicing the sentence in the issuing State. Failing that, the requested person shall serve the sentence in Spain.
- g) If the European warrant relates to offences which are regarded by Spanish Law as having been committed in whole or in part in Spanish territory;
- h) If the European warrant relates to offences that have been committed outside the territory of the issuing State and Spanish Law does not allow prosecution for the same acts when committed without Spain;
- i) If pursuant to Spanish legislation the criminal prosecution on which the European warrant is based or the punishment is statute-barred, if Spanish courts have jurisdiction on the criminal acts.

#### **Article 13. Arrest and bringing before the judicial authority**

1. The arrest of a person to whom a European arrest warrant refers shall be conducted in the form and with the requirements and guarantees foreseen in the Criminal Procedure Act.
2. Within a maximum of seventy-two hours after arrest, the arrested person shall be brought before the Central Criminal Investigation Court at the National High Court.
3. When the arrested person has been brought before the judicial authority, the latter shall inform him of the existence of a European warrant, its content, the possibility of irrevocably consenting to surrender to the issuing State and as to the rest of the arrested person's rights.
4. The issuing judicial authority shall be notified of the arrest of the requested person by the Central Criminal Investigation Court.

#### **Article 14. Hearing of the arrested person**

1. The hearing of the arrested person shall be held before the Central Criminal Investigation Court no later than seventy-two hours after he was brought before the judicial authorities, with the attendance of the Public Prosecutor, the legal counsel for the arrested person and, if necessary, an interpreter. The hearing shall be conducted according to the Criminal Procedure Act in respect of the hearing of the arrested person.

2. Firstly, the arrested person shall be heard concerning giving his irrevocable consent to surrender.

If the arrested person consents to his surrender, this shall be formally recorded and the written record thereof shall be signed by the arrested person, the court clerk, the representative of the Public Prosecutor and the Judge. Renunciation of entitlement to the 'speciality rule' shall be recorded in the same document, if appropriate.

In any event, the Judge presiding shall ensure that the consent to surrender by the arrested person was given freely and in full awareness of the consequences thereof, especially the fact that such consent is irrevocable. The Judge shall do likewise with regard to the renunciation of entitlement to the speciality rule.

Next, if there were no consent, the Judge shall hear the parties on the grounds for refusal of or on setting conditions for surrender.

3. In all cases, the Public Prosecutor shall be heard about whether the surrender or placing of conditions thereupon is appropriate.

4. At the hearing, the parties may propose evidence of grounds for refusal of or setting of conditions for surrender.

If the evidence cannot be produced during the course of the hearing, the Judge shall set a deadline for the submission of evidence, giving due consideration to the need to respect the deadlines set herein.

#### **Article 15. Additional information**

1. If the transmitted European warrant were not contain the mandatory information referred to in Article 3, the Judge of the Central Criminal Investigation Court shall request the issuing judicial authority to furnish the missing information. Likewise, the Judge may request the issuing judicial authority to furnish supplementary information on possible grounds for refusal of or setting of conditions on execution.

2. The Judge of the Central Criminal Investigation Court may set a deadline for the aforesaid information to be furnished, giving due consideration of the need to respect the deadlines referred to in Article 19 hereof.

#### **Article 16. Temporary transfer or hearing of the requested person**

1. In the events referred to in Article 5(1)(a), if the issuing judicial authority so requests, the Central Criminal Investigation Court may rule either to hear the requested person pursuant to Paragraph two or to transfer the requested person temporarily to the issuing State.

2. The requested person shall be heard by the issuing judicial authority, which shall go to Spain, and be attended, if appropriate, by the person designated in accordance with the law of the issuing State. The hearing shall be conducted as provided for by Spanish Law and pursuant to the conditions agreed by the judicial authorities concerned.

In any event, the right of the arrested person to legal counsel, his right not to incriminate himself and not to declare himself guilty, and his right to an interpreter shall be respected.

The Central Criminal Investigation Court may require this proceeding to be conducted in its presence or the presence of a Clerk of Court to leave a record of compliance with the conditions provided for herein and the conditions agreed by the judicial authorities supervising the procedure.

3. If the temporary transfer of the arrested person is consented, the transfer shall take place under the conditions and for the length of time agreed with the issuing judicial authority. In any event, the requested person shall return to Spain to attend hearings concerning him within the framework of the surrender procedure.

#### **Article 17. Personal status of the requested person**

1. During the hearing referred to in Article 14, after hearing the Public Prosecutor, the Judge of the Central Criminal Investigation Court shall decree either for the requested person to be remanded in custody or to released provisionally, taking such precautionary measures as the Judge may consider necessary to ensure that the person concerned remains fully available, especially the precautionary measures provided for that purpose in the Criminal Procedure Act.

2. The Judge shall decide, bearing in mind the circumstances of the case and the goal of ensuring execution of the European warrant.

3. At any time in the procedure after hearing the Public Prosecutor, the Judge, considering the circumstances of the case, may decide to put an end to custody, but in that case the Judge shall take one or more of the precautionary measures referred to in the Paragraph above.

4. Appeal against the judicial decisions referred to in this Article may be lodged before the Criminal Chamber of the National High Court.

#### **Article 18. Decision on surrender of the requested person**

1. If the person concerned has consented to surrender to the issuing State and the Public Prosecutor sees no grounds for refusing or setting conditions on surrender, the Judge of the Central Criminal Investigation Court may issue a decree ordering surrender to the issuing State. This decree shall be issued no later than ten days after the hearing and no appeal may be lodged against it.
2. In all other cases, the Judge of the Central Criminal Investigation Court shall refer the proceedings to the Criminal Chamber of the National High Court. The Criminal Chamber shall issue a decree deciding the proceedings, observing deadline set by the Article above. No appeal may be lodged against this decree.

#### **Article 19. Deadlines**

1. A European arrest warrant shall be dealt with and executed as a matter of urgency.
2. If the requested person consents to his surrender, the judicial decision shall be taken within the following ten days.
3. If there is no consent, the decision shall be taken within a period of 60 days after the arrest of the requested person.
4. If for justified reasons the decision cannot be taken within the deadlines indicated, the deadlines may be extended by a further thirty days, and the issuing judicial authority shall be notified of the circumstance and its causes. The conditions necessary for surrender shall be maintained in the meantime.
5. If for exceptional circumstances the deadlines provided for in this Article cannot be observed, the Spanish executing judicial authority shall inform Eurojust, giving the reasons for the delay.

#### **Article 20. Surrender of the requested person**

1. The surrender of the requested person shall be done by an agent of the Spanish authority, after notifying the authority designated for this purpose by the issuing judicial authority of the place and dates set, within ten days after the judicial decision on surrender.
2. If for circumstances beyond the control of any of the issuing or executing States the surrender cannot be done within this deadline, the judicial authorities involved shall immediately contact each other to set a new date, within a further deadline of ten days of the date first set.
3. Exceptionally, the judicial authority may temporarily postpone surrender for grave humanitarian reasons, but surrender shall take place as soon as these reasons have ceased to exist. The surrender shall take place within ten days of the new date agreed when these reasons are no longer present.
4. Upon expiry of the deadlines for surrender, if the requested person has not been received by the issuing State, the person shall be released. This release shall justify the refusal to execute a subsequent European warrant based on the same acts.
5. In any event, at the time of surrender the Spanish executing judicial authority shall notify the issuing judicial authority of the period of detention of the person referred to in a European warrant, in order for that period to be deducted from the custodial sentence or detention order handed down.

#### **Article 21. Postponed or conditional surrender**

1. If the requested person has criminal proceedings pending with a Spanish court for an act other than that referred to in a European warrant, the Spanish executing judicial authority may, even after deciding to execute the warrant, postpone the surrender until the trial has been held or the sentence handed down has been served.

2. In the event referred to in the Paragraph above, the Spanish executing judicial authority shall, if requested by the issuing judicial authority, temporarily surrender the requested person under conditions formalised in writing with the issuing judicial authority, which shall be binding on all the authorities in the issuing Member State.

#### **Article 22. Handing over of property**

1. At the request of the issuing judicial authority or on its own motion, the Spanish executing judicial authority shall, in accordance with its internal law, seize and hand over property that constitutes evidence or the results of the offence, without prejudice of any rights that the Spanish State or third parties may have acquired in the property. In this case, at conclusion of the trial, the property shall be returned.

2. The property referred to in the Paragraph above shall be handed over even if the European arrest warrant cannot be carried out owing to the death or escape of the requested person.

3. If the property that is the object of seizure or confiscation is in Spain, the Spanish executing judicial authority may refuse to hand over the property or may hand such property over temporarily only, if the property is needed in connection with pending criminal proceedings.

#### **Article 23. Decision in the event of multiple requests**

1. If two or more Member States have issued European warrants for the same person, the decision on which of the European arrest warrants shall be executed shall be taken by the Spanish executing judicial authority with due consideration of all the circumstances and especially the relative seriousness and place of the offences, the respective dates of the European arrest warrants and whether the warrant has been issued for the purpose of prosecution or for execution of a custodial sentence or detention order.

The Spanish executing judicial authority may, where appropriate, seek the advice of Eurojust when making this choice.

2. In the event of a conflict between a European warrant and a request for extradition presented by a third country, the Spanish executing judicial authority shall suspend the proceedings and remit all the documents to the Central Authority. The Ministry of Justice shall submit a proposal on whether the European warrant or the extradition request takes precedence to the Council of Ministers with due consideration of all the circumstances, in particular those referred to in Paragraph 1 and those mentioned in the applicable convention. This stage in the proceedings shall be governed by the provisions of the Passive Extradition Act.

3. Where it is decided that the extradition request takes precedence, the Spanish executing judicial authority shall be notified and shall inform the issuing judicial authority.

Where it is decided that the European warrant takes precedence, the Spanish executing judicial authority shall be notified and may resume the procedure at the stage where it was suspended.

4. This Article shall be without prejudice to obligations pursuant to the Statute of the International Criminal Court.

### **CHAPTER IV**

#### **Other Provisions**

#### **Article 24. Speciality rule**

1. Consent or authorisation is presumed to have been given for the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to the surrender of a

person, other than that for which he was surrendered to the Spanish State, provided that the State of the executing judicial authority has notified the General Secretariat of the Council of the European Union that such Member State is favourably disposed to giving consent or authorisation, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

2. If the declaration is made, the person surrendered to Spain may not be prosecuted, sentenced or otherwise deprived of his liberty for an offence committed prior to his surrender other than that for which he was surrendered, unless authorised by the executing State. For that purpose, the Spanish issuing judicial authority shall submit a request for authorisation to the executing judicial authority, accompanied by the information mentioned in Article 3(1).

3. If Spain is the executing State, until the General Secretariat of the Council is notified to which Paragraph 1 hereof refers, for the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to the surrender of a person, other than that for which he was surrendered, the issuing State shall request the authorisation referred to in the Paragraph above, which the Spanish executing judicial authority shall provide no later than thirty days, if the offence on which the request is based is a reason for surrender pursuant to the provisions of this Act, and without prejudice to the guarantees referred to in Article 11 hereof.

4. The Paragraphs above do not apply when any of the following circumstances concurs:

- a) When the person, before his surrender, has expressly renounced entitlement to the speciality rule before the executing judicial authority.
- b) When the person, after his surrender, has expressly renounced entitlement to the speciality rule with regard to specific offences preceding his surrender. Renunciation shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's domestic law. The renunciation shall be drawn up in such a way as to show that the person has given it voluntarily and in full awareness of the consequences. To that end, the person shall have the right to legal counsel.
- c) When the person having had an opportunity to leave the territory of the Member State to which he has been surrendered has not done so within 45 days of his final discharge, or has returned to that territory after leaving it.
- d) When the offence is not punishable by a custodial sentence or detention order.
- e) When the criminal proceedings do not give rise to the application of a measure restricting personal liberty.
- f) When the person could be liable to a penalty or a measure not involving the deprivation of liberty, in particular a financial penalty or a measure in lieu thereof, even if the penalty or measure may give rise to a restriction of his personal liberty.

## **Article 25. Transit**

1. The transit of a person through Spanish territory for the execution of a European warrant shall only require the following particulars, provided by the issuing State:

- a) the identity and nationality of the person subject to a European warrant,
- b) the existence of a European warrant,
- c) the legal classification of the offence,
- d) the description of the circumstances of the offence, including the date and place.

2. Exception is made for transit by air without stopover, unless a forced landing occurs.

3. In Spain, competence to receive transit information rests with Central Authority.

## **Article 26. Subsequent surrender**

1. The consent for the surrender by the Spanish State of an individual to another Member State pursuant to a European warrant issued for an offence committed prior to his surrender is presumed to have been given in respect of all executing Member States that have notified the General Secretariat of the Council that they are favourably disposed to give consent thereto, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

2. The Spanish State shall not require the consent of the executing judicial authority to surrender a person surrendered to the Spanish State pursuant to a European warrant for an offence committed prior to his surrender in the following cases:

- a) Where the requested person, having had an opportunity to leave the territory of the Member State to which he has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it.
- b) Where the requested person consents to be surrendered to a Member State other than the executing Member State pursuant to a European arrest warrant.

Consent shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's national law.

It shall be drawn up in such a way as to show that the person concerned has given it voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel.

- c) Where the requested person is not subject to the speciality rule, pursuant to Articles 24(2) and 24(4)(a), (b) and (c) hereof.

3. In cases not referred to in the Paragraph above, the Spanish State shall need the authorisation of the executing judicial authority, which the Spanish State shall request pursuant to Article 6 hereof, annexing to the request the information mentioned in Article 3(1) hereof, as well of a translation thereof.

4. Until Spain effects the declaration referred to in Paragraph 1 of this Article, the consent of the Spanish State to the surrender by the issuing State to a third State pursuant to a European warrant issued for an offence committed prior to the surrender shall require a request for authorisation from the State in question, which the Spanish executing judicial authority shall decide on within no more than thirty days, if the offence on which the request is based justifies a surrender pursuant to this Act, and without prejudice to the guarantees referred to in Article 11 hereof.

## **Article 27. Surrender subsequent to extradition**

1. If a requested person has been extradited to Spain from a third State and that person is protected by provisions of the agreement pursuant to which he was extradited concerning speciality, the executing Spanish judicial authority shall request authorisation from the State from which the requested person was extradited so that he can be surrendered to the issuing State. The deadlines referred to in Article 19 shall start running on the day on which the provisions on the speciality principles cease to apply.

2. While the authorisation is being dealt with, the executing Spanish judicial authority shall ensure that the material conditions necessary for effective surrender remain in place.

## **Article 28. Subsequent extradition**

1. If a person has been surrendered to Spain pursuant to a European warrant and the extradition of that person is subsequently requested by a State that is not a member of the European Union, extradition cannot be granted without the consent of the executing judicial authority that ordered the surrender. The Central Criminal Investigation Court shall address the relevant request.



2. If the Spanish judicial authorities, having agreed to surrender a person to another Member State of the European Union pursuant to a European warrant, are asked by the issuing judicial authorities to consent to the extradition of the requested person to a third State not belonging to the European Union, that consent shall be given in accordance with the bilateral or multilateral agreements to which Spain is a party, and the request for authorisation shall be regarded for these purposes as an extradition request.

#### **Article 29. Privileges and Immunities**

1. When the person referred to in a European warrant enjoys immunity in Spain, the executing judicial authority shall request the competent authority to waive that privilege forthwith. If power to waive the immunity lies with an authority of another State or international organisation, it shall be for the judicial authority issuing the European warrant to request it to exercise that power, for which purpose the executing judicial authority shall notify the issuing judicial authority of this circumstance.

2. Until the request for waiver of the immunity referred to in the Paragraph above has been decided upon, the executing judicial authority shall take such precautionary measures as such authority considers necessary in order to ensure effective surrender when the person no longer enjoys such privilege or immunity.

3. As soon as the executing judicial authority is informed of the fact that the privilege or immunity referred to above has been waived, the deadlines set in this Act shall start running.

4. When the person referred to in a European warrant reached Spain as a consequence of extradition from a third State not belonging to the European Union and the surrender is limited to the offence for which the person was requested, the deadlines for decision mentioned in the Paragraph above shall start running as from when the authorities of the State that extradited the requested person assent to waive the speciality principle and the individual can be surrendered to the State issuing the European warrant.

Until the decision is notified, the judge or court shall maintain the necessary conditions for surrendering the person, as appropriate.

#### **First Additional Provision. Relation to other legal instruments**

The conditions, requirements and procedure for issuing and complying with the European arrest warrant shall be governed by the terms established in this Act, without prejudice to the provisions of bilateral or multilateral Agreements signed by Spain to simplify or facilitate the procedure for surrender, pursuant to Article 31(2) of the Framework Decision.

#### **Second Additional Provision. Transmission of a European warrant via the European Judicial Network**

Transmission of a European warrant as referred to in Article 7(1) hereof may be effected via the secure telecommunications system of the European Judicial Network, regulated in Council Decision 2002/187/JHA of 28<sup>th</sup> February 2002, as soon as such Network is operational.

#### **Third Additional Provision. Transmission and execution of European warrants issued from or addressed to Gibraltar**

Application of the provisions regarding European warrants issued from or addressed to the British colony of Gibraltar shall be governed by the provisions contained in the 'Arrangements agreed relative to Gibraltar authorities in the context of EU and EC instruments and related treaties', contained in Council document 7998/00 JHA 45 MI 73 of 19<sup>th</sup> April 2000.

#### **First Transitional Provision. Equivalence of the alert in the Schengen Information System**

Provisionally, until the Schengen Information System is capable of transmitting all the information described in Article 3, the description shall be equivalent to a European warrant pending receipt of the original in due and proper form by the executing judicial authority.

### **Second Transitional Provision. Transitional procedure**

1. This Act shall apply to European arrest warrants issued subsequently to its entry in force, even when they refer to acts prior to the entry in force thereof.
2. Extradition procedures in progress at the time of the entry into force of this Act shall continue to be dealt with as such until their conclusion.
3. The provisions of this Act shall apply only to Member States that have notified the General Secretariat of the Council and the Commission of the European Union of the text and entry into force of the provisions transposing into their national law the obligations imposed on them pursuant to Council Framework Decision 2002/584/JHA of 13<sup>th</sup> June 2002 on the European arrest warrant and the surrender procedures between Member States. Until that time, current provisions on extradition shall continue to apply to the other Member States until the date when those Member States implement their provisions transposing the Framework Decision.

### **Sole Final Provision. Entry into force**

This Act shall enter into force on the day following publication thereof in the 'Official State Gazette'.

