

ACT 3/2003, MARCH 14, ON THE EUROPEAN ARREST WARRANT

To all those who read and understand the present law

Be it known: That the Parliament has approved and I have sanctioned the following Act

I. PREAMBLE

On 13 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, 17 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 accessible to all. The point is, then, to 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 will always respond to the injury of those rights.

In this context, traditional mechanisms of judicial cooperation have to give way to a new way of seeing the relations among the judicial systems of the Member States, based on trust. Here is where the principle of mutual recognition comes into its own, enabling decisions issued by the judicial authorities of 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 persons suspected of having committed an offence or fleeing from justice after having been finally sentenced. This procedure is built around a model of a Union-wide unified judicial decision, 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 that has been passed. Likewise the competent judicial authority in Spain must surrender such persons where required by the judicial authority of another Member State.

Under application of the principle of mutual recognition, upon receipt of the European warrant by the 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 it is in accordance with domestic law. Thus the grounds on which the judicial authority may refuse execution are fixed in the text of the Act, and due to the nature of those grounds the judicial authority can reach 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, vanish.

The deeply innovative nature of this procedure is accentuated by the fact that it is applied in regard to a long list of categories of offences established in the Framework Decision, in respect of which the existence of double incrimination can no longer be examined. Thus, on receiving a European warrant for one of the classes of offences established in this list, provided that the European warrant crosses a certain penalty threshold, the judicial authority must execute the warrant regardless of whether its own criminal law includes such types of offences.

Another of the important contributions this Act makes to Spanish law consists in envisioning the arrest and surrender procedure as a purely judicial procedure, with hardly any role for the executive branch to play. This stance makes perfect sense considering that, in the area where the principle of mutual recognition operates, which is a space of mutual trust, there no longer seems to be much point in verifying the political situation of the State issuing the European warrant. Whereas the margin for discretionary assessment of conduciveness to State interests disappears from the procedure, application of the terms of the European warrant can be attributed as a power to the courts alone.

This entails another great advantage in regard 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 play any role. The surrender of the person is performed after having followed a procedure that the Act has been particularly careful to construct as nimble and quick in order to meet the short time limits imposed by the European rule. If there is consent to the surrender, the decision must be taken in the ten days following the giving of consent. Where the arrested person does not consent to surrender, the decision shall be taken in the sixty days following the arrest. Surrender must normally occur in both cases in the ten days after the decision is taken.

This is, then, an Act that introduces such substantial amendments to the classic extradition procedure that the classic extradition procedure may be asserted without reservations to have vanished from judicial co-operation relations among the Member States of the European Union. The surrender procedure that shall be applied in its stead will henceforth enable this form of direct judicial co-operation to operate effectively and rapidly between States whose constitutional values are based upon respect for the fundamental rights and upon the principles of democracy.

CHAPTER I: General Provisions

Article 1. Definitions.

1. The 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 the European warrant pursuant to the law of that State.

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

1. In Spain the ‘issuing judicial authorities’ competent for the purpose of issuing the European warrant are the judge or court hearing the case in which this type of warrant is in order.
2. In Spain the ‘executing judicial authorities’ competent for the purpose of complying with the European warrant are the Central Preliminary Investigating Court and the Criminal Division of the National Court, in the cases and fashion determined herein.
3. The competent Central Authority is the Ministry of Justice.

i) Article 3. Content of the European arrest warrant.

The 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 Annex:

- 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.

B) CHAPTER II: ISSUING OF A EUROPEAN WARRANT

2. Article 5. Object of the European warrant.

1. The Spanish issuing judicial authorities may issue a European warrant in the following cases:
 - a) In order to conduct a criminal prosecution for acts punishable by Spanish criminal law by a custodial sentence or a detention order for a maximum period of at least 12 months.
 - b) Where a sentence has been passed 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 assigned to one of the categories provided for in Article 9(1), the issuing judicial authority must expressly notify this circumstance.
3. Furthermore the Spanish issuing judicial authority may request executing authorities to hand over, in accordance with its national law, property which may constitute evidence or effects of the offence.
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 passed.

Article 6. Transmission of a European warrant.

1. When the location of the requested person is known, the Spanish issuing judicial authority may transmit the European warrant directly to the competent 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. The aforesaid alerts shall be effected in accordance with the provisions of Article 95 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders. An alert in the Schengen Information System, accompanied by the information set out in Article 3 hereof, shall be equivalent to a European arrest warrant to all effects.
5. If it is not possible to call on the Schengen Information System, the Spanish issuing judicial authority may call on Interpol to transmit a European warrant.

Article 7. Transmission procedure.

The issuing Spanish judicial authority may forward the 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 the European warrant shall be dealt with by direct communication between the judicial authorities involved.

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

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

Article 8. Temporary surrenders.

1. When 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 it decides on the final surrender, for either transfer of the requested person temporarily to Spain for further proceedings or the hearing, or authorisation to go to the executing State for the purpose of hearing the requested person.
2. If the executing judicial authority, after having decided to surrender the requested person, should decide to postpone the surrender until trial or until service of the sentence passed in the executing State for an act other than that serving as grounds for the European warrant, the Spanish issuing judicial authority may request temporary surrender of the requested person in order to conduct further proceedings or hold the hearing.

CHAPTER III: EXECUTION OF A EUROPEAN WARRANT

Article 9. Acts leading to surrender.

1. Where the 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 herein 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 acts:

- 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 July 1995 on the protection of the European Communities' financial interests,
- laundering of the proceeds of crime,
- counterfeiting currency, including of 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 events 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 where a sentence has been passed or a detention order has been made for sentences of at least four months, surrender may be subject to the condition that the acts for which the European arrest warrant has been issued constitute an offence under Spanish legislation, whatever the constituent elements or however it is described.

Article 10. Initial proceedings.

- a) **1. If the Spanish court which receives a European warrant is not competent to act upon it, it shall automatically forward the European warrant to the National Court and shall inform the issuing judicial authority accordingly.**
- b) **2. The Central Preliminary Investigating 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 as shortly as possible. The procedure shall be postponed until receipt of the translation.

Where 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 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders, the Central Preliminary Investigating Court shall automatically have the warrant translated, without postponing the procedure.

3. The Central Preliminary Investigating Court shall notify the Ministry of Justice as shortly as possible of the receipt of any European warrants forwarded to it for execution.

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

1. If the offence on the basis of which the European warrant has been issued is punishable by custodial life sentence or life-time detention order, the execution of the 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 which the person is entitled to apply for under 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 the 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, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State.
 - b) 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 Spain.
 - c) If the requested person has been pardoned in Spain for the penalty or measure imposed for the same acts on which the European warrant is based and it can be prosecuted by Spanish jurisdiction.

2. The Spanish executing judicial authority may refuse to execute the 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 the European warrant shall not be refused on the ground that the law of Spain does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing Member State.
- b) Where the person who is the subject of the European warrant is being prosecuted in Spain for the same act as that on which the European warrant is based.
- c) Where a non-suit judgement has been given in Spain for the same acts.
- d) Where a final judgement has been passed upon the person who is the subject of the European warrant in another European Union Member State in respect of the same acts, which definitively prevents further proceedings.
- e) If the person who is the subject of the 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 under 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, where the requested person is of Spanish nationality, save when he consents to service in the issuing State. Otherwise, the requested person must serve the sentence in Spain.
- g) Where 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) Where the European warrant relates to offences which have been committed outside the territory of the issuing State and Spanish law does not allow prosecution for the same acts when committed outside its territory.
- i) Where under Spanish legislation the criminal prosecution on which the European warrant is based or the punishment is statute-barred, if Spanish courts were competent to prosecute the criminal acts.

3. Article 13. Arrest and bringing before the judicial authority.

- 1. The arrest of a person concerned in a European arrest warrant shall be conducted in the form and with the requirements and guarantees referred to by the Criminal Procedure Act.
- 2. Within the maximum of seventy-two hours after arrest, the arrested person shall be brought before the Central Preliminary Investigating Court at the National Court.
- 3. When the arrested person has been brought before the judicial authority, it will inform him of the existence of the European warrant, its content, the possibility of irrevocably consenting to surrender to the issuing State and the rest of his rights.

4. The issuing judicial authority shall be notified of the arrest of the requested person by the Central Preliminary Investigating Court.

Article 14. Hearing of the arrested person.

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

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

Where the arrested person consents to his or her surrender, this point shall be formally recorded and the record signed by the arrested person, the clerk of court, 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.

At all events, the Judge presiding shall ensure that the consent to surrender by the arrested person was given freely and in full awareness of its consequences, specially the fact that it is irrevocable. The Judge shall do likewise with regard to the renunciation of entitlement to the speciality rule.

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

1. In all events, the Public Prosecutor shall be heard about whether the surrender or placing of conditions thereupon is in order.
2. At the hearing the parties may propose evidence of grounds for refusal of or setting of conditions on surrender.

If the evidence cannot be submitted during the course of the hearing, the Judge shall set a time limit for evidence submission, with due consideration of the need to respect the maximum time limits referred to herein.

4. Article 15. Additional information.

1. Where the transmitted European warrant does not contain the mandatory information referred to in article 3, the Judge of the Central Preliminary Investigating Court shall request the issuing judicial authority to furnish the missing information. Likewise he 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 Preliminary Investigating Court may set a time limit for the said information to be furnished, with due consideration of the need to respect the maximum time limits referred to in Article 19.

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 Preliminary Investigating 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, who shall go to Spain, and be attended, where 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 under the conditions agreed by the judicial authorities concerned. At all events 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.

III. The Central Preliminary Investigating 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.

- IV. 3. Where the temporary transfer of the arrested person has been agreed to, the transfer shall take place under the conditions and for the length of time agreed with the issuing judicial authority. At all events the requested person must return to Spain to attend hearings concerning him or her as part of the surrender procedure.

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Article 17. Personal position of the requested person.

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1. During the hearing referred to in Article 14, after hearing the Public Prosecutor, the Judge of the Central Preliminary Investigating Court shall decree provisional incarceration or provisional release, taking such precautionary measures as he considers necessary to ensure that the persons concerned are fully available, especially the precautionary measures provided for that purpose in the Criminal Procedure Act.
2. The Judge shall decide, with due consideration of 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 end the provisional incarceration, but in that case he must 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 Division of the National Court.

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VIII. Article 18. Decision on surrender of the requested person.

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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 Preliminary Investigating Court may issue a writ for the surrender to the issuing State. This writ shall be issued no later than ten days after the hearing and shall admit no appeal.

2. In all other cases the Judge of the Central Preliminary Investigating Court shall refer the proceedings to the Criminal Division of the National Court. The Criminal Division shall issue a writ deciding the proceedings, observing the time limit set by the article above. This writ shall admit no appeal.

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XII. Article 19. Time limits.

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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 should 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. Where for grounded reasons the decision cannot be taken within the time limits indicated, the time limits 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. Where in exceptional circumstances the time limits provided for in this Article cannot be observed, the Spanish executing judicial authority shall inform Eurojust, giving the reasons for the delay.

XIV. Article 20. Surrender of the requested person.

XV.

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, always 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 time limit, the judicial authorities involved shall immediately contact each other to set a new date, within a further time limit of ten days of the date first set.
3. Exceptionally, the judicial authority may temporarily postpone surrender for serious humanitarian reasons, but surrender must take place as soon as these grounds have ceased to exist. The surrender shall take place within ten days of the new date agreed when these grounds have ceased to exist.
4. Upon expiry of the time limits for surrender, if the requested person has not been received by the issuing State, the person shall be released. This release shall furnish no grounds for refusing to execute a subsequent European warrant based on the same acts.
5. At all events, 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 the European warrant, for that period to be deducted from the custodial sentence or detention order passed.

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XVII. Article 21. Postponed or conditional surrender.

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1. Where the requested person has criminal proceedings pending with a Spanish court for an act other than that referred to in the European warrant, the Spanish executing judicial authority may, even if it has decided to execute the warrant, postpone the surrender until the trial has been

held or the sentence passed 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.

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XX. Article 22. Handing over of property.

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1. At the request of the issuing judicial authority or on its own initiative, the Spanish executing judicial authority shall, in accordance with its national law, seize and hand over property which constitutes evidence or effects of the offence, without prejudice of any rights which 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. Where the property is the object of seizure or confiscation in Spain, the Spanish executing judicial authority may refuse to hand over the property or may hand it over temporarily only, if the property is needed in connection with pending criminal proceedings.

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XXIII. Article 23. Decision in the event of multiple requests.

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1. If two or more Member States have issued European warrants for the same person, the decision on priority of execution 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 warrants and whether the warrant has been issued for the purpose of prosecution or for execution of a custodial sentence or detention order.

XXV. 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 stay 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 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.

XXVI. 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 stayed.

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

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XXIX. CHAPTER IV: OTHER PROVISIONS

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XXXI. Article 24. Speciality rule.

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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 or she 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 it is favourably disposed to give consent or authorisation, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.
2. Where the declaration is made, the person surrendered to Spain may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she 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. Where Spain is the executing State, until the General Secretariat of the Council is notified within the meaning of paragraph 1, 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 or she was surrendered, the issuing State must request the authorisation referred to in the paragraph above, which the Spanish executing judicial authority must give in no later than thirty days, if the offence on which the request is based is grounds 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 under any of the following circumstances:
 - a) When the person, before his/her surrender, has expressly renounced entitlement to the speciality rule before the executing judicial authority
 - b) When the person, after his/her surrender, has expressly renounced entitlement to the speciality rule with regard to specific offences preceding his/her 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 or she has been surrendered has not done so within 45 days of his or her 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 or her personal liberty.

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XXXV. Article 25. Transit.

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XXXVII. 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:

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XXXIX. a) the identity and nationality of the person subject to the European warrant,

XL. b) the existence of a European warrant,

XLI. c) the legal classification of the offence,

XLII. d) the description of the circumstances of the offence, including the date and place.

XLIII. 2. An exception is made for transit by air without a scheduled stopover, unless an unscheduled landing occurs.

XLIV. 3. In Spain the Central Authority is competent to receive transit information.

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XLVII. Article 26. Subsequent extradition.

XLVIII.

1. The consent for the surrender by the Spanish State of a person to another Member State pursuant to a European warrant issued for an offence committed prior to his or her surrender is presumed to have been given in respect of all executing States that have notified the General Secretariat of the Council that they are favourably disposed to give consent, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.
2. Nor shall the Spanish State need 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 or her surrender in the following cases:

Where the requested person, having had an opportunity to leave the territory of the Member State to which he or she has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it.

- a) 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 freely and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel.

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

- 3. In events not referred to in the paragraph above, the Spanish State shall need the authorisation of the executing judicial authority, which it shall request in accordance with Article 6, accompanying the request with the information mentioned in Article 3(1) and a translation.
- 4. Until Spain has made 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 must decide on within no more than thirty days, if the offence on which the request is based gives grounds for surrender in accordance with this Act, and without prejudice to the guarantees referred to in Article 11 hereof.

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LI. Article 27. Surrender subsequent to extradition.

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- 1. Where the requested person has been extradited to Spain from a third State and where that person is protected by provisions of the arrangement under which he or she 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 or she can be surrendered to the issuing State. The time limits referred to in Article 19 shall start running on the day on which these speciality rules 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 fulfilled.

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LV. Article 28. Subsequent extradition.

LVI.

- 1. Where a person has been surrendered to Spain pursuant to a European warrant, if 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 arranged the surrender. The Central Preliminary Investigating Court shall place the pertinent 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.

LVII.

LVIII. Article 29. Immunities and privileges.

LIX.

1. When the person referred to in the European warrant enjoys immunity in Spain, the executing judicial authority shall without delay request the competent authority to waive that privilege. If power to waive the immunity lies with 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 on, the executing judicial authority must take such precautionary measures as it considers necessary 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 time limits set in this Act shall start running.
4. When the person referred to in the 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 time limits for decision mentioned in the paragraph above shall start running as of the time when the authorities of the State that extradited the requested person assent to making the speciality rule null and void 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.

a) **ADDITIONAL PROVISIONS**

One. 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, save the provisions of bilateral or multilateral Agreements signed by Spain to simplify or facilitate the procedure for surrender, in accordance with Article 31(2) of the Framework Decision.

LX. Two. Transmission of the European warrant over the European Judicial Network.

LXI.

LXII. Transmission of the European warrant as referred to in Article 7(1) hereof may be done via the secure telecommunications system of the European Judicial Network, regulated in Council Decision 2002/187/JHA of 28 February 2002, as soon as it is operational.

LXIII.

LXIV. Three. Transmission and execution of European warrants issued from or addressed to Gibraltar.

LXV.

LXVI. Application of the provisions regarding European warrants issued from or addressed to the British colony of Gibraltar shall be governed by the provisions 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 April 2000.
LXVII.

a) TRANSITIONAL PROVISIONS

LXVIII. One. Equivalence of the alert in the Schengen Information System.

LXIX.

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

LXXI.

LXXII. Two. Transitional procedure.

LXXIII.

1. This Act shall apply to European arrest warrants issued subsequently to its entry in force, even when they refer to acts previous to its entry in force.
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 under Council Framework Decision 2002/584/JHA of 13 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 apply their provisions transposing the Framework Decision.

a) FINAL PROVISION

LXXIV. Entry into force.

LXXV.

LXXVI. This Act shall enter into force on the day following that of its publication in the *Boletín Oficial del Estado*.

In consequence,

I hereby order all Spaniards, individuals and authorities to obey and enforce this Organic Act
Madrid, on March 14 2003

1. KING JUAN CARLOS

The President of the Government
JOSÉ MARÍA AZNAR LÓPEZ

European arrest warrant ¹

This warrant has been issued by a competent judicial authority. I request that the person mentioned below be arrested and surrendered for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

a)	Information regarding the identity of the requested person: Name: Forename(s): Maiden name, where applicable: Aliases, where applicable: Sex: Nationality: Date of birth: Place of birth: Residence and/or known address: Language(s) which the requested person understands (if known): Distinctive marks/description of the requested person: Photo and fingerprints of the requested person, if they are available and can be transmitted, or contact details of the person to be contacted in order to obtain such information or a DNA profile (where this evidence can be supplied but has not been included)
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b)	Decision on which the warrant is based: 1. Arrest warrant or judicial decision having the same effect: Type: 2. Enforceable judgment: Reference:
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¹ This warrant must be written in, or translated into, one of the official languages of the executing Member State, when that State is known, or any other language accepted by that State.

c) Indications on the length of the sentence:

1. Maximum length of the custodial sentence or detention order which may be imposed for the offence(s):
.....
.....

2. Length of the custodial sentence or detention order imposed:
.....
Remaining sentence to be served:
.....
.....

d) Decision rendered in absentia and at the conclusion of a judicial procedure during which the person was absent or unrepresented (delete as appropriate and specify):

1. the person concerned has been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered in absentia,

or

2. the person concerned has not been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered in absentia but has the following legal guarantees after surrender (such guarantees can be given in advance):

Specify the legal guarantees

.....
.....
.....]

e) Offences:

This warrant relates to in total: offences.

Description of the circumstances in which the offence(s) was (were) committed, including the time, place and degree of participation in the offence(s) by the requested person:

.....
.....
.....

Nature and legal classification of the offence(s) and the applicable statutory provision/code:

.....
.....
.....

I. If applicable, tick one or more of the following offences punishable in the issuing Member State by a custodial sentence or detention order of a maximum of at least 3 years as defined by the laws of the issuing Member State:

- ☐ 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 July 1995 on the protection of European Communities' financial interests;
- ☐ laundering of the proceeds of crime;
- ☐ counterfeiting of 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 substances or radioactive materials;
- ☐ trafficking in stolen vehicles;

0 rape;
0 arson;
0 crimes within the jurisdiction of the International Criminal Court;
0 unlawful seizure of aircraft/ships;
0 sabotage.

II. Full descriptions of offence(s) not covered by section I above:

.....
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