

LAW 3251/2004

European arrest warrant, amendment to Law 2928/2001 on criminal organisations and other provisions

PART ONE

EUROPEAN ARREST WARRANT

CHAPTER ONE

GENERAL PROVISIONS

Article 1

Notion of the European arrest warrant

1. The European arrest warrant is a decision or a ruling issued by the judicial authorities of a Member State of the European Union with a view to the arrest and surrender of a person who is in the territory of another member state of the European Union, provided that such person is requested by the competent authorities of the state issuing the warrant within the framework of a penal procedure:

- a) so that a penal prosecution will be initiated against a person to whom a punishable act has been imputed, or
- b) so that a custodial sentence or a detention order will be executed.

2. The implementation of the provisions hereof may not result in the violation of the fundamental rights and principles which are laid down in the Constitution in force and in article 6 of the Treaty on the European Union. In any event, the person requested (extraditee) will not be removed, expelled or extradited to a state where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

Article 2

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Άνάοάβι ΜαόάοñÜóáñí Υόϊóñάάβιö Εñüóñééπí,Αέβίά

Bureau de Traductions du Ministère des Affaires Etrangères de la République Hellénique, Athènes.  
Hellenic Republic, Ministry of Foreign Affairs,Translations Office, Athens.

**Content and type of the European arrest warrant**

1. The European arrest warrant contains the following details:

- a) the identity particulars and the nationality of the extraditee,
- b) the name, address, telephone and fax number and the e-mail address of the judicial authority that has issued the warrant,
- c) a reference to the enforceable judicial decision, the arrest warrant or the relevant ruling issued by the judicial authority,
- d) the nature and the legal classification of the offence,
- e) a description of the circumstances in which the offence(s) was(were) committed, including the time, place and degree of participation of the extraditee in the offence(s) by the requested person,
- f) the penalty imposed, if there is an irrevocable decision, or the prescribed scale of penalties for the offence under the law of the issuing Member State, and
- g) to the extent possible, any other information relative to the offence and its consequences.

2. The European arrest warrant may pertain to several offences.

3. The European arrest warrant shall be translated into the official language or into one of the official languages of the executing Member State.

**Article 3**

**Central authority**

1. The Ministry of Justice is designated as the central authority empowered to assist the competent judicial authorities responsible for the administrative transmission and reception of a European arrest warrant as well as for all other official correspondence relating thereto.

2. The central authority may also be entitled to keep statistical data.

3. The Ministry of Justice shall advise the Secretariat General of the Council of the European Union in regard to the judicial authorities which are competent.

## **CHAPTER TWO**

### **ISSUING AND TRANSMITTING OF THE EUROPEAN ARREST WARRANT**

#### **Article 4**

#### **Competent judicial authority for issuing a European arrest warrant in Greece**

The judicial authority empowered to issue a European arrest warrant shall be the public prosecutor by the Court of Appeal who has the territorial jurisdiction:

- a) for the trial concerning the offence for which the arrest and surrender of the extraditee is requested,
- b) for the execution of the custodial sentence or the detention order.

#### **Article 5**

#### **Terms of issuing of a European arrest warrant**

1. The European arrest warrant shall be issued for acts punishable by Greek penal laws by a custodial sentence or a detention order for a maximum period of at least twelve months or, where sentence has been passed or a detention order has been made for sentences of at least four months.

#### **Article 6**

#### **Transmission of a European arrest warrant**

1. When the location of domicile or residence of the requested person is known, the competent public

prosecutor to the Court of Appeal shall transmit the European arrest warrant directly to the competent executing judicial authority.

2. The competent public prosecutor to the Court of Appeal may, in any event, decide to issue an alert in the Schengen Information System (SIS). Such an alert shall be effected in accordance with the provisions of Article 95 of the Schengen Convention, as it was ratified by first article of Law 2514 / 1997 (Official Gazette No. 140 A'). Such alert shall be equivalent to a European arrest warrant provided that the details laid down in article 2 paragraph 1 hereof are also included.

3. When the location of domicile or residence of the requested person is not known, the competent public prosecutor to the Court of Appeal shall make the requisite enquiries through the Schengen Information System and the contact points of the European Judicial Network in order to obtain that information from the executing Member State. For the transmission of the European arrest warrant the public prosecutor to the Court of Appeal may also call on Interpol.

4. In any event, the public prosecutor to the Court of Appeal may forward the European arrest warrant by any secure means capable of producing written records under conditions allowing the executing member state to establish its authenticity.

5. All difficulties concerning the transmission or the authenticity of any document needed for the execution of the European arrest warrant shall be dealt with by direct contacts between the judicial authorities involved, or, where appropriate, with the involvement of the central authorities of the member states.

6. The competent public prosecutor to the Court of Appeal may transmit at any time whatsoever to the issuing judicial authority every useful information in addition to the information contained in the warrant.

#### **Article 7**

**ÄñäöäBī MāöäöñÜöäüí YöïöñäāBīö Eñüöāñéêpí,AèBíá**

Bureau de Traductions du Ministère des Affaires Etrangères de la République Hellénique, Athènes.  
Hellenic Republic, Ministry of Foreign Affairs,Translations Office, Athens.

**Request for seizure and handing over of property**

1. The competent public prosecutor to the Court of Appeal shall be entitled, in addition to the transmission of the European arrest warrant, to ask the executing judicial authority to order the seizure and handing over, in any event, of property, which may be used as evidence or has been acquired by the requested person as proceeds of the offence.

2. Any rights which the executing member state or third parties have acquired in the property referred to in paragraph 1 shall be preserved. Where such rights exist, the competent public prosecutor to the Court of Appeal shall return the property without charge to the executing member state, or to the third party, as soon as criminal proceedings have been terminated.

**Article 8**

**Application for the waiver of a privilege or immunity of a requested person**

Where the requested person enjoys a privilege or immunity regarding jurisdiction or execution in the executing Member State, the judicial authority of such state may ask for the waiver thereof. Where power to waive the privilege or immunity lies with an authority of another State or international organisation, then the competent public prosecutor to the Court of Appeal shall submit to such authority a relevant application, to which the European arrest warrant will be attached.

**CHAPTER THREE**

**EXECUTION OF THE EUROPEAN ARREST WARRANT**

**Article 9**

**Competent judicial authority for the execution of the European arrest warrant in Greece**

1. The competent judicial authority for the receipt of the European arrest warrant, the arrest and detention of the requested person, the submission of the case to the competent judicial body and the execution of the decision on the surrender or not of the requested person shall be:

- a) The public prosecutor by the Court of Appeal, in whose territory is the requested person located,
- b) the public prosecutor by the Court of Appeal of Athens, if the location of residence of the requested person is unknown.

2. When the requested person consents to surrender to the issuing state, the judicial authority competent for issuing the decision on execution of the warrant shall be the Presiding Judge of the Court of Appeal, in whose territory is the requested person located or arrested.

3. When the requested person does not consent to surrender to the issuing state, the judicial authority competent for issuing the decision on execution of the warrant shall be the Judicial Council of the Court of Appeal, in the territory of which the requested person is located or arrested.

#### **Article 10**

##### **Cases in which the execution of the European arrest warrant is allowed**

1. Subject to the provisions of articles 11 - 13 hereof the European arrest warrant shall be executed if:

- a) the punishable act, for which the European arrest warrant has been issued, also constitutes an offence according to the Greek penal laws, independently of the legal description, which (offence) is punishable in the issuing Member State by a custodial sentence or a detention order, for a maximum period of at least twelve months. In the cases in which the punishable act constitutes an offence concerning taxes, duties, customs and exchange, execution of the European Arrest Warrant shall not be refused on the ground that the law of the Greek State does not impose the same kind of tax or duty or it 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) the courts of the issuing state sentenced the requested person by a custodial sentence or a detention order of

2. The execution of the European Arrest Warrant shall be allowed, without verification of the double criminality of the act, for the following offences, if they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined by the law of the issuing Member State:

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- t) fraud,
- u) extortion,
- v) counterfeiting and piracy of products,
- w) forgery of public documents and trafficking therein,
- x) forgery of means of payment,
- y) illicit trafficking in hormonal substances and other growth promoters,
- z) illicit trafficking in nuclear or radioactive materials,
- aa) trafficking in stolen vehicles,
- bb) rape,
- cc) arson,
- dd) crimes within the jurisdiction of the International Criminal Court,
- ee) unlawful seizure of aircraft/ships,
- ff) sabotage.

### Article 11

#### Cases in which the execution of the European Arrest Warrant shall be prohibited

The judicial authority deciding on the execution of a European Arrest Warrant shall refuse to execute the European arrest warrant in the following cases:

- a) if the offence, on which the European Arrest Warrant has been issued, is covered by amnesty according to the Greek penal laws, as long as Greece had jurisdiction to prosecute such offence,
- b) if the executing judicial authority is informed that the requested person has been irrevocably judged by a member state of the European Union 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,
- c) if the person against whom the European Arrest Warrant has been issued may not, owing to his age, be held criminally responsible for the acts on which the arrest warrant has been issued according to the Greek



penal laws.

d) where the criminal prosecution or punishment of the requested person is statute-barred according to the Greek penal laws and the punishable acts fall within the jurisdiction of the Greek judicial authorities according to the Greek penal laws,

e) if the European Arrest Warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his / her sex, race, religion, ethnic origin, nationality, language, political opinions, sexual orientation or his / her activities for freedom,

f) if the person against whom the European Arrest Warrant has been issued for the purposes of execution of a custodial sentence or a detention order is a Greek national and Greece undertakes to execute the sentence or the detention order in accordance with its penal law,

g) if the European Arrest Warrant has been issued in regard to offences which :

(i) are regarded according to the Greek penal law as having been committed in whole or in part in the territory of Greece or in a place treated as such, or

(ii) have been committed outside the territory of the issuing member state and the Greek penal laws do not allow prosecution for the same offences when committed outside the Greek territory.

h) if the person, against whom the European Arrest Warrant has been issued for the purpose of prosecution is a Greek national and is being prosecuted in Greece for the same act. If such person is not being prosecuted, the European Arrest Warrant shall be executed if it is ensured that, after being heard, he / she is returned to the Greek State, in order to serve there the custodial sentence or the detention order passed against him/her in the issuing Member State.

## Article 12

### Cases in which the execution of a European Arrest Warrant may be prohibited

The executing judicial authority may refuse to execute the European Arrest Warrant in the following cases:

a) If the person against whom the European Arrest Warrant has been issued is being prosecuted in Greece for the same act as that on which the European arrest warrant is based,

- b) If the Greek authorities have decided either not to prosecute for the offence, on which the European arrest warrant is based, or to stop the prosecution,
- c) If the requested person has been irrevocably convicted in respect of the acts, for which the European arrest warrant has been issued, in a Member State of the European Union, so that further proceedings are prevented,
- d) If the executing judicial authority is informed that the requested person has been irrevocably judged by a third 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 country,
- e) If the European arrest warrant has been issued for the purpose of execution of a custodial sentence or a detention order, where the requested person is domiciled or resides in Greece and Greece undertakes the obligation to execute the custodial sentence or the detention order according to its penal laws.

### **Article 13**

#### **Guarantees to be given for the execution of the European arrest warrant**

1. Where the European arrest warrant has been issued for the purposes of executing a sentence or a detention order imposed by a decision rendered in absentia and if 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, the execution of the European arrest warrant by the competent judicial authority may be subject to the condition that the issuing judicial authority gives an assurance deemed adequate to guarantee that the requested person who is the subject of the European arrest warrant will have an opportunity to apply for a retrial of the case in the issuing member state and to be present at the judgement.
2. If the offence on the basis of which the European arrest warrant has been issued is punishable by custodial life sentence or life-time detention order, the execution of the European arrest warrant by the competent judicial authority may be subject to the condition that the issuing member state has provisions in its legal system for a review of the penalty imposed - on request or at the latest after 20 years - or for the application of measures of clemency to which the person is entitled to apply for under the law of the issuing Member State,

aiming at the non-execution of such penalty or measure.

3. Where the person, who is the subject of a European arrest warrant for the purposes of prosecution, and anyhow after a specific punishable act is imputed to this person, is domiciled in Greece, the execution of the European arrest warrant by the competent judicial authority may be subject to the condition that the requested person, after being heard, is returned to the Greek State, in order to serve there the custodial sentence or detention order passed against him / her in the issuing Member State.

#### **Article 14**

##### **Receipt of the European arrest warrant**

1. When the competent public prosecutor to the Court of Appeal receives the European arrest warrant that has been issued in the form provided for by law, he shall arrange for the arrest of the requested person.

2. If the authority receiving the European arrest warrant is not competent for the execution of the warrant, it shall forward the warrant to the competent authority and advise accordingly the issuing judicial authority.

#### **Article 15**

##### **Arrest and rights of a requested person**

1. When the requested person is arrested on the basis of a European arrest warrant, he/she shall be brought without delay to the public prosecutor by the Court of Appeal. The public prosecutor by the Court of Appeal, after verifying the requested person's identity particulars, shall inform that person of the European arrest warrant and its contents, of his/her right to be assisted by a legal counsel and an interpreter as well as of the possibility granted to him/her to consent to his/her surrender to the issuing state according to the provisions of article 17 hereof. With respect to the above mentioned provision of information and the relevant statements of the requested person a report will be drawn up according to the provisions of articles 148 - 153 of the Code of Penal Procedure.

4. The arrested person according to the preceding paragraphs shall be entitled, by questioning his identity, to recourse to Judicial Council of the Court of Appeal, within a period of 24 hours after he/she has been brought before the public prosecutor by the Court of Appeal. The Judicial Council of the Court of Appeal shall appoint a court date within a period of ten days of the submission of the recourse and shall irrevocably decide within a period of five days after the completion of the procedure and after hearing the arrested person and his counsel. The recourse may also be lodged orally to the public prosecutor by the Court of Appeal, in which case a relevant report shall be drawn up.

### Detention of the requested person

1. After the arrest of the requested person and the verification of his/her identity particulars, the competent public prosecutor by the Court of Appeal shall decide whether the requested person shall remain in detention, so that to avoid his/her absconding or his/her release subject to the imposition or not of restraining measures.

The Public prosecutor may order the provisional release of the requested person and the imposition of restraining measures . The restraining measures imposed on the requested person may be replaced by detention if a risk of absconding appears.

2. In case of an order of detention of the requested person or for imposition of restraining measures, this person shall be entitled, within a period of two days following the issue of the relevant order, to recourse to the Judicial Council of the Court of Appeal. The recourse shall be submitted to the secretariat of the public prosecutor's office by the Court of Appeal and shall be brought up by the public prosecutor to the Council, which shall appoint a court date within a period of five days and after hearing shall immediately decide irrevocably.

3. The judicial authority deciding on the execution of the European arrest warrant shall also rule on the detention or not of the requested person or on the imposition of restraining measures.

## **Article 17**

### **Consent to surrender**

1. The public prosecutor by the Court of Appeal shall clearly inform the requested person of the consequences of the consent to surrender, of the renunciation of the entitlement to the speciality rule, which is referred to in article 34 hereof, as well as of his/her right to appear with a legal counsel and with an interpreter. Further, the public prosecutor shall emphasise to him/her the irrevocableness of his/her above-mentioned statements.

2. Regarding the information referred to in the preceding paragraph and the replies given by the requested person a report shall be drawn up according to the provisions of articles 148 - 153 of the Code of Penal Procedure. If, after the received information, the requested person declares that he/she wants to proceed with the relevant statements, then his/her consent and where appropriate, the renunciation referred to in paragraph 1 hereof, shall be formally recorded.

3. After the above-mentioned statements, the public prosecutor by the Court of Appeal shall forward the European arrest warrant and all relevant documents to the Presiding Judge of the Court of Appeal. The requested person shall be entitled to a hearing before the Presiding Judge of the Court of Appeal.

### **Article 18**

#### **Non-consent to surrender**

1. If the arrested person does not consent to his/her surrender, the public prosecutor by the Court of Appeal shall forward the European arrest warrant and all relevant documents to the competent Judicial Council of the Court of Appeal.

2. The requested person shall be entitled to appear and be heard in person before the Judicial Council of the Court of Appeal. This person shall be entitled to appear with a legal counsel selected by him/her and an interpreter or, if he/she does not have any such person, to ask for a counsel appointed by the Presiding Judge of the Court of Appeal. The procedure before the Judicial Council shall be carried out according to article 448 paragraph 2 of the Code of Penal Procedure.

### **Article 19**

#### **Decision on the execution of the European arrest warrant**

1. The decision on the execution of the European arrest warrant shall be issued within the time limits laid down in article 21 hereof.

2. If the judicial authority deciding on the execution of the warrant finds the information forwarded by the issuing Member State to be sufficient, to allowed it to decide on surrender, it shall request, through the public prosecutor by the Court of Appeal, the urgent submission of the necessary supplementary information,

especially with reference to articles 2 and 11 - 13 hereof, and it may fix a time limit for their receipt, taking into account the obligation of complying with the time limits laid down in article 21 hereof.

3. The decision on the execution or not of the European arrest warrant must be specifically reasoned.

## **Article 20**

### **Decision in the event of multiple requests**

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

2. The executing judicial authority may seek the advice of Eurojust when making the choice referred to in paragraph 1.

3. In the event of a conflict between a European arrest warrant and a request for extradition presented by a third country, the decision on whether the European arrest warrant or the extradition request takes precedence shall be taken by the Minister of Justice with due consideration of all the circumstances, in particular those referred to in paragraph 1 and those mentioned in the applicable convention.

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

## **Article 21**

### **Time limits and procedures for the decision to execute the European arrest warrant**

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**Άνάοάβι ΜαόάοñÚóáñí Υόϊóñάάβιö Εñúóñέέπí,Αέβίά**

Bureau de Traductions du Ministère des Affaires Etrangères de la République Hellénique, Athènes.  
Hellenic Republic, Ministry of Foreign Affairs,Translations Office, Athens.





prior to the hearing under the care of the public prosecutor to the Supreme Court.

### Article 23

#### **Hearing or provisional transfer of the requested person pending the decision on the execution of the warrant**

1. Where the European arrest warrant has been issued for the purpose of conducting a criminal prosecution, the executing judicial authority must:

- (a) either agree that the requested person should be heard according to paragraphs 2 and 3 hereof,
- (b) or agree to the temporary transfer of the requested person to the issuing state according to the provisions of paragraphs 4 and 5 of this article.

2. The requested person shall be heard by the territorially competent Presiding Judge of the Court of Appeal assisted by any other person designated in accordance with the law of the member state of the requesting court.

3. The requested person shall be heard in accordance with the provisions of the Code of Penal Procedure, depending on the status of the requested person at that time of his examination and on the conditions mutually agreed upon between the issuing judicial authority and the executing judicial authority.

4. The conditions and the duration of the temporary transfer shall be determined by mutual agreement between the issuing and executing judicial authorities.

5. In the case of temporary transfer, the requested person must be able to return to Greece to attend hearings concerning him or her as part of the surrender procedure.

### Article 24

#### **Privileges and immunities**

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Άνάοάβι ΜαόάοñÜóáñí Υόϊοñάάβιö Εñüóáñέêπί,Αέβιά

Bureau de Traductions du Ministère des Affaires Etrangères de la République Hellénique, Athènes.  
Hellenic Republic, Ministry of Foreign Affairs, Translations Office, Athens.

1. Where the requested person enjoys a privilege or immunity regarding jurisdiction or execution according to the Greek law in force, the time limits referred to in Article 21 shall start running as of the day on which the competent public prosecutor by the Court of Appeal was informed of the fact that the privilege or immunity has been waived.
2. Where power to waive the privilege or immunity lies with an authority of the Greek State, the competent public prosecutor by the Court of Appeal shall request it to exercise that power forthwith.
3. After the announcement of the waiver of the privilege or immunity, the transfer procedure pertaining to the requested person, shall be activated according to the provisions hereof.

#### **Article 25**

##### **Competing international obligations**

1. Where the requested person has been extradited to the Greek State by a third state and is protected by provisions relative to the speciality rule according to the Convention under which he was extradited, the competent executing judicial authority cannot issue a decision on the execution of the warrant, without consent of the state from which the requested person was extradited, so that he/she can be surrendered to the issuing state. For this purpose the executing judicial authority shall submit through the competent public prosecutor a relevant request to the competent authority of the third state.
2. The time limits provided for by article 21 shall not start running until the day on which this speciality rule cease to apply.

#### **Article 26**

**Notification of the decision**

The executing judicial authority shall notify the issuing judicial authority without undue delay of the decision on the European arrest warrant.

**Article 27**

**Time limits for surrender of the requested person**

1. Under the care of the public prosecutor by the Court of Appeal, the person requested shall be surrendered as soon as possible on a date agreed with the authorities of the issuing state. The person requested shall be surrendered no later than 10 days after the final decision on the execution of the European arrest warrant. At the time of surrender, under the care of the same public prosecutor, all information relative to the duration of detention of the requested person within the framework of the procedure pertaining to the execution of the European arrest warrant shall be forwarded to the competent authorities of the issuing state.

2. If the surrender of the requested person within the period laid down in paragraph 1 is prevented by circumstances beyond the control of any of the member states, the competent public prosecutor by the Court of Appeal and the issuing judicial authority shall immediately agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.

3. The surrender may exceptionally be temporarily postponed for serious humanitarian reasons, for example if there are substantial grounds for believing that it would manifestly endanger the requested person's life or health. The execution of the European arrest warrant shall take place as soon as these grounds have ceased to exist. The competent public prosecutor by the Court of Appeal shall immediately inform the issuing judicial authority and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.

4. Upon expiry of the above-mentioned time limits, if the requested person is still being held in custody, he shall be released. In the event that restraining measures have been imposed on him, they shall be waived automatically.

#### **Article 28**

##### **Postponed or conditional surrender**

1. The competent judicial authority may, after deciding to execute the European arrest warrant, postpone the surrender of the requested person so that he or she may be prosecuted in the Greek State or, if he or she has already been sentenced, so that he or she may serve, in the Greek territory, a sentence passed for an act other than that referred to in the European arrest warrant.

2. Instead of postponing the surrender, the executing judicial authority may temporarily surrender the requested person to the issuing member state under conditions to be determined by agreement with the issuing judicial authority and made in writing.

#### **Article 29**

##### **Seizure and handing over of property**

1. The competent executing judicial authority, on its own initiative or at the request of the issuing judicial authority shall seize and hand over property which may be required as evidence or has been acquired by the requested person as a result of the offence.

2. The seizure shall be executed under the care of the public prosecutor by the Court of Appeal by analogous application of articles 251 - 269 of the Code of Penal Procedure.

3. The property shall be handed over even if the European arrest warrant cannot be carried out owing to the



this person is a Greek resident, the competent authority may refuse his transit.

4. Where a person who is the subject of a European arrest warrant for the purposes of prosecution is a Greek national the competent authority shall refuse his transit unless it is ensured that such person, after being heard, is returned to the Greek State to serve the custodial sentence or detention order passed against him in the issuing Member State. In the event that this person is Greek resident, his transit may be subject to the above mentioned condition.

5. Where a transit concerns a person who may be extradited from a third State to a member state this Article shall apply mutatis mutandis. In this case the extradition request shall stand for a European arrest warrant.

6. The provisions of this article do not apply in the case of transport by air without a scheduled stopover. However, if an unscheduled landing occurs, the issuing Member State shall provide the competent Greek authority with the information provided for in paragraph 2.

### **Article 31**

#### **Competent authority**

1. The competent public prosecutor by the Court of Appeal of Athens is the responsible authority for receiving transit requests and the necessary supporting documents as well as any other official correspondence relating to transit requests.

2. The transit request as well as the information provided for in paragraph 2 article 30 shall be addressed to the public prosecutor by the Athens Court of Appeal by any means capable of producing written records. The public prosecutor by the Court of Appeal shall notify his decision on the request by the same procedure.

### **Article 32**

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**Άνάοάβī ΜάοάοñŪóαίŷ Ÿöřöñāāβīö Εñυόāñέêπί,Αεβίά**

Bureau de Traductions du Ministère des Affaires Etrangères de la République Hellénique, Athènes.  
Hellenic Republic, Ministry of Foreign Affairs,Translations Office, Athens.

**Application submitted by the Greek authority for transit**

The public prosecutor by the Court of Appeal, who issues the European arrest warrant shall submit a request, for the transit of the requested person through the territory of a Member State of the European Union, to the competent authority of such state, when this is necessary for his surrender to Greece. The request must include the information provided for in article 30 paragraph 2 hereof.

**CHAPTER FIVE**

**EFFECTS OF THE SURRENDER**

**Article 33**

**Deduction of the period of detention served in the executing Member State**

The period of detention of the requested person in the state executing the European arrest warrant within the framework of the procedure pertaining to his surrender to the competent Greek authority shall be deducted from the total period of deprivation of liberty in Greece as a result of a custodial sentence or a detention order being passed.

**Article 34**

**Speciality rule**

1. The requested person who has been surrendered to the competent public prosecutor by the Court of Appeal shall not be prosecuted, sentenced or otherwise deprived of his/her liberty for an offence committed prior to his/her surrender other than that for which the European arrest warrant had been issued.

2. Paragraph 1 shall not apply in the following cases :

a) when the surrendered person having had an opportunity to leave the Greek territory, nevertheless has not

g) the executing judicial authority shall give its consent after the submission of a relevant request by the competent public prosecutor by the Court of Appeal in accordance with paragraph 3 hereof.

3. The request for consent referred to in section g' of the preceding paragraph, which shall be submitted to the executing judicial authority by the competent public prosecutor by the Court of Appeal shall be accompanied by the information mentioned in article 2 paragraph 1 hereof and the translation provided for in paragraph 3 of the same article.

4. When the consent of the Greek judicial authority which decided about the execution of the warrant is requested, in order to prosecute or detain the surrendered person in the issuing state with respect to an offence committed prior to and other than that for which the European arrest warrant had been issued, the above-mentioned judicial authority shall rule not later than thirty days following the receipt of the request, as well as of the translation and the information provided for in article 2 paragraphs 1 and 3. Consent shall be given, when the offence, for which it is requested, is itself subject to surrender, according to article 10. The judicial authority shall refuse the consent, on the grounds referred to in article 11, as well as if the issuing state does not provide the guarantees, which are laid down in article 13. The judicial authority may refuse the consent on



the grounds referred to in article 12 hereof.

### Article 35

#### Subsequent surrender to a member state of the European Union

1. A person who has been surrendered to the competent public prosecutor by the Court of Appeal in execution of a European arrest warrant may, without the consent of the executing Member State, be surrendered to another Member State of the European Union, pursuant to a European arrest warrant issued for any offence committed prior to his/her surrender, in the following cases:

- a) where the requested person having had an opportunity to leave the Greek territory, has not done so within a period of forty five days of his final release or has returned to that territory, after leaving it,
- b) where the requested person is not subject to the speciality rule, according to article 34 paragraph 2 sections a', e', f' and g' hereof,
- c) where the requested person consents to be surrendered to a Member State other than the executing Member State, pursuant to a European arrest warrant. The declaration of consent shall be made according to the procedure provided for in article 17 hereof.

2. With respect to the consent of the executing judicial authority, the competent public prosecutor by the Court of Appeal shall submit a relevant request to the aforesaid authority. The request for consent shall be accompanied by the information and the translation referred to in article 2 paragraphs 1 and 3 hereof.

3. When the consent of the Greek judicial authority that decided about the execution of the warrant is requested, in order for the requested person to be surrendered to another member state for an offence committed prior to his surrender, on the basis of a European arrest warrant, the aforesaid judicial authority shall rule not later than thirty days after the receipt of the request, as well as of the translation and the information provided for in article 2. Consent shall be given when the offence, for which it is requested, is itself subject to surrender according to article 10. The judicial authority shall refuse the consent, on the

grounds referred to in article 11, as well as if the issuing Member State does not provide the guarantees, provided for in article 13. The judicial authority may refuse the consent on the grounds referred to in article 12.

**Article 36**

**Subsequent extradition to a third state**

1. A person who has been surrendered to the competent public prosecutor by the Court of Appeal in execution of a European arrest warrant, shall not be extradited to a third State, without the consent of the competent authority of the executing Member State.

2. When the European arrest warrant is executed by the Greek judicial authority, the consent to the subsequent extradition of a requested person to a third state shall be given according to the provisions of the conventions by which Greece is bound, as well as according to the provisions of the Code of Penal Procedure.

**CHAPTER SIX**

**FINAL AND TRANSITORY PROVISIONS**

**Article 37**

**Expenses**

If with respect to the execution of the European arrest warrant in Greece expenses are incurred on the Greek territory, such expenses shall be borne by the Greek State.

**Article 38**

**Relation to other legal instruments**

Without prejudice to their application in relations between Greece and third States, this Law shall replace the

corresponding provisions of the following conventions applicable in the field of extradition in relations between the Member States of the European Union:

- a) European Convention on Extradition of 13 December 1957 (Law 4165 /1991, Official Gazette 75 A'), its additional protocol of 15 October 1975, its second additional protocol of 17 March 1978 and the European Convention on the suppression of terrorism of 27 January 1977 (Law 1789 / 1988, Official Gazette No 133 A') as far as extradition is concerned,
- b) the Agreement between the 12 Member States of the European Communities on the simplification and modernisation of methods of transmitting extradition requests of 26 May 1989,
- c) the Convention of 10 March 1995 (Law 2787 / 2000, Official Gazette No 5 A') on Simplified Extradition Procedures between the Member States of the European Union,
- d) the Convention of 27 September 1996 relating to extradition between the Member States of the European Union (Law 2718 / 1999, Official Gazette No 105 A'),
- e) Title III, chapter 4 of the Convention of 19 June 1990 (Law 2514 / 1997, Official Gazette No 140 A') implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders.

### **Article 39**

#### **Transitory provision**

1. The extradition requests received prior to the effective date of this Law shall continue to be governed by the provisions in force on extradition. In the event of extradition requests stemming from a Member State of the European Union which has not yet harmonised itself with the framework decision on European arrest warrants, the provisions on extradition currently in force shall apply.

2. Until the Schengen Information System acquires the ability to transmit all the information provided for by article 2 paragraph 1 hereof, the simple entry of the requested person in this System shall produce the results of the European arrest warrant, only when the competent executing judicial authority receives the original in

## PART TWO

## Article 40

- k) offences concerning explosive substances (article 272)
- l) damage dangerous to the public (article 273),
- m) removal of safety devices (article 275),
- n) causing a shipwreck (article 277),
- o) poisoning of water and food (article 279),
- p) contamination of food (article 281 paragraph 1)
- q) impairing the safety of transportation (article 290),
- r) impairing the safety of railroads, ships and aircraft (article 291),
- s) the provisions of paragraph 1 of article 8 of legislative decree 181 / 1974 on "Protection from ionising radiations" (Official Gazette 347 A'),
- t) the provisions of articles 161, 162, 163, 164, 165, 168, 169, 170, 173, 174, 178, 179, 180, 181, 182, 183, 184 and 186 of the Code of Aviation Law which was ratified by Law 1815 / 1988 (Official Gazette 250 A'),
- u) the provisions of paragraphs 1 and 2 of article 15 and the provisions of paragraphs 1 and 3 of article 17 of Law 2168 / 1993 on "Dealing with matters pertaining to weapons, munitions, explosive materials, explosive devices and other provisions" (Official Gazette 147 A'),
- v) the provisions of paragraphs 2 and 3 of article 4 of Law 2991 / 2002 on "Implementing the Convention on prohibition of use etc. of chemical weapons" (Official Gazette 35 A'), in a manner and to an extent capable of seriously harming a country or an international organisation and aiming at seriously intimidating a population or illegally forcing a public authority or an international organisation to perform any act whatsoever or abstain therefrom or of seriously harming or destroying the fundamental constitutional, political, economic structures of a country or of an international organisation, shall be punished :
  - i) by confinement in a penitentiary for life if the punishment provided for one of the offences of the list from a' to v' is confinement in a penitentiary for life. In this case the act (offence) is statute-barred after thirty years. If the sentence of confinement in a penitentiary for life is imposed, then the provisions of articles 105 - 110 shall apply if the offender has served a sentence of twenty five years.
  - ii) by confinement in a penitentiary for not less than ten years if the punishment provided for with respect to one of the offences of the list from a' to v' is confinement in a penitentiary for a certain period of time.

iii) by imprisonment for not less than three years if the punishment provided for with respect to one of the offences of the list from a' to v' is punishment of imprisonment

If the terrorist act resulted in the death of several persons, then the provision of article 94 paragraph 1 shall apply.

2. The provisions of the preceding paragraph shall not apply if the conditions of articles 134 - 137 concur.

3. Anyone, with the exception of the cases that are referred to in paragraph 8, who seriously threatens that he will commit the offence referred to in paragraph 1 and, thus, he causes terror shall be punished by imprisonment for not less than two years. The attempt to commit such offence shall not be punishable.

4. By confinement in a penitentiary for not more than ten years shall be punished the person who forms or accedes as a member to a group which is structured and with a continuous activity consisting of three or more persons acting jointly for the purpose of committing the offence referred to in paragraph 1 (terrorist organisation). The manufacturing, procurement or possession of weapons, explosive materials and chemical or biological materials or materials emitting radiations harmful for people for the purpose or serving the objects of the terrorist organisation shall constitute an aggravating circumstance. Then non-commission by a terrorist organisation of any of the offences listed from a' to u' in the list of paragraph 1 shall constitute a mitigating circumstance.

5. Anyone who manages the terrorist organisation referred to in the preceding paragraph shall be punished by confinement in a penitentiary for not less than ten years.

6. Anyone who, for the purpose of facilitating the commission of an act according to paragraph 4, provides information or material means or in any manner whatsoever collects or disposes of funds within the meaning of paragraph 1 of article 1 of the International Convention for the suppression of the financing of terrorism (which was ratified by Law 3034 / 2002, Official Gazette 168 A') or provides financial means in any manner

7. Anyone who, in order to prepare the offence referred to in paragraph 1, commits a special case of theft (article 374), robbery (paragraphs 1 and 3 of article 380), forgery (article 216) which pertains to a public document or extortion (article 385) shall be punished by confinement in a penitentiary, unless the extortion is punished by a heavier punishment. If the act that was committed is a misdemeanor, then a punishment of imprisonment for not less than three years shall be imposed.

8. The commission of one or more of the offences referred to in the preceding paragraphs shall not constitute a terrorist act within the meaning of the preceding paragraphs of this article, if it is manifested as an effort for the establishment of a democratic government or for the safeguarding or restoration thereof or as an activity in favour or freedom within the meaning of article 5 paragraph 2 of the constitution or if it aims at exercising a fundamental individual, political or trade union freedom or another right laid down in the Constitution or in the European Convention on Protection of Human Rights and Fundamental Liberties (Legislative Decree 53/1974, Official Gazette 256 A').

9. Article 187 paragraph 2 shall also apply to the offences referred to in the preceding paragraphs."

2. The first two paragraphs of article 187B of the Penal Code shall be modified as follows:

"1. If one of the perpetrators of the acts pertaining to the formation of a criminal organisation or gang or the participation therein according to paragraphs 1 and 3 of article 187 or the formation of a terrorist organisation or the participation therein according to paragraph 4 of article 187A causes, by advising the authorities, the prevention of the commission of one of the offences that are being prepared or if in the same manner he substantially contributes to the break up of the criminal organisation or gang or of the terrorist organisation, he shall be absolved from the punishment relating to such acts.

If no penal prosecution has been initiated yet, the public prosecutor by the Misdemeanor Court under a reasoned ruling issued by him shall abstain from the initiation of the penal prosecution and he shall submit the

file of the case to the public prosecutor to the Court of Appeal, who will act according to article 43 paragraph 2 of the Code of Penal Procedure.

2. If, in the case of the preceding paragraph, the perpetrator has committed one of the pursued offences referred to in article 187 paragraphs 1 and 3 or if he has committed one of the offences laid down in article 187A paragraph 1, the Court shall impose on him a mitigated punishment according to article 83. In exceptional cases the Court, with due consideration of all the circumstances and especially of the dangerous nature of the criminal organisation, the gang or the terrorist organisation, the extent of the perpetrator's participation therein and the degree of the perpetrator's contribution to its break up, may order the suspension of the sentence over a period ranging from three to ten years. Save as aforesaid, the provisions of articles 99 - 104 shall apply mutatis mutandis."

3. Section a' of article 8 of the Penal Code is replaced as follows :

"a) high treason, or treason against the Greek State and terrorist acts (article 187A)."

#### **Article 41**

##### **Liability of legal persons**

1. If one of the offences referred to in article 40 hereof was committed for the benefit of a private law legal person by fault of any natural person acting either individually or as part of an organ of such legal person and has a leading position within such legal person, which is based :

- a) on a power of representation of the legal person or
- b) on an authority to take decisions on behalf of the legal person or
- c) on an authority to exercise control within the legal person,

then the following administrative sanctions shall be imposed on this legal person under a joint decision issued by the Minister of Justice and the competent Minister, as appropriate:

- a) permanent or provisional deprivation of the undertaking's authorization (over a time period ranging from



one month to two years) or, if such an authorization is not provided for by law, disqualification from the practice of commercial activities,

b) permanent or provisional exclusion (for the same period of time) from entitlement to public benefits or aid or from public tendering procedures,

c) administrative fine of an amount ranging from EUR 20,000 to EUR 3,000,000.

2. If one of the offences referred to in article 40 of this Law was committed for the benefit of a legal person by a lower-rank executive, due to lack of supervision or control by one of the executives referred to in the preceding paragraph on the lower-rank executive, the following administrative sanctions shall be imposed :

a) temporary deprivation of the undertaking's authorization (over a time period ranging from ten days to six months) or, if such an authorization is not provided for by law, disqualification from the practice of commercial activities,

b) temporary exclusion (for the same period of time) from entitlement to public benefits or aid or from public tendering procedures,

c) administrative fine of an amount ranging from EUR 10,000 to EUR 1,000,000.

3. For the cumulative or disjunctive imposition of the sanctions laid down in the preceding paragraphs and for the computation of sanctions the following shall be particularly taken into account : the gravity of violation, the degree of culpability, the financial status of the legal person or of the undertaking and the circumstances of the specific case.

## **Article 42**

### **Provisions of the penal procedural law**

1. The first section of paragraph 1 of article 253A of the Code of Penal Procedure, as it was added by Law 2928 / 2001, is amended as follows :

"Especially in regard to the offences referred to in article 187 paragraphs 1 and 2 of the Penal Code and in

regard to the offences referred to in article 187A of the Penal Code the probe (investigation) may also include the conduct:".

2. Article 253A paragraph 2 is replaced as follows :

"The acts of investigation referred to in the preceding paragraph shall be performed only :

- a) if serious indications arise that the offence referred to in article 187 paragraphs 1 and 2 or the offence referred to in article 187A of the Penal Code has been committed,
- b) if the break up of the criminal organisation or the investigation of the terrorist act referred to in article 187A is otherwise impossible or particularly difficult."

3. The first section of paragraph 1 of article 200A of the Code of a Penal Procedure is amended as follows:

"1. When there are serious indications that a person has committed a felony by use of violence or a felony against sexual liberty or a felony referred to in paragraph 1 of article 187 or of article 187A of the Penal Code, the competent judicial council may order an analysis of the Deoxyribonucleic Acid - D.N.A. for the purpose of verifying the identity of the perpetrator of this offence."

4. Paragraph 5 of article 111 of the Code of Penal Procedure, as it was replaced by paragraph 1 of article 12 of Law 1897 / 1990 and amended by law 2928 / 2001, is replaced as follows:

"5. The felonies of piracy, the felonies against safety of railway or water transportation or aviation provided for in the Penal Code or in special Penal Laws, the felonies laid down in article 187 paragraph 1 and article 187A of the Penal Code as well as the misdemeanors and felonies similar to them, even if the latter are punished by a heavier punishment than the above-mentioned main felonies."

5. The first section of article 7 of Law 2928 / 2001 is amended as follows:

"The completion of the main investigation on the felonies referred to in articles 187 and 187A of the Penal Code shall be declared by the Council of the Court of Appeal."

6. The provisions of articles 9 and 10 of law 2928 / 2001 shall also apply to the offences provided for in article 187A of the Penal Code.

**Article 43**

**Effective date**

This Law shall come into effect as of its publication in the Official Gazette.

Athens 8 July 2004

THE PRESIDENT OF THE HELLENIC REPUBLIC

KONSTANTINOS STEFANOPOULOS

THE MINISTERS OF

INTERIOR, PUBLIC ADMINISTRATION AND  
DECENTRALIZATION

P.PAVLOPOULOS

ECONOMY AND FINANCE

G.ALOGOSKOUFIS

FOREIGN AFFAIRS

P.MOLYVIATIS

JUSTICE

A.PAPALIGOURAS

True translation from Greek of the attached document.

Athens 15.10.2004

G. D. Goulandris

Translator