



Brussels, 28.9.2017  
C(2017) 6389 final

**COMMISSION NOTICE**

**of 28.9.2017**

**HANDBOOK ON HOW TO ISSUE AND EXECUTE A EUROPEAN ARREST  
WARRANT**

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## **List of abbreviations**

CISA	Convention Implementing the Schengen Agreement
CoE	Council of Europe
EAW	European Arrest Warrant
EIO	European Investigation Order
EJN	European Judicial Network
ESO	European Supervision Order
Framework Decision on EAW	Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States
SIRENE	Supplementary Information Request at the National Entries
SIS	Schengen Information System
TFEU	Treaty on the Functioning of the European Union

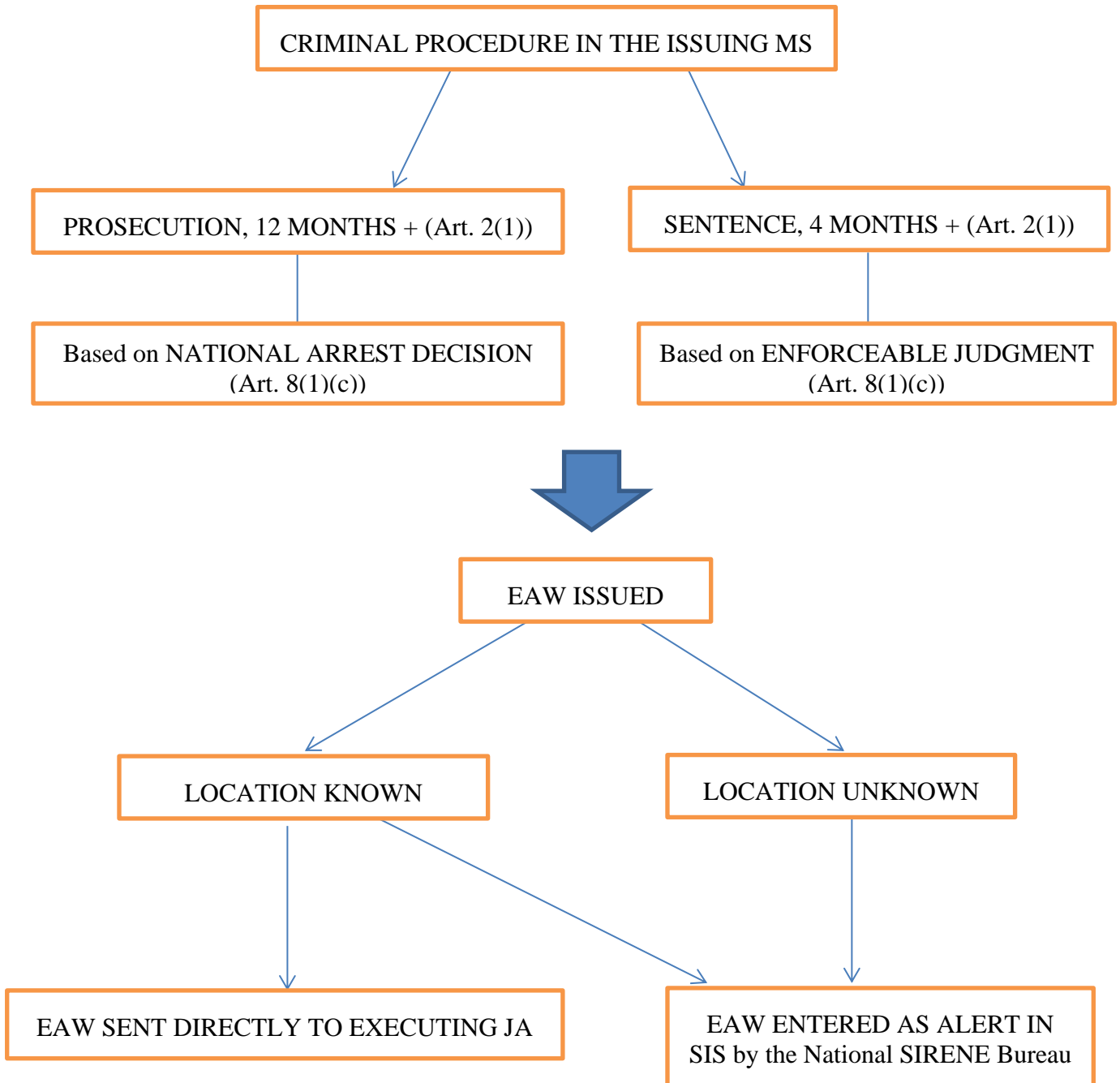
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This handbook is neither legally binding nor exhaustive. It is without prejudice to existing Union law and its future development. It is also without prejudice to the authoritative interpretation of Union law which may be given by the Court of Justice of the European Union.

# ISSUING A EUROPEAN ARREST WARRANT

## Main steps

(JA = Judicial authority)

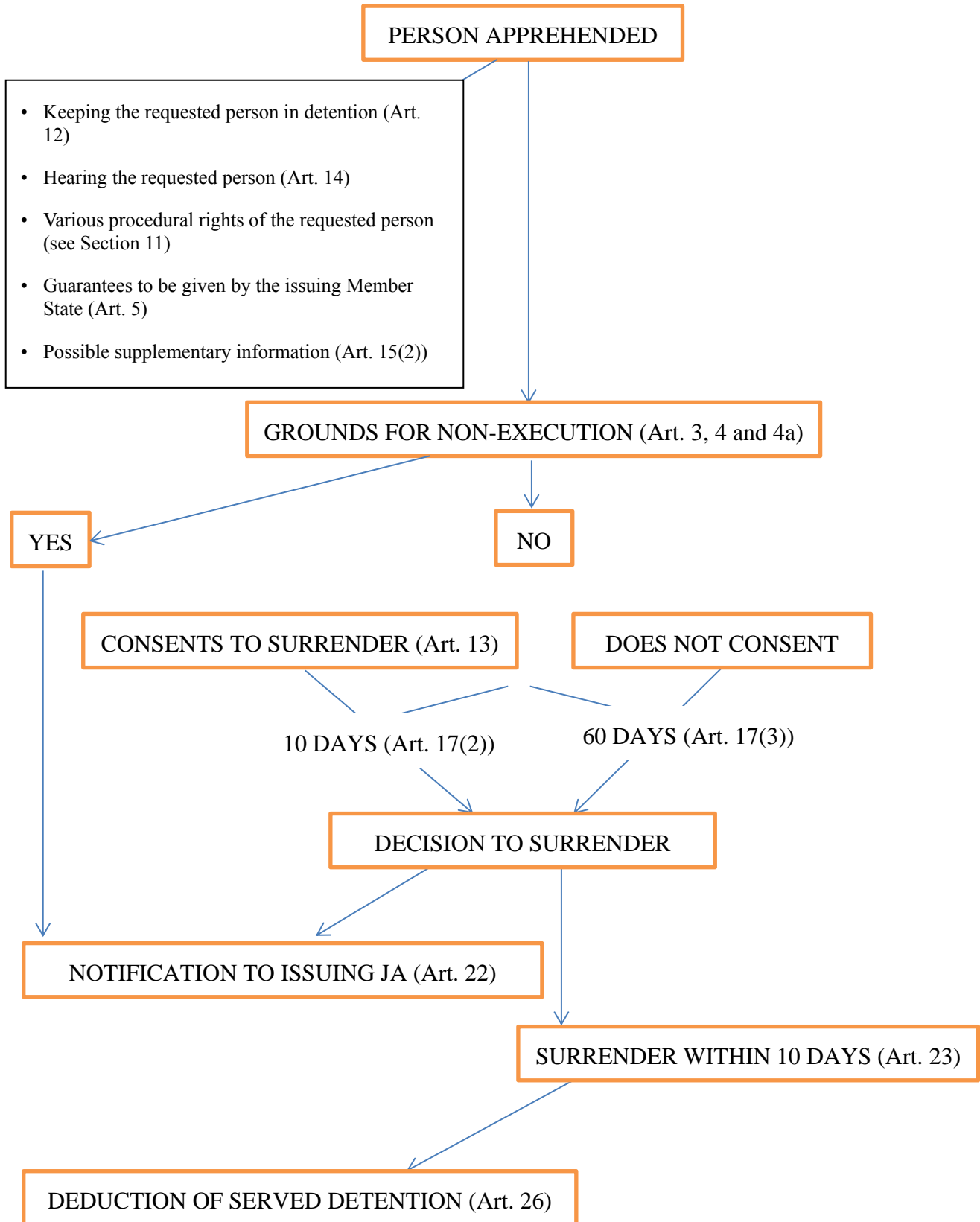




# EXECUTING A EUROPEAN ARREST WARRANT

## Main steps

(JA = Judicial authority)



## PREFACE

This handbook is a revised version of the European handbook on how to issue a European Arrest Warrant issued by the Council in 2008<sup>1</sup> and revised in 2010.<sup>2</sup> Following the end of the five year transitional period under the Lisbon Treaty concerning the so-called ex-third pillar legal instruments<sup>3</sup>, including Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States<sup>4</sup> ('the Framework Decision on EAW'), the Commission took over the task of updating and revising the handbook.

This handbook takes into account the experience gained over the past 13 years of application of the European Arrest Warrant in the Union. The purpose of this revision is to update the handbook and make it more comprehensive and more user-friendly. To prepare this latest version of the handbook, the Commission consulted various stakeholders and experts, including Eurojust, the Secretariat of the European Judicial Network, and Member States' government experts and judicial authorities.

The handbook is available on the internet at: <https://e-justice.europa.eu> in all official languages of the Union.

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<sup>1</sup> 8216/2/08 REV 2 COPEN 70 EJM 26 EUROJUST 31.

<sup>2</sup> 17195/1/10 REV 1 COPEN 275 EJM 72 EUROJUST 139.

<sup>3</sup> Protocol (No 36) on transitional provisions.

<sup>4</sup> OJ L 190, 18.7.2002, p. 1.

# INTRODUCTION

## 1. OVERVIEW OF THE EUROPEAN ARREST WARRANT (EAW)

### 1.1. Background of the EAW

The Framework Decision on EAW was adopted by the Council on 13 June 2002 and Member States were required to take the necessary measures to comply with it by 31 December 2003. From 1 January 2004, the new surrender regime has, with a few exceptions, replaced extradition arrangements. As far as surrender between Member States is concerned, the corresponding provisions of the following conventions have been replaced:

- (a) the European Convention on Extradition of 13 December 1957 (ETS No 024), its additional protocol of 15 October 1975 (ETS No 086), its second additional protocol of 17 March 1978 (ETS No 098), and the European Convention on the Suppression of Terrorism of 27 January 1977 (ETS No 090) 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 on simplified extradition procedure between the Member States of the European Union<sup>5</sup>;
- (d) the Convention of 27 September 1996 relating to extradition between the Member States of the European Union<sup>6</sup>;
- (e) Title III, Chapter 4 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders<sup>7</sup>.

### 1.2. Definition and main features of the EAW

The EAW is a judicial decision enforceable in the Union that is issued by a Member State and executed in another Member State on the basis of the principle of mutual recognition.

As noted by the Court of Justice in its judgments in Case C-452/16 PPU *Poltorak*<sup>8</sup> and Case C-477/16 PPU *Kovalkovas*<sup>9</sup>, it follows from Article 1(1) of the Framework Decision on EAW that the EAW constitutes a 'judicial decision', which must be issued by a 'judicial authority', within the meaning of Article 6(1) thereof. The Court of Justice

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<sup>5</sup> OJ C 78, 30.3.1995, p. 2.

<sup>6</sup> OJ C 313, 23.10.1996, p. 12.

<sup>7</sup> OJ L 239, 22.9.2000, p. 19.

<sup>8</sup> Judgment of the Court of Justice of 10 November 2016 *Poltorak*, C-452/16 PPU, ECLI:EU:C:2016:858.

<sup>9</sup> Judgment of the Court of Justice of 10 November 2016 *Kovalkovas*, C-477/16 PPU, ECLI:EU:C:2016:861.

ruled that the words ‘judicial authority’, contained in Article 6(1) of the Framework Decision on EAW, are not limited to designating only the judges or courts of a Member State, but may extend, more broadly, to the authorities required to participate in administering justice in the legal system concerned. However, the Court of Justice found that the term ‘judicial authority’, referred to in that provision, cannot be interpreted as also covering the police service or an organ of the executive of a Member State, such as a ministry, and that acts issued by such authorities cannot be regarded as ‘judicial decisions’.

The EAW replaced the traditional system of extradition with a simpler and quicker mechanism of surrender of requested persons for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order. A warrant may be issued for the purposes of:

- (a) a criminal prosecution in relation to acts punishable under domestic law by a custodial sentence or detention order for a maximum period of at least 12 months (during the investigation, examining and trial stages, until the conviction is final);
- (b) the execution of a sentence or detention order of at least four months.

Points (a) and (b) are not cumulative.

To make requests simpler and easier to comply with, they are now issued in a uniform way by filling in a EAW form. It is, however, always necessary that a national enforceable judgment or a national arrest warrant or similar judicial decision has been issued prior to and separately from the EAW (see Section 2.1.3.).

Central authorities, which used to play a significant role in the extradition process, are excluded from the decision making process in EAW procedures. However, Article 7 of the Framework Decision on EAW provides that Member States may designate central authorities to assist and support the judicial authorities, especially for receiving and transmitting EAWs.

In the Member States where the Schengen Information System (SIS) is in operation (at the time that this Handbook was issued – all Member States except Ireland and Cyprus) the national SIRENE Bureaux play an important role in the EAW process when a corresponding alert has been created in the SIS. The rules and procedures for Member States’ cooperation concerning alerts for arrest based on EAWs are set out in Articles 24 to 31 of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II)<sup>10</sup> (‘SIS II Decision’) and Point 3 of the SIRENE Manual<sup>11</sup>.

The Framework Decision on EAW reflects a philosophy of integration in a common judicial area. It is the first legal instrument involving cooperation between the Member States on criminal matters based on the principle of mutual recognition. The issuing

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<sup>10</sup> OJ L 205, 7.8.2007, p. 63.

<sup>11</sup> Commission Implementing Decision (EU) 2016/1209 of 12 July 2016 replacing the Annex to Commission Implementing Decision 2013/115/EU on the SIRENE Manual and other implementing measures for the second generation Schengen Information System (SIS II) (OJ L 203, 28.7.2016, p. 35).

Member State's decision must be recognised without further formalities and solely on the basis of judicial criteria.

The surrender of nationals is a principle and a general rule, with few exceptions. These exceptions concern the enforcement of custodial sentences in one's home country and apply equally to residents. Practice has shown that about one fifth of all surrenders in the Union concern a country's own nationals.

The grounds for refusal of execution are limited and exhaustively listed in Articles 3, 4 and 4a of the Framework Decision on EAW. There is no verification of double criminality as a ground for non-execution and non-surrender with regard to 32 categories of offences listed in Article 2(2) of the Framework Decision on EAW, as defined by the issuing Member State, where those offences are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years.

If the offences in question are not regarded by the competent authority of the issuing Member State as offences falling within Article 2(2) of the Framework Decision on EAW, double criminality may still apply. It was held by the Court of Justice in its judgment in Case C-289/15 *Grundza*<sup>12</sup>, that when assessing double criminality, the competent authority of the executing Member State is required to verify whether the factual elements underlying the offence would also, per se, be subject to a criminal penalty in the executing Member State if they were present in that State (see Section 5.2).

From 28 March 2011, the Framework Decision on EAW has been amended by Council Framework Decision 2009/299/JHA<sup>13</sup>, deleting Article 5(1) and inserting a new Article 4a on decisions rendered in absence of the person concerned at the trial (trial in absentia).

### 1.3. The EAW form

The EAW is a judicial decision issued in the form laid down in an annex to the Framework Decision on EAW. The form is available in all official languages of the Union. Only **this form may be used** and it must not be altered. The intention of the Council was to create a working tool easily filled in by the issuing judicial authorities and recognised by the executing judicial authorities.

Use of the form avoids lengthy and expensive translations and facilitates the accessibility of the information. Since the form in principle constitutes the sole basis for the arrest and subsequent surrender of the requested person, it should be filled in with particular care in order to avoid unnecessary requests for supplementary information.

The form can be filled in either directly online by using the European Judicial Network (EJN) Compendium e-tool available on the EJN website, or in a word format form which

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<sup>12</sup> Judgment of the Court of Justice of 11 January 2017, *Grundza*, C-289/15, ECLI:EU:C:2017:4, paragraph 38.

<sup>13</sup> Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial (OJ L 81, 27.3.2009, p. 24).

can be downloaded from the Judicial Library section on the EJN website (<https://www.ejn-crimjust.europa.eu>).

Using the e-tool is as easy as filling in a word form, but has several modern, useful and user-friendly features, such as:

- (a) the possibility of directly importing the competent executing judicial authority from the EJM Judicial Atlas tool;
- (b) obtaining the form in the language(s) accepted by the executing Member State;
- (c) saving and sending it by e-mail.

# PART I: ISSUING A EAW

## 2. REQUIREMENTS FOR ISSUING A EAW

### 2.1. Scope of the EAW

A judicial authority may issue a EAW for two purposes (Article 1(1) of the Framework Decision on EAW):

- (a) criminal prosecution; or
- (b) execution of a custodial sentence or detention order.

Point (a) concerns criminal procedures where the requested person can be prosecuted. Point (b) concerns enforceable custodial sentences or detention orders for criminal offences issued by a court. Issuing a EAW is not possible for all crimes but limited to those of sufficient severity, as explained in more detail below.

In some Member States' legal systems, a EAW for the execution of a custodial sentence or a detention order can be issued even if the sentence is not final and still subject to judicial review. In other Member States' legal systems, this type of EAW can be issued only when the custodial sentence or detention order is final. It is recommended that the executing judicial authority recognises the issuing judicial authority's classification for the purpose of execution of the EAW, even if it does not correspond to its own legal system in this regard.

In this context, it should be noted that issuing judicial authorities are advised to consider whether in the particular case issuing a EAW would be proportionate (see Section 2.4) and whether any less coercive Union measure could be used to achieve an adequate result (see Section 2.5).

#### 2.1.1. Criminal prosecution

An EAW may be issued for the purposes of conducting a criminal prosecution in relation to acts punishable under domestic law by a custodial sentence or a detention order for a maximum period of **at least 12 months** (Article 2(1) of the Framework Decision on EAW).

This refers to the maximum possible punishment for the offence laid down in the national law of the issuing Member State. The maximum punishment in the law of the executing Member State is not relevant in this regard.

Order of the Court of Justice in Case C-463/15 PPU, *Openbaar Ministerie v A.*<sup>14</sup>

‘Article 2(4) and Article 4.1 of Council Framework Decision 2002/584 (...) must be interpreted as precluding a situation in which surrender pursuant to a European arrest warrant is subject, in the executing Member State, not only to the condition that the act for which the arrest warrant was issued constitutes an offence under the law of that Member State, but also to the condition that it is,

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<sup>14</sup> Order of the Court of Justice of 25 September 2015, A., C-463/15 PPU, ECLI:EU:C:2015:634.

under that same law, punishable by a custodial sentence of a maximum of at least twelve months.’

‘Conducting a criminal prosecution’ includes the pre-trial stage of criminal proceedings. However, the purpose of the EAW is not to transfer persons merely for questioning them as suspects. For that purpose other measures, such as a European Investigation Order (EIO) could be considered instead. In Section 2.5 other measures of judicial cooperation are briefly presented.

### 2.1.2. *Execution of a sentence or detention order*

A EAW may be issued for the purposes of execution of a sentence or detention order of at **least four months** (Article 2(1) of the Framework Decision on EAW). However, in situations where only a short period of the sentence remains to be served, competent judicial authorities are advised to consider whether issuing a EAW would be a **proportionate** measure (see Sections 2.4 and 2.5).

Domestic rules on early or conditional release, probation or other similar rules resulting in shorter effective imprisonment which may apply following the surrender to the issuing Member State are not relevant when determining the minimum period of four months.

There is no link between the length of the actual and potential punishment. This means that where a person has already been sentenced to a combined custodial sentence for multiple offences and that sentence is four months or more, the EAW may be issued regardless of the maximum possible sentence for each of the individual offences.

Where the person is known to reside in another Member State, the competent authorities of the issuing Member State are advised to consider the possibility of transferring the enforceable sentence to the Member State of residence, instead of issuing a EAW, taking into account the person’s social ties and chances for better rehabilitation in that Member State and other requirements in accordance with Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union<sup>15</sup> (see Section 2.5.2).

### 2.1.3. *The requirement for an enforceable judicial decision*

The issuing judicial authorities must always ensure that there is an enforceable domestic judicial decision before issuing the EAW. The nature of this decision depends on the purpose of the EAW. When the EAW is issued for the purposes of prosecution, a national arrest warrant or any other enforceable judicial decision having the same effect must have been issued by the competent judicial authorities of the issuing Member State (Article 8(1)(c) of the Framework Decision on EAW) prior to issuing a EAW. It was confirmed by the Court of Justice in its judgment in Case C-241/15 *Bob-Dogi*<sup>16</sup> that the national arrest warrant or other judicial decision is distinct from the EAW itself. When the EAW is issued for the purposes of execution of a custodial sentence or a detention order there must be an enforceable domestic judgment to that effect.

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<sup>15</sup> OJ L 327, 5.12.2008, p. 27.

<sup>16</sup> Judgment of the Court of Justice of 1 June 2016, *Bob-Dogi*, C-241/15, ECLI:EU:C:2016:385.



As the Court of Justice noted in that case, the EAW system entails a dual level of protection for procedural rights and fundamental rights which must be enjoyed by the requested person – judicial protection provided at the first level, at which a national judicial decision, such as a national arrest warrant, is adopted, and the protection that is afforded at the second level, at which a EAW is issued. That dual level of judicial protection is, in principle, lacking in a situation where no domestic judicial decision on which the EAW will be based, has been taken by a national judicial authority before the EAW is issued.

Judgment of the Court of Justice in Case C-241/15, *Bob-Dogi*

‘Article 8(1)(c) of Framework Decision 2002/584 (...) is to be interpreted as meaning that, where a European arrest warrant based on the existence of an ‘arrest warrant’ within the meaning of that provision does not contain any reference to the existence of a national arrest warrant, the executing judicial authority must refuse to give effect to it if, in the light of the information provided pursuant to Article 15(2) of Framework Decision 2002/584, as amended, and any other information available to it, that authority concludes that the European arrest warrant is not valid because it was in fact issued in the absence of any national warrant separate from the European arrest warrant.’

The term ‘judicial decision’ (that is distinct from the EAW itself) was further clarified by the Court of Justice in its judgment in Case C-453/16 PPU *Özçelik*<sup>17</sup>, where it was concluded that a confirmation by the public prosecutor’s office of a national arrest warrant that was issued by the police, and on which the EAW is based, is covered by the term ‘judicial decision’.

Judgment of the Court of Justice in Case C-453/16 PPU, *Özçelik*

‘Article 8(1)(c) of the Council Framework Decision 2002/584/JHA (...) must be interpreted as meaning that a confirmation, such as that at issue in the main proceedings, by the public prosecutor’s office, of a national arrest warrant issued previously by a police service in connection with criminal proceedings constitutes a ‘judicial decision’, within the meaning of that provision.’

The existence of the domestic judicial decision or arrest warrant must be indicated on the EAW form when the EAW is issued (Article 8(1)(c) of the Framework Decision on EAW and see Section 3.2 of this Handbook). The decision or warrant does not need to be attached to the EAW.

## **2.2. The list of 32 offences which give rise to surrender without verification of double criminality**

Before issuing the EAW, the competent judicial authority should determine whether one or more of the offences belong to one of the 32 categories in respect of which the verification of double criminality does not apply. The list of offences is in Article 2(2) of the Framework Decision on EAW and also on the EAW form, where offences belonging to the list should be ‘ticked’.

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<sup>17</sup> Judgment of the Court of Justice of 10 November 2016 *Özçelik*, C-453/16 PPU, ECLI:EU:C:2016:860.

It is the issuing Member State's law which is decisive. This was confirmed in the judgment in Case C-303/05 *Advocaten voor de Wereld*<sup>18</sup> where the Court held that Article 2(2) of the Framework Decision on EAW is not incompatible with the principle of the legality of criminal offences and penalties and does not breach the principle of equality and non-discrimination.

The executing judicial authority can only verify double criminality in respect of offences that are not in the list of 32 offences (see Section 5.2).

### 2.3. Accessory offences

The 1957 European Convention on Extradition contains a provision on accessory offences:

‘Article 2 — Extraditable offences

1. Extradition shall be granted in respect of offences punishable under the laws of the requesting Party and of the requested Party by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty. Where a conviction and prison sentence have occurred or a detention order has been made in the territory of the requesting Party, the punishment awarded must have been for a period of at least four months.
2. If the request for extradition includes several separate offences each of which is punishable under the laws of the requesting Party and the requested Party by deprivation of liberty or under a detention order, but of which some do not fulfil the condition with regard to the amount of punishment which may be awarded, the requested Party shall also have the right to grant extradition for the latter offences.’

In the Framework Decision on EAW there is no similar provision. It does not regulate surrender for offences punishable by a lower sanction than the threshold set out in Article 2(1) when they are accessory to the main offences that meet that threshold. In practice some Member States have decided to allow such surrender, whereas others do not.

Annex VIII contains a list of Member States whose legal system provides for the possibility to surrender for accessory offences.

The issuing judicial authority may include such accessory offences on the EAW form with the aim to obtain the executing Member State's consent for prosecuting those offences. However, the EAW must always be issued for at least one offence that meets the threshold set out in Article 2(1) of the Framework Decision on EAW.

If the executing Member State does not surrender for accessory offences, the rule of speciality (Article 27 of the Framework Decision on EAW) might preclude the issuing Member State from prosecuting those offences (see Section 2.6 of this Handbook).

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<sup>18</sup> Judgment of the Court of Justice of 3 May 2007, *Advocaten voor de Wereld*, C-303/05, ECLI:EU:C:2007:261, paragraphs 48 to 61.

## **2.4. Proportionality**

A EAW should always be proportional to its aim. Even where the circumstances of the case fall within the scope of Article 2(1) of the Framework Decision on EAW, issuing judicial authorities are advised to consider whether issuing a EAW is justified in a particular case.

Considering the severe consequences that the execution of a EAW has on the requested person's liberty and the restrictions of free movement, the issuing judicial authorities should consider assessing a number of factors in order to determine whether issuing a EAW is justified.

In particular the following factors could be taken into account:

- (a) the seriousness of the offence (for example, the harm or danger it has caused);
- (b) the likely penalty imposed if the person is found guilty of the alleged offence (for example, whether it would be a custodial sentence);
- (c) the likelihood of detention of the person in the issuing Member State after surrender;
- (d) the interests of the victims of the offence.

Furthermore, issuing judicial authorities should consider whether other judicial cooperation measures could be used instead of issuing a EAW. Other Union legal instruments on judicial cooperation in criminal matters provide for other measures that in many situations, are effective but less coercive (see Section 2.5).

On a more general note, applying the proportionality check before issuing a EAW can reinforce mutual trust among Member State's competent authorities. Therefore, it significantly contributes to the effective operation of the EAW throughout the Union.

## **2.5. Other measures available under Union legal instruments on judicial cooperation in criminal matters**

Before deciding to issue a EAW, the issuing judicial authorities are advised to give due consideration to other possible measures.

There are several measures available under Union legal instruments on judicial cooperation in criminal matters, based on the principle of mutual recognition, that complement the EAW. In some situations these measures might be more appropriate than the EAW. Such measures include, in particular:

- (a) the European Investigation Order;
- (b) the transfer of prisoners;
- (c) the transfer of probation decisions and alternative sanctions;
- (d) the European Supervision Order;
- (e) the enforcement of financial penalties.

The scope of these measures is explained briefly in Sections 2.5.1. to 2.5.5. In addition, competent authorities may take into account the possibilities offered by other international measures, such as the Council of Europe Convention on the Transfer of Proceedings in Criminal Matters of 15 of May 1972 (ETS No 073) as explained briefly in Section 2.5.6.

More information on the practical application of Union legal instruments on judicial cooperation in criminal matters can be found on the EJN website: [www.ejn-crimjust.europa.eu](http://www.ejn-crimjust.europa.eu).

The Judicial Library section of the EJN website contains comprehensive and practical information about each legal instrument, including texts as published in the *Official Journal of the European Union*, amending acts, status of implementation, forms in word format, notifications, statements, reports, handbooks, and other practical information. For easy access to the Union legal instruments on judicial cooperation and to the status of implementation of them in the Member States, there are separate entry points (shortcuts) on the homepage of the EJN website.

The following measures, in particular, might be considered at the pre-trial stage of criminal proceedings:

- (a) issuing a European Investigation Order (EIO) for a suspect to be heard via a video link in another Member State;
- (b) issuing a European Investigation Order (EIO) for suspect to be heard in another Member State by the competent authorities of that Member State;
- (c) issuing a European Supervision Order (ESO) for a non-custodial supervision measure concerning the suspect to be executed by the Member State of residence of the suspect in the pre-trial stage;
- (d) issuing an alert in SIS for the purpose of establishing the place of residence or domicile of a suspect (Article 34 of the SIS II Decision). Such alerts differ from the alerts for arrest that are described under Section 3.3.1 of this Handbook. As soon as the place of residence or domicile has been provided to the issuing judicial authority, that authority needs to take the necessary follow-up measures (such as requiring the suspect to appear before a relevant authority responsible for criminal proceedings) and delete the alert from SIS in accordance with point 6.5 of the SIRENE Manual;
- (e) requiring a suspect located in the executing Member State to appear before a relevant authority responsible for criminal proceedings in the issuing Member State;
- (f) inviting a person to attend the criminal procedure voluntarily.

The following measures, in particular, might be considered at the post-trial stage, once the sentence has been passed:

- (a) transferring a custodial sentence to the Member State of residence of the convicted person to be executed by that Member State;

- (b) transferring an alternative sentence (for example, community service) or a probation order to the Member State of residence of the convicted person to be executed by that Member State.

### 2.5.1. *European Investigation Order (EIO)*

*Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters*<sup>19</sup>

The EIO can be used for obtaining evidence from another Member State. The EIO covers any investigative measure, with the exception of setting up joint investigation teams. The goal is to allow Member States to request another Member State to carry out investigative measures on the basis of mutual recognition. EIOs concerning investigative measures that do not exist or are not available in the executing Member State can nonetheless be executed by way of recourse to an alternative investigative measure.

The EIO replaces the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union<sup>20</sup> and the previous patchwork of legal provisions in this area. Incorporating the existing measures into a single new instrument aims to make judicial cooperation on investigations faster and more efficient. The EIO can be used in criminal proceedings, but also in those brought by administrative authorities, with judicial validation, when there is a criminal dimension. Member States must decide on the recognition or execution of an EIO within 30 days and carry out the investigation measure within 90 days following the taking of that decision.

In some situations a EIO might be issued for questioning the suspect via video link in order to determine whether or not to issue a EAW for the purposes of prosecuting him.

*Example 1:* Pierre has recently moved from Member State A to Member State B. There is evidence to suggest that he was an accomplice in a serious offence in A. However, the authorities of A need to question him before being able to decide whether to prosecute him. The judicial authority of A can issue a EIO for questioning Pierre via a video link in B.

*Example 2:* Alternatively, given the facts of Example 1, the judicial authority of A could issue a EIO requesting the competent authorities in B to question Pierre and produce a written transcript of the hearing.

### 2.5.2. *Transfer of prisoners*

*Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union*

Framework Decision 2008/909/JHA provides a system for transferring convicted prisoners back to their Member State of nationality or habitual residence or another

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<sup>19</sup> OJ L 130, 1.5.2014, p. 1.

<sup>20</sup> Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union (OJ C 197, 12.7.2000, p. 3).

Member State with which they have close ties. Framework Decision 2008/909/JHA also applies where the sentenced person is already in that Member State. The consent of the sentenced person to transfer is no longer a pre-requisite in all cases. This Framework Decision has, for Member States, replaced the Council of Europe Convention on the Transfer of Sentenced Persons of 21 March 1983 (ETS No 112) and its additional Protocol of 18 December 1997 (ETS No 167).

In certain situations, instead of issuing a EAW for surrender of the person to serve the sentence in the Member State where the sentence was handed down, Framework Decision 2008/909/JHA could be used to execute the sentence in the place where the convicted person resides and might have better chances of rehabilitation.

Article 25 of Framework Decision 2008/909/JHA also contains a specific provision concerning the enforcement of custodial sentences in the executing Member State in cases falling under Articles 4(6) and 5(3) of the Framework Decision on EAW (see Sections 5.4.2 and 5.8.2 of this Handbook). In cases where Article 4(6) or 5(3) of the Framework Decision on EAW are applied, Framework Decision 2008/909/JHA must also be applied for transferring the sentence to the Member State where it is executed.

#### *Example 1*

Jerzy is a national of and habitually lives in Member State B. During his visit to Member State A he commits an offence. He is sentenced in A to two years in prison.

The authorities in A may transfer the sentence for execution in B without Jerzy's consent, if this improves the chances of his rehabilitation and other conditions of Framework Decision 2008/909/JHA are met.

#### *Example 2*

Gustav is a national of Member State B but lives in Member State A where he has a permanent job and where his family also lives. In Member State B he is convicted for a tax offence and receives a custodial sentence. Instead of issuing a EAW for the execution of the sentence, the authorities in B may transfer the custodial sentence to be served in A.

### 2.5.3. *European Supervision Order (ESO)*

*Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention*<sup>21</sup>

Framework Decision 2009/829/JHA introduces the possibility of transferring a non-custodial supervision measure from the Member State where a non-resident is suspected of having committed an offence, to the Member State where the person is resident. This allows a suspect to be subject to a supervision measure in his or her normal environment until the trial takes place in the other Member State. The European Supervision Order ('ESO') may be used for all non-custodial pre-trial supervision measures, for example travel restrictions and duty to report regularly.

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<sup>21</sup> OJ L 294, 11.11.2009, p. 20.

Whether an order to transfer a decision on supervision measures is made will be determined by the prosecuting Member State. The types of supervision measures covered are set out in Framework Decision 2009/829/JHA and the subsequent declarations by each Member State (listed on the EJM website). The transfer of a supervision measure requires the consent of the person subject to the measure.

*Example:* Sonia lives and works in Member State B. She is temporarily staying in Member State A where she is being investigated for fraud. The judicial authority in A knows where Sonia resides in B and considers that the risk of her absconding trial is low. Instead of holding her in pre-trial detention in A, the judicial authority in A can issue an order obliging her to report regularly to the police authority in B. In order to allow Sonia to return and stay in B until the trial takes place in A, the competent authority in A can, with Sonia's consent, issue a ESO to have the obligation to report recognised and enforced in B.

#### 2.5.4. *Transfer of probation decisions and alternative sanctions*

*Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition of judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions*<sup>22</sup>

Framework Decision 2008/947/JHA introduces the application of the principle of mutual recognition to alternatives to custody and measures facilitating early release. It relates to the post-trial stage.

It provides that a probation decision or other alternative sanction may be executed in a Member State other than the one in which the person was sentenced as long as the person has consented.

*Example:* Anna is a national of Member State A, but is on holiday in Member State B. She is convicted of an offence in B and sentenced to carry out community service instead of a custodial sentence. She can return to A, whereupon the authorities in A are obliged to recognise the community service order and supervise Anna's completion of it.

#### 2.5.5. *Financial penalties*

*Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties*<sup>23</sup>

Framework Decision 2005/214/JHA applies the principle of mutual recognition to financial penalties imposed by judicial or administrative authorities. The purpose is to facilitate the enforcement of such penalties in a Member State other than the one in which the penalties were imposed. It enables a judicial or administrative authority to transmit a financial penalty directly to an authority in another Member State and to have that penalty recognised and executed without any further formality.

The scope of Framework Decision 2005/214/JHA covers all criminal offences (Article 1(a)(i) and (ii)) and also 'infringements of rules of law', on the condition that an

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<sup>22</sup> OJ L 337, 16.12.2008, p. 102.

<sup>23</sup> OJ L 76, 22.3.2005, p. 16.

appeal is possible before ‘a court having jurisdiction in criminal matters’ (the Court of Justice has given indications as to the latter notion notably in its judgment in Case C-60/12 *Baláz*<sup>24</sup>, paragraphs 39 and 40).

The procedure applies in cross-border situations where a financial penalty is imposed in one Member State and is expected to be executed in the Member State where the perpetrator resides or has property or income.

In some Member States’ systems an unpaid financial penalty might be converted into a custodial sentence. In these situations, a EAW might be issued for the execution of the custodial sentence. It is advised that, where possible, Framework Decision 2005/214/JHA is considered as one of the methods for enforcing payment before converting the financial penalty into a custodial sentence, thus avoiding the need to issue a EAW.

#### 2.5.6. *Transfer of criminal proceedings*

The transfer of criminal proceedings to the Member State where the suspect is residing should be considered in relevant cases. The legal basis for the transfer is the 1972 Convention on the Transfer of Proceedings in Criminal Matters. For those Member States that did not ratify this Convention, the transfer can be based on ordinary jurisdiction in the receiving Member State to initiate a criminal investigation. In that case, a request is normally based on Article 21 of the Council of Europe Convention on Mutual Assistance in Criminal Matters of 20 April 1959 (ETS No 030).

#### 2.6. **Rule of speciality — possible prosecution for other offences**

In general, a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to the surrender other than that for which the person was surrendered. This is the rule of speciality, set out in Article 27 of the Framework Decision on EAW.

The rule of speciality is subject to a number of exceptions. The Framework Decision on EAW gives a possibility to Member States to notify that, in their relations with other Member States that have given the same notification, they renounce the rule of speciality, unless in a particular case the executing judicial authority states otherwise in its decision on surrender (see Article 27(1) of the Framework Decision on EAW). According to the information available to the Commission only Estonia, Austria and Romania have sent such notifications.

In addition, Article 27(3) of the Framework Decision on EAW lists other situations where the rule of speciality does not apply:

- ‘(a) 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;
- (b) the offence is not punishable by a custodial sentence or detention order;
- (c) the criminal proceedings do not give rise to the application of a measure restricting personal liberty;

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<sup>24</sup> Judgment of the Court of Justice of 14 November 2013, *Baláz*, C-60/12, ECLI:EU:C:2013:733.



- (d) 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;
- (e) when the person consented to be surrendered, where appropriate at the same time as he or she renounced the speciality rule, in accordance with Article 13;
- (f) 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 make clear 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;'

In other cases, it is necessary to request the original executing Member State's consent for prosecution or enforcement of the other offences (Article 27(3)(g) of the Framework Decision on EAW). Consent must be given when the offence for which the consent is requested is itself subject to surrender in accordance with the Framework Decision on EAW unless a mandatory or optional ground for non-execution applies.

Where applicable, the executing judicial authority may subject its consent to one of the conditions concerning custodial life sentences and the return of nationals and residents laid down in Article 5 of the Framework Decision on EAW (see Section 5.8 of this Handbook). In such cases the issuing Member State must give the appropriate guarantees (Article 27(4) of the Framework Decision on EAW).

#### *Procedure for renouncing the rule of speciality by consent of the executing judicial authority*

The request for consent must be submitted by the same procedure and must contain the same information as a normal EAW. Thus the competent judicial authority transmits the request for consent directly to the executing judicial authority which surrendered the person. The information contained in the request, as provided in Article 8(1) of the Framework Decision on EAW, must be translated under the same rules as a EAW. The executing judicial authority must take the decision no later than 30 days after receipt of the request (Article 27(4) of the Framework Decision on EAW).

In its judgment in Case C-388/08 PPU *Leymann and Pustovarov*<sup>25</sup> the Court of Justice examined how to establish whether the offence under consideration is an 'offence other' than that for which the person was surrendered within the meaning of Article 27(2) of the Framework Decision on EAW requiring the implementation of the consent procedure referred to in Article 27(3)(g) and 27(4) of the Framework Decision on EAW. The Court held that:

'(...) it must be ascertained whether the constituent elements of the offence, according to the legal description given by the issuing State, are those in respect of which the person was surrendered and whether there is a sufficient

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<sup>25</sup> Judgment of the Court of Justice of 1 December 2008, *Leymann and Pustovarov*, C-388/08 PPU, ECLI:EU:C:2008:669.

correspondence between the information given in the arrest warrant and that contained in the later procedural document. Modifications concerning the time or place of the offence are allowed, in so far as they derive from evidence gathered in the course of the proceedings conducted in the issuing State concerning the conduct described in the arrest warrant, do not alter the nature of the offence and do not lead to grounds for non-execution under Articles 3 and 4 of the Framework Decision.’

### **3. PROCEDURE FOR ISSUING A EAW**

#### **3.1. Other pending criminal procedures and EAWs concerning the same person**

##### *3.1.1. In the issuing Member State*

Before issuing a EAW the competent judicial authority is advised to check whether other criminal procedures have been initiated or other EAWs issued concerning the requested person in the issuing Member State.

If there are other criminal proceedings pending or enforceable custodial sentences against the requested person in the issuing Member State, it is advisable to communicate and, where possible, coordinate with other national authorities before issuing a EAW. It is important to ensure that the EAW covers all offences for which the requested person will be prosecuted or has been sentenced in the issuing Member State. This is advisable in particular because of the rule of speciality which may prevent prosecution or sentencing for offences other than those for which the person was surrendered by the executing Member State (see Section 2.6). Although consent by the requested person or the executing Member State to prosecution or execution of the sentence for these offences may be requested after the surrender (see Article 27(3)(f) and (g) of the Framework Decision on EAW), practice has shown that obtaining such consent can be slow or cumbersome.

If possible, all offences should be included in one EAW, as this makes the procedure in the executing Member State quicker and more efficient. If there is a prior EAW issued in respect of the same person, that EAW could, whenever possible, be replaced by a new EAW which covers both the offences from the previous EAW and the new offences. If there is a prior alert for arrest issued in respect of the person, it should be updated to include the new EAW. It is possible to enter more than one EAW per alert for arrest (see point 3.1 of the SIRENE Manual).

##### *3.1.2. In another Member State*

If there are indications of other pending criminal proceedings or enforceable custodial sentences against the requested person in another Member State or other Member States, it might be advisable to contact the authorities of the other Member State(s) before issuing the EAW. In these cases, the authorities of the different Member States could explore the possibility of coordinating which Member State should issue the (first) EAW and the possibility of transferring criminal proceedings into one, or at least fewer, Member States.

The competent authorities should verify in SIS whether an alert for arrest has been issued in respect of the same person by another Member State. Several Member States may

enter an alert for arrest in respect of the same person. In the event of an arrest, the SIRENE Bureau of the executing Member State will simultaneously inform each Member State concerned (see point 3.2 of the SIRENE Manual).

The competent authorities can also contact Eurojust or the EJM contact points or both or directly contact the competent authority of another Member State<sup>26</sup>.

It should be noted that if the executing Member State has received multiple EAWs in respect of the requested person, it must in any event decide where the requested person is to be surrendered first (see Section 5.10). Therefore it might be more efficient to seek agreement among the issuing judicial authorities on which of the Member States the requested person should be surrendered to first before issuing multiple EAWs. Although the executing judicial authority is not bound by agreements relating to concurrent EAWs reached between issuing judicial authorities, the executing judicial authority should take them into consideration.

It is therefore also advisable to complete section ‘f’ (other circumstances relevant to the case) of the EAW form regarding these agreements, so that executing judicial authorities are immediately aware of them.

### **3.2. Filling in the EAW form**

Detailed guidelines on filling in the EAW form are set out in Annex III.

#### *3.2.1. Information that is always necessary*

The executing judicial authority should always have the minimum necessary information to allow it to decide on surrender (see Article 15(2) of the Framework Decision on EAW). In particular, the executing judicial authority needs to be able to confirm the identity of the person and evaluate whether any of the grounds for non-execution apply. Thus the issuing judicial authority should pay particular attention to the description of the offence(s) on the EAW form.

The exact information to be provided depends on the circumstances in each case. However, it is good to bear in mind that the executing judicial authority might know little or nothing about the case underlying the EAW or the issuing Member State’s legal system. Therefore, it is vital that issuing judicial authorities ensure that the information in the EAW is clear, correct and comprehensive. If the EAW form is properly filled in, no additional documents are required.

Experience has shown that requests for further information between the issuing and executing judicial authorities are one of the primary causes of delays in the execution of EAWs. This often results in the time limits set out in the Framework Decision on EAW being exceeded (see Section 4.1. on time limits).

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<sup>26</sup> For a general introduction on the tasks of Eurojust and the EJM see document ‘Assistance in International Cooperation in Criminal Matters for Practitioners - European Judicial Network and Eurojust — What can we do for you?’ available on both the EJM website (<https://www.ejm-crimjust.europa.eu>) and the Eurojust website (<http://www.eurojust.europa.eu>).

### *3.2.2. Useful supplementary information from the issuing judicial authority*

Photographs and fingerprints of the requested person must be added to the SIS alert, where available. Furthermore, the contact details and the mobile phone number of the duty office and person responsible should always be given, so that they can be notified immediately, whatever time of day the requested person is found.

Whenever it is likely that the executing Member State will require guarantees by the issuing Member State on the basis of Article 5 of the Framework Decision on EAW, it is advisable to add the relevant information to the EAW. For example, the issuing judicial authority might already indicate its consent to return the requested person to the executing Member State under specified conditions (see Section 5.8.).

### **3.3. Transmitting the EAW**

The procedure for transmitting the EAW depends on whether the issuing judicial authority knows the whereabouts of the requested person (Article 9 of the Framework Decision on EAW). In most cases the person's location is unknown or uncertain and the EAW should be transmitted to all Member States via the SIS. Even when the person's location is known the issuing judicial authority may decide to issue an alert in the SIS (Article 9(2) of the Framework Decision on EAW).

#### *3.3.1. When the location of the requested person is unknown*

When the location of the requested person is unknown the EAW should be transmitted to all Member States. To that end, an alert for arrest or surrender should be created in the SIS in accordance with Article 26 of SIS II Decision. It is important to emphasise that the issuing judicial authority must issue the EAW before the alert can be entered into the SIS.

The issuing judicial authority should, where appropriate, send a copy of the original EAW and all relevant information concerning the person to the national SIRENE Bureau, via the competent police authority.

The SIRENE Bureau of the issuing Member State checks whether the information is complete (for instance, whether photographs and fingerprints are available and can be attached), attaches the copy of the original EAW to the alert and a translation, if available, and validates the entry of the alert in the SIS. In addition, the SIRENE Bureau communicates the contents of the EAW to all other SIRENE Bureaux through the exchange of supplementary information (A form). The A form is issued in English. It is important to indicate in the A form (field 311) if the search for the person is limited to the territories of certain Member States only (geographical search).

Upon receipt of the A form, all other SIRENE Bureaux verify whether the information provided in the A form and the EAW is complete. In accordance with Article 25 of the SIS II Decision the SIRENE Bureaux may also, under judicial supervision, check whether it is obvious that the execution of the EAW will have to be refused and, if it is, add a 'flag' to the alert preventing the arrest. During this verification process, the alert should continue to be available to users. If a Member State does not execute the EAW and therefore decides to flag the alert, the alert will remain visible for users. This action will not be to arrest the requested person but to take the whereabouts of the person (Section 3.6 of the SIRENE Manual).

The receiving SIRENE Bureaux also check national databases, such as police and prison systems, to see if the requested person is already known to them or even already in custody for another offence. If the person is located on the basis of such verification, the SIRENE Bureau forwards the information contained in the A form to the competent authority that will execute the EAW.

The alert for arrest is visible to the competent authorities of all Member States (usually law enforcement and judicial authorities). If the person is detected and arrested on the basis of the SIS alert in another Member State, the issuing judicial authority will be informed via the national SIRENE Bureau.

An alert for arrest in the SIS containing a copy of the original EAW constitutes and has the same effect as a EAW (SIS II Decision, Article 31(1)). Since the entry into operation of the second generation of the SIS, transmission of the original EAW paper copy is no longer required as the copy of the original EAW is directly attached to the alert. However, since the original EAW is issued in the language of the issuing State and the A form is issued in English, it may still be necessary for the issuing judicial authority to send a translated EAW to the executing Member State after the requested person has been arrested. It is also possible to immediately attach, a copy of a EAW translation to the alert in one or more official languages of the Union.

The EJN website (<http://www.ejn-crimjust.europa.eu>) contains a list of the languages accepted by the Member States (see Section 3.4.).

The issuing judicial authority should ensure that the alert entered in SIS is stored only for the time required to achieve the purposes for which it was entered (SIS II Decision, Article 44(1)). This means that the alert needs to be deleted if the EAW is withdrawn (see Section 10.4 of this Handbook) or surrender has taken place (Section 3.11 of the SIRENE Manual).

### 3.3.2. *When the location of the requested person is known*

When the requested person's location is known, the issuing judicial authority can send the EAW directly to the competent authority of the executing Member State for execution (Article 9(1) of the Framework Decision on EAW).

If the issuing judicial authority does not know the competent executing judicial authority, it must make enquiries, including through the contact points of the European Judicial Network, in order to obtain that information from the executing Member State (Article 10(1) of the Framework Decision on EAW). The Atlas tool on the EJN website also (<http://www.ejn-crimjust.europa.eu>) contains information and contact details of each Member State's competent authorities.

In order to reduce any risk of the requested person absconding, the issuing judicial authority can also send the EAW to its national SIRENE Bureau for transmission to the other Member States via the SIS (see Section 3.3.1). The SIS alert enables the police authorities in the Member States to be aware that the person is wanted for arrest. However, it should be clearly indicated to all SIRENE Bureaux that the person's location is known to avoid unnecessary work checking whether the person is known or present on their territory.

### 3.3.3. *Transmitting the EAW to Member States who do not use the SIS*

Currently the following Member States do not use the SIS: Ireland and Cyprus. Where transmission to those Member States is required, the EAW can be sent either directly or by the relevant Interpol National Office. Transmitting via Interpol is provided for in Article 10(3) of the Framework Decision on EAW.

However, it should be noted that in some Member States an Interpol alert does not constitute grounds for arrest. Therefore it is important to clearly indicate the existence of the EAW in the alert since a EAW always entails an obligation to apprehend the requested person.

### 3.4. **Translation of the EAW**

The EAW form must be completed or translated into the official language or one of the official languages of the executing Member State. However, where the executing Member State has stated in a declaration that it will also accept a translation in one or more official languages of the institutions of the Union, the EAW may, alternatively, be translated into one of those languages.(Article 8(2) of the Framework Decision on EAW).

The EJM website (<http://www.ejm-crimjust.europa.eu> — *Fiches belges* tool) contains a list of the languages accepted by the Member States.

Where the EAW is transmitted via the SIS the issuing Member State may also attach a copy of a translation of the EAW in one or more other official languages of the institutions of the Union to the alert as provided in Article 27(2) of the SIS II Decision. These translations as well as the A forms should serve as a sufficient basis to carry out the verifications indicated in Section 3.3.1 of this Handbook. It should be noted that this does not affect the obligation to translate the EAW into a language accepted by the executing Member State.

Where the location of the arrest of the requested person can be anticipated, it may be better to translate the EAW in advance into the language of that Member State. This makes it easier to respect the short deadlines for execution of a EAW.

In cases where a EAW is transmitted directly to an executing judicial authority, it must be accompanied by a translation. As EAWs must be dealt with and executed as a matter of urgency (Article 17(1) of the Framework Decision on EAW), the issuing Member State should send the translation as soon as possible and, in any case, before the deadline set by the Member State for receiving a translated EAW (see Section 4.3 of this Handbook).

The translations must be done using the standard EAW form which is available in all 24 official languages of the Union. All language versions of the form are available on the EJM website (Judicial Library and Compendium, in both pdf and word formats).

### **3.5. After the requested person is apprehended: cooperation and communication with the competent authorities of the executing Member State**

After the requested person is apprehended in another Member State, the competent authorities of the issuing Member State should swiftly respond to requests for information and other requests from the authorities of the executing Member State. The competent authorities of the issuing Member State are advised to refer to PART II of this Handbook for guidelines on good cooperation and communication with the competent authorities of the executing Member State. EJN or Eurojust can assist should problems in communication arise. The SIRENE Bureaux also regularly facilitate communications when the person has been apprehended following an alert for arrest issued in the SIS.

If the issuing judicial authority decides to withdraw its EAW, it should notify this without delay to the executing judicial authority, in particular where the requested person has been deprived of liberty. It must also ensure that the alert in the SIS is deleted.

The issuing judicial authority may at any time forward any additional useful information to the executing judicial authority (Article 15(3) of the Framework Decision on EAW).

## PART II: EXECUTING A EAW

### 4. PROCEDURE FOR EXECUTING A EAW

#### 4.1. Time limits for taking the decision on the execution of the EAW

Strict time limits are set out for the execution of a EAW. The time limits depend on whether the requested person consents to his or her surrender. It is emphasised that notwithstanding the time limits, all EAWs must be dealt with and executed as a matter of **urgency** (Article 17(1) of the Framework Decision on EAW).

If the requested person consents to his or her surrender the final decision on the execution of the EAW should be taken within a period of **10 days after consent** has been given (Article 17(2) of the Framework Decision on EAW).

If the requested person does not consent to his or her surrender the final decision on the execution of the EAW should be taken within a period of **60 days after the arrest** of the requested person (Article 17(3) of the Framework Decision on EAW).

According to the Framework Decision on EAW, in principle, consent may not be revoked. Each Member State may, however, provide that consent and, if appropriate, renunciation of entitlement to the rule of speciality (see Section 2.6) may be revoked, in accordance with the rules applicable under its domestic law. If the requested person revokes his or her consent, the initial 10 day time limit ceases to apply and becomes 60 days, starting from the day of arrest (Article 13(4) of the Framework Decision on EAW). When establishing that time limit, the period between the date of consent and that of its revocation is not taken into consideration.

Exceptionally, where in a specific case the EAW cannot be executed within the applicable time limits, those time limits may be extended by a **further 30 days**. In that case, the executing judicial authority must immediately inform the issuing judicial authority thereof and give the reasons for the delay (Article 17(4) of the Framework Decision on EAW).

As held by the Court of Justice in its judgment in Case C-168/13 PPU *Jeremy F.*<sup>27</sup> any appeal with suspensive effect provided for by national legislation against a surrender decision must, in any event, comply with the time limits laid down in the Framework Decision on EAW for making a final decision.

In its judgment in Case C-237/15 PPU *Lanigan*<sup>28</sup> the Court of Justice held that the expiry of the time limits for taking a decision on the execution of a EAW does not free the competent court of its obligation to adopt a decision in that regard and does not preclude, in itself, the continued detention of the requested person. The release of the requested person, together with the measures necessary to prevent him from absconding must, however, be ordered if the duration of the custody is excessive.

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<sup>27</sup> Judgment of the Court of Justice of 30 May 2013, *Jeremy F.*, C-168/13 PPU, ECLI:EU:C:2013:358.

<sup>28</sup> Judgment of the Court of Justice of 16 July 2015, *Lanigan* C-237/15 PPU, ECLI:EU:C:2015:474.



### *The duty to inform Eurojust of delays*

Where a Member State cannot observe the time limits, the competent authorities must inform Eurojust, giving the reasons for the delay (Article 17(7) of the Framework Decision on EAW). Given the fundamental importance of respecting the time limits in the operation of the EAW, Eurojust monitors the cases where the time limits could not be observed, if informed. On this basis Eurojust can help identify the problems causing delays. In many situations Eurojust can help competent authorities to respect the time limits, for example by facilitating information exchange between competent authorities.

#### **4.2. Time limits for surrendering the requested person (after the decision on the execution of the EAW)**

The time limit for surrendering the requested person starts to run immediately after the final decision on the execution of the EAW is taken. The authorities concerned should arrange and agree on the person's surrender as soon as possible (Article 23(1) of the Framework Decision on EAW). In any event the surrender must take place no later than **10 days** after the final decision on the execution of the EAW (Article 23(2) of the Framework Decision on EAW). For this reason, it is necessary to agree on the practical arrangements of the surrender without delays.

If the surrender of the requested person within the 10 day period is prevented by circumstances beyond the control of any of the Member States, the executing and issuing judicial authorities must immediately contact each other and agree on a new surrender date. In that event, the surrender must take place within 10 days of the new date thus agreed (Article 23(3) of the Framework Decision on EAW).

In its judgment in Case C-640/15 *Vilkas*<sup>29</sup> the Court of Justice concluded that the executing judicial authority may agree on a new surrender date with the issuing judicial authority, even if the previous two surrender attempts failed due to resistance put up by the requested person in so far as that resistance could not have been foreseen by the authorities and the consequences of the resistance for the surrender could not have been avoided in spite of the exercise of all due care by those authorities, which is for the referring court to ascertain. Those authorities remain obliged to agree on a new surrender date if the time limits prescribed in Article 23 have expired.

As regards postponement of surrender for serious humanitarian reasons, for example, serious illness of the requested person, see Section 5.9.1.

#### **4.3. Translation of the EAW**

The executing judicial authority may set a deadline for receiving a translation of the EAW. The EAW is to be translated into one of the official languages of the executing Member State or another language which that Member State has stated that it would accept. The executing judicial authorities are strongly encouraged to set this deadline **between 6 and 10 calendar days**.

Experience has shown that a deadline shorter than six days is often too short for providing a translation of adequate quality. Allowing over 10 days could be regarded as

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<sup>29</sup> Judgment of the Court of Justice of 25 January 2017, *Vilkas*, C-640/15, ECLI:EU:C:2017:39.

leading to an excessive prolongation of the procedure, in particular when the requested person is held in custody.

#### **4.4. Communication between competent judicial authorities of Member States prior to the decision on surrender**

##### *4.4.1. When to communicate*

###### *Supplementary information necessary to allow decision on surrender*

Requests for supplementary information should be exceptional. This communication should take place via the SIRENE Bureaux by using the dedicated form (M form). The EAW operates on the general presumption that the executing judicial authority can decide on the surrender on the basis of the information contained in the EAW. This presumption rests on the principle of mutual recognition and on the need to decide on the surrender swiftly. Requests for supplementary information are nonetheless necessary in some situations in order to comply with the duty to execute a EAW.

If the information communicated by the issuing Member State is insufficient to allow the executing judicial authority to decide on surrender, the executing judicial authority must communicate with the issuing judicial authority in order to obtain the necessary supplementary information. It is important to note that in the Framework Decision on EAW this is presented as the executing judicial authority's **duty** (Article 15(2)).

Communication between the issuing and executing judicial authorities prior to the surrender decision should primarily concern supplementary information that is relevant for deciding on surrender (see Section 5.6). Thus, requests for supplementary information should concern, in particular, the content required in the EAW form which is needed to assess the possibility to execute the EAW and the applicability of any ground for refusal.

In line with the principle of mutual recognition, the executing judicial authority may not question the merits of decisions by the issuing Member State's judicial authorities.

Communication should always be done as swiftly as possible and, in any event, within the time limits set out in Article 17 of the Framework Decision on EAW.

Typical situations in which supplementary information may be necessary are when:

- (a) a relevant part of the EAW form is not filled in;
- (b) the content of the EAW is unclear;
- (c) there is an obvious error in the EAW;
- (d) it is uncertain whether the correct person was arrested pursuant to the EAW.

###### *Before invoking a ground for refusal*

In many situations the executing judicial authority might contact the issuing judicial authority before deciding to apply a ground for non-execution. For example, this can be beneficial for establishing whether there are other measures of judicial cooperation that could be used where the EAW cannot be executed.

### *Other reasons to communicate*

Additional communication may also be required, for example:

- (a) for obtaining guarantees from the issuing Member State concerning life-term custodial sentences or for returning nationals or residents for serving custodial sentences in the executing Member State (see Section 5.8); and
- (b) in the case of multiple EAWs concerning the same person (see Section 5.10).

#### *4.4.2. How to communicate*

The EAW builds on the principle of direct contact between competent authorities. Direct communication between the issuing and executing judicial authorities has the benefit of being swift and reliable.

Communication must take place, however, through central authority where the Member State designated a central authority for official correspondence pursuant to Article 7 of the Framework Decision on EAW. Information on Member States which have availed themselves of this possibility can be found on the EJN website (<https://www.ejn-crimjust.europa.eu>).

#### *Judicial Atlas (contact details)*

Contact details of Member States' competent authorities can be found in the Atlas tool on the EJN website (<https://www.ejn-crimjust.europa.eu>). The Atlas was developed for the purpose of identifying the authority locally competent for receiving the decision to be executed and contacting the relevant person to discuss practical issues regarding the EAW and other mutual recognition instruments.

#### *Methods of communication*

There are no specific rules in the Framework Decision on EAW on the forms of or procedures for communication following reception of the EAW. Communication may be carried out by any available, sufficiently secure means (for example, telephone or e-mail). The most efficient way is to communicate directly with minimum formalities and, whenever possible, by agreeing to use a common language.

It is advisable to keep the language in written communication as simple as possible. Terms and concepts that might have different connotations in different legal systems should be avoided or explained. This will help to avoid misunderstanding and problems with translations.

Good communication helps to keep the procedure swift, to avoid misunderstandings and to respect the short time limits set in Article 17 of the Framework Decision on EAW (see Sections 4.1 and 4.2 of this Handbook on time limits).

#### *Always urgent*

The issuing judicial authority must deal with requests for further information as a matter of urgency. The executing judicial authority may set a (reasonable) time limit for the receipt of this information taking into account the need to observe the time limits set in

Article 17 of the Framework Decision on EAW (Article 15(2) of the Framework Decision on EAW).

Competent authorities should also take into account the delays that may be caused by requests for further information and attempt to minimise such delays.

#### *Eurojust or EJM contact points can facilitate communication*

The contact points of the EJM or national members of Eurojust can facilitate communication with the other Member States' authorities. Both the EJM and Eurojust can provide swift and informal communication between representatives of all Member States' legal systems.

Using the EJM or Eurojust in accordance with their specific roles, is particularly advisable in urgent situations or where reaching the right authority is difficult.

As examples, tools on the EJM website (the Judicial Atlas, *Fiches belges*) and the EJM contact points can assist in identifying the competent executing judicial authorities and provide information on the specific requirements in the executing Member State, while the Eurojust national member should be involved in cases of repeated delays or refusals of execution or in the case of overlapping EAWs. In addition, the EJM secure telecommunications connection may be used as a channel to transmit EAWs, as provided for in Article 10(2) of the Framework Decision on EAW. It is good practice to mention on the EAW form if EJM contact points or Eurojust national members or other persons in charge of a case have been involved in the preparation of the EAW<sup>30</sup>.

#### *Role of the SIRENE Bureaux*

For arrest alerts issued in the SIS, the SIRENE Bureaux are responsible for the exchange of information from the moment the person is found ('the hit') until at least the start of the formal surrender procedure. Judicial authorities should keep the SIRENE Bureau informed about any developments that occur between the hit and the final decision on the execution of the EAW.

#### **4.5. Duty of the executing judicial authority to inform the issuing judicial authority after deciding on the surrender**

After taking a decision on whether or not to surrender the requested person, the executing judicial authority has a duty to inform the issuing Member State about the decision as well as about the time spent in detention.

##### *4.5.1. Information on the decision concerning surrender*

The executing judicial authority must notify the issuing judicial authority of the decision concerning surrender. Regardless of whether or not the requested person will be surrendered, this notification must be done **immediately after the decision is taken** in order to allow the issuing Member State's authorities to take appropriate action. This

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<sup>30</sup> For general introduction on the tasks of Eurojust and the EJM see document 'Assistance in International Cooperation in Criminal Matters for Practitioners - European Judicial Network and Eurojust — What can we do for you?' available on both the EJM website (<https://www.ejm-crimjust.europa.eu>) and the Eurojust website (<http://www.eurojust.europa.eu>).

duty to notify the issuing Member State immediately stems from Article 22 of the Framework Decision on EAW.

For this purpose, it is advisable to use the standard form presented in Annex VII to this Handbook. It is also recommended that the executing judicial authority communicates the decision **directly** to the issuing judicial authority, as this facilitates fast and clear communication (see Section 4.4.2).

Reasons must be given for any refusal to execute a EAW (Article 17(6) of the Framework Decision on EAW).

It is important that the executing judicial authorities **clearly indicate the offence(s) to which the decision concerning surrender relates**. This is relevant because of the rule of speciality, enshrined in Article 27 of the Framework Decision on EAW (see Section 2.6 of this Handbook). The rule of speciality might preclude the issuing Member State from prosecuting offences committed prior to the surrender, other than the one or those for which the requested person was surrendered.

In cases where the EAW was entered in the SIS, the executing judicial authority should notify its decision to its Member State's SIRENE Bureau.

#### 4.5.2. *Information on the time spent in detention*

All information concerning the duration of the detention of the requested person on the basis of the EAW must be transmitted to the issuing judicial authority. The Framework Decision on EAW requires this information to be transmitted **at the time of the surrender** (Article 26(2) of the Framework Decision on EAW). This information may be transmitted by the executing judicial authority or the designated central authority.

It is important that the issuing Member State's authorities are aware of the exact time spent in detention. This period must be deducted from the final custodial sentence or detention order (Article 26(1) of the Framework Decision on EAW).

The standard form in Annex VII contains space for providing information on time spent in detention.

In its judgment in Case C-294/16 PPU *JZ*<sup>31</sup> the Court of Justice ruled as follows:

‘47 (...) the concept of ‘detention’ within the meaning of Article 26(1) of Framework Decision 2002/584 must be interpreted as covering not only imprisonment but also any measure or set of measures imposed on the person concerned which, on account of the type, duration, effects and manner of implementation of the measure(s) in question deprive the person concerned of his liberty in a way that is comparable to imprisonment.

(...)

53 When applying Article 26(1) of Framework Decision 2002/584, the judicial authority of the Member State which issued the European arrest

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<sup>31</sup> Judgment of the Court of Justice of 28 July 2016, *JZ*, C-294/16 PPU, ECLI:EU:C:2016:610.

warrant is required to consider whether the measures taken against the person concerned in the executing Member State are to be treated in the same way as a deprivation of liberty, as referred to in paragraph 47 of the present judgment, and therefore constitute detention within the meaning of Article 26(1). If, in carrying out that examination, the judicial authority comes to the conclusion that that is the case, Article 26(1) of Framework Decision 2002/584 requires that the whole of the period during which those measures were applied be deducted from the period of detention which that person would be required to serve in the Member State which issued the European arrest warrant.

(...)

- 55 However, in so far as Article 26(1) of that framework decision merely imposes a minimum level of protection of the fundamental rights of the person subject to the European arrest warrant, it cannot be interpreted, as the Advocate General stated at point 72 of his Opinion, as preventing the judicial authority of the Member State that issued that arrest warrant from being able, on the basis of domestic law alone, to deduct from the total period of detention which the person concerned would have to serve in that Member State all or part of the period during which that person was subject, in the executing Member State, to measures involving not a deprivation of liberty but a restriction of it.
- 56 It must, lastly, be borne in mind that, in the course of the examination referred to in paragraph 53 of the present judgment, the judicial authority of the Member State which issued the European arrest warrant may, under Article 26(2) of Framework Decision 2002/584, ask the competent authority of the executing Member State to transmit any information it considers necessary.’

#### **4.6. Keeping the requested person in detention in the executing Member State**

Following the arrest of the requested person on the basis of the EAW, the executing judicial authority must decide whether the person needs to be kept in detention or set free until the decision on the execution of the EAW. Detention is, thus, not necessarily required and the person may be released provisionally at any time in conformity with the domestic law of the executing Member State (Article 12 of the Framework Decision on EAW).

When the person is not kept in detention, the competent authority of the executing Member State has a duty to take all measures it deems necessary to prevent the person absconding (Article 12 of the Framework Decision on EAW). These measures could include, for example, travel-bans or a duty to regularly register and electronic surveillance.

The decision on detention is taken in accordance with national law and in conformity with Article 6 of the Charter of Fundamental Rights of the European Union which provides that everyone has the right to liberty and security of person.

In its judgment in Case C-237/15 PPU *Lanigan* the Court of Justice held:

‘Articles 15(1) and 17 of Council Framework Decision 2002/584/JHA (...) must be interpreted as meaning that the executing judicial authority remains required to adopt the decision on the execution of the European arrest warrant after expiry of the time-limits stipulated in Article 17.

Article 12 of that Framework Decision, read in conjunction with Article 17 thereof and in the light of Article 6 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding, in such a situation, the holding of the requested person in custody, in accordance with the law of the executing Member State, even if the total duration for which that person has been held in custody exceeds those time-limits, provided that that duration is not excessive in the light of the characteristics of the procedure followed in the case in the main proceedings, which is a matter to be ascertained by the national court. If the executing judicial authority decides to bring the requested person’s custody to an end, that authority is required to attach to the provisional release of that person any measures it deems necessary so as to prevent him from absconding and to ensure that the material conditions necessary for his effective surrender remain fulfilled for as long as no final decision on the execution of the European arrest warrant has been taken.’

## **5. SURRENDER DECISION**

### **5.1. General duty to execute EAWs**

The executing judicial authority has a general duty to execute any EAW on the basis of the principle of mutual recognition and in accordance with the provisions of the Framework Decision on EAW (Article 1). Those provisions are addressed in Sections 5 to 8 of this Handbook. The decision on surrender must be carried out within the time limits mentioned in Section 4.

In addition, the competent authorities must ensure that the minimum procedural rights of the requested person are respected, as mentioned in Section 11.

### **5.2. The list of 32 offences which give rise to surrender without verification of double criminality**

The executing judicial authority should check whether any of the offences have been determined by the issuing judicial authority as belonging to one of the 32 categories of offences listed in Article 2(2) of the Framework Decision on EAW. The executing judicial authority can only verify double criminality for offences that are not in the list of 32 offences.

It should be emphasised that it is only the definition of the offence and maximum punishment in the issuing Member State’s law that is relevant. The executing judicial authority must recognise what the issuing judicial authority has indicated in the EAW.

In its judgment in Case C-289/15 *Grundza*, the Court of Justice interpreted Article 7(3) and Article 9(1)(d) of Framework Decision 2008/909/JHA (namely how the double criminality condition needs to be assessed). The Court of Justice ruled as follows:

‘38 (...) when assessing double criminality, the competent authority of the executing State is required to verify whether the factual elements underlying the offence, as reflected in the judgment handed down by the competent authority of the issuing State, would also, per se, be subject to a criminal penalty in the executing State if they were present in that State.

(...)

49 (...) in assessing double criminality, the competent authority of the executing State must ascertain, not whether an interest protected by the issuing State has been infringed, but whether, in the event that the offence at issue were committed in the territory of the executing State, it would be found that a similar interest, protected under the national law of that State, had been infringed.’

If the executing judicial authority considers that there is an obvious error in this regard, it should contact the issuing judicial authority for clarifications (see Section 4.4 on communication).

### **5.3. Accessory offences**

‘Accessory offences’ refers to one or more offences punishable by a lower sanction than the threshold set out in Article 2(1) of the Framework Decision on EAW. Such offences may be included in a EAW as accessory offences. The issuing judicial authority might include such offences on the EAW form even though they do not fall within the scope of the EAW (see Section 2.3).

However, the EAW must be issued for at least one offence that meets the threshold set out in Article 2(1) of the Framework Decision on EAW.

The Framework Decision on EAW itself does not explicitly provide for a way to deal with the issue of accessory surrender. Some Member States have decided to allow it, whereas others do not. If the executing Member State does not surrender for accessory offences, the rule of speciality may preclude the issuing Member State from prosecuting those offences (see Section 2.6. on the rule of speciality).

If the EAW includes accessory offences, it is advised that the executing judicial authority indicates clearly in the surrender decision whether the surrender also concerns the accessory offences. Surrender for the accessory offences grants the issuing Member State the competence to prosecute or execute a custodial sentence for those offences.

Annex VIII contains a list of Member States whose legal system provides for the possibility to surrender for accessory offences.

### **5.4. Grounds for non-execution (refusal)**

The general duty to execute EAWs (enshrined in Article 1(2) of the Framework Decision on EAW) is limited by the grounds for mandatory and optional non-execution of the



EAW, that is to say, the grounds for *refusal* (Articles 3, 4 and 4a of the Framework Decision on EAW). It is important to note that in accordance with the Framework Decision on EAW, these grounds are the only ones which the executing judicial authority may invoke as the basis for non-execution. As regards the grounds for optional non-execution, the executing judicial authority can only invoke those which are transposed into its national law. The Court of Justice has clarified that the list of grounds is **exhaustive** (notably in its judgments in Case C-123/08 *Wolzenburg*, paragraph 57, and Joined Cases C-404/15 and C-659/15 PPU *Aranyosi and Căldăraru*, paragraph 80)<sup>32</sup>.

The executing judicial authority can contact the issuing judicial authority before deciding to refuse the surrender. This might be advisable where there are uncertainties regarding the application of any of the grounds for non-execution. The executing judicial authority can also communicate on the possibilities for other measures, such as the transfer of prisoners, before taking the refusal decision (see Section 4.4 on communication and Section 2.5 on the other Union measures on judicial cooperation).

After the decision to refuse the surrender has been taken, the requested person can no longer be kept in detention on the basis of the EAW.

#### 5.4.1. *Mandatory grounds for non-execution*

Where one or more of the mandatory grounds for non-execution apply, the executing judicial authority must refuse to execute the EAW (Article 3 of the Framework Decision on EAW). Therefore, once the executing judicial authority has established that one of these grounds for refusal applies, it must refuse execution. These grounds are provided in Article 3 of the Framework Decision on EAW.

##### ***Amnesty (Article 3(1))***

The offence on which the arrest warrant is based is covered by amnesty in the executing Member State. It is also required that the executing Member State had jurisdiction to prosecute the offence under its own criminal law.

##### ***Ne bis in idem (Article 3(2))***

The executing judicial authority is informed that the requested person has been finally judged by a Member State in respect of the same acts. It is also required that, where a sentence has been passed, that sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State.

The Court of Justice has handed down several judgments in cases on the interpretation of the *ne bis in idem* principle in relation to Article 54 of the Convention Implementing the Schengen Agreement (CISA). These judgments are applicable to the Framework Decision on EAW by virtue of the judgment in Case C-261/09 *Mantello*<sup>33</sup> and clarify the concepts such as ‘final decision’, ‘same act’ and ‘sentence has been served’. In its

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<sup>32</sup> Judgment of the Court of Justice of 6 October 2009, *Wolzenburg*, C-123/08, ECLI:EU:C:2009:616, Judgment of the Court of Justice of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, ECLI:EU:C:2016:198.

<sup>33</sup> Judgment of the Court of Justice of 16 November 2010, *Mantello*, C-261/09, ECLI:EU:C:2010:683.

judgment in Case C-129/14 PPU *Spasic*<sup>34</sup>, the Court of Justice ruled that Article 54 CISA is as such compatible with Article 50 of the Charter of Fundamental Rights of the European Union, where the principle is enshrined.

Annex VI contains summaries of judgments of the Court of Justice concerning the *ne bis in idem* principle.

#### *Article 54 CISA*

‘A person whose trial has been finally disposed of in one Contracting Party may not be prosecuted by another Contracting party for the same acts provided that, if a penalty has been imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing Contracting party.’

#### *Article 50 of the Charter*

‘Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.’

#### ***Under the age of criminal responsibility (Article 3(3))***

Due to his or her age, the requested person cannot be held criminally responsible for the acts on which the arrest warrant is based under the law of the executing Member State.

Member States laws define the minimum age for criminal responsibility differently. Also the moment when this age operates on a particular case varies: the relevant moment might be, for example, when the suspected offence takes place or when the person is charged.

Grounds for non-execution apply if, in the executing Member State, the requested person might only face civil or administrative proceedings, but not criminal, due to his or her age.

#### *5.4.2. Grounds for optional non-execution*

When any of the grounds for optional non-execution apply and have been transposed into national law, the executing judicial authority may refuse to execute the EAW depending on the circumstances of the case. Those grounds are set out in Article 4 of the Framework Decision on EAW.

#### ***Lack of double criminality (Article 4(1))***

The act on which the EAW is based does not constitute an offence under the law of the executing Member State.

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<sup>34</sup> Judgment of the Court of Justice of 27 May 2014, *Spasic*, C-129/14 PPU, ECLI:EU:C:2014:586.

This only concerns offences which are not mentioned in the list of offences in Article 2(2) of the Framework Decision on EAW, for which the verification of double criminality is abolished. However, even if the act corresponds to one of those listed in Article 2(2) of the Framework Decision on EAW, but it is punishable by a custodial sentence or a detention order for a maximum period of less than three years in the law of the issuing Member State, and that act does not constitute an offence under the law of the executing Member State, this ground for optional non-execution may apply. In its judgment in Case C-289/15 *Grundza* the Court of Justice has clarified how the double criminality condition needs to be assessed (see Section 5.2).

In relation to taxes or duties, customs and exchange, the execution of a EAW may not be refused on the ground that the law of the executing Member State 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.

#### ***Prosecution pending in the executing Member State (Article 4(2))***

The person who is the subject of the EAW is being prosecuted in the executing Member State for the same act as that on which the EAW is based.

#### ***Prosecution for the same offence precluded in the executing Member State (Article 4(3))***

The judicial authorities of the executing Member State have decided either not to prosecute for the offence on which the EAW is based or to stop proceedings, or a final judgment has been passed upon the requested person in a Member State, in respect of the same acts, which prevents further proceedings.

See also Section 5.4.1 on the *ne bis in idem* principle.

#### ***Prosecution or punishment statute-barred (Article 4(4))***

The criminal prosecution or punishment of the requested person is statute-barred according to the law of the executing Member State and the acts fall within the jurisdiction of that Member State under its own criminal law.

See also Section 5.4.1 on the *ne bis in idem* principle.

#### ***Final judgment in a third State (Article 4(5))***

The executing judicial authority is informed that the requested person has been finally judged by a third State in respect of the same acts provided that, where there has been a sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing country.

#### ***The executing Member State undertakes the execution of the sentence (Article 4(6))***

Where the EAW has been issued for the purposes of execution of a custodial sentence or detention order, and the requested person is staying in, or is a national or a resident of the executing Member State, the executing judicial authority might consider whether the sentence could be executed in its Member State instead of surrendering the person to the issuing Member State.

Article 25 of Framework Decision 2008/909/JHA also contains a specific provision concerning the enforcement of custodial sentences in the executing Member State in cases falling under Article 4(6) of the Framework Decision on EAW (see Section 2.5.2 of this Handbook). Framework Decision 2008/909/JHA has replaced the 1983 Convention and its additional protocol. Thus Framework Decision 2008/909/JHA must be applied for transferring the sentence to the Member State where it is executed.

In accordance with Framework Decision 2008/909/JHA, consent by the sentenced person to the transfer is no longer a pre-requisite in all cases.

In its judgment in Case C-66/08 *Kozłowski*<sup>35</sup> the Court of Justice held that the terms ‘resident’ and ‘staying’ in Article 4(6) of the Framework Decision on EAW must be defined uniformly, since they concern autonomous concepts of Union law. They cover respectively, the situations in which the requested person has either established his actual place of residence in the executing Member State or has acquired, following a stable period of presence in that State, certain connections with that State, which are of a similar degree to those resulting from residence. A determination of ‘staying’ requires an overall assessment of various objective factors, including the length, nature and conditions of the person’s presence and the family and economic connections with the executing Member State.

As held by the Court of Justice in its judgment in Case C-123/08 *Wolzenburg*, in respect of Article 4(6) of the Framework Decision on EAW and the principle of equal treatment of citizens of the Union, domestic rules providing for the non-execution of a EAW in the case of migrant Union citizens, with a view to the enforcement of a custodial sentence, only if they had been lawfully resident within the national territory for a continuous period of five years, were compatible with Article 12 of the Treaty establishing the European Community (now Article 18 TFEU). However a Member State cannot make application of the ground for optional non-execution of a EAW in Article 4(6) of the Framework Decision on EAW subject to supplementary administrative requirements, such as possession of a residence permit of indefinite duration.

In its judgment in Case C-42/11 *Lopes da Silva Jorge*<sup>36</sup> the Court of Justice held that Article 4(6) of the Framework Decision on EAW and Article 18 TFEU must be interpreted as meaning that a Member State may, in transposing Article 4(6) of the Framework Decision on EAW, decide to limit the situations in which an executing judicial authority may refuse to surrender a person falling within the scope of that provision, but it cannot automatically and absolutely exclude from its scope the nationals of other Member States who are staying or resident in its territory, irrespective of their connections with that Member State. National courts are required to interpret the law in the light of the wording and purpose of the Framework Decision on EAW to ensure its full effectiveness.

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<sup>35</sup> Judgment of the Court of Justice of 17 July 2008, *Kozłowski*, C-66/08, ECLI:EU:C:2008:437.

<sup>36</sup> Judgment of the Court of Justice of 5 September 2012, *Lopes da Silva Jorge*, C-42/11, ECLI:EU:C:2012:517.

***Extraterritoriality (offences committed outside the territory of the issuing Member State) (Article 4(7))***

The EAW relates to offences which:

- (a) are regarded by the law of the executing Member State as having been committed in whole or in part in the territory of the executing Member State or in a place treated as such; or
- (b) have been committed outside the territory of the issuing Member State and the law of the executing Member State does not allow prosecution for the same offences when committed outside its territory.

**5.5. Trials *in absentia***

Framework Decision 2009/299/JHA amended the Framework Decision on EAW by deleting Article 5(1) and inserting a new Article 4a on decisions rendered *in absentia*. These provisions concern situations where an executing judicial authority has received a EAW concerning execution of a custodial sentence arising from proceedings in the issuing Member State where the person was not present.

Article 4a of the Framework Decision on EAW contains a ground for optional non-execution whereby the EAW issued for the purpose of executing a custodial sentence or a detention order may be refused, if the person did not appear at the trial resulting in the decision (a decision rendered *in absentia*).

However, this rule contains a number of exceptions. An executing judicial authority cannot refuse to execute a EAW based on a decision rendered *in absentia* where the EAW states that the person, in accordance with further procedural requirements defined in the national law of the issuing Member State:

- (a) in due time:
  - (i) either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial; and
  - (ii) was informed that a decision may be handed down if he or she does not appear for the trial; or
- (b) being aware of the scheduled trial, had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial; or
- (c) after being served with the decision and being expressly informed about the right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed:
  - (i) expressly stated that he or she does not contest the decision; or

- (ii) did not request a retrial or appeal within the applicable time frame; or
- (d) was not personally served with the decision but:
  - (i) will be personally served with it without delay after the surrender and will be expressly informed of his or her right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed; and
  - (ii) will be informed of the time frame within which he or she has to request such a retrial or appeal, as mentioned in the relevant EAW.

The judgment in Case C-399/11 *Melloni*<sup>37</sup> concerned the question whether Article 4a(1) of the Framework Decision on EAW must be interpreted as precluding the executing judicial authorities, in the circumstances specified in that provision, from making the execution of a EAW issued for the purposes of executing a sentence conditional upon the conviction rendered in absentia being open to review in the issuing Member State.

The Court of Justice considered that Article 4a(1) of the Framework Decision on EAW provides for an optional ground for non-execution of a EAW issued for the purpose of executing a sentence, where the person concerned has been sentenced *in absentia*. That option is nevertheless accompanied by four exceptions as set out in points (a) to (d) of Article 4a(1). The Court held that in these four situations, the executing judicial authority may not make the surrender of a person convicted *in absentia* conditional upon the conviction being open to review in his presence.

In its judgment in Case C-108/16 PPU *Dworzecki*<sup>38</sup> the Court of Justice held as follows:

‘Article 4a(1)(a)(i) of Council Framework Decision 2002/584 (...) must be interpreted as meaning that a summons, such as that at issue in the main proceedings, which was not served directly on the person concerned but was handed over, at the latter’s address, to an adult belonging to that household who undertook to pass it on to him, when it cannot be ascertained from the European arrest warrant whether and, if so, when that adult actually passed that summons on to the person concerned, does not in itself satisfy the conditions set out in that provision.’

## **5.6. Fundamental rights considerations by the executing judicial authority**

The Framework Decision on EAW does not contain any provision on non-execution on the basis of a breach of the requested person’s fundamental rights in the issuing Member State.

However, Article 1(3), read together with recitals 12 and 13 of the Framework Decision on EAW clarify that fundamental rights and fundamental legal principles should be respected in the context of the EAW.

<sup>37</sup> Judgment of the Court of Justice of 26 February 2013, *Melloni*, C-399/11, ECLI:EU:C:2013:107.

<sup>38</sup> Judgment of the Court of Justice of 24 May 2016 *Dworzecki*, C-108/16 PPU, ECLI:EU:C:2016:346.

In its judgment in Joined Cases C-404/15 and C-659/15 PPU *Aranyosi and Căldăraru*, the Court of Justice ruled as follows:

‘... where there is objective, reliable, specific and properly updated evidence with respect to detention conditions in the issuing State that demonstrates that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people, or which may affect certain places of detention, the executing judicial authority must determine, specifically and precisely, whether there are substantial grounds to believe that the individual concerned by a European arrest warrant, issued for the purposes of conducting a criminal prosecution or executing a custodial sentence, will be exposed, because of the conditions for his detention in the issuing Member State, to a real risk of inhuman or degrading treatment, within the meaning of Article 4 of the Charter, in the event of his surrender to that Member State.

To that end, the executing judicial authority must request that supplementary information be provided by the issuing judicial authority, which, after seeking, if necessary, the assistance of the central authority or one of the central authorities of the issuing Member State, under Article 7 of the Framework Decision, must send that information within the time limit specified in the request. The executing judicial authority must postpone its decision on the surrender of the individual concerned until it obtains the supplementary information that allows it to discount the existence of such a risk.

If the existence of that risk cannot be discounted within a reasonable time, the executing judicial authority must decide whether the surrender procedure should be brought to an end.’

If the judicial authority of the executing Member State is in possession of evidence of a real risk of inhuman or degrading treatment of individuals detained in the issuing Member State because of general detention conditions, it must follow the procedure as set out in the judgment of the Court of Justice in Joined Cases C-404/15 and C-659/15 PPU *Aranyosi and Căldăraru* (paragraphs 89 to 104).

*Procedural steps to be followed by the national executing judicial authorities **if they are in possession of evidence** of a real risk of inhuman or degrading treatment of individuals detained in the issuing Member State*

*The steps below should be followed:*

1. **Verification whether there is a real risk of inhuman and degrading treatment of the requested person because of general detention conditions:**
  - *based on objective reliable, specific and properly updated information that may be obtained from, inter alia, judgments of international courts, such as judgments of the European Court of Human Rights, judgments of courts of the issuing Member State, and also decisions, reports and other documents produced by bodies of the Council of Europe or under the aegis of the UN.*

**2. If the existence of such a risk is identified based on the general detention conditions, verification whether there are substantial grounds to believe that such a real risk of inhuman and degrading treatment exists in the particular circumstances of the case for the requested person:**

- *obligation to request* — on the basis of Article 15(2) of the Framework Decision on EAW — of the issuing judicial authority that there be provided, as a matter of urgency, all necessary supplementary information on the conditions in which it is envisaged that the requested person will be detained;
- *possibility to request information* relating to the existence of possible mechanisms for monitoring detention conditions;
- *possibility to fix a time limit for the reply*, taking into account the time required to collect the information as well as the time limits set in Article 17 of the Framework Decision on EAW.

**3. If the existence of a real risk of inhuman or degrading treatment for the requested person is identified, based on information received from the issuing judicial authority and any other information that may be available to the executing judicial authority (and pending a final decision on the EAW):**

- *obligation to postpone the execution of the EAW in question*. Eurojust must be informed (in accordance with Article 17(7) of the Framework Decision on EAW);
- *possibility to hold the person concerned in custody*, but only if the procedure for execution of the EAW has been carried out in a sufficiently diligent manner and the duration of the detention is not excessive (in accordance with the judgment in Case C-237/15 Lanigan, paragraphs 58, 59 and 60), giving due regard to the principle of the presumption of innocence guaranteed by Article 48 of the Charter and respecting the principle of proportionality laid down in Article 52(1) of the Charter;
- *possibility or even obligation to provisionally release the person concerned* accompanied by measures to prevent the person absconding.

**4. Final decision:**

- if the executing judicial authority, on the basis of the information received from the issuing judicial authority, can discount the existence of a real risk that the requested person will be subject to inhuman and degrading treatment, it must decide on the execution of the EAW;
- if the executing judicial authority finds out that the risk of inhuman and degrading treatment cannot be discounted within a reasonable time, it must decide whether the surrender procedure should be brought to an end.



## 5.7. Proportionality — the role of the executing Member State

The Framework Decision on EAW does not provide for the possibility of evaluation of the proportionality of a EAW by the executing Member State. This is in line with the principle of mutual recognition. Should serious concerns on the proportionality of the received EAW arise in the executing Member State, the issuing and executing judicial authorities are encouraged to enter into direct communication. It is anticipated that such cases would arise only in exceptional circumstances. With consultation, the competent judicial authorities may be able to find a more suitable solution (see Section 4.4 on communication between competent authorities). For example, depending on the circumstances of the case, it might be possible to withdraw the EAW and use other measures provided under national law or Union law.

In such situations judicial authorities may also consult Eurojust or the EJN contact points. These bodies can facilitate communication and help find solutions.

## 5.8. Guarantees to be given by the issuing Member State

Article 5 of the Framework Decision on EAW states that the execution of the EAW by the executing judicial authority may, by its national law, be subject to certain conditions. Those conditions may relate to the review of life-term imprisonment and the return of nationals to the executing Member State to serve their custodial sentences.

These guarantees may be provided directly in the national law of the issuing Member State or by way of an agreement between the competent authorities of the issuing and executing Member States. Nonetheless, they may concern only the subjects specified in Article 5 of the Framework Decision on EAW, as confirmed by the Court of Justice (notably in its judgments in Joined Cases C-404/15 and C-659/15 PPU *Aranyosi and Căldăraru*, paragraph 80, and in Case C-237/15 PPU *Lanigan*, paragraph 36).

*N.B.:* The guarantee concerning retrial for decisions rendered *in absentia* in Article 5(1) was deleted by Framework Decision 2009/299/JHA and replaced by the new Article 4a, which contains more comprehensive provisions on decisions *in absentia* (see Section 5.5 of this Handbook).

In its judgment in Case C-306/09 *I.B.*<sup>39</sup> the Court of Justice concluded:

‘Articles 4(6) and 5(3) of Council Framework Decision 2002/584/JHA (...) must be interpreted as meaning that, where the executing Member State has implemented Articles 5(1) and Article 5(3) of that framework decision in its domestic legal system, the execution of a European arrest warrant issued for the purposes of execution of a sentence imposed *in absentia* within the meaning of Article 5(1) of the framework decision, may be subject to the condition that the person concerned, a national or resident of the executing Member State, should be returned to the executing State in order, as the case may be, to serve there the sentence passed against him, following a new trial organised in his presence in the issuing Member State.’

<sup>39</sup>

Judgment of the Court of Justice of 21 October 2010, *I.B.*, C-306/09, ECLI:EU:C:2010:626.

### 5.8.1. *Review of custodial life sentence or lifetime detention order*

In cases where the EAW has been issued for an offence that is punishable by custodial life sentence or a lifetime detention order, the executing Member State can require a guarantee of review from the issuing Member State (Article 5(2) of the Framework Decision on EAW).

**Custodial life sentence** refers to sentences served in prison. **Lifetime detention order** refers to other types of detention, for example, in psychiatric treatment facilities.

The guarantee can be provided by the issuing Member State by demonstrating that according to its legal system, the penalty or measure imposed can be reviewed either on request or at the latest after 20 years. Alternatively, a sufficient guarantee is that the person is entitled to apply for measures of clemency under the law or practice of the issuing Member State, aiming at a non-execution of such penalty or measure.

### 5.8.2. *Returning nationals and residents*

The EAW allows for the possibility of returning the requested person to serve the custodial sentence in his or her home country. According to Article 5(3) of the Framework Decision on EAW where a person who is the subject of a EAW for the purposes of prosecution is a national or resident of the executing Member State, the executing Member State can impose the condition that such person is returned to its territory by the issuing Member State to serve the custodial sentence or detention order passed in the issuing Member State.

This condition should be clearly stated by the executing Member State. Where possible, the issuing and executing Member State should agree on the details of this condition before the executing Member State decides on the surrender.

Where it is already known, prior to the EAW being issued, that the requested person is a national or resident of the executing Member State, the issuing judicial authority could already indicate on the EAW form, its consent to a potential return condition.

The issuing Member State is responsible for ensuring that the condition is fulfilled. When a custodial sentence or detention order passed against the surrendered person becomes final, the issuing Member State must contact the executing Member State to arrange the return. The issuing Member State should ensure that the sentence is translated into the language of the executing Member State.

Article 25 of Framework Decision 2008/909/JHA also contains a specific provision concerning the enforcement of custodial sentences in the executing Member State in cases falling under Article 5(3) of the Framework Decision on EAW. For transferring the sentence to the executing Member State where it is executed, the procedure and conditions required by Framework Decision 2008/909/JHA are to be applied (see Section 2.5.2 of this Handbook).

## 5.9. Postponement or temporary surrender

### 5.9.1. *Serious humanitarian reasons*

After the executing judicial authority has decided to execute the EAW, the 10 day time limit for surrendering the person starts to run (as explained in Section 4.2). However, the executing judicial authority may, exceptionally, decide to postpone the surrender temporarily for serious humanitarian reasons, for example, where there are substantial grounds for believing that the surrender would manifestly endanger the requested person's life or health (Article 23(4) of the Framework Decision on EAW).

The execution of the EAW must take place as soon as these grounds have ceased to exist. The executing judicial authority must immediately inform the issuing judicial authority and agree on a new surrender date. In that event, the surrender must take place within 10 days of the new date thus agreed. After the expiry of that deadline, the person can no longer be held in custody by the executing Member State on the basis of the EAW and the person must be released (Article 23(5) of the Framework Decision on EAW).

In situations where such humanitarian reasons are **indefinite or permanent** the issuing and executing judicial authorities might consult and consider whether there are alternatives to the EAW. For example, possibilities to transfer proceedings or the custodial sentence to the executing Member State or to withdraw the EAW (for example in the case of serious permanent illness) might be examined.

### 5.9.2. *Ongoing criminal procedure or execution of a custodial sentence*

The executing judicial authority may, after deciding to execute the EAW, postpone the surrender of the requested person so that the person may be prosecuted in the executing Member State for **another** offence (Article 24(1) of the Framework Decision on EAW).

In such situations the surrender should take place immediately after the prosecution has been carried out, on a date agreed by the issuing and executing judicial authorities.

When the requested person has already been sentenced for another offence, the surrender may be postponed so that the person may serve the sentence for that offence in the executing Member State (Article 24(1) of the Framework Decision on EAW).

In such cases the surrender should take place after the person has served the sentence, on a date agreed by the issuing and executing judicial authorities.

*N.B.:* If the criminal procedure in the executing Member State concerns the **same** offence that is the basis of the EAW, the executing Member State may refuse the execution of the EAW (for that offence) (see Article 4(2) of the Framework Decision on EAW and Section 5.4.2 of this Handbook). Where the conditions of Article 3(2) of the Framework Decision on EAW are fulfilled, the execution of the EAW must be refused (see Section 5.4.1 of this Handbook).

### 5.9.3. *Temporary surrender instead of postponement*

In the situations described in Section 5.9.2, instead of postponing the surrender, the executing judicial authority may temporarily surrender the requested person to the

issuing Member State (Article 24(2) of the Framework Decision on EAW). This can be done for the purposes of prosecuting the person or executing a sentence already passed.

The executing and the issuing judicial authorities need to agree on the conditions of the temporary surrender in writing and in clear terms. The agreement is binding on all the authorities in the issuing Member State (Article 24(2) of the Framework Decision on EAW).

The temporary surrender makes it possible to avoid lengthy delays in proceedings in the issuing Member State resulting from the fact that the person is being prosecuted or has already been sentenced in the executing Member State.

#### *5.9.4. Postponement of EAW due to identification of a real risk of inhuman or degrading treatment for the requested person*

In accordance with the judgment of the Court of Justice in Joined Cases C-404/15 and C-659/15 PPU *Aranyosi and Căldăraru*, if the existence of a real risk of inhuman or degrading treatment for the requested person is identified, based on information received from the issuing judicial authority and any other information that may be available to the executing judicial authority (and pending a final decision on the EAW), the execution of the EAW must be postponed, but not abandoned. Where the executing judicial authority decides on such a postponement, the executing Member State is to inform Eurojust, in accordance with Article 17(7) of the Framework Decision on EAW, giving the reasons for the delay (see Sections 5.6 and 4.1 of this Handbook).

### **5.10. Multiple EAWs concerning the same person**

#### *5.10.1. Deciding which EAW to execute*

Multiple EAWs concerning the same person may exist at the same time, either for the same acts or for different acts, and may be issued by the authorities of one or more Member States. The following guidelines apply regardless of whether the EAWs were issued for same acts or for different acts.

Where there are multiple EAWs for the same person, the executing judicial authority decides which one to execute, with due consideration of all the circumstances (Article 16 of the Framework Decision on EAW).

It is advised that before deciding the executing judicial authority tries to coordinate among the issuing judicial authorities who have issued the EAWs. If the issuing judicial authorities have already coordinated beforehand, this should be taken into account by the executing judicial authority, although the executing judicial authority is not bound by any agreements they may have reached under the Framework Decision on EAW.

The executing judicial authority may also seek advice from Eurojust (Article 16(2) of the Framework Decision on EAW). It can facilitate and speed up the coordination and be requested to give an opinion on the competing EAWs. Ideally the decision on which EAW to execute should be based on the consent of all of the issuing judicial authorities.

In considering which of the EAWs to execute, and whether or not the issuing judicial authorities reach consensus, the following factors in particular should be taken into

account by the executing judicial authority (Article 16(1) of the Framework Decision on EAW):

- (a) the relative seriousness of the offences;
- (b) the place the offences were committed;
- (c) the respective dates of the EAWs;
- (d) whether the warrant has been issued for the purposes of prosecution or for execution of a custodial sentence or detention order.

This list is non-exhaustive. Furthermore, there are no strict rules as to which of these factors should be prioritised — this is to be considered on a case by case basis. In any case, Article 16 of the Framework Decision on EAW requires that the executing judicial authority takes due consideration of the situation. Therefore, a simple ‘first come, first served’ decision should be avoided.

The executing judicial authorities may also refer to the Eurojust’s *Guidelines for Deciding on Competing EAWs*, included in the *Eurojust annual report 2004* (available at [www.eurojust.europa.eu](http://www.eurojust.europa.eu)).

When taking the surrender decision it is important that the executing judicial authority clearly indicates which EAW is the basis for the surrender. Furthermore, the SIRENE Bureau of the executing Member State then needs to send a G-form to each Member State concerned (point 3.2 of the SIRENE Manual).

The assessment of which of the EAWs to execute should only concern those EAWs that are **enforceable**. Therefore the executing judicial authority could initially assess each of the EAWs to determine whether it would be possible to execute them on their own. If a ground of non-execution applies to any of the EAWs, the executing judicial authority could, for the sake of clarity, take a separate decision not to execute that EAW.

#### 5.10.2. ‘Parallel proceedings’

When EAWs for offences concerning **the same facts and the same person** are issued by two or more Member States, the competent authorities have a duty to communicate and cooperate. This duty follows from Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings<sup>40</sup>. In these situations, the competent authorities are advised to refer to their national legislation implementing that Framework Decision.

When consensus cannot be reached, the competent authorities involved must refer the matter to Eurojust in cases where Eurojust is competent to act<sup>41</sup>. Eurojust can also be consulted in other situations.

Member States which receive such parallel EAWs should inform the issuing Member States’ competent authorities of the parallel proceedings.

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<sup>40</sup> OJ L 328, 15.12.2009, p. 42.

<sup>41</sup> See Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 63, 6.3.2002, p. 1).

The competent authorities of the Member States which issued the EAWs should inform the executing judicial authority of their cooperation to resolve the conflict of jurisdiction and of any consent achieved in this procedure.

## **6. DEDUCTION OF THE PERIOD OF DETENTION SERVED IN THE EXECUTING MEMBER STATE**

Following the surrender of the requested person, the issuing Member State must take into account the periods of detention that have resulted from the execution of the EAW. All of these periods must be deducted from the total period of the custodial sentence or detention to be served in the issuing Member State (Article 26 of the Framework Decision on EAW). If the person is acquitted, provisions of the issuing Member State on compensation for damages may apply.

For this reason, as described in Section 4.5.2, the executing judicial authority or the central authority of the executing Member State must provide all information concerning the duration of the detention of the requested person on the basis of the EAW. This information must be provided at the time of the surrender (see also the judgment of the Court of Justice in Case C-294/16 PPU *JZ*).

## **7. SUBSEQUENT SURRENDER**

### **7.1. To another Member State**

Following the surrender of the requested person to the issuing Member State on the basis of a EAW, that Member State might need to decide on the execution of another EAW issued by another Member State regarding the same person. In accordance with Article 28(2) of the Framework Decision on EAW the issuing Member State may subsequently surrender the person to another Member State **without the consent** of the original executing Member State in the following cases:

- (a) 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;
- (b) where the requested person consents to be surrendered to a Member State other than the executing Member State pursuant to a EAW.

Consent by the requested person must be given before the competent judicial authorities of the issuing Member State. It must be recorded in accordance with that State's national law. It must be drawn up in such a way as to make clear that the person concerned has given it voluntarily and in full awareness of the consequences;

- (c) where the requested person is not subject to the speciality rule. The speciality rule, when applicable, prevents the deprivation of liberty of the requested person for offences for which the person was not surrendered, thus also preventing subsequent surrender (see Section 2.6).

In other cases, it is necessary to request the original executing Member State's consent for any subsequent surrender<sup>42</sup>. Consent must be given when the offence for which the consent is requested is itself subject to surrender in accordance with the provisions of the Framework Decision on EAW unless a mandatory or optional ground for non-execution applies.

Where applicable, the executing judicial authority may subject its consent to one of the conditions concerning custodial life sentences and the return of nationals and residents laid down in Article 5 of the Framework Decision on EAW (see Section 5.8 of this Handbook). In such cases the issuing Member State must give the appropriate guarantees (Article 28(3) of the Framework Decision on EAW).

Where a person has been subject to more than one surrender between Member States pursuant to successive EAWs, the subsequent surrender of that person to a Member State other than the Member State which surrendered him last is subject to the consent **only** of the Member State which carried out that **last surrender** (see judgment of the Court of Justice in Case C-192/12 PPU *West*)<sup>43</sup>.

### *Procedure*

The request for consent must be submitted by the same procedure and must contain the same information as a normal EAW. The competent judicial authority transmits the request for consent directly to the executing judicial authority which surrendered the person. The information that must be contained in the request, as set out in Article 8(1) of the Framework Decision on EAW, must be translated under the same rules as a EAW. The executing judicial authority must take the decision on the consent no later than 30 days after receipt of the request (Article 28(3) of the Framework Decision on EAW).

#### Judgment of the Court of Justice in Case C-192/12 PPU *West*

‘Article 28(2) of Council Framework Decision 2002/584/JHA (...) must be interpreted as meaning that, where a person has been subject to more than one surrender between Member States pursuant to successive European arrest warrants, the subsequent surrender of that person to a Member State other than the Member State having last surrendered him is subject to the consent only of the Member State which carried out that last surrender.’

## **7.2. To a third State**

A person who has been surrendered pursuant to a EAW shall not be extradited to a State which is not a Member State (third State) without the consent of the competent authority of the Member State which surrendered the person. Such consent is given in accordance with the extradition agreements by which that Member State is bound, as well as with its domestic law (Article 28(4) of the Framework Decision on EAW).

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<sup>42</sup> Article 28(1) of the Framework Decision on EAW provides for a possibility for Member States to notify that their consent is presumed for such surrender on subsequent extradition in their relations with other Member States that have made the same notification. According to the information available to the Commission, only Romania has made such a notification.

<sup>43</sup> Judgment of the Court of Justice of 28 June 2012, *West*, C-192/12 PPU, ECLI:EU:C:2012:404.

## 8. OBLIGATIONS AS REGARDS THIRD COUNTRIES

### 8.1. Simultaneous EAWs and extradition requests for the same person

#### 8.1.1. Requests from third States

A Member State might receive a EAW and a simultaneous extradition request from a third State for the same person who is in its territory. They might concern the same acts or different acts. The Member State might have different authorities responsible for deciding on the execution of the EAW and of the extradition request. In such cases, these authorities should cooperate when deciding how to proceed on the basis of the criteria mentioned below. Advice and help in coordination among the States involved might also be sought from Eurojust or the EJM.

There are no rules in the Framework Decision on EAW on which request should take precedence. According to Article 16(3) of the Framework Decision on EAW the Member State must give due consideration to all the circumstances, and in particular the criteria mentioned in Article 16(1) of the Framework Decision on EAW for deciding which request to execute when more than one of them relate to the same person.

Therefore, the following factors should be taken into account by the competent authorities:

- (a) the relative seriousness of the offences;
- (b) the place of the offences;
- (c) the respective dates of the EAW and the extradition request;
- (d) whether the warrant has been issued for the purposes of prosecution or for execution of a custodial sentence or detention order.

The executing judicial authorities may also refer to Eurojust's *Guidelines for Deciding on Competing EAWs*, included in the *Eurojust annual report 2004* (available at [www.eurojust.europa.eu](http://www.eurojust.europa.eu)).

In addition, any criteria mentioned in the relevant extradition agreement will need to be taken into account. These could concern, in particular, the grounds for refusing extradition and rules on multiple extradition requests.

When the extradition request from a third State is addressed to a Member State which has rules in place granting its own nationals protection against extradition and the request concerns a national of another Member State, the executing judicial authority must inform the Member State of which the citizen in question is a national, and, where applicable, surrender the person to that Member State pursuant to its EAW, in accordance with the judgment of the Court of Justice in Case C-182/15 *Petruhhin*<sup>44</sup>.

‘Article 18 TFEU and Article 21 TFEU must be interpreted as meaning that, when a Member State to which a Union citizen, a national of another Member

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<sup>44</sup> Judgment of the Court of Justice of 6 September 2016, *Petruhhin*, C-182/15, ECLI:EU:C:2016:630.



State, has moved receives an extradition request from a third State with which the first Member State has concluded an extradition agreement, it must inform the Member State of which the citizen in question is a national and, should that Member State so request, surrender that citizen to it, in accordance with the provisions of Council Framework Decision 2002/584/JHA (...) provided that that Member State has jurisdiction, pursuant to its national law, to prosecute that person for offences committed outside its national territory.

Where a Member State receives a request from a third State seeking the extradition of a national of another Member State, that first Member State must verify that the extradition will not prejudice the rights referred to in Article 19 of the Charter of Fundamental Rights of the European Union.’

### *8.1.2. Requests from the International Criminal Court (ICC)*

If a Member State receives a EAW and a simultaneous extradition request from the ICC for the same person, the competent authority or authorities should consider all circumstances referred to in Section 8.1.1. However, Member States’ obligations under the Statute of the International Criminal Court take precedence over the execution of the EAW (Article 16(4) of the Framework Decision on EAW).

## **8.2. Prior extradition from a third State and the rule of speciality**

If the requested person had been extradited to the executing Member State by a third State, the extradition might involve the speciality rule, depending on the rules of the applicable extradition agreement. According to the speciality rule the extradited person can only be prosecuted or deprived of liberty for the offence or offences for which he or she was extradited. The Framework Decision on EAW does not prejudice the obligation to respect the speciality rule in such situations (Article 21 of the Framework Decision on EAW). This means that the executing Member State might be prevented from further surrender of the person without the consent of the State from which the requested person was extradited.

To resolve such situations, the Framework Decision on EAW requires that the executing Member State takes all necessary measures for requesting the consent of the third State (from which the requested person was extradited) immediately so that the person can be surrendered to the Member State which issued the EAW (Article 21 of the Framework Decision on EAW).

The time limits referred to in Article 17 of the Framework Decision on EAW (see Section 4.1 of this Handbook) will not start running until the day on which these speciality rules cease to apply. Pending the decision of the third State from which the requested person was extradited, the executing Member State must ensure that the material conditions necessary for effective surrender remain fulfilled (Article 21 of the Framework Decision on EAW). In particular, it may need to take the necessary measures to prevent the person from absconding.

## **9. TRANSIT**

### **9.1. Transit via another Member State**

**Transit** (Article 25 of the Framework Decision on EAW) concerns the situation where the requested person is transferred to the issuing Member State from the executing Member State via the territory, land or water of a third Member State. In these cases the third Member State has to permit the transit. The issuing Member State's competent authority must, however, provide the following information to the third Member State:

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

To facilitate the transit, this information should be provided as soon as possible prior to the organisation of the transit. The issuing judicial authority is therefore advised to consider the possible need for transit even before it has agreed on the date of surrender with the executing judicial authority. This is also important in order to keep within the strict time limits for surrender of the person set out in Article 23 of the Framework Decision on EAW (normally 10 days).

The information should be provided to the authority responsible for receiving transit requests in the Member State in question. Information on these authorities in each Member State can be found on the EJM Website (the Judicial Atlas, *Fiches belges*). The information can be provided to the relevant authority by any means capable of producing a written record, including e-mail. The Member State of transit must notify its decision by the same procedure (Article 25(3) of the Framework Decision on EAW).

The Framework Decision on EAW does not set a time limit for transit requests, but the State of transit should handle them without delay.

When the transport is carried out by air without a scheduled stopover the rules above do not apply. However, if an unscheduled landing occurs, the issuing Member State must provide the designated authority in the transit State with the information mentioned above, as in the case of transit via land or water (Article 25(4) of the Framework Decision on EAW).

### **9.2. Nationals and residents of the Member State of transit**

The exceptions to the duty to permit transit concern situations where a person who is the subject of a EAW is a national or resident of the Member State of transit. If the EAW is issued for the purpose of prosecution, the Member State of transit may impose the condition that the person, after being heard, is returned to the transit State to serve the custodial sentence or detention order passed against that person in the issuing Member State (Article 25(1) of the Framework Decision on EAW). In this regard, Article 5(3) of the Framework Decision on EAW should be observed *mutatis mutandis* (see Section 5.8.2 of this Handbook). If the EAW is issued for the purpose of the execution of

a custodial sentence or detention order, the Member State of transit may refuse the transit.

### **9.3. Extradition from a third State to a Member State**

Although the Framework Decision on EAW does not directly concern extradition from third States, the rules on transit in Article 25 of the Framework Decision on EAW presented in Sections 9.1 and 9.2 of this Handbook apply *mutatis mutandis* to extradition from a third State to a Member State. In this context, the expression ‘European arrest warrant’ in Article 25 of the Framework Decision on EAW must be read as ‘extradition request’ (Article 25(5)).

## **10. NON-EXECUTED EAWs**

### **10.1. Ensuring that the person is not arrested again in the same Member State**

If the executing judicial authority decides to refuse the execution of the EAW, the competent authority of that Member State needs to ensure that, within its territory, the refused EAW can no longer result in the arrest of the requested person. To ensure this, it must take the following steps so that:

- (a) the corresponding SIS alert is ‘flagged’; and
- (b) the corresponding alerts in domestic systems, if any, are deleted in this regard. For more information on the procedure for flagging see point 2.6 of the SIRENE Manual.

### **10.2. Communication to the issuing Member State**

The executing judicial authority must communicate its decision on the action to be taken on the EAW to the issuing judicial authority (Article 22 of the Framework Decision on EAW). For this purpose, it is advisable to use the standard form in Annex VII to this Handbook. If the executing judicial authority decides to refuse the execution of the EAW, this communication gives the issuing judicial authority the possibility to consider whether it should maintain or withdraw the EAW.

### **10.3. Consideration by the issuing judicial authorities whether to maintain the EAW**

The Framework Decision on EAW does not require a EAW to be withdrawn if one Member State refuses to execute it — other Member States may still be able to execute the EAW. Therefore, the EAW and corresponding SIS alert remain valid, unless the issuing judicial authority decides to withdraw it.

However, there should always be legitimate grounds for any existing EAW. When considering whether or not to maintain an EAW after a Member State has refused to execute it, the issuing judicial authority should consider the circumstances of the case and the applicable national and Union law, including fundamental rights. In particular the following questions could be considered:

- (a) is it likely that the ground for mandatory non-execution which the executing judicial authority applied would be applied by the other Member States? This is relevant in particular concerning the *ne bis in idem* principle (Article 3(2) of the Framework Decision on EAW);
- (b) is it still proportionate to maintain the EAW (see Section 2.4)?;
- (c) is the EAW the only measure likely to be effective (see Section 2.5)?.

#### **10.4. Review of long-standing EAWs in the SIS**

Each issuing judicial authority should remain attentive to its alerts in the SIS. It may need to observe the statute of limitations in respect of the offences concerned and any relevant changes in the criminal process and domestic legislation affecting the position of the requested person.

According to the SIS II Decision, alerts on persons entered in SIS may be kept only for the time required to achieve the purposes for which they were entered (Article 44(1) of SIS II Decision). As soon as there are no longer grounds for an EAW, the competent authority of the issuing Member State must delete it from SIS. EAWs which are entered in SIS remain there for up to three years (unless they were issued for a shorter time period) and are automatically deleted after that (Article 44(5) of SIS II Decision). Therefore, in any case within three years of entering the EAW in SIS, the issuing judicial authority should decide whether to extend its duration. Member States may determine a shorter review period (Article 44(3) of SIS II Decision).

Alerts for EAWs should be deleted from SIS once the person has been surrendered.

### **11. PROCEDURAL RIGHTS OF THE REQUESTED PERSON**

The Framework Decision on EAW grants the requested person several procedural rights. In accordance with Article 11 of the Framework Decision on EAW the requested person has the right to be informed of the EAW and of its contents and of the possibility of consenting to surrender and the right to a legal counsel and an interpreter. These rights must be provided in accordance with the national law of the executing Member State. In addition, various provisions of the Framework Decision on EAW grant the requested person rights, in particular Article 4a(2) (right to information on judgments rendered *in absentia*), Article 13(2) (legal counsel when taking the decision to consent), Article 14 and Article 19 (right to be heard), Article 23(5) (release upon expiry of the time limits for surrender of the person).

These rights are strengthened by the specific instruments on procedural guarantees, as explained in Sections 11.1 to 11.8.

### **11.1. Right to interpretation and translation**

The right to interpretation and translation applies to the execution of a EAW, as provided by Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings<sup>45</sup>.

Article 2(7) of Directive 2010/64/EU requires the executing Member State's competent authorities to provide the following rights to any person subject to EAW proceedings who does not speak or understand the language of the proceedings:

- (a) the right to interpretation, without delay, during criminal proceedings before investigative and judicial authorities, including during police questioning, all court hearings and any necessary interim hearings;
- (b) the right to interpretation for communication between suspected or accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings or with the lodging of an appeal or other procedural applications;
- (c) the right to challenge a decision finding that there is no need for interpretation and the possibility to complain that the quality of the interpretation provided is not sufficient to safeguard the fairness of the proceedings.

Article 3(6) of Directive 2010/64/EU requires the executing Member State's competent authorities to provide a written translation of the EAW to any person subject to proceedings for the execution of a EAW who does not understand the language of the EAW. As an exception, an oral translation or oral summary may be provided on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings.

Interpretation and translation must be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence. It is also important to note that Member States must meet the costs of interpretation and translation, irrespective of the outcome of the proceedings.

### **11.2. Right to information**

The right to written information about rights on arrest, as provided by Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings<sup>46</sup>, applies to persons arrested for the purpose of the execution of a EAW.

Article 5 of Directive 2012/13/EU requires that persons who are arrested for the purpose of the execution of a EAW are provided promptly with an appropriate Letter of Rights containing information on their rights according to the law implementing the Framework Decision on EAW in the executing Member State. An indicative model Letter of Rights

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<sup>45</sup> OJ L 280, 26.10.2010, p. 1. Denmark is not bound by this Directive.

<sup>46</sup> OJ L 142, 1.6.2012, p. 1. Denmark is not bound by this Directive.

is set out in Annex II to Directive 2012/13/EU (and reproduced in Annex IX to this Handbook).

When information is provided, this is noted using the recording procedure of the Member State concerned. Suspects or accused persons have the right to challenge any failure or refusal to provide information, in accordance with procedures in national law.

### **11.3. Right of access to a lawyer**

The right of access to a lawyer applies to persons subject to a EAW, pursuant to Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty<sup>47</sup>.

Persons subject to a EAW have the right of access to a lawyer in the executing Member State upon arrest pursuant to the EAW (Article 10(1), (2) and (3) of Directive 2013/48/EU). With regard to the content of the right of access to a lawyer in the executing Member State, requested persons have the following rights:

- (a) the right of access to a lawyer in such time and in such a manner as to allow the requested persons to exercise their rights effectively and in any event without undue delay from deprivation of liberty;
- (b) the right to meet and communicate with the lawyer representing them;
- (c) the right for their lawyer to be present and, in accordance with procedures in national law, participate during a hearing by the executing judicial authority.

In addition, requested persons have the right to appoint a lawyer in the issuing Member State (Article 10(4), (5) and (6) of Directive 2013/48/EU). The role of that lawyer is to assist the lawyer in the executing Member State by providing that lawyer with information and advice with a view to the effective exercise of the rights of requested persons under the Framework Decision on EAW.

### **11.4. Right to have a third person informed of the deprivation of liberty**

From the time of their arrest in the executing Member State, persons subject to a EAW have the right to have at least one person, such as a relative or an employer, nominated by them, informed of their deprivation of liberty without undue delay<sup>48</sup>.

### **11.5. Right to communicate with third persons**

From the time of their arrest in the executing Member State, persons subject to a EAW have, the right to communicate without undue delay with at least one third person, such as a relative, nominated by them<sup>49</sup>.

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<sup>47</sup> OJ L 294, 6.11.2013, p. 1. The deadline for the transposition of this Directive was 27 November 2016. Denmark, the United Kingdom and Ireland are not bound by this Directive.

<sup>48</sup> Directive 2013/48/EU, Article 5.

<sup>49</sup> Directive 2013/48/EU, Article 6.

## **11.6. Right to communicate with consular authorities**

From the time of their arrest in the executing Member State, persons subject to a EAW who are non-nationals of the executing Member State have the right to have consular authorities of their State of nationality informed of the deprivation of liberty without undue delay and to communicate with those authorities<sup>50</sup>.

They also have the right to be visited by their consular authorities, the right to converse and correspond with them and the right to have legal representation arranged for by their consular authorities.

## **11.7. Specific rights for children**

Specific safeguards for children subject to a EAW apply from the time of their arrest under a EAW in the executing Member State<sup>51</sup>. They are related in particular to:

- (a) the right to information;
- (b) the right to have the holder of parental responsibility informed;
- (c) the right to be assisted by a lawyer;
- (d) the right to a medical examination;
- (e) the right to specific treatment in case of deprivation of liberty;
- (f) the right to protection of privacy;
- (g) the right to be accompanied by the holder of parental responsibility during the proceedings.

## **11.8. Right to legal aid**

The right to legal aid applies to persons subject to a EAW, as provided for by Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings<sup>52</sup>.

Persons subject to a EAW have a right to legal aid in the executing Member State upon arrest pursuant to a EAW until they are surrendered, or until the decision not to surrender them becomes final (Article 5(1) of Directive (EU) 2016/1919).

In addition requested persons who exercise their right to appoint a lawyer in the issuing Member State to assist the lawyer in the executing Member State in accordance with Article 10(4) and (5) of Directive 2013/48/EU have the right to legal aid also in the

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<sup>50</sup> Directive 2013/48/EU, Article 7.

<sup>51</sup> Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132, 21.5.2016, p. 1). The deadline for transposition by Member States is 11 June 2019. Denmark, the United Kingdom and Ireland are not bound by this Directive.

<sup>52</sup> OJ L 297, 4.11.2016, p. 1. The deadline for the transposition of this Directive is 25 May 2019. Denmark, the United Kingdom and Ireland are not bound by this Directive.

issuing Member State, in so far as legal aid is necessary to ensure effective access to justice (Article 5(2) of Directive (EU) 2016/1919).

Member States may in both cases apply criteria for means testing provided in Article 4(3) of Directive (EU) 2016/1919, which apply *mutatis mutandis* to legal aid in EAW proceedings (Article 5(3) of that Directive). Such means testing should therefore take into account all relevant and objective factors, such as the income, capital and family situation of the person concerned, as well as the costs of the assistance of a lawyer and the standard of living in that Member State, in order to determine whether, in accordance with the applicable criteria in that Member State, a requested person lacks sufficient resources to pay for the assistance of a lawyer.



# **ANNEX I —Framework Decision on EAW, unofficial consolidation<sup>1</sup>**

Text in the English language of Framework Decision on EAW

## **COUNCIL FRAMEWORK DECISION**

**of 13 June 2002**

**on the European arrest warrant and the surrender procedures between  
Member States**

**(2002/584/JHA)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 31(a) and (b) and Article 34(2)(b) thereof,

Having regard to the proposal from the Commission<sup>2</sup>,

Having regard to the opinion of the European Parliament<sup>3</sup>,

Whereas:

- (1) According to the Conclusions of the Tampere European Council of 15 and 16 October 1999, and in particular point 35 thereof, the formal extradition procedure should be abolished among the Member States in respect of persons who are fleeing from justice after having been finally sentenced and extradition procedures should be speeded up in respect of persons suspected of having committed an offence.
- (2) The programme of measures to implement the principle of mutual recognition of criminal decisions envisaged in point 37 of the Tampere European Council Conclusions and adopted by the Council on 30 November 2000<sup>4</sup>, addresses the matter of mutual enforcement of arrest warrants.
- (3) All or some Member States are parties to a number of conventions in the field of extradition, including the European Convention on extradition of 13 December 1957 and the European Convention on the suppression of terrorism of 27 January 1977. The Nordic States have extradition laws with identical wording.

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<sup>1</sup> This unofficial consolidation contains only the recitals of Framework Decision 2002/584/JHA. It does not incorporate the recitals of Framework Decision 2009/299/JHA, which amended Framework Decision 2002/584/JHA.

<sup>2</sup> OJ C 332 E, 27.11.2001, p. 305.

<sup>3</sup> Opinion delivered on 9 January 2002 (not yet published in the Official Journal).

<sup>4</sup> OJ C 12 E, 15.1.2001, p. 10.

- (4) In addition, the following three Conventions dealing in whole or in part with extradition have been agreed upon among Member States and form part of the Union *acquis*: the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders<sup>5</sup> (regarding relations between the Member States which are parties to that Convention), the Convention of 10 March 1995 on simplified extradition procedure between the Member States of the European Union<sup>6</sup> and the Convention of 27 September 1996 relating to extradition between the Member States of the European Union<sup>7</sup>.
- (5) The objective set for the Union to become an area of freedom, security and justice leads to abolishing extradition between Member States and replacing it by a system of surrender between judicial authorities. Further, the introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. Traditional cooperation relations which have prevailed up till now between Member States should be replaced by a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice.
- (6) The European arrest warrant provided for in this Framework Decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the ‘cornerstone’ of judicial cooperation.
- (7) Since the aim of replacing the system of multilateral extradition built upon the European Convention on Extradition of 13 December 1957 cannot be sufficiently achieved by the Member States acting unilaterally and can therefore, by reason of its scale and effects, be better achieved at Union level, the Council may adopt measures in accordance with the principle of subsidiarity as referred to in Article 2 of the Treaty on European Union and Article 5 of the Treaty establishing the European Community. In accordance with the principle of proportionality, as set out in the latter Article, this Framework Decision does not go beyond what is necessary in order to achieve that objective.
- (8) Decisions on the execution of the European arrest warrant must be subject to sufficient controls, which mean that a judicial authority of the Member State where the requested person has been arrested will have to take the decision on his or her surrender.
- (9) The role of central authorities in the execution of a European arrest warrant must be limited to practical and administrative assistance.
- (10) The mechanism of the European arrest warrant is based on a high level of confidence between Member States. Its implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the

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<sup>5</sup> OJ L 239, 22.9.2000, p. 19.

<sup>6</sup> OJ C 78, 30.3.1995, p. 2.

<sup>7</sup> OJ C 313, 13.10.1996, p. 12.

principles set out in Article 6(1) of the Treaty on European Union, determined by the Council pursuant to Article 7(1) of the said Treaty with the consequences set out in Article 7(2) thereof.

- (11) In relations between Member States, the European arrest warrant should replace all the previous instruments concerning extradition, including the provisions of Title III of the Convention implementing the Schengen Agreement which concern extradition.
- (12) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union<sup>8</sup>, in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons.

This Framework Decision does not prevent a Member State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media.

- (13) No person should 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.
- (14) Since all Member States have ratified the Council of Europe Convention of 28 January 1981 for the protection of individuals with regard to automatic processing of personal data, the personal data processed in the context of the implementation of this Framework Decision should be protected in accordance with the principles of the said Convention,

HAS ADOPTED THIS FRAMEWORK DECISION:

## **CHAPTER 1**

### **GENERAL PRINCIPLES**

#### *Article 1*

##### **Definition of the European arrest warrant and obligation to execute it**

1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested

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<sup>8</sup> OJ C 364, 18.12.2000, p. 1.

person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.
3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.

## *Article 2*

### **Scope of the European arrest warrant**

1. A European arrest warrant may be issued for acts punishable by the law of the issuing Member 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.
2. 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, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to surrender pursuant to a European arrest warrant:
  - 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.
3. The Council may decide at any time, acting unanimously after consultation of the European Parliament under the conditions laid down in Article 39(1) of the Treaty on European Union (TEU), to add other categories of offence to the list contained in paragraph 2. The Council shall examine, in the light of the report submitted by the Commission pursuant to Article 34(3), whether the list should be extended or amended.
  4. For offences other than those covered by paragraph 2, surrender may be subject to the condition that the acts for which the European arrest warrant has been

issued constitute an offence under the law of the executing Member State, whatever the constituent elements or however it is described.

### *Article 3*

#### **Grounds for mandatory non-execution of the European arrest warrant**

The judicial authority of the Member State of execution (hereinafter ‘executing judicial authority’) shall refuse to execute the European arrest warrant in the following cases:

1. if the offence on which the arrest warrant is based is covered by amnesty in the executing Member State, where that State had jurisdiction to prosecute the offence under its own criminal law;
2. if the executing judicial authority is informed that the requested person has been finally judged by a Member 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;
3. 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 the executing State.

### *Article 4*

#### **Grounds for optional non-execution of the European arrest warrant**

The executing judicial authority may refuse to execute the European arrest warrant:

1. if, in one of the cases referred to in Article 2(4), the act on which the European arrest warrant is based does not constitute an offence under the law of the executing Member State; however, in relation to taxes or duties, customs and exchange, execution of the European arrest warrant shall not be refused on the ground that the law of the executing Member State 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;
2. where the person who is the subject of the European arrest warrant is being prosecuted in the executing Member State for the same act as that on which the European arrest warrant is based;
3. where the judicial authorities of the executing Member State have decided either not to prosecute for the offence on which the European arrest warrant is based or to halt proceedings, or where a final judgment has been passed upon the requested person in a Member State, in respect of the same acts, which prevents further proceedings;

4. where the criminal prosecution or punishment of the requested person is statute-barred according to the law of the executing Member State and the acts fall within the jurisdiction of that Member State under its own criminal law;
5. if the executing judicial authority is informed that the requested person has been finally 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;
6. 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 staying in, or is a national or a resident of the executing Member State and that State undertakes to execute the sentence or detention order in accordance with its domestic law;
7. where the European arrest warrant relates to offences which:
  - (a) are regarded by the law of the executing Member State as having been committed in whole or in part in the territory of the executing Member State or in a place treated as such; or
  - (b) have been committed outside the territory of the issuing Member State and the law of the executing Member State does not allow prosecution for the same offences when committed outside its territory.

#### *Article 4a*

#### **Decisions rendered following a trial at which the person did not appear in person**

1. The executing judicial authority may also refuse to execute the European arrest warrant issued for the purpose of executing a custodial sentence or a detention order if the person did not appear in person at the trial resulting in the decision, unless the European arrest warrant states that the person, in accordance with further procedural requirements defined in the national law of the issuing Member State:
  - (a) in due time:
    - (i) either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial;
    - and
    - (ii) was informed that a decision may be handed down if he or she does not appear for the trial;
  - or

(b) being aware of the scheduled trial, had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

or

(c) after being served with the decision and being expressly informed about the right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed:

(i) expressly stated that he or she does not contest the decision;

or

(ii) did not request a retrial or appeal within the applicable time frame;

or

(d) was not personally served with the decision but:

(i) will be personally served with it without delay after the surrender and will be expressly informed of his or her right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed;

and

(ii) will be informed of the time frame within which he or she has to request such a retrial or appeal, as mentioned in the relevant European arrest warrant.

2. In case the European arrest warrant is issued for the purpose of executing a custodial sentence or detention order under the conditions of paragraph 1(d) and the person concerned has not previously received any official information about the existence of the criminal proceedings against him or her, he or she may, when being informed about the content of the European arrest warrant, request to receive a copy of the judgment before being surrendered. Immediately after having been informed about the request, the issuing authority shall provide the copy of the judgment via the executing authority to the person sought. The request of the person sought shall neither delay the surrender procedure nor delay the decision to execute the European arrest warrant. The provision of the judgment to the person concerned is for information purposes only; it shall neither be regarded as a formal service of the judgment nor actuate any time limits applicable for requesting a retrial or appeal.

3. In case a person is surrendered under the conditions of paragraph (1)(d) and he or she has requested a retrial or appeal, the detention of that person awaiting



such retrial or appeal shall, until these proceedings are finalised, be reviewed in accordance with the law of the issuing Member State, either on a regular basis or upon request of the person concerned. Such a review shall in particular include the possibility of suspension or interruption of the detention. The retrial or appeal shall begin within due time after the surrender.

#### *Article 5*

#### **Guarantees to be given by the issuing Member State in particular cases**

The execution of the European arrest warrant by the executing judicial authority may, by the law of the executing Member State, be subject to the following conditions:

1. [deleted]
2. if the offence on the basis of which the European arrest warrant has been issued is punishable by custodial life sentence or lifetime detention order, the execution of the said arrest warrant may 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, 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 or practice of the issuing Member State, aiming at a non-execution of such penalty or measure;
3. where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the executing Member State, surrender may be subject to the condition that the person, after being heard, is returned to the executing Member State in order to serve there the custodial sentence or detention order passed against him in the issuing Member State.

#### *Article 6*

#### **Determination of the competent judicial authorities**

1. The issuing judicial authority shall be the judicial authority of the issuing Member State which is competent to issue a European arrest warrant by virtue of the law of that State.
2. The executing judicial authority shall be the judicial authority of the executing Member State which is competent to execute the European arrest warrant by virtue of the law of that State.
3. Each Member State shall inform the General Secretariat of the Council of the competent judicial authority under its law.

## *Article 7*

### **Recourse to the central authority**

1. Each Member State may designate a central authority or, when its legal system so provides, more than one central authority to assist the competent judicial authorities.
2. A Member State may, if it is necessary as a result of the organisation of its internal judicial system, make its central authority(ies) responsible for the administrative transmission and reception of European arrest warrants as well as for all other official correspondence relating thereto.

Member State wishing to make use of the possibilities referred to in this Article shall communicate to the General Secretariat of the Council information relating to the designated central authority or central authorities. These indications shall be binding upon all the authorities of the issuing Member State.

## *Article 8*

### **Content and form of the European arrest warrant**

1. The European arrest warrant shall contain 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 judgment, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 1 and 2;
  - (d) the nature and legal classification of the offence, particularly in respect of Article 2;
  - (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 judgment, or the prescribed scale of penalties for the offence under the law of the issuing Member State;
  - (g) if possible, other consequences of the offence.
2. The European arrest warrant must be translated into the official language or one of the official languages of the executing Member State. Any Member State may, when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the European Communities.

## CHAPTER 2

### SURRENDER PROCEDURE

#### *Article 9*

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

1. When the location of the requested person is known, the issuing judicial authority may transmit the European arrest warrant directly to the executing judicial authority.
2. The issuing judicial authority may, in any event, decide to issue an alert for the requested person in the Schengen Information System (SIS).
3. Such an alert 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 controls at common borders. An alert in the Schengen Information System shall be equivalent to a European arrest warrant accompanied by the information set out in Article 8(1).

For a transitional period, until the SIS is capable of transmitting all the information described in Article 8, the alert shall be equivalent to a European arrest warrant pending the receipt of the original in due and proper form by the executing judicial authority.

#### *Article 10*

##### **Detailed procedures for transmitting a European arrest warrant**

1. If the issuing judicial authority does not know the competent executing judicial authority, it shall make the requisite enquiries, including through the contact points of the European Judicial Network<sup>9</sup>, in order to obtain that information from the executing Member State.
2. If the issuing judicial authority so wishes, transmission may be effected via the secure telecommunications system of the European Judicial Network.
3. If it is not possible to call on the services of the SIS, the issuing judicial authority may call on Interpol to transmit a European arrest warrant.
4. The issuing judicial authority 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.

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<sup>9</sup> Council Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network (OJ L 191, 7.7.1998, p. 4).

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. If the authority which receives a European arrest warrant is not competent to act upon it, it shall automatically forward the European arrest warrant to the competent authority in its Member State and shall inform the issuing judicial authority accordingly.

#### *Article 11*

#### **Rights of a requested person**

1. When a requested person is arrested, the executing competent judicial authority shall, in accordance with its national law, inform that person of the European arrest warrant and of its contents, and also of the possibility of consenting to surrender to the issuing judicial authority.
2. A requested person who is arrested for the purpose of the execution of a European arrest warrant shall have a right to be assisted by a legal counsel and by an interpreter in accordance with the national law of the executing Member State.

#### *Article 12*

#### **Keeping the person in detention**

When a person is arrested on the basis of a European arrest warrant, the executing judicial authority shall take a decision on whether the requested person should remain in detention, in accordance with the law of the executing Member State. The person may be released provisionally at any time in conformity with the domestic law of the executing Member State, provided that the competent authority of the said Member State takes all the measures it deems necessary to prevent the person absconding.

#### *Article 13*

#### **Consent to surrender**

1. If the arrested person indicates that he or she consents to surrender, that consent and, if appropriate, express renunciation of entitlement to the 'speciality rule', referred to in Article 27(2), shall be given before the executing judicial authority, in accordance with the domestic law of the executing Member State.
2. Each Member State shall adopt the measures necessary to ensure that consent and, where appropriate, renunciation, as referred to in paragraph 1, are established in such a way as to show that the person concerned has expressed them voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel.

3. The consent and, where appropriate, renunciation, as referred to in paragraph 1, shall be formally recorded in accordance with the procedure laid down by the domestic law of the executing Member State.
4. In principle, consent may not be revoked. Each Member State may provide that consent and, if appropriate, renunciation may be revoked, in accordance with the rules applicable under its domestic law. In this case, the period between the date of consent and that of its revocation shall not be taken into consideration in establishing the time limits laid down in Article 17. A Member State which wishes to have recourse to this possibility shall inform the General Secretariat of the Council accordingly when this Framework Decision is adopted and shall specify the procedures whereby revocation of consent shall be possible and any amendment to them.

#### *Article 14*

##### **Hearing of the requested person**

Where the arrested person does not consent to his or her surrender as referred to in Article 13, he or she shall be entitled to be heard by the executing judicial authority, in accordance with the law of the executing Member State.

#### *Article 15*

##### **Surrender decision**

1. The executing judicial authority shall decide, within the time limits and under the conditions defined in this Framework Decision, whether the person is to be surrendered.
2. If the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Articles 3 to 5 and Article 8, be furnished as a matter of urgency and may fix a time limit for the receipt thereof, taking into account the need to observe the time limits set in Article 17.
3. The issuing judicial authority may at any time forward any additional useful information to the executing judicial authority.

#### *Article 16*

##### **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 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<sup>10</sup> 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 competent authority of the executing Member State 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 17*

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

1. A European arrest warrant shall be dealt with and executed as a matter of urgency.
2. In cases where the requested person consents to his surrender, the final decision on the execution of the European arrest warrant should be taken within a period of 10 days after consent has been given.
3. In other cases, the final decision on the execution of the European arrest warrant should be taken within a period of 60 days after the arrest of the requested person.
4. Where in specific cases the European arrest warrant cannot be executed within the time limits laid down in paragraphs 2 or 3, the executing judicial authority shall immediately inform the issuing judicial authority thereof, giving the reasons for the delay. In such case, the time limits may be extended by a further 30 days.
5. As long as the executing judicial authority has not taken a final decision on the European arrest warrant, it shall ensure that the material conditions necessary for effective surrender of the person remain fulfilled.
6. Reasons must be given for any refusal to execute a European arrest warrant.
7. Where in exceptional circumstances a Member State cannot observe the time limits provided for in this Article, it shall inform Eurojust, giving the reasons for the delay. In addition, a Member State which has experienced repeated delays on the part of another Member State in the execution of European arrest

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<sup>10</sup> Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 63, 6.3.2002, p. 1).

warrants shall inform the Council with a view to evaluating the implementation of this Framework Decision at Member State level.

#### *Article 18*

##### **Situation pending the decision**

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 Article 19;
  - (b) or agree to the temporary transfer of the requested person.
2. The conditions and the duration of the temporary transfer shall be determined by mutual agreement between the issuing and executing judicial authorities.
3. In the case of temporary transfer, the person must be able to return to the executing Member State to attend hearings concerning him or her as part of the surrender procedure.

#### *Article 19*

##### **Hearing the person pending the decision**

1. The requested person shall be heard by a judicial authority, assisted by another person designated in accordance with the law of the Member State of the requesting court.
2. The requested person shall be heard in accordance with the law of the executing Member State and with the conditions determined by mutual agreement between the issuing and executing judicial authorities.
3. The competent executing judicial authority may assign another judicial authority of its Member State to take part in the hearing of the requested person in order to ensure the proper application of this Article and of the conditions laid down.

#### *Article 20*

##### **Privileges and immunities**

1. Where the requested person enjoys a privilege or immunity regarding jurisdiction or execution in the executing Member State, the time limits referred to in Article 17 shall not start running unless, and counting from the day when, the executing judicial authority is informed of the fact that the privilege or immunity has been waived.

The executing Member State shall ensure that the material conditions necessary for effective surrender are fulfilled when the person no longer enjoys such privilege or immunity.

2. Where power to waive the privilege or immunity lies with an authority of the executing Member State, the executing judicial authority shall request it to exercise that power forthwith. Where power to waive the privilege or immunity lies with an authority of another State or international organisation, it shall be for the issuing judicial authority to request it to exercise that power.

#### *Article 21*

### **Competing international obligations**

This Framework Decision shall not prejudice the obligations of the executing Member State where the requested person has been extradited to that Member State 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 Member State shall take all necessary measures for requesting forthwith the consent of the State from which the requested person was extradited so that he or she can be surrendered to the Member State which issued the European arrest warrant. The time limits referred to in Article 17 shall not start running until the day on which these speciality rules cease to apply. Pending the decision of the State from which the requested person was extradited, the executing Member State will ensure that the material conditions necessary for effective surrender remain fulfilled.

#### *Article 22*

### **Notification of the decision**

The executing judicial authority shall notify the issuing judicial authority immediately of the decision on the action to be taken on the European arrest warrant.

#### *Article 23*

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

1. The person requested shall be surrendered as soon as possible on a date agreed between the authorities concerned.
2. He or she shall be surrendered no later than 10 days after the final decision on the execution of the European arrest warrant.
3. If the surrender of the requested person within the period laid down in paragraph 2 is prevented by circumstances beyond the control of any of the Member States, the executing and issuing judicial authorities shall immediately contact each other 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. 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 executing judicial authority 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.
5. Upon expiry of the time limits referred to in paragraphs 2 to 4, if the person is still being held in custody he shall be released.

#### *Article 24*

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

1. The executing 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 executing Member State or, if he or she has already been sentenced, so that he or she may serve, in its 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 mutual agreement between the executing and the issuing judicial authorities. The agreement shall be made in writing and the conditions shall be binding on all the authorities in the issuing Member State.

#### *Article 25*

#### **Transit**

1. Each Member State shall, except when it avails itself of the possibility of refusal when the transit of a national or a resident is requested for the purpose of the execution of a custodial sentence or detention order, permit the transit through its territory of a requested person who is being surrendered provided that it has been given information on:
  - (a) the identity and nationality of the person subject to the European arrest warrant;
  - (b) the existence of a European arrest warrant;
  - (c) the nature and legal classification of the offence;
  - (d) the description of the circumstances of the offence, including the date and place.

Where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the Member State of transit, transit may be subject to the condition that the person, after being heard, is returned to

the transit Member State to serve the custodial sentence or detention order passed against him in the issuing Member State.

2. Each Member State shall designate an authority responsible for receiving transit requests and the necessary documents, as well as any other official correspondence relating to transit requests. Member States shall communicate this designation to the General Secretariat of the Council.
3. The transit request and the information set out in paragraph 1 may be addressed to the authority designated pursuant to paragraph 2 by any means capable of producing a written record. The Member State of transit shall notify its decision by the same procedure.
4. This Framework Decision does 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 authority designated pursuant to paragraph 2 with the information provided for in paragraph 1.
5. Where a transit concerns a person who is to be extradited from a third State to a Member State this Article will apply *mutatis mutandis*. In particular the expression ‘European arrest warrant’ shall be deemed to be replaced by ‘extradition request’.

## **CHAPTER 3**

### **EFFECTS OF THE SURRENDER**

#### *Article 26*

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

1. The issuing Member State shall deduct all periods of detention arising from the execution of a European arrest warrant from the total period of detention to be served in the issuing Member State as a result of a custodial sentence or detention order being passed.
2. To that end, all information concerning the duration of the detention of the requested person on the basis of the European arrest warrant shall be transmitted by the executing judicial authority or the central authority designated under Article 7 to the issuing judicial authority at the time of the surrender.

#### *Article 27*

##### **Possible prosecution for other offences**

1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States that have given the same notification, consent 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 his or her surrender, other than that for which he or she was surrendered, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

2. Except in the cases referred to in paragraphs 1 and 3, a person surrendered 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.
3. Paragraph 2 does not apply in the following cases:
  - (a) 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;
  - (b) the offence is not punishable by a custodial sentence or detention order;
  - (c) the criminal proceedings do not give rise to the application of a measure restricting personal liberty;
  - (d) 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;
  - (e) when the person consented to be surrendered, where appropriate at the same time as he or she renounced the speciality rule, in accordance with Article 13;
  - (f) 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 make clear 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;
  - (g) where the executing judicial authority which surrendered the person gives its consent in accordance with paragraph 4.
4. A request for consent shall be submitted to the executing judicial authority, accompanied by the information mentioned in Article 8(1) and a translation as referred to in Article 8(2). Consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision. Consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4. The decision shall be taken no later than 30 days after receipt of the request.

For the situations mentioned in Article 5 the issuing Member State must give the guarantees provided for therein.

## *Article 28*

### **Surrender or subsequent extradition**

1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States which have given the same notification, the consent for the surrender of a person to a Member State other than the executing Member State pursuant to a European arrest warrant issued for an offence committed prior to his or her surrender is presumed to have been given, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.
2. In any case, a person who has been surrendered to the issuing Member State pursuant to a European arrest warrant may, without the consent of the executing Member State, be surrendered to a Member State other than the executing Member State pursuant to a European arrest warrant issued for any offence committed prior to his or her surrender in the following cases:
  - (a) where the requested person, having had an opportunity to leave the territory of the Member State to which he 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;
  - (b) where the requested person consents to be surrendered to a Member State other than the executing Member State pursuant to a European arrest warrant. Consent shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's national law. It shall be drawn up in such a way as to make clear that the person concerned has given it voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel;
  - (c) where the requested person is not subject to the speciality rule, in accordance with Article 27(3)(a), (e), (f) and (g).
3. The executing judicial authority consents to the surrender to another Member State according to the following rules:
  - (a) the request for consent shall be submitted in accordance with Article 9, accompanied by the information mentioned in Article 8(1) and a translation as stated in Article 8(2);
  - (b) consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision;
  - (c) the decision shall be taken no later than 30 days after receipt of the request;

- (d) consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4.

For the situations referred to in Article 5, the issuing Member State must give the guarantees provided for therein.

4. Notwithstanding paragraph 1, a person who has been surrendered pursuant to a European arrest warrant shall not be extradited to a third State without the consent of the competent authority of the Member State which surrendered the person. Such consent shall be given in accordance with the Conventions by which that Member State is bound, as well as with its domestic law.

#### *Article 29*

#### **Handing over of property**

1. At the request of the issuing judicial authority or on its own initiative, the executing judicial authority shall, in accordance with its national law, seize and hand over property which:
- (a) may be required as evidence; or
  - (b) has been acquired by the requested person as a result of the offence.
2. The property referred to in paragraph 1 shall be handed over even if the European arrest warrant cannot be carried out owing to the death or escape of the requested person.
3. If the property referred to in paragraph 1 is liable to seizure or confiscation in the territory of the executing Member State, the latter may, if the property is needed in connection with pending criminal proceedings, temporarily retain it or hand it over to the issuing Member State, on condition that it is returned.
4. Any rights which the executing Member State or third parties may have acquired in the property referred to in paragraph 1 shall be preserved. Where such rights exist, the issuing Member State shall return the property without charge to the executing Member State as soon as the criminal proceedings have been terminated.

#### *Article 30*

#### **Expenses**

1. Expenses incurred in the territory of the executing Member State for the execution of a European arrest warrant shall be borne by that Member State.
2. All other expenses shall be borne by the issuing Member State.

## CHAPTER 4

### GENERAL AND FINAL PROVISIONS

#### *Article 31*

##### **Relation to other legal instruments**

1. Without prejudice to their application in relations between Member States and third States, this Framework Decision shall, from 1 January 2004, replace the corresponding provisions of the following conventions applicable in the field of extradition in relations between the Member States:
  - (a) the European Convention on Extradition of 13 December 1957, 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 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 on simplified extradition procedure 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;
  - (e) Title III, Chapter 4 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders.
2. Member States may continue to apply bilateral or multilateral agreements or arrangements in force when this Framework Decision is adopted in so far as such agreements or arrangements allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of European arrest warrants.

Member States may conclude bilateral or multilateral agreements or arrangements after this Framework Decision has come into force in so far as such agreements or arrangements allow the prescriptions of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of European arrest warrants, in particular by fixing time limits shorter than those fixed in Article 17, by extending the list of offences laid down in Article 2(2), by further limiting the grounds for refusal set out in Articles 3 and 4, or by lowering the threshold provided for in Article 2(1) or (2).

The agreements and arrangements referred to in the second subparagraph may in no case affect relations with Member States which are not parties to them.

Member States shall, within three months from the entry into force of this Framework Decision, notify the Council and the Commission of the existing agreements and arrangements referred to in the first subparagraph which they wish to continue applying.

Member States shall also notify the Council and the Commission of any new agreement or arrangement as referred to in the second subparagraph, within three months of signing it.

3. Where the conventions or agreements referred to in paragraph 1 apply to the territories of Member States or to territories for whose external relations a Member State is responsible to which this Framework Decision does not apply, these instruments shall continue to govern the relations existing between those territories and the other Members States.

#### *Article 32*

##### **Transitional provision**

1. Extradition requests received before 1 January 2004 will continue to be governed by existing instruments relating to extradition. Requests received after that date will be governed by the rules adopted by Member States pursuant to this Framework Decision. However, any Member State may, at the time of the adoption of this Framework Decision by the Council, make a statement indicating that as executing Member State it will continue to deal with requests relating to acts committed before a date which it specifies in accordance with the extradition system applicable before 1 January 2004. The date in question may not be later than 7 August 2002. The said statement will be published in the *Official Journal of the European Communities*. It may be withdrawn at any time.

#### *Article 33*

##### **Provisions concerning Austria and Gibraltar**

1. As long as Austria has not modified Article 12(1) of the 'Auslieferungs- und Rechtshilfegesetz' and, at the latest, until 31 December 2008, it may allow its executing judicial authorities to refuse the enforcement of a European arrest warrant if the requested person is an Austrian citizen and if the act for which the European arrest warrant has been issued is not punishable under Austrian law.
2. This Framework Decision shall apply to Gibraltar.

*Article 34*

**Implementation**

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 31 December 2003.
2. Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. When doing so, each Member State may indicate that it will apply immediately this Framework Decision in its relations with those Member States which have given the same notification.

The General Secretariat of the Council shall communicate to the Member States and to the Commission the information received pursuant to Article 7(2), Article 8(2), Article 13(4) and Article 25(2). It shall also have the information published in the *Official Journal of the European Communities*.

3. On the basis of the information communicated by the General Secretariat of the Council, the Commission shall, by 31 December 2004 at the latest, submit a report to the European Parliament and to the Council on the operation of this Framework Decision, accompanied, where necessary, by legislative proposals.
4. The Council shall in the second half of 2003 conduct a review, in particular of the practical application, of the provisions of this Framework Decision by the Member States as well as the functioning of the Schengen Information System.

*Article 35*

**Entry into force**

This Framework Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

Done at Luxembourg, 13 June 2002.

*For the Council*  
*The President*  
*M. RAJOY BREY*



**ANNEX II — EAW FORM, contained in the Annex to  
the Framework Decision on EAW**

**EUROPEAN ARREST WARRANT<sup>1</sup>**

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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<sup>1</sup> 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.

(b) Decision on which the warrant is based:

1. Arrest warrant or judicial decision having the same effect: .....  
Type: .....
2. Enforceable judgment: .....  
.....  
Reference: .....

(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) Indicate if the person appeared in person at the trial resulting in the decision:

1.  Yes, the person appeared in person at the trial resulting in the decision.
2.  No, the person did not appear in person at the trial resulting in the decision.
3. If you have ticked the box under point 2, please confirm the existence of one of the following:  
 3.1a. the person was summoned in person on ... (day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for the trial;  
  
OR  
 3.1b. the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the decision, in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

3.2. being aware of the scheduled trial, the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

OR

3.3. the person was served with the decision on ... (day/month/year) and was expressly informed about the right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and

the person expressly stated that he or she does not contest this decision;

OR

the person did not request a retrial or appeal within the applicable time frame;

OR

3.4. the person was not personally served with the decision, but

- the person will be personally served with this decision without delay after the surrender, and
- when served with the decision, the person will be expressly informed of his or her right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and
- the person will be informed of the timeframe within which he or she has to request a retrial or appeal, which will be ..... days.

4. If you have ticked the box under point 3.1b, 3.2 or 3.3 above, please provide information about how the relevant condition has been met:

.....  
.....

(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 or radioactive materials;
- trafficking in stolen vehicles;
- rape;
- arson;
- crimes within the jurisdiction of the International Criminal Court;
- unlawful seizure of aircraft/ships;
- sabotage.

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

.....

.....

(f) Other circumstances relevant to the case (optional information):

*(NB: This could cover remarks on extraterritoriality, interruption of periods of time limitation and other consequences of the offence)*

.....

.....

(g) This warrant pertains also to the seizure and handing over of property which may be required as evidence:

This warrant pertains also to the seizure and handing over of property acquired by the requested person as a result of the offence:

Description of the property (and location) (if known):

.....

.....

.....

(h) The offence(s) on the basis of which this warrant has been issued is(are) punishable by/has(have) led to a custodial life sentence or lifetime detention order:

– the legal system of the issuing Member State allows for a review of the penalty or measure imposed – on request or at least after 20 years – aiming at a non-execution of such penalty or measure,

and/or

– the legal system of the issuing Member State allows for the application of measures of clemency to which the person is entitled under the law or practice of the issuing Member State, aiming at non-execution of such penalty or measure.

(i) The judicial authority which issued the warrant:

Official name: .....

Name of its representative:<sup>2</sup> .....

.....

Post held (title/grade): .....

.....

File reference: .....

Address: .....

.....

Tel. No.: (country code) (area/city code) (...) .....

Fax No. (country code) (area/city code) (...) .....

E-mail: .....

Contact details of the person to contact to make necessary practical arrangements for the  
surrender: .....

Where a central authority has been made responsible for the transmission and administrative  
reception of European arrest warrants:

Name of the central authority: .....

.....

Contact person, if applicable (title/grade and name): .....

.....

Address: .....

.....

Tel. No.: (country code) (area/city code) (...) .....

Fax No.: (country code) (area/city code) (...) .....

E-mail: .....

---

<sup>2</sup> In the different language versions a reference to the 'holder' of the judicial authority will be included.

Signature of the issuing judicial authority and/or its representative:

.....

Name: .....

Post held (title/grade): .....

Date: .....

Official stamp (if available)

### **ANNEX III — GUIDELINES ON HOW TO FILL IN THE EAW FORM**

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.

#### ***Comment***

- It is recommended to use the EAJN Compendium tool on the EAJN website, when drafting a EAW. Using this e-tool makes filling in the form as easy as filling in a word form, but with several modern and user-friendly features, such as: the possibility of directly importing the competent executing judicial authorities from the EAJN Judicial Atlas; obtaining the static text of the form in the language(s) accepted by the executing Member State immediately; saving and sending it by e-mail.
- However, it may be advisable to download the form in word format from the EAJN website (Judicial Library section) in the issuing judicial authority's (your own) language and keep it on your own computer, in case there is no access to the website when needed in urgent cases.
- It may also be advisable to download the form from the EAJN website (Judicial Library) in all languages, especially in those more frequently accepted by other Member States and keep it on your own computer.
- If you use the word form, fill in that form in your own language using a computer (not in handwriting). When the Compendium is used, the form is always filled in on the computer.
- If a box is not relevant, write 'not applicable' or indicate clearly, for instance by a specific mark (e. g.: — ) that it is not applicable. You should never delete a box or change the EAW form in any way.
- If there are several offences covered by the EAW, please number them offences 1, 2, 3 and so on and keep that numbering throughout the EAW and in particular in box (b).



**Box (a)**

***Information necessary for the identification of the requested person***

***Comment:***

Please fill in all fields, if possible.

(a) Information regarding the identity of the requested person:

Name: ***Comment: obligatory field. Include previous official name, if known, and write the name as it is in national language, name should not be translated. Make sure the order is correct, that you are not stating a forename as the name, and double-check in case there are two or more persons with similar names (maybe in different order, or with small variations) in the same file.***

Forename(s): ***Comment: obligatory field.***

Maiden name, where applicable:

Aliases, where applicable: ***Comment: Include false names. Indicate nicknames in brackets. If the person uses a false identity, this false identity should be inserted in all fields, e.g. false date of birth and false address.***

Sex: ***Comment: obligatory field.***

Nationality: ***Comment: obligatory field. Indicate all of them in case of multiple nationalities.***

Date of birth: ***Comment: obligatory field.***

Place of birth: ***Comment: obligatory field, if information available.***

Residence and/or known address: ***Comment: obligatory field, if information available.***

***Indicate 'not known' if there is no information.***

Language(s) which the requested person understands (if known):

Distinctive marks/description of the requested person: ***Comment: obligatory field, if information is available. Also indicate if the person is dangerous and/or may carry a weapon.***

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) ***Comment: Obligatory to provide via Interpol or SIS if information is available. This is crucial in order to ensure that the right person is arrested.***

***Double-check in case there are two or more persons with similar names (maybe in different order, or with small variations) in the same file.***

**Box (b)**

***Information concerning the decision on which the EAW is based***

***Comment:***

The Form should be filled in according to the requested purpose of the EAW — prosecution and/or conviction cases. Box (b) uses the terms ‘Decision on which the warrant is based’ which refer to a judicial decision that is distinct from the EAW. The term ‘judicial decision’ covers decisions of the Member States authorities that administer criminal justice, but not the police services. Where the decision that has led to the detention order has been changed into, for instance, a judgment in absentia, a new EAW (with the new title) should be issued.

**Pre-trial stage** (EAW is issued for conducting a criminal prosecution)

- (b) 1. Identify the decision on which the EAW is based (for example, a Court order or an arrest warrant, rendered on dd/mm/year, having imposed a coercive measure of preventive detention). Note that where box (b) 1. is filled in box (c) 1. should also be filled in.

**Post-trial stage** (EAW issued for execution of a sentence/sentence in absentia)

- (b) 1. When EAW is issued in cases rendered in absentia, please identify the court decision.
- (b) 2. Refer to the relevant judgment or ruling, which became final on dd/mm/yyyy and insert the case number and the name of the court which issued the decision. In some Member States, sentences not yet enforceable, while appeal is possible, while they are not final, are grounds for filling in box (b) 1. and NOT box (b) 2.

Note that where box (b) 2. is filled in box (c) 2. should also be filled in.

(b) Decision on which the warrant is based:

1. Arrest warrant or judicial decision having the same effect:

Type: ***Comment: specify court order or other judicial order and date and the case reference.***

2. Enforceable judgment: ***Comment: if the judgment is enforceable, also specify the date when it became final.***

Reference: ***Comment: indicate date, case number, type of decision. Do not translate references.***

**Box (c)**

**Information on the length of the sentence/custodial sentence**

**Comment:**

The purpose of this box is to place on record the fact that the EAW meets the requirements for punishment thresholds laid down in Article 2(1) of the Framework Decision on EAW. During the pre-trial stage, that minimum will apply to the sentence which could be imposed in principle, and where a sentence has been passed, it will apply to the length of the actual penalty. As in box (b), fill in the paragraph(s) which is/are relevant taking into account the stage of criminal proceedings.

**Pre-trial stage** (EAW is issued for conducting a criminal prosecution)

- (c) 1. Indicate the maximum penalty which can be imposed. Please note that according to Article 2(1) the EAW may be issued for acts punishable by a custodial sentence or detention order of a maximum period of at least 12 months. Where box (b) 1. is filled in box (c) 1. should also be filled in.

**Post-trial stage** (EAW issued for execution of a sentence/sentence in absentia)

- (c) 2. Indicate the length of the custodial sentence or detention order imposed. Please note that according to Article 2(1) a EAW may be issued for sentences of at least 4 months where a sentence has been passed or a detention order has been made. Where box (b) 2. is filled in, box (c) 2. should also be filled in.
- (c) 2. Indicate years, months and days. It should be noted that the Framework Decision on EAW has not set a minimum amount of the remaining sentence to be served. It is recommended that the proportionality of issuing a EAW is carefully weighed in situations where the remaining sentence is of less than 4 months even though the original sentence was 4 months or more.

(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: **Comment: in cases where a custodial sentence or detention order has been made, the period of the detention order may be indefinite, e. g. life imprisonment or a sentence involving psychiatric care.**

Remaining sentence to be served: **Comment: if the sentence is of indefinite but of at least 4 months' duration, indicate that at least 4 months remain to be served.**

**Box (d)**

***Cases when decisions are rendered in absentia***

(d) Indicate if the person appeared in person at the trial resulting in the decision:

1.  Yes, the person appeared in person at the trial resulting in the decision.
2.  No, the person did not appear in person at the trial resulting in the decision.
3. If you have ticked the box under point 2, please confirm the existence of one of the following:

3.1a. the person was summoned in person on ... (day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

3.1b. the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the decision, in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

3.2. being aware of the scheduled trial, the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

OR

3.3. the person was served with the decision on ... (day/month/year) and was expressly informed about the right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and

the person expressly stated that he or she does not contest this decision;

OR

the person did not request a retrial or appeal within the applicable timeframe;

OR

- 3.4. the person was not personally served with the decision, but
  - the person will be personally served with this decision without delay after the surrender; and
  - when served with the decision, the person will be expressly informed of his or her right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed; and
  - the person will be informed of the timeframe within which he or she has to request a retrial or appeal, which will be ..... days.

4. If you have ticked the box under point 3.1b, 3.2 or 3.3 above, please provide information about how the relevant condition has been met:

.....  
.....

## ***Box (e)***

### ***Offences concerned***

#### ***Comment:***

Whether the offence belongs to one of the 32 categories for which the verification of double criminality does not apply, is decided by the issuing judicial authority in accordance with the definition of the offence in the issuing Member States' criminal law. It is not necessary to incorporate the text of the national law into the EAW or attach it. This also avoids unnecessary translation of legal texts.

The circumstances of the case must always be described fully, including all relevant information, so that the executing Member States' authorities can assess the application of the rule of speciality, and whether grounds for non-execution, such as the *ne bis in idem* principle and prescription apply.

#### **Pre-trial and post-trial stage**

- Insert the **number of offences** concerned.
  - Be consistent with those described.
  - Please bear in mind the comments in the Handbook on accessory offences when deciding whether to include them or not (Section 2.3).
- Give a precise explanation of the **facts** justifying the EAW:
  - Focus on those facts concerning the person to be surrendered.
  - Always describe the necessary facts for that purpose (person responsible, degree of participation or execution, place, time, quantity, means, resulting damage or injuries, intention or purpose, profit, etc.).
  - The factual description should consist only of a short summary and not of a full transcript of whole pages of the file. However in more complex cases, and in particular where double criminality applies (not listed offences), a longer description might be necessary in order to document the main aspects of the facts. In those cases, include the data which is **essential** for a decision on the EAW by the executing judicial authority, in particular to identify any possible grounds for non-execution or with a view to application of the rule of speciality.
  - In case of several offences, if possible, describe the facts so that the description correlates with the corresponding legal classification.
  - Use short and simple sentences which are easy to translate.
  - A short description will also be useful for the insertion of alerts in the SIS by the national SIRENE Bureau.

- Indicate the **legal classification** of the offence (which provision of criminal law it violates). However, it is not necessary to add the legal texts in the EAW. This only results in unnecessary translation.
- If the issuing judicial authority recognises the offence as an offence on the list of 32 offences below, and the offence is punishable by a custodial sentence or detention order of a maximum of at least 3 years it should tick the relevant box from the list.
- It is recommended that, where possible, only one form be used for one EAW concerning one person. If it contains several offences, it should be made clear (e.g. by using ‘offence 1’, ‘offence 2’, ‘offence 3’, ...) which tick applies to which offence (see in particular box (b)). Note that the SIS will only allow for the insertion of one alert for arrest. It is nevertheless possible to attach more than one EAW per alert for arrest.
- In the case of several EAWs issued by the same Member State concerning the same person, these EAWs should not be considered to be competing ones.

(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: ***Comment: for clarity, where e.g. 3 offences are concerned, the descriptions should be numbered 1, 2 and 3. Use short sentences, but give a complete factual description. Please be precise.***

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

***Comment: insert the legal classification of the offence and state which provisions of the applicable national law it violates.***

- .....  
.....
- 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 or radioactive materials;
- trafficking in stolen vehicles;
- rape;
- arson;
- crimes within the jurisdiction of the International Criminal Court;
- unlawful seizure of aircraft/ships;
- sabotage.

II. Full description of offence(s) not covered by section I above: ***Comment: Anything already described above under (e) should not be repeated in section II. Beyond the full description, no information concerning national legislation is needed.***

***If the circumstances are already indicated above do not repeat them. Do not insert legal texts if circumstances are clearly identified above; use this box only if double criminality applies and you need to give more details of the circumstances than are already mentioned above. For a judge to examine double criminality it is not necessary to have the legal text but only to know the precise circumstances of the case, although some jurisdictions do request copies of the legal text.***

.....  
 .....

**Box (f)**

***Other circumstances relevant to the case (optional information)***

***Comment:***

This box does not need to be filled in.

It may be used for remarks on extraterritoriality, interruption of periods of time limitation and other consequences of the offence. It is not usually necessary to indicate any interruption of time limitation, but if the offence was committed a long time ago, such an indication may be useful.

It may also be used where there are special circumstances relating to the execution of the EAW and providing further information could facilitate the execution of the EAW, in spite of the possibilities of direct communication, for example:

- Remarks on restrictions regarding contacts with third parties after arrest, indications that there is a risk of destruction of evidence or a risk of re-offending.
- Indication of circumstances which, under Framework Decision 2008/909/JHA, make it likely that the requested person could be in a position to be transferred afterwards to serve the possible custodial sentence in the executing Member State under Article 5(3) of the Framework Decision on EAW (such as having residence, job, family links, etc. in the executing Member State).
- Request for consent under Article 27(4) of the Framework Decision on EAW.
- Other requests for judicial cooperation, for example a European Investigation Order, to be executed simultaneously.
- Relation to other EAWs.
- Agreements relating to concurrent EAWs reached between issuing judicial authorities, so that the executing judicial authority is immediately aware of them and is in a position to take them into consideration, especially those agreements reached at coordination meetings at Eurojust.
- In accordance with Directive 2013/48/EU, information on the lawyer within the issuing Member State that can assist the lawyer in the executing Member State (chosen lawyer or an ex officio lawyer).
- In accordance with Article 22 of Framework Decision 2009/829/JHA, information on any previous supervision measure (breach of the supervision measures).

<p>(f) Other circumstances relevant to the case (optional information): <i>(NB: This could cover remarks on extraterritoriality, interruption of periods of time limitation and other consequences of the offence).</i></p> <p>.....</p> <p>.....</p>
---

**Box (g)**

**Seizure**

**Comment:**

**Pre-trial stage** (EAW is issued for conducting a criminal prosecution)

- Give a short description of the requested item (e.g. mobile phone, laptop computer, tablet, weapon, ID, travel documents etc.). Where this kind of cooperation is not requested, write ‘not applicable’.
- For example, describe the weapon of which the seizure is requested.
- If available, any information concerning a separate European Investigation Order or freezing order should be given.
- Box (g) does not refer to ‘personal belongings’; indicate items which can be referred to as evidence, e.g. laptop, personal documents or mobile phones, in order to enable the seizure of property.

(g) This warrant pertains also to the seizure and handing over of property which may be required as evidence:

This warrant pertains also to the seizure and handing over of property acquired by the requested person as a result of the offence:

Description of the property (and location) (if known):

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

**Box (h)**

**Comment:**

The indents have been changed to boxes — tick where applicable. If the law does not permit a life sentence, write ‘not applicable’

**Pre-trial stage** (EAW is issued for conducting a criminal prosecution)

- Tick the box if applicable.

**Post-trial stage** (EAW issued for execution of a sentence/sentence in absentia)

- Tick the box if applicable

(h) The offence(s) on the basis of which this warrant has been issued is(are) punishable by / has(have) led to a custodial life sentence or lifetime detention order:

- the legal system of the issuing Member State allows for a review of the penalty or measure imposed — on request or at least after 20 years — aiming at a non-execution of such penalty or measure,

and/or

- the legal system of the issuing Member State allows for the application of measures of clemency to which the person is entitled under the law or practice of the issuing Member State, aiming at non-execution of such penalty or measure.

**Box (i)**

**Information on the issuing judicial authority**

**Comment:**

- Name of its representative: in the different language versions a reference to the ‘holder’ of the judicial authority will be included.
- Insert address of the issuing judicial authority.
- Insert telephone number / fax / e-mail of the issuing judicial authority, preferably where the authority can be reached 24 hours per day.
- Contact details for practical arrangements: If possible, indicate the name and contact details of a judicial official who has knowledge of a relevant foreign language.

(i) The judicial authority which issued the warrant:

Official name: .....

Name of its representative: .....

Post held (title/grade): .....

File reference: .....

Address: .....

Tel. No.: (country code) (area/city code) (...) .....

Fax No.: (country code) (area/city code) (...) .....

E-mail: **Comment: indicate an official e-mail address that is frequently checked** .....

Contact details of the person to contact to make necessary practical arrangements for the surrender: .....

*Contact information on the Central Authority*

Where a central authority has been made responsible for the transmission and administrative reception of European arrest warrants:

Name of the central authority: .....

.....

Contact person, if applicable (title/grade and name): .....

.....

Address: .....

.....

Tel. No.: (country code) (area/city code) (...) .....

Fax No.: (country code) (area/city code) (...) .....

E-mail: .....

*Signature and information on the issuing judicial authority*

**Comment:**

- This may be the judicial authority or, for example, a Court Registrar who signs on behalf of the Court.

Signature of the issuing judicial authority and/or its representative:

.....  
.....

Name:

.....  
.....

Post held (title/grade): .....

Date: .....

Official stamp (if available) **Comment: this is the official stamp of the issuing judicial authority under domestic law. Always use if available.**

## **ANNEX IV — LANGUAGES ACCEPTED BY THE MEMBER STATES WHEN RECEIVING A EAW**

According to Article 8(2) of the Framework Decision on EAW, the following statements have been made by Member States regarding languages accepted when receiving a EAW:

<b>Austria:</b>	German or other language in reciprocity (accepts receiving the EAW in the official language of a Member State which also accepts receiving EAWs issued by Austrian judicial authorities in German).
<b>Belgium:</b>	French, Dutch, German
<b>Bulgaria:</b>	Bulgarian
<b>Cyprus:</b>	Greek, Turkish, English
<b>Czech Republic:</b>	Czech; with regard to the Slovak Republic the Czech Republic will accept a EAW produced in the Slovak language or accompanied by a translation into the Slovak language, while with regard to Austria the Czech Republic will accept a EAW in German.
<b>Denmark:</b>	Danish, English, Swedish
<b>Estonia:</b>	Estonian, English
<b>Finland:</b>	Finnish, Swedish, English
<b>France:</b>	French
<b>Germany:</b>	Germany applies reciprocity (accepts receiving the EAW in the official language of a Member State which also accepts receiving a EAW issued by German judicial authorities in German).
<b>Greece:</b>	Greek
<b>Hungary:</b>	Hungarian or a translation of the EAW into Hungarian. In relation to Member States which do not exclusively accept the EAW in their own language or in one of their official languages, Hungary accepts the EAW in English, French or German, or accompanied by a translation into one of those languages.
<b>Ireland:</b>	Irish or English or a language that the Ministry of Justice may by order prescribe, or the EAW with a translation into Irish or English.
<b>Italy:</b>	Italian
<b>Latvia:</b>	Latvian, English
<b>Lithuania:</b>	Lithuanian, English



<b>Luxembourg:</b>	French, German, English
<b>Malta:</b>	Maltese, English
<b>Netherlands:</b>	Dutch, English or any other official language of the Union provided that an English translation is submitted at the same time.
<b>Poland:</b>	Polish
<b>Portugal:</b>	Portuguese
<b>Romania:</b>	Romanian, French, English
<b>Slovakia:</b>	Slovak or, on the basis of prior bilateral treaties, German with regard to Austria, Czech with regard to the Czech Republic, Polish with regard to Poland.
<b>Slovenia:</b>	Slovenian, English
<b>Spain:</b>	Spanish. Where a EAW is issued through a SIS alert, the executing judicial authority will ensure translation if it is not in Spanish.
<b>Sweden:</b>	Swedish, Danish, Norwegian, English or a translation into one of those languages.

## **ANNEX V — LIST OF JUDGMENTS OF THE COURT OF JUSTICE CONCERNING THE FRAMEWORK DECISION ON EAW**

- C-303/05, *Advocaten voor de Wereld* (Judgment of 3 May 2007)
- C-66/08, *Kozłowski* (Judgment of 17 July 2008)
- C-296/08 PPU, *Santesteban Goicoechea* (Judgment of 12 August 2008)
- C-388/08 PPU, *Leymann and Pustovarov* (Judgment of 1 December 2008)
- C-123/08, *Wolzenburg* (Judgment of 6 October 2009)
- C-306/09, *I.B.* (Judgment of 21 October 2010)
- C-261/09, *Mantello* (Judgment of 16 November 2010)
- C-192/12 PPU, *West* (Judgment of 28 June 2012)
- C-42/11, *Lopes da Silva Jorge* (Judgment of 5 September 2012)
- C-396/11, *Radu* (Judgment of 29 January 2013)
- C-399/11, *Melloni* (Judgment of 26 February 2013)
- C-168/13 PPU, *Jeremy F.* (Judgment of 30 May 2013)
- C-237/15 PPU, *Lanigan* (Judgment of 16 July 2015)
- C-463/15 PPU, *A.* (Order of 25 September 2015)
- C-404/15 and C-659/15 PPU, *Aranyosi and Căldăraru* Joined Cases (Judgment of 5 April 2016)
- C-108/16 PPU, *Dworzecki* (Judgment of 24 May 2016)
- C-241/15, *Bob-Dogi* (Judgment of 1 June 2016)
- C-294/16 PPU, *JZ* (Judgment of 28 July 2016)
- C-182/15, *Petruhhin* (Judgment of 6 September 2016)
- C-452/16 PPU, *Poltorak* (Judgment of 10 November 2016)
- C-477/16 PPU, *Kovalkovas* (Judgment of 10 November 2016)
- C-453/16 PPU, *Özçelik* (Judgment of 10 November 2016)
- C-640/16, *Vilkas* (Judgment of 25 January 2017)

Pending:

C-579/15, *Popławski*

C-473/15, Schotthöfer & Steiner

C-191/16, *Pisciotti*

C-367/16, *Piotrowski*

C-496/16, *Aranyosi*

## ANNEX VI —JUDGMENTS OF THE COURT OF JUSTICE CONCERNING THE *NE BIS IN IDEM* PRINCIPLE

### **Joined Cases C-187/01 and C-385/01, *Gözütok and Brügge* (Judgment of 11 February 2003)**

The *ne bis in idem* principle, laid down in Article 54 of the CISA also applies to procedures whereby further prosecution is barred, such as the procedures at issue in the main actions, by which the Public Prosecutor of a Member State discontinues criminal proceedings brought in that State, without the involvement of a court, once the accused has fulfilled certain obligations and, in particular, has paid a certain sum of money determined by the Public Prosecutor

### **Case C-469/03, *Miraglia* (Judgment of 10 March 2005)**

The *ne bis in idem* principle, enshrined in Article 54 of the CISA, does not fall to be applied to a decision of the judicial authorities of one Member State declaring a case to be closed, after the Public Prosecutor has decided not to pursue the prosecution on the sole ground that criminal proceedings have been started in another Member State against the same defendant and for the same acts, without any determination whatsoever as to the merits of the case.

### **Case C-436/04, *Van Esbroeck* (Judgment of 9 March 2006)**

1. The *ne bis in idem* principle, enshrined in Article 54 of the CISA, must be applied to criminal proceedings brought in a Contracting State for acts for which a person has already been convicted in another Contracting State even though the Convention was not yet in force in the latter State at the time at which that person was convicted, in so far as the Convention was in force in the Contracting States in question at the time of the assessment, by the court before which the second proceedings were brought, of the conditions of applicability of the *ne bis in idem* principle.
2. Article 54 of the CISA must be interpreted as meaning that:
  - the relevant criterion for the purposes of the application of that article is identity of the material acts, understood as the existence of a set of facts which are inextricably linked together, irrespective of the legal classification given to them or the legal interest protected;
  - punishable acts consisting of exporting and importing the same narcotic drugs and which are prosecuted in different Contracting States to the Convention are, in principle, to be regarded as ‘the same acts’ for the purposes of Article 54, the definitive assessment in that respect being the task of the competent national courts.

### **Case C-467/04, *Gasparini and Others* (Judgment of 28 September 2006)**

1. The *ne bis in idem* principle, enshrined in Article 54 of the CISA, applies in respect of a decision of a court of a Contracting State, made after criminal proceedings have been brought, by which the accused is acquitted finally because prosecution of the offence is time-barred.

2. That principle does not apply to persons other than those whose trial has been finally disposed of in a Contracting State.
3. A criminal court of a Contracting State cannot hold goods to be in free circulation in national territory solely because a criminal court of another Contracting State has found, in relation to the same goods, that prosecution for the offence of smuggling is time-barred.
4. The marketing of goods in another Member State, after their importation into the Member State where the accused was acquitted, constitutes conduct which may form part of the 'same acts' within the meaning of Article 54 of the Convention.

**Case C-150/05, *Van Straaten* (Judgment of 28 September 2006)**

1. Article 54 of the CISA, must be interpreted as meaning that:
  - the relevant criterion for the purposes of the application of that article is identity of the material acts, understood as the existence of a set of facts which are inextricably linked together, irrespective of the legal classification given to them or the legal interest protected;
  - in the case of offences relating to narcotic drugs, the quantities of the drug that are at issue in the two Contracting States concerned or the persons alleged to have been party to the acts in the two States are not required to be identical;
  - punishable acts consisting of exporting and of importing the same narcotic drugs and which are prosecuted in different Contracting States party to that Convention are, in principle, to be regarded as 'the same acts' for the purposes of Article 54 of the Convention, the definitive assessment in that respect being the task of the competent national courts.
2. The *ne bis in idem* principle, enshrined in Article 54 of that Convention, falls to be applied in respect of a decision of the judicial authorities of a Contracting State by which the accused is acquitted finally for lack of evidence.

**Case C-288/05, *Kretzinger* (Judgment of 18 July 2007)**

1. Article 54 of CISA must be interpreted as meaning that:
  - the relevant criterion for the purposes of the application of that article is identity of the material acts, understood as the existence of a set of facts which are inextricably linked together, irrespective of the legal classification given to them or the legal interest protected;
  - acts consisting in receiving contraband foreign tobacco in one Contracting State and of importing that tobacco into another Contracting State and being in possession of it there, characterised by the fact that the defendant, who was prosecuted in two Contracting States, had intended from the outset to transport the tobacco, after first taking possession of it, to a final destination, passing through several Contracting States in the process, constitute conduct which may be covered by the notion of 'same acts'

within the meaning of Article 54. It is for the competent national courts to make the final assessment in that respect.

2. For the purposes of Article 54 of the CISA, a penalty imposed by a court of a Contracting State ‘has been enforced’ or is ‘actually in the process of being enforced’ if the defendant has been given a suspended custodial sentence.
3. For the purposes of Article 54 of the CISA, a penalty imposed by a court of a Contracting State is not to be regarded as ‘having been enforced’ or ‘actually in the process of being enforced’ where the defendant was for a short time taken into police custody and/or held on remand pending trial and that detention would count towards any subsequent enforcement of the custodial sentence under the law of the State in which judgment was given.
4. The fact that a Member State in which a person has been sentenced by a final and binding judgment under its national law may issue a EAW for the arrest of that person in order to enforce the sentence under the Framework Decision on EAW cannot affect the interpretation of the notion of ‘enforcement’ within the meaning of Article 54 of the CISA.

**Case C-367/05, *Kraaijenbrink* (Judgment of 18 July 2007)**

Article 54 of the CISA, must be interpreted as meaning that:

- the relevant criterion for the purposes of the application of that article is identity of the material acts, understood as the existence of a set of facts which are inextricably linked together, irrespective of the legal classification given to them or the legal interest protected;
- different acts consisting, in particular, first, in holding in one Contracting State the proceeds of drug trafficking and, second, in the exchanging at exchange bureaux in another Contracting State of sums of money also originating from such trafficking should not be regarded as ‘the same acts’ within the meaning of Article 54 of the CISA merely because the competent national court finds that those acts are linked together by the same criminal intention;
- it is for that national court to assess whether the degree of identity and connection between all the facts to be compared is such that it is possible, in the light of the said relevant abovementioned criterion, to find that they are ‘the same acts’ within the meaning of Article 54 of the CISA.

**Case C-297/07, *Bourquain* (Judgment of 11 December 2008)**

The *ne bis in idem* principle, enshrined in Article 54 of the CISA, is applicable to criminal proceedings instituted in a Contracting State against an accused whose trial for the same acts as those for which he faces prosecution was finally disposed of in another Contracting State, even though, under the law of the State in which he was convicted, the sentence which was imposed on him could never, on account of specific features of procedure such as those referred to in the main proceedings, have been directly enforced.

**Case C-491/07, *Turanský* (Judgment of 22 December 2008)**

The *ne bis in idem* principle enshrined in Article 54 of the CISA does not fall to be applied to a decision by which an authority of a Contracting State, after examining the merits of the case brought before it, makes an order, at a stage before the charging of a person suspected of a crime, suspending the criminal proceedings, where the suspension decision does not, under the national law of that State, definitively bar further prosecution and therefore does not preclude new criminal proceedings, in respect of the same acts, in that State.

**Case C-398/12, *M.* (Judgment of 5 June 2014)**

Article 54 of the CISA must be interpreted as meaning that an order making a finding that there is no ground to refer a case to a trial court which precludes, in the Contracting State in which that order was made, the bringing of new criminal proceedings in respect of the same acts against the person to whom that finding applies, unless new facts and/or evidence against that person come to light, must be considered to be a final judgment, for the purposes of that article, precluding new proceedings against the same person in respect of the same acts in another Contracting State.

**Case C-261/09, *Mantello* (Judgment of 16 November 2010)**

For the purposes of the issue and execution of a EAW, the concept of ‘same acts’ in Article 3(2) of the Framework Decision on EAW constitutes an autonomous concept of European Union law.

In circumstances such as those at issue in the main proceedings where, in response to a request for information within the meaning of Article 15(2) of Framework Decision on EAW made by the executing judicial authority, the issuing judicial authority, applying its national law and in compliance with the requirements deriving from the concept of ‘same acts’ as enshrined in Article 3(2) of the Framework Decision on EAW, expressly stated that the earlier judgment delivered under its legal system did not constitute a final judgment covering the acts referred to in the arrest warrant issued by it and therefore did not preclude the criminal proceedings referred to in that arrest warrant, the executing judicial authority has no reason to apply, in connection with such a judgment, the ground for mandatory non-execution provided for in Article 3(2) of the Framework Decision on EAW.

**Case C-129/14 PPU, *Spasic* (Judgment of 27 May 2014)**

1. Article 54 of the CISA, which makes the application of the *ne bis in idem* principle subject to the condition that, upon conviction and sentencing, the penalty imposed ‘has been enforced’ or is ‘actually in the process of being enforced’, is compatible with Article 50 of the Charter of Fundamental Rights of the European Union, in which that principle is enshrined.
2. Article 54 of the CISA must be interpreted as meaning that the mere payment of a fine by a person sentenced by the self-same decision of a court of another Member State to a custodial sentence that has not been served is not sufficient to consider that the penalty ‘has been enforced’ or is ‘actually in the process of being enforced’ within the meaning of that provision.

**Case C-486/14, *Kossowski* (Judgment of 29 June 2016)**

The *ne bis in idem* principle laid down in Article 54 of the CISA, read in the light of Article 50 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that a decision of the public prosecutor terminating criminal proceedings and finally closing the investigation procedure against a person, albeit with the possibility of its being reopened or annulled, without any penalties having been imposed, cannot be characterised as a final decision for the purposes of those articles when it is clear from the statement of reasons for that decision that the procedure was closed without a detailed investigation having been carried out; in that regard, the fact that neither the victim nor a potential witness was interviewed is an indication that no such investigation took place.



## ANNEX VII — STANDARD FORM ON EAW DECISION

This form shall not be understood as replacing the decision on surrender to be transmitted in accordance with Article 22 of the Framework Decision 2002/584/JHA as well as, where applicable and so requested by the issuing authority, the full text of the judicial decision on the European Arrest Warrant.

I.-IDENTIFICATION OF THE EAW					
<b>ISSUING REF.:</b>		<b>EXECUTING REF.:</b>		<b>SIS REF.:</b>	
<b>ISSUING AUTHORITY:</b>				<b>DATE OF ISSUE:</b>	
<b>EXECUTING AUTHORITY:</b>			<b>REQUESTED PERSON</b>		
<b>NATIONALITY OF THE PERSON</b>					
II.- FINAL DECISION ON THE EAW					
AUTHORITY REF., JUDGMENT OR DECISION No      DATED					
-A- <input type="checkbox"/> EXECUTED:					
<b>CONSENT OF REQUESTED PERSON (Art. 13 EAW FD)</b>	<input type="checkbox"/> <b>YES</b>  <input type="checkbox"/> <b>NO</b>		<b>RENUNCIATION OF SPECIALITY RULE (Art. 13(2) EAW FD)</b>	<input type="checkbox"/> <b>YES</b>  <input type="checkbox"/> <b>NO</b>	
<b>PERIOD OF DETENTION PENDING</b>	<input type="checkbox"/> <b>DETENTION</b>	<b>BEGINNING (DATE/ HOUR OF ARREST):</b>	<b>TRIAL IN</b>	<input type="checkbox"/>	<input type="checkbox"/> <b>NEW NOTIFICATION</b>
<b>IN CASE OF PARTIAL SURRENDER, PLEASE INDICATE FOR WHICH OFFENCES THE EAW IS NOT ACCEPTED:</b>					

SURRENDER IN EXECUTING MEMBER STATE (Art. 26 EAW FD)		END (DATE/ HOUR OF SURRENDER): <sup>1</sup>	ABSENTIA (Art. 4a EAW FD)	YES	<input type="checkbox"/> NEW TRIAL <input type="checkbox"/> NEITHER NECESSARY (requirements under Article 4a met)
	<input type="checkbox"/> NONE			<input type="checkbox"/> NO	
GUARANTEES (Art. 5 EAW FD)	<input type="checkbox"/> REVIEW OF LIFE SENTENCE (Art. 5(2) EAW FD)		POSTPONED (Art. 24(1) EAW FD)	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> FOR PROSECUTION IN EXECUTING MEMBER STATE
	<input type="checkbox"/> RETURN OF NATIONALS OR RESIDENT OF EXECUTING MEMBER STATE (Art. 5(3) EAW FD)				<input type="checkbox"/> TO HAVE SENTENCE SERVED IN EXECUTING MEMBER STATE
TEMPORARY SURRENDER			<input type="checkbox"/> NO <input type="checkbox"/> YES UNTIL (DATE )    (Art. 24(2) EAW FD)		

<sup>1</sup> This footnote shall be reproduced in the form: ‘This date is to be completed when available by the surrendering authority. It may also be completed by the receiving authority.’

<b>1.1.1. MANDATORY GROUNDS FOR REFUSAL:</b>	<b>1.1.2. GROUNDS UNDER NATIONAL LEGISLATION:</b>
<input type="checkbox"/> NE BIS IN IDEM principle (Art. 3(2) EAW FD) <input type="checkbox"/> MINOR (Art. 3(3) EAW FD) <input type="checkbox"/> AMNESTY (Art. 3(1) EAW FD)	<input type="checkbox"/> <b>PLEASE SPECIFY:</b>
<b>III.- COMMENTS:</b>	

Place, date and signature of the competent authority in the executing Member State

**TO THE COMPETENT AUTHORITY IN THE ISSUING MEMBER STATE**

**ANNEX VIII — LIST OF MEMBER STATES WHOSE LEGAL SYSTEM MAY ALLOW FOR SURRENDER FOR OFFENCES PUNISHABLE BY A LOWER SANCTION THAN THE THRESHOLD SET OUT IN ARTICLE 2(1) OF THE FRAMEWORK DECISION ON EAW, WHEN SUCH OFFENCES ARE ACCESSORY TO THE MAIN OFFENCE(S) IN THE EAW<sup>1</sup>**

Czech Republic

Denmark

Germany

France

Latvia

Lithuania

Hungary

Austria

Slovenia

Slovakia

Finland

Sweden

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<sup>1</sup> The list is based on 20 Member States' replies to a Commission's questionnaire – it does not necessarily reflect the situation in all Member States. The list gives an overview of Member States where there is some possibility to surrender for accessory offences. It should be noted that this possibility may depend on various factors, for example double criminality, and on the executing judicial authority's discretion on a case-by-case basis.

# **ANNEX IX— INDICATIVE MODEL LETTER OF RIGHTS FOR PERSONS ARRESTED ON THE BASIS OF A EAW**

## **ANNEX II to Directive 2012/13/EU on the right to information in criminal proceedings<sup>1</sup>**



### **Indicative model Letter of Rights for persons arrested on the basis of a European Arrest Warrant**

The sole purpose of this model is to assist national authorities in drawing up their Letter of Rights at national level. Member States are not bound to use this model. When preparing their Letter of Rights, Member States may amend this model in order to align it with their national rules and add further useful information.

#### **A. INFORMATION ABOUT THE EUROPEAN ARREST WARRANT**

You have the right to be informed about the content of the European Arrest Warrant on the basis of which you have been arrested.

#### **B. ASSISTANCE OF A LAWYER**

You have the right to speak confidentially to a lawyer. A lawyer is independent from the police. Ask the police if you need help to get in contact with a lawyer, the police shall help you. In certain cases the assistance may be free of charge. Ask the police for more information.

#### **C. INTERPRETATION AND TRANSLATION**

If you do not speak or understand the language spoken by the police or other competent authorities, you have the right to be assisted by an interpreter, free of charge. The interpreter may help you to talk to your lawyer and must keep the content of that communication confidential. You have the right to a translation of the European Arrest Warrant in a language you understand. You may in some circumstances be provided with an oral translation or summary.

#### **D. POSSIBILITY TO CONSENT**

You may consent or not consent to being surrendered to the State seeking you. Your consent would speed up the proceedings. [Possible addition of certain Member States: It

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<sup>1</sup> OJ L 142, 1.6.2012, p. 1.

may be difficult or even impossible to change this decision at a later stage.] Ask the authorities or your lawyer for more information.

#### **E. HEARING**

If you do not consent to your surrender, you have the right to be heard by a judicial authority.