

**NB: UNOFFICIAL TRANSLATION**

**BELGIAN LEGISLATION IMPLEMENTING THE EUROPEAN ARREST WARRANT**  
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**CHAPTER 1: Preliminary provision**

Article 1. This law governs a subject covered by Article 77 of the Constitution

**CHAPTER 2 – General principles**

Article 2 § 1. The arrest and surrender of persons wanted for the exercise of criminal prosecution or for the execution of a sentence or a detention order between Belgium and the other Member States of the European Union are governed by this law.

§ 2. The arrest and surrender are made on the basis of a European arrest warrant.

§ 3. The European arrest warrant is a judicial decision issued by a competent judicial authority of a Member State of the European Union, referred to as the issuing judicial authority, for the arrest and surrender by the competent judicial authority of another Member State, called the executing authority, of a person wanted for the exercise of criminal prosecution or for the execution of a sentence or a detention order.

§ 4. The European arrest warrant contains the following information:

1° the identity and nationality of the wanted person;

2° the name, address, telephone and telecopy number and the email address of the issuing judicial authority;

3° an indication of the existence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same force falling under the scope of this provision;

4° the nature and legal description of the offense, particularly in view of article 5. § 2;

5° a description of the circumstances under which the offense was committed, including the time and place it was committed and the extent of participation of the wanted person in the offense;

6° the sentence given, if it is a final judgment, or the scale of sentences stipulated by law for the offense;

7° insofar as possible, the other consequences of the offense.

The European arrest warrant is established using the forms given in annex to this law.

§ 5. A European arrest warrant addressed to the competent authority of another Member State

shall be translated into the official language or into one of the official languages of the State of execution or into one or several other official languages of the European Community institutions that this State accepts in virtue of a declaration made to a General Secretariat of the Council of the European Union.

§ 6. A European arrest warrant addressed to the Belgian authority must be translated into Dutch, French or German.

Article 3. The European arrest warrant can be issued for offenses<sup>1</sup> punishable under the law of the issuing Member State by a custodial sentence or detention of at least twelve months, or, when a sentence has been pronounced further to a conviction, or detention has been inflicted, insofar as they are for a duration of at least four months.

### **CHAPTER 3 – Execution of the European arrest warrant issued by another Member State**

#### ***Section 1 – The conditions of execution***

Article 4. The execution of a European arrest warrant is refused in the following cases:

1° if the offense on the basis of which the arrest warrant was issued is covered by an amnesty law in Belgium, insofar as the offenses could have been prosecuted in Belgium under Belgian law;

2° if the information available to the judge shows that the wanted person has been definitively judged for the same offenses in Belgium or in another Member State subject to the condition that, in the event of conviction, the sanction has been carried out or is currently being executed or can no longer be executed under the law of the Member State of conviction, or when the person concerned has been the subject of another final decision in Belgium or in another Member State for the same offenses which precludes subsequent prosecution;

3° when because of his age, the person to whom the European arrest warrant pertains cannot yet be held criminally liable under Belgian law for the offenses for which the European arrest warrant is issued;

4° when there is prescription of prosecution or of the sentence under Belgian law and the Belgian courts have jurisdiction for the offenses;

5° if there are serious reasons to believe that the execution of the European arrest warrant would have the effect of jeopardizing the fundamental rights of the person concerned, as they are enshrined in Article 6 of the Treaty on the European Union.

Article 5. The execution is refused if the offense on the basis of which the arrest warrant was issued does not constitute an offense under Belgian law.

§ 2. The above paragraph does not apply if the offense is one of the following offenses, insofar

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<sup>1</sup> Je n'arrive pas à faire la distinction entre les "faits" punissables et "l'infraction". Les deux sont traduits par "offenses".

as it is punished in the issuing State by a custodial sentence of a maximum of three years at least:

- 1° participation in a criminal organization;
- 2° terrorism;
- 3° trafficking of human beings;
- 4° sexual exploitation of children and child pornography;
- 5° illicit trade in narcotics and psychotropic substances;
- 6° illicit trade in weapons, munitions and explosives;
- 7° corruption;
- 8° fraud, including fraud prejudicial to the financial interests of the European Communities in the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests;
- 9° laundering of proceeds of crime;
- 10° counterfeiting and forgery of the euro;
- 11° computer crime;
- 12° crimes against the environment, including illicit trade in endangered animal species, and illicit trade in endangered plants species;
- 13° facilitation of unauthorized entry and residence;
- 14° voluntary manslaughter, serious assault and battery;
- 15° illicit trade in human organs and tissues;
- 16° abduction, sequestration and taking of hostages
- 17° racism and xenophobia;
- 18° organized or armed robbery;
- 19° illicit trade in cultural goods including antiques and works of art;
- 20° embezzlement;
- 21° racketeering and extortion;
- 22° counterfeiting and pirating of products;
- 23° forging administrative documents and dealing in forgeries;
- 24° falsification of means of payment
- 25° illicit trade in hormonal substances and growth-stimulation factors
- 26° illicit trade in nuclear and radioactive materials
- 27° trade in stolen vehicles;
- 28° rape;
- 29° arson;
- 30° crimes falling under the jurisdiction of the International Criminal Court;
- 31° hijacking aircraft or vessels;
- 32° sabotage.

§ 3. On the subject of duties and taxes, customs and foreign exchange, the execution of the European arrest warrant cannot be refused on the grounds that Belgian law does not impose the same type of duties or taxes and does not contain the same type of regulation concerning duties and taxes, customs and foreign exchange as the law of the issuing State.

§ 4. For the application of Paragraph 2, 14°, the offense of abortion under Article 350, paragraph 2, of the Criminal Code and the offense of euthanasia under the law of 28 May 2002 on euthanasia, are not considered to be covered by the concept of voluntary homicide.

Article 6. Execution can be refused in the following cases:

1° when the person to whom the European arrest warrant pertains is prosecuted in Belgium for the same offense as the one on the basis of which the European arrest warrant was issued;

2° when a Belgian judicial authority decided either not to prosecute the offense for which the European arrest warrant was issued, or to terminate prosecution;

3° if the information available to the judge shows that the wanted person has been definitively judged for the same offenses in a State that is not a member of the European Union, subject to the condition that, in the event of conviction, the sanction has been carried out or is currently being executed or can no longer be executed under the law of the State of conviction;

4° if the European arrest warrant was issued for the execution of a sentence or detention order, when the person concerned is Belgian or residing in Belgium and the competent Belgian authorities undertake to execute this sentence or detention order in compliance with Belgian law;

5° when the European arrest warrant concerns offenses which:

- were committed in all or in part on Belgian territory or in a place assimilated to its territory;

- were committed outside the territory of the issuing Member State and Belgian law does not authorize prosecution of the same offenses committed outside Belgian territory

Article 7. When the European arrest warrant was issued for the execution of a sentence or detention order pronounced by a decision given by default, and if the person concerned was not personally summoned nor otherwise informed of the date and place of the hearing that resulted in the decision given by default, the surrender can be subject to the condition that the issuing judicial authority gives sufficient assurance to guarantee that the person to whom the European arrest warrant pertains will have the possibility of requesting a new trial in the issuing State and of being judged in his presence.

The existence of a provision in the law of the issuing State that provides for recourse and the indication of the conditions for exercising that recourse under which the person will effectively be able to exercise such recourse shall be considered sufficient assurance in the meaning of the above paragraph.

Article 8. When the person concerned by a European arrest warrant for prosecution is Belgian or resides in Belgium, the surrender can be subject to the condition that, after being judged, the person is returned to Belgium to serve the sentence or the detention measure to be pronounced against him in the issuing State.

## ***Section 2 - Execution procedure***

### ***Sub-Section 1 - Arrest***

Article 9. § 1. Identifying data given in compliance with the provisions of Article 95 of the

Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders is equivalent to a European arrest warrant.

§ 2. So long as the identifying data does not contain all information required by the European arrest warrant, the identifying data must be followed by the transmission of the original European arrest warrant referred to in Articles 2 and 3, or a certified true copy thereof.

Article 10. The wanted person can be arrested on the basis of the identifying data referred to in Article 9 or on production of the European arrest warrant. The arrest is subject to the conditions of Article 2 of the law of 20 July 1990 on preventive detention.

### ***Sub-Section 2: The investigating judge's order***

Article 11. § 1. Within 24 hours following effective detention, the person concerned is presented to the investigating judge, who informs him:

1° of the existence and the contents of the European arrest warrant;

2° of the possibility given to him to consent to his surrender to the issuing judicial authority;

3° of the right to choose a lawyer and an interpreter. The assistance of the lawyer follows the rules of Belgian law applicable to the subject. This is also the case as concerns the assistance of an interpreter if necessary.

This information is mentioned in the report on the hearing.

§ 2. The investigating judge then hears the person concerned about his possible detention and his observations on the subject.

§ 3. At the conclusion of the hearing, the investigating judge can order the placing or maintenance in detention of the person, on the basis of the European arrest warrant and in view of the circumstances of the offenses mentioned therein, as well as those invoked by the person.

§ 4. The investigating judge can, on his own authority, on a petition from the public prosecution service or at the request of the person concerned, leave the person at liberty, imposing respect of one or several conditions, until the time of the final decision on the execution of the European arrest warrant.

These conditions must be of a nature to ensure that the person concerned does not commit new crimes or offenses, does not elude judicial action, nor destroy evidence or enter into collusion with third parties.

During the proceedings, the investigating judge can, on his own motion or on a petition from the King's prosecutor, impose one or several new conditions, withdraw, modify or extend, in all or in part, conditions already imposed. He can give exemption from compliance with all conditions or with some of them.

The person concerned can apply for the withdrawal or modification of all or part of the conditions imposed; he can also apply to be exempted from all or certain conditions.

When the conditions are not observed, the investigating judge can issue an arrest warrant, under the conditions stipulated by the law of 20 July 1990 on preventive detention.

§ 5. The investigating judge can also demand prior, integral payment of surety, for an amount that he sets.

The surety is paid to the *Caisse des dépôts et consignations* and, on seeing the receipt, the public prosecution service gives the order to have person released.

The surety is returned after the final decision on the execution of the European arrest warrant, if the person in question has remained continually on Belgian territory during the progress of the proceedings.

The surety is attributed to the State if the person concerned has left Belgian territory without legitimate grounds, without so informing the Belgian judicial authority or has eluded the execution of the European arrest warrant.

§ 6. If the person is left at liberty in application of §§ 4. or 5., the investigating judge immediately so informs the public prosecution service which, in turn, informs the issuing judicial authority.

§ 7. The reasoned decision in detail is served to the person concerned within the period of 24 hours referred to under § 1. It is not subject to appeal.

Article 12 § 1. Immediately after the first hearing, the person concerned can communicate freely with his lawyer.

§ 2. If the person concerned has not chosen a lawyer, or does not choose one after the hearing stipulated in Article 11, the investigating judge so informs the "bâtonnier de l'Ordre" or his delegate who proceeds to appoint a lawyer of his own motion, in compliance with Article n° 508/21 of the judicial code.

### ***Sub-Section 3 – The procedure in the event of consent of the person***

Article 13. § 1. If the person concerned consents to being surrendered, this consent is given before the King's prosecutor, in the presence of his lawyer, after he has been informed of the consequences of his consent, particularly of the fact that this entails waiving the benefit of the rule of specialty.

§ 2. A report thereof is drafted. The report is worded so as to show that the person concerned voluntarily consents and is fully aware of the consequences that result therefrom.

§ 3. If the person concerned consents and subject to the control made by the investigating judge on the basis of Article 14, the King's Prosecutor decides on the execution of the European arrest warrant.

§ 4. The person's consent can be given at any time during the proceedings. It can be revoked by the person up to the time of his effective surrender.

***Sub-Section 4. – The decision on the execution of the European arrest warrant***

Article 14. § 1. If, at the hearing referred to in Article 11, the investigating judge notes the existence of a clear cause for refusing execution of the European arrest warrant on the basis of Articles 3 to 6, he shall immediately take a reasoned decision for non-execution.

§ 2. The public prosecution service can appeal the decision of non-execution before the Court's indictment division within a period of 24 hours that begins as from the day of the decision.

§ 3. In the absence, within 24 hours, of an appeal of the decision of non-execution of the European arrest warrant taken in compliance with the first paragraph, the order taken under Article 11 ceases its effects.

§ 4. Within 15 days of the appeal, the Court's indictment division shall rule on the appeal, after hearing the general prosecutor and the person concerned assisted or represented by his lawyer. It shall proceed with the verifications stipulated in Article 16, § 1, with a view to making its decision.

§ 5. At least 24 hours before the appearance, the place, day and time of the appearance are indicated in the register referred to in Article 17, § 2, and the court clerk shall inform the person concerned and his lawyer by telecopy or by a letter registered with the Post Office.

The dossier is made available to the person concerned and to his lawyer during last working day before the appearance.

The dossier can be made available to the person concerned and to his lawyer in the form of copies certified true by the court clerk.

The dossier is again made available to them during the morning of the day of the appearance if the previous day was not a working day; in this case, the appearance before the Court's indictment division will take place in the afternoon.

§ 6. The decision concerning the appeal is communicated immediately to the general prosecutor and is served to the person concerned within 24 hours.

§ 7. The decision concerning the appeal can be the subject of an appeal in cassation under the conditions stipulated in Article 18.

Article 15. If the investigating judge considers that the information communicated in the European arrest warrant by the issuing Member State is insufficient to allow for a decision on the surrender, he asks for the necessary additional information urgently and can set a limit in time for reception thereof, given the necessity to comply with the delay set in Article 16, § 1.

Article 16. § 1. Within 15 days of the arrest, the Council Chamber shall rule by a reasoned decision on the execution of the European Arrest Warrant, on a report of the investigating judge and having heard the King's prosecutor and the person concerned assisted or represented by his lawyer.

To reach its ruling, the Council Chamber shall verify:

1° that the conditions of Article 3 have been met;

2° that one of the causes of refusal stipulated in Articles 4 to 6 need not be applied;

3° in the event that the European arrest warrant concerns an offense included in the list under Article 5. § 2, that the comportment as described in the European arrest warrant does correspond to those included in that list;

4° whether it is appropriate to apply the guarantees stipulated in Article 7 and 8.

§ 2. At least 24 hours before the appearance, the place, date and time of the appearance are indicated in a special register held by the registry and the court clerk shall inform the person concerned and his lawyer by telecopy or by a letter registered with the Post Office.

The dossier is made available to the person concerned and to his lawyer during last working day before the appearance.

The dossier can be made available to the person concerned and to his lawyer in the form of copies certified true by the court clerk.

The dossier is again made available to them during the morning of the day of the appearance if the previous day was not a working day; in this case, the appearance before the Council Chamber will take place in the afternoon.

§ 3. The decision concerning the execution of the European arrest warrant is communicated immediately to the King's prosecutor and is served to the person concerned within 24 hours. The act served contains the notification to the person concerned of his right to lodge an appeal and the period during which this right must be exercised.

§ 4. The decision on the execution of the European arrest warrant indicates that the person concerned cannot be prosecuted, convicted or detained for an offense committed before his surrender other than the one that motivated his surrender, in compliance with the provisions of the law of the issuing State taken in compliance with Articles 27 and 28 of the framework decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and surrender procedures between Member States.

§ 5. If the Council Chamber does not rule within the period stipulated in paragraph 1, the investigating judge orders the release of the person, unless the public prosecution service appeals this order within 24 hours before the Court's indictment division in keeping with Article 17.

Article 17. § 1. The person concerned and the public prosecution service can appeal the decision of the Council Chamber before the Court's indictment division. The appeal must be made within 24 hours, beginning from the day of the decision for the public prosecution service and, for the person concerned, on the day on which it is served to him.

§ 2. The appeal is made by a declaration to the clerk of the Court of First Instance and is recorded in a register opened for that purpose.

§ 3. At least 24 hours before the appearance, the place, date and time of the appearance are indicated in the register referred to in § 2, and the court clerk informs the person concerned and his lawyer by telecopy or a letter registered with the Post Office.

The dossier is made available to the person concerned and to his lawyer during last working day before the appearance.

The dossier can be made available to the person concerned and to his lawyer in the form of copies certified true by the court clerk.

The dossier is again made available to them during the morning of the day of appearance if the previous day was not a working day; in this case, the appearance before the Court's indictment division will take place in the afternoon.

§ 4. Within 15 days of the declaration referred to under § 2, the Court's indictment division rules on the appeal by a reasoned decision, having heard the King's prosecutor and the person concerned assisted or represented by his lawyer. The division shall make the verification stipulated in Article 16 § 1 (2) in order to make that ruling.

If no decision is made within that period, the person concerned is released.

§ 5. The decision on the appeal is communicated to the general prosecutor immediately and is served to the person concerned within 48 hours. The act served contains the notification to the person concerned of his right to appeal in cassation and the period during which this right must be exercised.

Article 18. § 1. The decision on the appeal can be appealed in cassation by the public prosecution service and by the person concerned within a period of 24 hours, beginning from the day of the decision for the public prosecution service and, for the person concerned, on the day on which it is served to him.

§ 2. The dossier is transmitted to the clerk of the *Cour de Cassation* within 24 hours as from the time of the appeal. The arguments in cassation can be described either in the act of the appeal, or in a written document lodged at that time, or in a memorandum that must reach the registry of the *Cour de Cassation* on the fifth day after the appeal in cassation at the latest.

§ 3 The *Cour de Cassation* rules within 15 days as from the date of appeal in cassation.

§ 4. After a ruling in cassation with referral, the Court's indictment division to which the case is

referred rules within 15 days as from pronouncement of the *Cour de Cassation's* ruling.

§ 5. If the appeal in cassation is rejected, the decision of the Court's indictment division on the execution of the European arrest warrant is immediately enforceable.

Article 19. § 1. When, in specific cases, the European arrest warrant cannot be executed within 60 days as from the arrest of the person concerned, the public prosecution service immediately so informs the person concerned and the issuing judicial authority, indicating the reasons. In such a case, the period can be extended by 30 days.

§ 2. When, under exceptional circumstances, the final decision on the execution of the European arrest warrant has not been taken within 90 days as from the date of the arrest of the person, the public prosecution service so informs the federal prosecutor who, in turn, informs Eurojust, specifying the reasons for the delay.

§ 3. The periods stipulated in Articles 16 § 1, 17 § 4 and 18 § 3 are suspended during the stay<sup>2</sup> granted at the request of the person concerned or his lawyer.

Article 20. § 1. The order of the investigating judge taken in virtue of Article 11 remains effective until the decision on execution of the European arrest warrant is final.

§ 2. Under the conditions stipulated in Article 11, §§ 4 to 6, and after having heard the person concerned assisted or represented by his lawyer, the investigating judge can release the person concerned at any time of the proceedings until the decision to execute the European arrest warrant becomes final.

§ 3. Should the investigating judge fail to rule within 15 days following an application for release of the person concerned or if the application is rejected, the person concerned can apply to the Chamber Council.

§ 4. The final decision to execute the European arrest warrant constitutes the instrument of detention up to the actual surrender of the person to the issuing State.

However, the final decision to execute the European arrest warrant can provide for release under certain conditions or with a guarantee from the person concerned under the conditions stipulated in Article 11, §§ 4 and 5 up to the actual surrender of the person to the issuing State.

### ***Sub-Section 5 - Communication of the decision***

Article 21. The public prosecution service immediately serves the final decision on the execution of the European arrest warrant to the person concerned and to the issuing judicial authority.

### ***Sub-Section 6. - Surrender of the wanted person***

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<sup>2</sup> Le texte français utilise le mot "remise", qui est le même utilisé pour "surrender" (remise de la personne) et pour "release" ("remise en liberté"). J'ai traduit par "stay" (remise de l'exécution), car je ne comprends pas le sens de la phrase dans les autres cas.

Article 22. § 1. The public prosecution service agrees on a date of surrender as early as possible with the competent authority of the issuing State. The date shall in any case be within ten days after the decision to execute the European arrest warrant. The person concerned is so informed immediately.

§ 2. In the event of unforeseeable circumstances preventing the surrender of the person concerned within the period stipulated in § 1 above, the public prosecution service will immediately get in touch with the competent authority in the issuing State to agree on a new date of surrender. This new date shall intervene ten days after expiration of the delay referred to in § 1 at the latest. The person concerned is immediately informed of the new date.

§ 3. The surrender takes place within ten days following the new date agreed.

§ 4. On expiration of the periods referred to under §§ 1 to 3, if the person is still in detention, he shall be released.

Article 23. § 1. The public prosecution service can exceptionally temporarily suspend the surrender on serious humanitarian grounds, for example, when there are serious reasons to think that it would clearly endanger the life or the health of the person concerned.

§ 2. The execution of the European arrest warrant takes place as soon as these reasons cease to exist. The public prosecution service immediately so informs the issuing judicial authority and agrees with it on a new date of surrender. This new date shall intervene within ten days at the latest. The person concerned is immediately so informed.

§ 3. In this case, the surrender takes place within ten days following the new date agreed.

§ 4. On expiration of the period referred to under § 3, if the person is still in detention, he shall be released.

Article 24. § 1. In derogation of that which is provided in Article 22, the public prosecution service can postpone the surrender of the person concerned so that he can be prosecuted in Belgium, or, if he has already been convicted, so that he can serve a sentence incurred for an offense other than the one referred to by the European arrest warrant.

The execution of the European arrest warrant takes place as soon as these reasons cease to exist. The public prosecution service immediately so informs the judicial authority in the issuing State and agrees with it on a new date of surrender. This new date shall intervene within ten days at the latest. The person concerned is immediately so informed.

In this case, the surrender takes place within ten days following the new date agreed.

On expiration of the periods referred to under paragraph 3, if the person is still in detention, he shall be released

§ 2. Instead of postponing the surrender, the public prosecution service can temporarily

surrender the person concerned to the issuing State under conditions to be determined by mutual agreement with the competent authority in the issuing State.

Article 25. All information concerning the duration of detention of the person concerned further to the execution of the European arrest warrant is transmitted by the public prosecution service to the issuing judicial authority at the time of surrender.

### ***Section 3 - Surrender of objects***

Article 26 § 1. On a petition from the issuing judicial authority or of its own initiative, the Council Chamber can decide whether it is appropriate to seize and surrender objects:

§ 1° that can serve as evidence or

§ 2° that were acquired by the person concerned as a result of the offense

The Council Chamber orders the return of objects which are not directly associated with the offense charged against the person concerned and, where applicable, rules on the claims of third party holders or other legal claimants.

§ 2. The surrender of objects as per § 1° is carried out even in the case whereby the European arrest warrant cannot be executed as a result of the death or the escape of the person concerned.

§ 3. When the objects referred to under § 1 are susceptible of seizure or confiscation on Belgian territory, the Belgian judicial authorities concerned can keep them temporarily if the objects are required for an ongoing criminal procedure, or can surrender them to the issuing Member State subject to restitution.

### ***Section 4 - Special cases***

Article 27. § 1. When the person to whom the European arrest warrant pertains was previously extradited to Belgium from a State outside the European Union and this person is protected by the provisions concerning the specialty of the arrangement under which he was extradited, the public prosecution service informs the person concerned and the Ministry of Justice, so that the latter immediately requests the consent of the State from which the person concerned was extradited.

§ 2. The periods referred to under Article 16 to 19 only begin to apply as from the date on which the specialty rules cease to apply.

Article 28. § 1. When the person concerned benefits from a privilege or immunity in Belgium, the periods referred to under Article 16 to 19 only begin to apply as from the date on which this privilege or immunity has been withdrawn.

§ 2. When a Belgian authority is empowered for the withdrawal of the privilege or immunity, the public prosecution service will request withdrawal without delay from that authority.

§ 3. When another State or international organization is empowered for the withdrawal of the privilege or the immunity, the investigating judge suspends the proceedings until such time as the privilege or immunity has been withdrawn on the initiative of the issuing judicial authority. He shall so inform the issuing judicial authority.

Article 29. § 1. If several Member States have issued a European arrest warrant for the same person, the King's prosecutor informs the federal prosecutor and brings the matter before the Council Chamber so that it can make a choice of the European arrest warrant for which the execution procedure will be effected.

§ 2. The Council Chamber rules within 15 days, on the opinion of the federal prosecutor and taking due account of all circumstances and, in particular, the relative seriousness and the place where the offenses were committed, the respective dates of the European arrest warrants and the fact that the warrant was issued for prosecution or for execution of a sentence or detention measure.

§ 3. The federal prosecutor can ask Eurojust for its opinion on the choice to be made.

§ 4. The public prosecution service immediately communicates the decision on the choice of the European arrest warrant for which the execution procedure will be effected to the various issuing judicial authorities.

Article 30. §1. In the event of a conflict between a European arrest warrant and an application for extradition presented by a third country, the public prosecution service will inform the federal prosecutor and government without delay, communicating the observations of the investigating judge before whom the case was brought, so that government decides whether it is appropriate to give priority to the European arrest warrant or to the application for extradition.

§2. The decision is taken, on the opinion of the general prosecutor and the observations of the investigating judge before whom the case was brought, within 30 days of the information given by the public prosecution service, taking due account of the circumstances, in particular those referred to under Article 29, § 2 and all those mentioned in the applicable convention.

§ 3. The periods referred to in Articles 16 to 19 only begin as from the day of the decision referred to under §2.

§ 4. If the government decides that it is appropriate to give priority to the European arrest warrant in application of § 1 but the competent judicial authority decides not to execute the warrant, the public prosecution service shall so inform the government to enable continuation of the extradition procedure.

Article 31. § 1. If, after surrender of the person, the competent authority of the issuing State wishes to prosecute, sentence or detain that person for an offense committed before the surrender other than the one that motivated the surrender, the Council Chamber that surrendered the person decides under the conditions stipulated in Article 16 of this law.

For this purpose, the surrendered person can be represented by his lawyer in Belgium if it is not

possible for him to come personally before the Belgian judge.

§ 2. The decision is taken at the latest 30 days after reception of the application.

#### **CHAPTER IV - Issue of a European arrest warrant by a Belgian judicial authority**

Article 32. § 1. When there is reason to believe that a person wanted for criminal prosecution is found in the territory of another Member State of the European Union, the investigating judge issues a European arrest warrant in keeping with the formalities and under the conditions stipulated under Articles 2 and 3. The European arrest warrant issued for the purposes of criminal prosecution can only be issued under the conditions imposed by the law of 20 July 1990 on preventive detention.

§ 2. When there is reason to believe that a person wanted for the purpose of serving a sentence or a detention measure is found in the territory of another Member State of the European Union, the King's Prosecutor issues a European arrest warrant in keeping with the formalities and under the conditions stipulated under Articles 2 and 3.

If, in this case, the sentence or detention measure was pronounced in a decision taken by default, and if the wanted person had not been personally summoned nor otherwise informed of the date and place of the hearing that resulted in the decision made by default, the European arrest warrant indicates that the wanted person will have the possibility of filing opposition in Belgium and being judged in his presence.

Article 33. § 1. The European arrest warrant is established using the forms given in annex to this law.

§ 2. When the place where the person is found is known, the European arrest warrant can be addressed directly to the judicial authority of execution.

§ 3. The wanted person can, in all cases, be reported to the Schengen Information System.

§ 4. If the judicial authority competent for execution is not known, the necessary research can be done by means of the contact points in the European judicial network to obtain this information in the state of execution.

§ 5. The European arrest warrant can be transmitted by the following channels:

1° in priority by the Schengen Information System.

2° by means of the protected telecommunications system of the European judicial network;

3° if it is not possible to use the Schengen Information System, by the Interpol services;

4° by any other safe means from which a written record can be obtained under conditions allowing the Member State of execution to verify its authenticity.

Article 34. The public prosecution service, or, if applicable, the investigating judge can, at any time, transmit any helpful additional information to the judicial authority of execution.

Article 35. When the wanted person benefits from a privilege or immunity in the State of execution, and an authority of the State other than the State of execution or an international organization is empowered for the withdrawal of that privilege or immunity, the public prosecution service shall inform the Minister of Justice so that Belgium can address a petition for withdrawal to the State or international organization concerned.

Article 36. Any period of detention resulting from the execution of a European arrest warrant shall be deducted from the total duration of detention to be carried out in Belgium as a result of a custodial conviction or detention measure.

Article 37. § 1. A person who has been surrendered on the basis of a European arrest warrant issued by a Belgian judicial authority cannot be prosecuted, convicted or detained for an offense committed before his surrender other than the one which motivated his surrender.

§ 2. Paragraph § 1 does not apply in the following cases:

1° when the person concerned did not leave Belgian territory within 45 days following his final release, having had the possibility to do so, or returned after having left the territory;

2° the offense is not punished by detention;

3° the criminal procedure did not give rise to the application of a measure restricting individual freedom;

4° when the person concerned incurs a non-detention sentence or measure, particularly a financial sentence or subsidiary imprisonment, even if this sentence or measure is susceptible of restricting his individual freedom;

5° when the person concerned has given his consent to his surrender, if applicable, when he simultaneously renounced the specialty rule;

6° when, after his surrender, the person concerned has expressly renounced the benefit of the specialty rule for specific offenses prior to his surrender. The renunciation is made before the King's prosecutor and a report is drafted thereof. It is worded in such a way as to show that the person concerned renounces voluntarily and is fully aware of the consequences resulting therefrom. The person concerned is entitled to be assisted by a lawyer for this purpose.

If, outside the cases listed in paragraph 1, the investigating judge, the King's prosecutor or the court, as the case may be, wishes to prosecute, convict or detain the person surrendered for an offense committed before the surrender other than the one that motivated the surrender, the request for consent must be presented to the judicial authority of execution, accompanied by the information mentioned in Article 2 § 4, and, if applicable, a translation.

Article 38. § 1. A person who was surrendered to Belgium in virtue of a European arrest warrant

can be surrendered to a Member State other than the State of execution, without the consent of the Member State of execution, in virtue of the European arrest warrant issued for an offense committed before the surrender in the following cases:

1° when the person concerned did not leave Belgian territory within 45 days following his final release, having had the possibility to do so, or returned after having left the territory;

2° when the person concerned accepts to be surrendered to a Member State other than the State of execution in virtue of a European arrest warrant. Consent is given before the King's prosecutor and is set down in a report. It is worded in such a way as to show that the person concerned consents voluntarily and is fully aware of the consequences resulting therefrom. The person concerned is entitled to be assisted by a lawyer for this purpose.

§ 2. Outside the cases referred to in § 1, an application for consent must be presented to the executing judicial authority, accompanied with the information mentioned in Article 2, § 4 and a translation.

§ 3. A person who was surrendered to Belgium in virtue of the European arrest warrant cannot be extradited to a third State without the consent of a competent authority of the Member State from which the person concerned was surrendered.

## **CHAPTER V - Transit**

Article 39. § 1. Belgium allows a wanted person who is the object of a surrender to transit through its territory, subject to the condition of having received information on:

- the existence of a European arrest warrant;
- the identity and nationality of the person to whom the European arrest warrant pertains;
- the nature and legal description of the offense;
- the description of the circumstances of the offense, including the date and place.

§ 2. When the person concerned by a European arrest warrant for the purposes of prosecution is of Belgian nationality or resides in Belgium, the transit can be subject to the condition that the person be returned to Belgium after having been judged, to undergo the sentence or detention measure that may be pronounced against him in the issuing State. The person concerned is heard on this subject.

§ 3. When the transit of a Belgian national or a person residing in Belgium is requested for the purposes of execution of a sentence or detention measure, this can be refused if the competent Belgian authorities undertake to execute this sentence or detention measure in compliance with Belgian law. The person concerned is heard on this subject.

Article 40. § 1. The Minister of Justice is the authority responsible for receiving requests for transit and the documents required therefore, and for any other official correspondence

concerning these requests.

§ 2. The request for transit and the information stipulated in Article 39 can be transmitted by any means from which a written record can be obtained. The Minister of Justice will make his decision known by the same process.

Article 41. § 1. The use of nonstop air travel is authorized without formalities.

§ 2. However, should an unscheduled landing occur, Articles 39 and 40 are applicable.

Article 42. Articles 39 and 40 also apply when a transit concerns a person who is extradited by a third State to a Member State.

## **CHAPTER VI. Final provision**

Article 43. § 1. Outside of the cases listed in Article 40, the Federal Justice Public Service assists the competent judicial authorities for the execution of this law if they so request.

§ 2. The competent judicial authorities inform the Federal Justice Public Service without delay of any difficulty encountered in the application of this law, either on the occasion of the execution in Belgium of a foreign European arrest warrant, or the execution by a Member State of a European arrest warrant issued by a Belgian judicial authority.

## **CHAPTER VII -- Temporary provision**

Article 44. § 1. This law applies to the arrest and surrender of a person wanted in virtue of a European arrest warrant between Belgium and the Member States of the European Union as from 1 January 2004. Requests for surrender prior to that date will continue to be governed by the instruments existing in the extradition field.

In relations with the competent French authorities, this law will apply to the arrest and surrender of a person wanted in virtue of the European arrest warrant for offenses committed after 1 November 1993.

In relations with the competent Italian and Austrian authorities, this law will apply to the arrest and surrender of a person wanted in virtue of the European arrest warrant for offenses committed after 7 August 2002.

§ 2. When a person has been arrested before 1 January 2004 on the basis of a provisional arrest warrant for extradition and the petition for extradition was not addressed to Belgium before 31 December 2003, the previous instrument for detention remains valid and the situation of the person is governed by this law. The periods listed under Articles 16 to 19 began as from 1 January 2004.

§ 3. In relations with Member States that have not transposed the framework-decision 2002/584/JHA of the Council of the European Union of 13 June 2002 on the European arrest warrant and surrender procedures between Member States, the law of 15 March 1874 on

extraditions and the existing instruments in the field of extradition remain in application.