

# **Law no. 65/2003 of 23 August**

**Approves the legal regime of the European arrest warrant (giving effect to the council framework decision no. 2002/584/JHA of 13 June)**

Pursuant to Article 161 (c) of the Constitution, the Parliament decrees to be valid as a general law of the Republic the following:

## **CHAPTER I**

### **General Provisions**

#### **Section I**

#### **Definition, scope, content and transmission**

##### **Article 1**

##### **Definition and effects**

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

2 - The European arrest warrant shall be executed on the basis of the principle of mutual recognition and in accordance with the provisions of this law and of the council framework decision no. 2002/584/JHA of 13 June.

##### **Article 2**

##### **Scope**

1 - The 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, without verification of the double criminality of the act, give rise to extradition pursuant to a European arrest warrant:

- a) Participation in a criminal organisation;
- b) Terrorism;

- c) Trafficking in human beings;
- d) Sexual exploitation of children and child pornography;
- e) Illicit trafficking in narcotic drugs and psychotropic substances;
- f) Illicit trafficking in weapons, munitions and explosives;
- g) Corruption;
- h) 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;
- i) Laundering of the proceeds of crime;
- j) Counterfeiting currency, including of the euro;
- l) Computer-related crime;
- m) Environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
- n) Facilitation of unauthorised entry and residence;
- o) Murder, grievous bodily injury;
- p) Illicit trade in human organs and tissue;
- q) Kidnapping, illegal restraint and hostage-taking;
- r) Racism and xenophobia;
- s) Organised or armed robbery;
- t) Illicit trafficking in cultural goods, including antiques and works of art;
- u) Swindling;
- v) Racketeering and extortion;
- x) Counterfeiting and piracy of products;
- z) Forgery of administrative documents and trafficking therein;
- aa) Forgery of means of payment;
- bb) Illicit trafficking in hormonal substances and other growth promoters;
- cc) Illicit trafficking in nuclear or radioactive materials;
- dd) Trafficking in stolen vehicles;
- ee) Rape;
- ff) Arson;
- gg) Crimes within the jurisdiction of the International Criminal Court;
- hh) Unlawful seizure of aircraft/ships;
- ii) Sabotage.

3 – For offences other than those covered by the preceding paragraph, the surrender of the requested person shall only take place if the acts for which the European arrest warrant has been issued constitute an offence under the Portuguese law, whatever the constituent elements or however it is described.

## **Article 3**

### **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 shall be translated into one of the official languages of the executing Member State or another official language of the Institutions of the European Communities accepted by this State, by declaration deposited with the General Secretariat of the Council.

## **Article 4**

### **Transmission of the 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 carried out 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.

4 - An alert in the Schengen Information System shall be equivalent to a European arrest warrant, provided it is accompanied by the information set out in Article 3(1).

5 - Where the criminal police authorities have information about an alert carried out pursuant to the preceding paragraph, they shall detain the requested person.

## **Article 5**

### **Procedures for transmitting the European arrest warrant**

1 – The transmission of the European arrest warrant may be effected via the secure telecommunications system of the European Judicial Network.

2 - 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.

3 - 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.

4 - 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.

5 - Any authority that receives a European arrest warrant and is not competent to act upon it, shall as soon as possible forward the European arrest warrant to the public prosecution office at the *Tribunal da Relação* (Appeal Court) that has jurisdiction to entertain the proceedings to execute the European arrest warrant and shall inform the issuing judicial authority accordingly.

## **Section II**

### **Provisional measures, speciality rule, surrender and subsequent extradition**

## **Article 6**

### **Temporary transfer and hearing of the requested person pending the execution of the European arrest warrant**

1 - Where the European arrest warrant has been issued for the purpose of conducting a criminal prosecution, the issuing judicial authority may request the executing judicial authority to:

- a) Arrange for the hearing of the requested person;
- b) Agree to the temporary transfer of the requested person.

2 - The conditions of the hearing of the requested person, as well as the conditions and the duration of the temporary transfer shall be determined by mutual agreement between the issuing and executing judicial authorities.

3 - The requested person shall be heard by the issuing judicial authority, assisted by another person designated in accordance with the law of the issuing Member State.

4 - 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.

5 - The competent executing judicial authority may assign another issuing judicial authority to take part in the hearing of the requested person in order to ensure the proper application of paragraphs 3

and 4 and of the conditions that have been agreed upon with the issuing judicial authority.

6 - In the case of temporary transfer, the person must be able to return to the executing Member State to attend the hearings as part of the procedure for the execution of the European arrest warrant.

## Article 7

### Speciality rule

1 – A person surrendered pursuant to a European arrest warrant 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 the European arrest warrant was issued.

2 – The provisions of the preceding paragraph do not apply in the following cases:

- a) When the surrendered person having had an opportunity to leave the territory of the issuing Member State has not done so within 45 days of his/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 surrendered person is 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/her personal liberty;
- e) When the person consented to be surrendered and also renounced the speciality rule, in accordance with Article 18(5) and (6);
- 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.
- g) Where the executing judicial authority that has taken the decision on the surrender gives its consent in accordance with paragraph 4.

3 – The renunciation provided for in the paragraph f) shall:

- a) Be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's law;
- b) 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;
- c) Be given with the assistance of a legal counsel.

4 – If the issuing Member State is the Portuguese State, the consent referred to in paragraph 2(g):

- a) Shall be given before the *Tribunal da Relação* for the place where the person concerned is domiciled, or if the person concerned has no domicile, for the place where the person concerned is. The formalities provided for in Article 18 shall be carried out *mutatis mutandis*.
- b) Shall be submitted to the executing judicial authority, accompanied by the information mentioned in Article 3(1) and a translation as referred to in Article 3(2);
- c) Shall be given when the offence for which it is requested is itself subject to surrender by virtue of the legal regime of the European arrest warrant;

- d) Shall be refused on the grounds referred to in Article 11 and otherwise may be refused only on the grounds referred to in Article 12;
- e) Shall be given or refused within 30 days of the receipt of the request.

5 – The *Procuradoria-Geral da República* (Public Prosecution Office) is competent to request the consent mentioned in paragraph 2(g).

## Article 8

### Surrender or subsequent extradition

1 – 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 another Member State pursuant to a European arrest warrant issued for any offence committed prior to his/her surrender in the following cases:

- a) Where the requested person is not subject to the speciality rule, in accordance with Article 7(2)(a), (e), (f) and (g).
- 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.

2 – The consent provided for in subparagraph b) of the preceding paragraph shall:

- a) Be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's national law;
- b) 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;
- c) Be given with the assistance of a legal counsel.

3 - If the issuing Member State is the Portuguese State, the consent referred to in paragraph 1(b) shall be given before the *Tribunal da Relação* for the place where the person concerned is domiciled, or if the person concerned has no domicile, for the place where the person concerned is. The formalities provided for in Article 18 of this law shall be carried out *mutatis mutandis*.

4 – Except in the cases referred to in the preceding paragraphs, the issuing Member State may request the consent of the executing judicial authority for the surrender of the requested person to another Member State. The decision on surrender shall be subject to the following rules:

- a) The request shall be submitted in accordance with Article 4, accompanied by the information mentioned in Article 3(1) and a translation as referred to in Article 3(2);
- b) Consent to surrender shall be given when the offence for which the European arrest warrant has been issued is one of the offences for which the European arrest warrant may be issued;
- c) The decision shall be taken no later than 30 days after the receipt of the request.
- d) Surrender shall be refused on the grounds referred to in Article 11 and otherwise may be refused on the grounds referred to in Article 12;
- e) For the situations mentioned in Article 13 the executing Member State must give the guarantees provided for therein.

5 - 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 executing judicial authority that has taken the surrender decision.

6 - The consent mentioned in the preceding paragraph shall be given in accordance with the conventions by which that Member State is bound, as well as with its law.

7 - The *Procuradoria-Geral da República* is competent to request the consent mentioned in paragraphs 4 and 5.

### **Section III**

#### **Other provisions**

#### **Article 9**

#### **Central authority**

The *Procuradoria-Geral da República* is the designated Central Authority for the purposes of the present law.

#### **Article 10**

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

1 - The period of detention arising from the execution of a European arrest warrant shall be deducted 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 – For the purposes of the preceding paragraph, the Central Authority shall transmit to the issuing judicial authority all information concerning the duration of the detention served by the requested person as a result of the European arrest warrant.

## **CHAPTER II**

### **Execution of the European arrest warrant issued by a Member State**

#### **Section I**

#### **Execution conditions**

#### **Article 11**

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

The execution of a European arrest warrant shall be refused in the following cases:

- a) If the offence on which the arrest warrant is based is covered by amnesty in Portugal, where the Portuguese courts have jurisdiction to prosecute the offence;
- b) If 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 Member State where the decision has been taken;

- c) If under the Portuguese law the requested person may not, owing to his/her age, be held criminally responsible for the acts on which the European arrest warrant is based.
- d) The offence is punishable by death penalty or any other penalty causing an irreversible injury to a person's physical integrity;
- e) If the arrest warrant has been issued on account of political reasons.

## **Article 12**

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

1 - The execution of a European arrest warrant may be refused in the following cases:

- a) If the act on which the European arrest warrant is based does not constitute an offence under the Portuguese law provided that the offence is not covered by Article 2(2);
- b) Where the person who is the subject of the European arrest warrant is being prosecuted in Portugal for the same conduct as that for which the European arrest warrant was issued;
- c) If knowing the facts on which the European arrest warrant is based, the Public Prosecution Office decides either not to prosecute or to halt proceedings;
- d) 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, in cases other than those referred to in Article 11(b),
- e) Where the criminal prosecution or punishment of the requested person is statute-barred according to the Portuguese law provided that the Portuguese courts have jurisdiction over the conduct for which the European arrest warrant has been issued;
- f) If 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 Portuguese law;
- g) If the arrest warrant has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in the national territory, has the Portuguese nationality or lives in Portugal and the Portuguese State undertakes to execute the sentence or detention order in accordance with the Portuguese law;
- h) Where the European arrest warrant relates to offences which:
  - i) Are regarded by the Portuguese law as having been committed in whole or in part in the national territory or aboard Portuguese ships and aircrafts;
  - ii) Have been committed outside the territory of the issuing Member State, provided that the Portuguese criminal law is not applicable to the same offences when committed outside the national territory.

2 - In relation to taxes and duties, customs and exchange, the execution of the European arrest warrant shall not be refused on the grounds referred to in paragraph 1 where the Portuguese law 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.

## **Article 13**

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

The execution of the European arrest warrant may be subject to the condition that the issuing

Member State gives one of the following guarantees:

- a) Where the European arrest warrant has been issued for the purposes of executing a sentence or a detention order imposed by a decision rendered in absentia and if the person concerned has not been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered in absentia, surrender may be subject to the condition that the issuing judicial authority gives an assurance deemed adequate to guarantee the requested person that he/she will have an opportunity to appeal or apply for a retrial of the case in the issuing Member State and to be present at the judgment;
- b) If the offence on the basis of which the European arrest warrant has been issued is punishable by custodial life sentence or life-time detention order, the execution of the 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 imposed, at the latest after 20 years, or for the application of measures of clemency to which the requested 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;
- c) Where the requested person for the purposes of prosecution is a national of the executing Member State or is ordinarily resident there, surrender may be subject to the condition that the requested 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/her in the issuing Member State.

## **Article 14**

### **Competing international obligations**

- 1 – The legal regime of the European arrest warrant shall not prejudice the obligations of the Portuguese State where the requested person has been extradited to Portugal from a third State and where that person is protected by speciality provisions of the arrangement under which he/she was extradited.
- 2 – In the case referred to in the preceding paragraph the executing judicial authority shall take all necessary measures for requesting forthwith the consent of the State from which the requested person was extradited so that he/she can be surrendered to the issuing Member State.
- 3 - The time limits referred to in Article 26 shall not start running until the day on which these speciality rules cease to apply.
- 4 - Pending the decision of the State from which the requested person was extradited, it shall be ensured that the material conditions necessary for effective surrender remain fulfilled.

## **Section II**

### **Execution Procedure**

#### **Article 15**

##### **Competence to execute the European arrest warrant**

1 – The *Tribunal da Relação* for the place where the requested person is domiciled, or if the requested person has no domicile, for the place where the requested person is at the date when the warrant is issued, has jurisdiction to execute the European arrest warrant.

2 – The criminal chamber is competent to hear the case.

#### **Article 16**

##### **Initial ruling and detention of the requested person**

1 - The public prosecution office at the *Tribunal da Relação*, upon receiving the European arrest warrant, shall arrange for its execution within 48 hours.

2 – Upon distribution, the case shall be immediately forwarded to the judge-rapporteur who shall within five days issue his initial ruling on whether the information accompanying the European arrest warrant is sufficient, particularly taking into account the provisions of Article 3.

3 - If the information communicated by the issuing Member State is insufficient to make it possible for a decision on the surrender to be taken, the necessary supplementary information shall be urgently requested and a time limit for the receipt thereof may be fixed.

4 - The issuing judicial authority may at any time, on its own initiative, transmit all supplementary information it considers useful.

5 – Where the European arrest warrant contains the information referred to in Article 3 and has been duly translated, it shall be forwarded to the public prosecution office that shall arrange for the requested person to be detained.

6 – The detention of the requested person shall be governed by the requirements stipulated by the code of criminal procedure for the detention of suspects.

#### **Article 17**

##### **Rights of the arrested person**

1 - When a requested person is arrested, he/she shall be informed of the European arrest warrant and of its contents, and also of the possibility of consenting to surrender to the issuing judicial authority.

2 - The arrested person shall have a right to be assisted by a legal counsel.

3 – If the arrested person does not adequately understand or speak Portuguese, a properly qualified interpreter shall be provided free of charge.

## **Article 18**

### **Hearing of the arrested person**

1 – The detention shall be immediately communicated by the authority that carries it out, through the swiftest channel capable of producing written record, to the public prosecution office at the competent *Tribunal da Relação*.

2 – The requested person shall be brought promptly or as soon as possible before the prosecution office for a personal hearing.

3 – The judge-rapporteur shall hear the arrested person within at most 48 hours of the detention and determine whether the detention is valid and whether the requested person should remain in detention. He may impose one of the coercive measures provided for in the code of criminal procedure.

4 – If the arrested person has no lawyer, the judge-rapporteur shall appoint beforehand a legal counsel for him/her.

5 – The judge-rapporteur shall identify the arrested person, as well as inform him/her of the European arrest warrant and of its contents, and also of the possibility of consenting to surrender and the procedure for, as well as of the renunciation of entitlement to the speciality rule.

6 – The consent to surrender given before the issuing judicial authority by the arrested person, the contents of the information communicated on the speciality rule and the statement of the arrested person shall be formally recorded in a written record, signed by the requested person and his/her legal counsel or lawyer.

## **Article 19**

### **Hearing of the arrested person by the court of first instance**

1 - Where, for some reason, the arrested person cannot be heard by the *Tribunal da Relação*, he/she shall be brought before the public prosecution office at the court of first instance where the competent court sits.

2 – In the case provided for under the preceding paragraph the hearing shall be held for the sole purpose of the judge of the court of first instance validating and maintaining the detention or applying one of the coercive measures provided for in the code of criminal procedure. The public prosecution office shall take the measures necessary to present the person claimed the first subsequent working day.

## **Article 20**

### **Execution of the European arrest warrant with the consent of the requested person**

1 - The consent to surrender to the issuing judicial authority given by the arrested person may not be revoked and shall result in the renunciation of entitlement to the execution procedure of the European arrest warrant.

2 – The judge shall ensure that the consent referred to in the preceding paragraph was given voluntarily and in full awareness of the consequences.

3 – The judicial decision approving the consent shall, to all intents and purposes, be equivalent to the final decision on the execution of the European arrest warrant.

## **Article 21**

### **Opposition of the requested person**

1 - Where the requested person does not consent to his/her surrender to the issuing Member State, his/her legal counsel is given the opportunity to make representations against it.

2 – The opposition may be founded on mistaken identification of the arrested person or on a reason for refusing to execute the European arrest warrant.

3 – Once the opposition is lodged in accordance with the preceding paragraphs the public prosecution office is given the opportunity to pronounce on the issues raised in the opposition as well as on the verification of the requirements on which is based the execution of the European arrest warrant.

4 – The opposition shall be filed and the evidence submitted at the defendant's hearing, notwithstanding that, at the request of the legal counsel, the court shall fix by an irrevocable order a time limit for this purpose, whenever that time limit is necessary to prepare the defence or present the evidence, taking into account the need to observe the time limits set in Article 26.

5 – Upon presentation of the evidence the public prosecution office and the legal counsel of the requested person are given the opportunity to make oral representations.

## **Article 22**

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

1 – The court takes a reasoned decision with regard to the execution of the European arrest warrant within five days from the day on which the hearing of the requested person is held.

2 - Where the information communicated by the issuing Member State is found to be insufficient to allow for a decision on surrender, the necessary supplementary information shall be requested as a matter of urgency and a time limit be fixed for the receipt thereof, taking into account the need to observe the time limits set in Article 26.

## **Article 23**

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

1 - If several Member States have issued European arrest warrants for the same person, the court decides on which of the European arrest warrants shall be executed with due consideration of all the circumstances and especially:

a) The relative seriousness of the offences;

b) The place of the offences;

c) The respective dates of the European arrest warrants;

d) Whether the warrant has been issued for the purposes of prosecution or for execution of a custodial sentence or detention order.

2 - The court may seek the advice of EUROJUST when making the choice referred to in paragraph

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 which of the requests takes precedence shall be taken 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 the Portuguese State's obligations under the Statute of the International Criminal Court.

## **Article 24**

### **Appeal**

1 - An appeal may be filed against the:

- a) Decision to maintain the detention or to replace it by a coercive measure;
- b) Final decision on the execution of the European arrest warrant.

2 – The time limit for lodging the appeal is five days and it shall start counting from the day on which the decision was notified or, in case of an oral decision formally recorded in a written record, from the day on which it was taken.

3 – For the appeal to be admitted the request for it must always state the grounds of appeal. Where the appeal is filed by way of declaration recorded in a written record, grounds of appeal may be presented within five days from the day on which the request is presented.

4 – The request for an appeal and the grounds of appeal are notified to the person affected by the appeal. He/She must respond within five days.

5 – The criminal chambers of the Supreme Court of Justice are competent to decide on the appeals provided for in this Article.

6 – The case shall be referred to the Supreme Court of Justice immediately after the attachment of the response or after the expiry of the time limit within which the response must be submitted.

## **Article 25**

### **Submission of the case and trial**

1 – Upon distribution in the criminal chamber of the Supreme Court of Justice, the case shall be forwarded to the judge-rapporteur for a period of five days, and then, together with a draft ruling, it shall be submitted for simultaneous consideration by the other judges for another period of five days.

2 – The case shall be heard in the first session following consideration by the last judge, notwithstanding being introduced in the cause list and taking precedence over the other cases. It shall be referred back for a period of three days after the date of the transit.

## **Article 26**

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

1 - If the requested person consents to his/her surrender to the issuing Member State, the final decision on the execution of the European arrest warrant shall be taken within 10 days from the date when consent has been given.

2 - In other cases, the final decision on the execution of the European arrest warrant shall be taken within a period of 60 days after the arrest of the requested person.

3 - Where the European arrest warrant cannot be executed within the time limits laid down in paragraphs 1 or 2, namely because an appeal against the decision taken has been filed, the issuing judicial authority shall be immediately informed thereof as well as of the reasons for the delay. In such case, the time limits may be extended by a further 30 days.

4 - As long as no final decision is taken on the European arrest warrant, it shall be ensured that the material conditions necessary for effective surrender of the person remain fulfilled.

5 - Where in exceptional circumstances it is not possible to observe the time limits provided for in this Article, the *Procuradoria-Geral da República* shall inform Eurojust, giving the reasons for the delay.

## **Article 27**

### **Privileges and immunities**

1 - Where the requested person enjoys a privilege or immunity regarding jurisdiction or execution, the time limits referred to in Article 26 shall only start running counting from the day when, the fact that the privilege or immunity has been waived is made known.

2 - Where power to waive the privilege or immunity lies with a Portuguese authority, the court that has jurisdiction to entertain the judicial proceedings to execute the European arrest warrant shall request it to exercise that power forthwith.

3 - Where power to waive the privilege or immunity lies with another State or international organisation, it shall be for the issuing judicial authority to request it to exercise that power.

4 - It shall be ensured that the material conditions necessary for effective surrender are fulfilled when the person no longer enjoys such privilege or immunity.

## **Article 28**

### **Notification of the decision**

The competent court shall notify as soon as possible the issuing judicial authority of the decision taken on the execution of the European arrest warrant.

## **Article 29**

### **Time limit for the surrender of the requested person**

1 - The requested person shall be surrendered as soon as possible on a date agreed between the court and the issuing judicial authority.

2 - The surrender shall take place 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 the preceding paragraph is prevented by circumstances beyond the control of any of the Member States, the court shall contact the issuing judicial authority and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the date thus agreed pursuant to the preceding paragraph.

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.

5 - Where the grounds of the temporary postponement of the surrender have ceased to exist, the court shall inform the issuing judicial authority thereof. The two authorities shall agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.

### **Article 30**

#### **Maximum period of detention**

1 – Where the *Tribunal da Relação* takes no decision on the execution of the European arrest warrant within 60 days of the commencement of the detention, the requested person shall be released. The detention may be replaced by one of the coercive measures provided for in the code of criminal procedure.

2 – The time limit provided for in the preceding paragraph shall be extended to 90 days, if an appeal is filed against the decision taken by the *Tribunal da Relação* on the execution of the European arrest warrant.

3 - The time limits provided for in the preceding paragraphs shall be extended to 150 days, if an appeal is filed before the Constitutional Court.

### **Article 31**

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

1 - The court may, after deciding to execute the European arrest warrant, postpone the surrender of the requested person so that he/she may be prosecuted in Portugal or, if he/she has already been sentenced, so that he/she may serve, in Portugal, the corresponding sentence.

2 – When the grounds on which the surrender has been deferred have ceased to exist, the court shall inform the issuing judicial authority and agree on a new surrender date. In that event, the surrender shall take place within 10 days.

3 - Instead of postponing the surrender, the court may temporarily surrender the requested person to the issuing Member State under conditions to be determined by mutual agreement with the issuing judicial authority. The agreement shall be made in writing and the conditions shall be binding on all the authorities in the issuing Member State.

## **Article 32**

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

1 - At the request of the issuing judicial authority or on the initiative of the competent authorities, the court having jurisdiction to entertain the judicial proceedings to execute the European arrest warrant shall order the seizure and handing over to the issuing judicial authority of property which:

- a) May be required as evidence;
- b) Has been acquired by the requested person as a result of the offence.

2 - The property referred to in the preceding paragraph shall be handed over to the issuing judicial authority even if the European arrest warrant cannot be carried out owing to the death or escape of the requested person.

3 - Where the property referred to in paragraph 1 is liable to seizure or confiscation, it may, if it is needed in connection with pending criminal proceedings in Portugal, be temporarily retained or handed over to the issuing Member State, on condition that it is returned.

4 - Any rights that the Portuguese State or third parties may have acquired in the property referred to in paragraph 1 shall be preserved.

5 - In the situation mentioned in the preceding paragraph, the issuing Member State shall return the property that was seized and handed over without charge to the executing Member State as soon as the criminal proceedings have been terminated.

## **Article 33**

### **Urgent nature of the procedure of execution of the European arrest warrant**

1 - The procedural acts concerning the procedure of execution of the European arrest warrant shall be carried out even outside working days, normal working hours of the Justice Services, as well as outside the judicial holidays.

2 - Holidays shall count when calculating the time limits relating to the procedure of execution of the European arrest warrant.

## **Article 34**

### **Supplementary legislation**

The criminal procedure code supplements or complements the provisions applicable to the procedure of execution of the European arrest warrant.

## **Article 35**

### **Expenses**

1 - Expenses incurred in the national territory for the execution of a European arrest warrant shall be borne by the Portuguese State.

2 - All other expenses shall be borne by the issuing Member State.

## **CHAPTER III**

### **Issue in Portugal of the European arrest warrant**

#### **Article 36**

#### **Competence to issue the European arrest warrant**

The judicial authority that is competent to order the arrest or detention of the requested person by virtue of the Portuguese law is competent to issue the European arrest warrant.

#### **Article 37**

#### **Issue and transmission regime of the European arrest warrant**

The European arrest warrant shall be issued and transmitted pursuant to the rules provided for in Chapter I.

## **CHAPTER IV**

### **Transit**

#### **Article 38**

#### **Transit**

1 - Transit through or over the national territory shall be granted for the purposes of surrender of a requested person if that person is not a national or a resident in national territory. The surrender is requested for the purpose of executing a custodial sentence or detention order, provided that the following information has been given:

- 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.

2 - Where a person who is the subject of a European arrest warrant for the purposes of prosecution is Portuguese or lives in national territory, transit may be subject to the condition that the person, after being heard, is returned to serve the custodial sentence or detention order passed against him in the issuing Member State.

3 - The transit request may be addressed to the Central Authority by any means capable of producing a written record.

4 - The decision on the transit request shall be notified by the same procedure.

5 - This Article does not apply in the case of transport by air without a scheduled stopover in national territory.

6 - If an unscheduled landing occurs, the issuing Member State shall transmit the information provided for in paragraph 1.

7 - Where a transit concerns a person who is to be extradited from a third State to a Member State this Article shall apply mutatis mutandis.

## **CHAPTER IV**

### **Final and Transitional Provisions**

#### **Article 39**

##### **Transitional provision**

Until the SIS is capable of transmitting all the information described in Article 3, the issue of an alert for the requested person in the SIS shall be equivalent to a European arrest warrant pending the receipt of the original in due and proper form.

#### **Article 40**

##### **Entry into force**

The legal regime of the European Warrant Arrest shall enter into force on the 1 January 2004. It shall apply to the requests made by Member States that have chosen to apply immediately the Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, published in the Official Journal of the European Communities of 18 July 2002, and received after that date.

Approved on 3 July 2003

The President of the Parliament, *João Bosco Amaral*.

Promulgated on 4 August 2003

The President, *Jorge Sampaio*

Approved on 8 August 2003

The Prime Minister, *José Manuel Durão Barroso*