

HOW TO ISSUE AND SEND EUROPEAN ARREST WARRANTS

A HANDBOOK

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Procuradoria
Geral da República



GABINETE DE DOCUMENTAÇÃO
E DIREITO COMPARADO

INTRODUCTION

- The European Arrest Warrant, hereafter EAW, is the first legal instrument based upon mutual recognition of decisions in criminal matters. It has implied a radical change in the paradigm of classic cooperation within the extradition system, with impact, first of all, on procedures, time limits and grounds for non-surrender of a person.
- When transposing the new EU rules to national law, the Portuguese lawmaker has introduced a significant de-centralisation of powers in the EWA issuing system, as judges and prosecutors in charge of proceedings are now competent to issue EAWs.
- In this context, there is a clear need to implement good judicial practices when issuing EAWs, by providing for a convergent, coherent implementation of the new system in the light of national and compared experience within the European Union. That is why this Handbook was conceived, basically, under a practical approach.
- Indeed, the EAW should be used in an efficient, effective, proportional manner, taking account of the legitimate goals of cooperation, as a tool for the prevention and repression of crime. There is also a need to adjust this instrument, which is based upon the deprivation of personal freedom, to the prosecution of more serious or more damaging crime that may substantially justify it.
- We should emphasize, then, the need to rely on European bodies like the European Judicial Network (EJN) and EUROJUST in the framework of their specific powers, thus implementing the rationale behind the relevant instructions given by Portuguese authorities, namely in their *Circulares* n.º 4/2004 of 18.3.2004 and n.º 15/2004 of 18.11.2004.
- This Handbook on how to issue EAWs is also focussed on how to reach the relevant goals while, at the same time, meeting the needs felt by different judges and prosecutors, as well as other legal practitioners, when dealing with international judicial cooperation.
- In order to make it available to all, the Handbook is published, not only in paper version, but is also ~~be~~ available on the website of the Portuguese Prosecutor General's Office – Bureau of Documentation and Comparative Law (PGR/GDDC).



- As normal in the case of a Handbook, the aim of this publication is to provide guidelines for the adoption of good practices in the light of acquired experience, while supplying the competent judges and prosecutors with specific information on how EAW forms should be filled. For that purpose, the text includes specific examples on how to draw-up an EAW.
- We would like to thank all those who, with their suggestions, doubts or even criticism, have helped us prepare this publication, as well as those who provided for its layout, thus making the text more appealing to readers.
- Thank you, especially, to the Portuguese Prosecutor General - *Procurador Geral da República* - for suggesting the publication of this Handbook and for the great support he gave us during its preparation.
- We would like this Handbook to remain open to future updates, as may be necessary in the light of practical developments, statutory amendments or progress in court decisions.
- However, the effective contribution of this Handbook will naturally depend on how it will be used and on the kinds of suggestions we will receive from its users, so that it may be improved.
- In the near future, we would also like to extend the Portuguese experience – which, in a way, is a feedback to other developments in the same direction, namely in Spain – to the European Union framework, by means of a future initiative for the publication of a European Handbook on how to issue European arrest warrants.
- That is why your comments are most welcome.

Lisbon, 14 July 2006

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1. Framework

1.1. Legal reference framework for Portugal

- EU Framework Decision (FD) 2002/584/JHA of 13.6.2002
- Portuguese Law n.º 65/2003 of 23.8.2003
- EAW form (Annex to the FD and to Law n.º 65/2003)
- Instructions given by the Portuguese Prosecutor General in *Circulares* n.º 4/2004 of 18.3.2004 and n.º 15/2004 of 18.11.2004
- Statements made by Portugal regarding the FD on the EAW (Doc. 5165/04 of 9 January 2004, COPEN 5 EJM 1 EUROJUST 1)
- Practical “Fiche” – Implementation of the FD on the EAW in Portugal (Doc. 5198/04 of 12 January 2004, COPEN 10 EJM 4 EUROJUST 4)

Links to more information on the EAW:

<http://www.ejn-crimjust.europa.eu/>
(EJM website)

http://www.ejn-crimjust.europa.eu/eaw_atlas.aspx
(EAW Atlas on the EJM website)

<http://www.ejn-crimjust.europa.eu/european-arrest-warrant.aspx>
(Information on the EAW available on the EJM website)

http://www.consilium.europa.eu/cms3_Applications/applications/PolJu/details.asp?lang=EN&cmsid=545&id=66
(Documents on the EAW on the General Secretariat of the Council website)

http://ue.eu.int/ueDocs/cms_Data/docs/polju/EN/EJM416.pdf
(Shortcut to the EAW form in PT)

http://ue.eu.int/ueDocs/cms_Data/docs/polju/EN/EJM459.pdf
(Statements/notifications by Portugal)

http://ue.eu.int/ueDocs/cms_Data/docs/polju/EN/EJM463.pdf
(Practical “Fiche” on Portugal)

<http://www.pgr.pt> (Instâncias europeias)
(Information on EUROJUST in the Portuguese system: “EUROJUST – uma acção coordenada na perseguição penal da criminalidade transnacional”)

http://eur-lex.europa.eu/LexUriServ/site/en/com/2007/com2007_0407en01.pdf
(document COM(2007)407 final of 11.7.2007:2nd evaluation report by the European Commission on the implementation of the FD on the EAW by EU Member States).

Other documents quoted in this text are available on the General Secretariat of the Council website – see above.

The website of *Asser Institute* also provides information on legislation, court decisions and doctrine related to the EAW in all Member States, in the framework of a project that was co-financed by the AGIS Programme and the European Commission – available on:

<http://www.eurowarrant.net>

1.2. The EAW system: definition and main features

- The EAW is a judicial decision enforceable in the European Union, issued by a Member State and executed in another Member State on the basis of the **principle of mutual recognition**.
- The EAW has replaced the traditional system of extradition for a simpler, quicker mechanism of **surrender** of requested persons for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.
- It corresponds to a philosophy of **integration** in a common judicial area and involves a new pattern of cooperation based upon mutual trust between Member States.
- The EAW system has started a new **judicialised** procedure: in other words, the stage where the Executive would examine criteria of political opportunity has been suppressed, so that cooperation now takes place directly between judicial authorities.
- Central Authorities, that used to play a significant role in the extradition process, are now excluded from the EAW process as a rule, although they may still work as support and information units in general.
- In order to make requests simpler and easier to comply with, these are now issued in a uniform way, by **filling in an EAW form**.
- The surrender of **nationals** is now a principle and a general rule, with few exceptions limited in time or in enforcement requirements.
- The grounds for **refusal** of cooperation have been reduced.
- It suppresses the verification of the **double criminality** as a ground for non-execution and non-surrender regarding a list of 32 typical offences, where these are punishable by a custodial sentence or a detention order for a maximum period of at least 3 years. Where the reported offences correspond, in the **specific** case, to their typical

description in the law of the issuing State, then the executing judicial authority may not control the double criminality of the act.

- It significantly reduces the **deadlines** for a final decision on the surrender of the requested person and for his/her effective surrender.

2. Implementation of the EAW in different Member States

2.1. Subjective framework – territorial framework

The EAW applies in relations between Member States of the European Union.

Constitutional Law 1/2001 of 12 December 2001 has allowed Portugal to fulfil its obligations under the EAW. Indeed, article 33 (expulsion, extradition and asylum) provides, in its paragraph 5, for an exception to limitations on cooperation on grounds of life imprisonment and nationality – paragraphs 3 and 4, accordingly – in favour of judicial cooperation in criminal matters within the European Union. Paragraph 6 enshrines the new concept of “surrender” underlying, especially, cooperation within the European Union on the basis of the EAW.

NB – In **Germany**, a decision rendered by the Constitutional Court on 18 July 2005 has revoked the transposition law by declaring it null and void. Basically, the decision has found the legislative transposition inadequate in the light of constitutional requirements regarding the protection of German nationals.

The new German law transposing the Framework Decision on the EAW, which took effect on 2 August 2006, adopted the necessary amendments to the law implementing the Council Framework Decision, thus enabling compliance with the above-mentioned Constitutional Court decision (source: doc. 12509/06 of 7 Sept. 06 COPEN 94 EJM 22 EUROJUST 43). In other words, in order to ensure the protection of fundamental rights of German citizens requested on the basis of a EAW issued in another Member State, the surrender should depend, among other requirements, on a double criminality check (source: doc. COM(2007)407 final of 11.7.2007 – 2nd evaluation report by the European Commission on the implementation of the FD on the EAW by EU Member States – item 2.2.1.).

NB 2 – The EU Council has adopted an “Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on surrender procedures between EU Member States and Iceland and Norway”, which was signed on 28 June 2006 and published in the OJ L 292 of 21.10.2006. The Agreement extends the mechanism of surrender to Norway and Iceland, as States associated to Schengen. However, it does not cover all EAW provisions, namely those that are more directly connected to rights and guarantees, as enshrined in the Portuguese Constitution. The Agreement has not yet been concluded among the involved Parties.

2.2. Time framework

A. Law n.º 65/2003, article 40, and FD, article 32, paragraph 1, 1st part: general transitional regime

In Portugal, the legal system of the EAW has been in force since 1st January 2004 (art. 40 of Portuguese Law n.º 65/2003). It applies to requests submitted after that date, regardless of the date when acts were committed.

Since 14 May 2005, when the EAW system was implemented in the last Member State that transposed it, the warrant is fully enforced in all Member States, except for situations described in items 2.1, 2.2.B and 2.3. B. and C. . As regards Romania and Bulgaria, the EAW system came into effect on 1st January 2007.

Therefore, except for cases referred above, where Portugal is the issuing State, Portuguese judicial authorities are competent to transmit EAWs since 1st January 2004.

B. Law 65/2003, article 40, and FD, article 32, paragraph 1, 2nd part: special regime regarding the date when acts were committed

Under article 32, paragraph 1, of the FD, Member States, when adopting the Framework Decision, may declare that they will only apply the EAW regime to acts committed after a specific date to be appointed, not later than 7 August 2002.

Such a statement has been made by:

- **Austria:** acts committed after 7 August 2002
- **Slovenia:** acts committed after 7 August 2002
- **France:** acts committed after 1st November 1993
- **Italy:** acts committed after 7 August 2002
- **Luxembourg:** acts committed after 7 August 2002
- **Czech Republic:** acts committed after 1st November 2004. Under a recent legislation amendment of 19 April 2006, since 1st July 2006 this requirement only applies to nationals of the Czech Republic. (Communication to the EU Council General Secretariat: doc. 10750/06 of 3rd July, COPEN 69 EJM 17 EUROJUST 31)
- **Cyprus:** acts committed by nationals after 1st May 2004 (see below, 2.3.C).

Hence, if acts were committed before the dates indicated above, Portuguese judicial authorities might only expect the requested person to be surrendered by submitting a traditional extradition request, not an EAW form.

For that purpose, when they are informed that the requested person has been detained following an alert through the Schengen Information System,

the request should be addressed according to the extradition regime, together with all necessary documents and within the relevant deadlines.

NB – The executing State may announce that such a request is not necessary, according to the Convention on a simplified extradition procedure between Member States of the European Union (ratified by Portugal: Parliament Resolution n. ° 41/97 and Decree of the President of the Republic n. ° 41/97, *in DR I* of 18 June 1997).

2.3. Material framework (Law 65/2003, art. 2)

A. General regime

A warrant issued for **purposes of criminal prosecution** applies to acts punishable under Portuguese law by a custodial sentence or detention order for a maximum period of at least 12 months (art. 2, par. 1, 1st part).

Under Portuguese criminal procedure, an EAW may be issued for purposes of criminal prosecution during the investigation, examining and trial stages, until the conviction is final.

The warrant may be issued for execution of a sentence or detention order of at least 4 months (art. 2, par. 1, 2nd part).

Portuguese criminal procedure provides that an EAW may be issued for execution of a sentence as of the trial stage and from the moment when the conviction becomes final.

B. Special provision adopted in Austria (Austrian citizens)

Under article 33 of the FD on the EAW and until 31 December 2008, Austria may refuse the execution of a warrant in the case of Austrian nationals, where the relevant facts are not punishable under Austrian law.

C. Surrender of nationals

As referred above (item 1.2), one of the main features of the EAW system is that it allows national citizens of a given EU country to be surrendered to another EU Member State.

However, in the following Member States, the execution of EAWs for surrender of their nationals has found the following legal barriers:

- **Germany** — A Constitutional Court Decision of 18 July 2005 has revoked the transposition law on the EAW. Until a new law for transposition of the FD on the EAW is adopted, the extradition system applies and the extradition of German nationals is not allowed — see information above (summary of the Court Decision: doc. 11601/05 of 29 July COPEN 123 EJM 42 EUROJUST 46, available on the website of the EU Council General Secretariat). A new law has been adopted on 20 July 2006 – see above, item 2.2.1.
- **Cyprus** — On 7 November 2005, the Cypriot Supreme Court has ruled that, regardless of whether the EAW is a form of extradition, there isn't an adequate legal basis in the Cyprus Constitution to allow the surrender of a Cypriot national. A reform of the Constitution is being discussed on this issue. Until the Constitution is amended, Cypriot authorities may not execute EAWs for surrender of Cypriot nationals (summary of the ruling: doc. 14281/05 of 11 November COPEN 176 EJM 58 EUROJUST 78, available on the website of the EU Council General Secretariat). Since the constitutional reform of 28 July 2006, it is now possible to surrender national citizens as regards facts committed after 1st May 2004.
- **Poland** – By decision of 27 April 2005, the Constitutional Court has ruled that the provision implementing the FD on the EAW allowing the surrender of national citizens was contrary to Article 55 (1) of the Polish Constitution. However, it postponed the annulment of that provision until 4 November 2006 (source: doc. 10207/05 of 21 June 2005). After the Constitutional reform and since 7 November 2006, Poland allows the surrender of Polish citizens subject to the double condition that the offence justifying the EAW is committed outside Polish territory and that it is also an offence under Polish law.

Sources: RAPID – Portuguese Representation of the European Commission: IP/07/1064, available at http://ec.europa.eu/portugal/index_pt.htm; COM(2007)407 final of 11.7.2007 – 2nd report from the European Commission on the implementation of the FD on the EAW: http://eur-lex.europa.eu/LexUriServ/site/en/com/2007/com2007_0407en01.pdf

D. Return guarantee [Law 65/2003, art. 13-c]

The executing judicial authority may provide that the surrender of its nationals (or residents) shall depend on the guarantee of his/her repatriation in order to serve in that country the sentence or security measure imposed by the Portuguese competent court.

Where the Portuguese judicial authority has provided that guarantee, the conviction should explicitly order the surrender of the person to the executing judicial authority, thus ensuring that the detention of the person is consistent with the Portuguese legal provisions regarding deprivation of freedom.

3. Issuing a EAW

3.1. Competent authority to issue a warrant (Law 65/2003, art. 36)

- In Portugal, the EAW is issued by the judicial authority with competence to order the detention or arrest of the requested person under Portuguese law.

In other words,

1. During the **Inquiry/Investigation** stage, Public Prosecutors, for detention of an offender and his/her presentation to the Judge for a first interrogation (art. 257, par. 1 of the Code of Criminal Procedure), or Court Judges, for execution of a coercive measure of preventive detention whose application belongs exclusively to the Examining Judge (art. 268, par. 1, b) of the Code of Criminal Procedure).
2. During the **Examining stage**, the Court Judges.
3. In the **pre-trial stage** started by the decision appointing the day for trial, the Court Judges.
4. In the **post-trial stage**, the Court Judges in charge of the case.

3.2. Content and transmission of the EAW (Law 65/2003, arts. 2 and 3; EAW form; *Circular of the Prosecutor General's Office*)

(see notes on the form)

We draw attention, in particular, to the note on criteria for filling in the EAW form (item 3, p. 20) and on the importance of sending the available identification (item 5, p. 22). Where the whereabouts of the requested person are known, the issuing authority should inquire on the need to provide the guarantees referred in article 13, c) of Law 65/2003 of 23.8.2003.

3.3. Transmission channels (Law 65/2003, arts. 4, 5, 39)

(see notes on the form)

We draw attention, in particular, to the note on items 3 to 5, pp. 21-22.

3.4. Language (Law 65/2003, art. 3, par. 2; FD, art. 8, par. 2)

- The warrant shall be sent together with a translation into the language of the executing State or into another official language of the institutions of the European Communities accepted by that State by means of a declaration deposited with the EU Council General Secretariat.
- The issuing court should provide for a translation.

- Statements by Member States regarding languages accepted when receiving a EAW are made under article 8, par. 2, of the FD:

Austria (AT): German or another language in reciprocity (accepts receiving the EAW in the official language of the MS that also accepts receiving the EAW issued by Austrian judicial authorities in German).

Belgium (BE): French, Dutch, German.

Bulgaria (BU): Bulgarian

Cyprus (CY): Greek, Turkish, English.

Czech Republic (CZ): Czech; Slovakian in relation to Slovakia; German in relation to Austria.

Denmark (DK): Danish, Swedish, English. In urgent cases, accepts translating the EAW but normally a translation is required.

Estonia (EE): Estonian or English.

Finland (FI): Finnish, Swedish, English.

France (FR): French.

Germany (DE): applies reciprocity (accepts receiving the EAW in the official language of a MS that also accepts receiving an EAW issued by German judicial authorities in German).

Greece (EL): Greek.

Hungary (HU): Hungarian or a translation of the EAW into Hungarian. Applies reciprocity partly towards MS that also accept other languages besides their official language; in that case, it accepts English, French, German or the EAW together with a translation in one of those languages.

Ireland (IE): Gaelic or English or another language decided by the Ministry of Justice, or the EAW together with a translation into Irish/English.

Italy (IT): Italian.

Latvia (LV): Latvian, English.

Lithuania (LT): Lithuanian, English

Luxembourg (LU): French, German, English

Malta (MT): Maltese, English.

Netherlands (NL): Dutch, English or another EU official language provided that an English translation is submitted at the same time.

Poland (PL): Polish.

Romania (RO): Romanian, English, French.

Slovakia (SK): Slovakian; on the basis of previous bi-lateral treaties, German with Austria, Czech with the Czech Republic and Polish with Poland.

Slovenia (SI): Slovenian.

Spain (ES): Spanish. Where an EAW is issued through a SIS alert, the executing judicial authority in Spain (Juzgado Central de Instrucción) will ensure translation if not in Spanish.

Sweden (SE): Swedish, Danish, Norwegian, English or a translation to one of those languages.

United Kingdom (UK): English or a translation of the EAW into English.

Source: Annex to the 2nd COM report on the implementation of the FD by MS [Sec(2007)979 of 11.7.07].

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2007:0979:FIN:EN:HTML>

3.5. Deadline for the executing authority to receive the EAW after detention of a person sought by a Portuguese judicial authority on the basis of an alert in the SIS – Schengen Information System (Law 65/2003, art. 4):

Austria (AT): 40 days.
Belgium (BE): 10 days.
Bulgaria (BU): 7 days from the beginning of detention.
Cyprus (CY): 3 days provided that the EAW has been issued before the arrest of the person sought.
Czech Republic (CZ): 40 days.
Denmark (DK): 10 days (not necessary, however, as long as data on the SIS are sufficient).
Estonia (EE): 3 working days.
Finland (FI): as soon as possible or within a time limit set by the competent executing authority. However, the law does not require the transmission of an EAW when the EAW request has been inserted in the SIS.
France (FR): 6 working days.
Germany (DE): 40 days.
Greece (EL): 15 days, can be extended to 30 days.
Hungary (HU): 40 days.
Ireland (IE): the person sought is arrested after the EAW has been received and endorsed by the High Court. When the SIS will be applied to Ireland, 7 days.
Italy (IT): 10 days.
Latvia (LV): 72 H.
Lithuania (LT): 48 H.
Luxembourg (LU): 6 working days.
Malta (MT): 48H, but provisional arrests (without an EAW) are exceptional.
Netherlands (NL): 23 days in relation to MS that participate in the SIS, when the arrest is based on a SIS alert. Same time limit for countries that use Interpol channels.
Poland (PL): 48H.
Romania (RO): 48H as of detention of the person (with intervention of the prosecutor, of the arrested person's lawyer and, where necessary, of an interpreter under the Romanian Code of Criminal Procedure).
Slovakia (SK): a) within 48H, reception of a copy (e.g. fax) of the EAW with translation into Slovak, even if provisional; b) up to 18 days from the arrest, reception of the original EAW together with a translation into Slovak. The court may decide to release the person if those data are not received within 18 days; if the documents are not received within 40 days, the release of the person is mandatory.
Slovenia (SI): 20 days.
Spain (ES): there isn't a legal time limit. Spanish judicial authorities ask to receive the documents as soon as possible and, in any case, within 10 days after the arrest of the requested person.
Sweden (SE): as soon as possible (a few days, as decided by the prosecutor).

United Kingdom (UK): 48H, but provisional arrest is exceptional; if requested, the EAW must be supplied or the person will be released.

Sources: EAW Atlas (http://www.ejn-crimjust.europa.eu/eaw_atlas.aspx).
Appendix to the 2nd COM report on the implementation of the FD by MS [Sec(2007)979 of 11.7.2007].
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2007:0979:FIN:EN:HTML>

3.6. Authority to which the request should be addressed in the executing State (Law 65/2003, art. 4):

The EAW should be directly addressed to the judicial authority that is supposed to execute it in the relevant Member State and, in any event, an alert for the requested person may be issued in the Schengen Information System – SIS.

The European Judicial Network (EJN) has implemented a computer tool that allows the identification of the executing judicial authority to which the warrant should be directly transmitted.

That tool includes information on:

- Contact details of those authorities (executing authorities);
- Language in which the warrant should be issued;
- Time limit for reception of the original warrant as of the date when the person to surrender has been arrested, where the arrest has followed an alert in the SIS;
- Contact details of the issuing authorities;
- Contact details of central authorities and their powers (i.e. for reception and transmission of an EAW; assistance to competent authorities; requests for transit; urgent cases).

The European Arrest Warrant Atlas is available at the EJN website (http://www.ejn-crimjust.europa.eu/eaw_atlas.aspx). The EAW Atlas provides the requested information when you introduce data on the location where you wish to transmit an EAW (district, region, locality or Zip Code).

3.7. Transmission of the EAW and bodies to contact in case of difficult connection to the executing judicial authority (Law 65/2003, art. 5):

- In Portugal, the contact points of the European Judicial Network may be reached at (on the EJN and its activities, see *Circular PGR n.º 6/2000 of 5 June 2000*):

NAME	JUDICIAL AUTHORITY	ADDRESS	PHONE FAX / E-MAIL
Cândida Almeida	Director of DCIAP Lisbon	Rua Alexandre Herculano, nº 60 - 9º P - 1250-012 Lisboa	+ 351.21 384 70 48 calmeida@pgr.pt
Maria José Morgado	Director of DIAP Lisbon	Av. Casal Ribeiro, nº 48 P - 1049-020 Lisboa	+ 351.21 318 86 67 + 351.21 318 86 69 (fax) maria.morgado@diap-lsb.mj.pt
Maria Hortênsia Calçada	Director of DIAP Porto	Rua da Constituição, nº 352 P - 4249-002 Porto	+ 351.22 507 30 41 + 351.22 509 23 12 hortensiacalcada@diapprt.mj.pt
Euclides Dâmaso Simões	Director of DIAP Coimbra	Rua da Sofia, nº 175 P-3000-391 Coimbra	+ 351.239 85 22 85 + 351.239 85 22 86 Euclides.damaso@diap-cmb.mj.pt
Alcides Manuel Rodrigues	Director of DIAP Évora	Rua Serpa Pinto, nº 44 P - 7000-537 Évora	+ 351.266 76 00 60 + 351.266 75 89 88 alcidesrodrigues@evora.diap.mj.pt
Joana Gomes Ferreira	Director of GDDC/PGR and Head of the Division on Judicial Cooperation Procuradoria-Geral da República	Rua do Vale de Pereiro, n.º 2, P - 1269-113 Lisboa	+ 351. 21 382 03 57 + 351.21 382 03 00 + 351.21 382 03 01 (fax) joana.ferreira@gddc.pt

- In cases of serious crime, namely serious, cross-border crime, the National Member of EUROJUST may also be contacted so that he may provide for a timely, efficient coordination within his sphere of powers.

A contact with that authority is strongly advised in the case of serious, cross-border crime, in situations referred in sections 3.8; 3.10.3; and 8 of this Handbook:

José Luís Lopes da Mota	Public Prosecutor	EUROJUST Maanweg, 174 2516 AB The Hague The Netherlands	+ 31 704125230 + 31 704125231 Cellphone +31647168429 JLopesdaMota@eurojust.europa.eu
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3.8. Temporary transfer and hearing of the requested person pending the execution of the European Arrest Warrant (Law 65/2003, art. 6)

- Where the Portuguese judicial authority has issued an EAW for the purpose of conducting a **criminal prosecution**, it may request the executing judicial authority to provide for the hearing of the requested person or to agree to the temporary transfer of the person, pending a decision on the EAW request (paragraph 1).

For that purpose, the Portuguese judicial authority sets the conditions by **mutual agreement** with the executing judicial authority (paragraph 2).

3.8.1. Hearing the requested person (Law 65/2003, art. 6 pars. 1-a) and 3-5)

In this case, and since the FD does not clearly indicate which judicial authority is competent to provide for the hearing, we should bear in mind how article 19, paragraph 1, of the FD was transposed to different MS: for some (e.g. Spain and Portugal), the requested person is heard by the issuing judicial authority, assisted by another person designated in accordance with the law of the issuing State; for others (e.g. France, Luxembourg and the Netherlands) the requested person is heard by the judicial authority of the executing State, assisted by a judicial authority of the issuing State.

In the first case, the issuing judicial authority is supposed to travel to the executing State in order to hear the requested person, together with the person designated to assist him.

The hearing takes place in accordance with the law of the executing State and with the conditions determined by mutual agreement between the issuing and executing judicial authorities.

The executing judicial authority may assign another issuing judicial authority to take part in the hearing, in order to ensure the proper application of the relevant provisions and of the conditions that have been agreed upon with the Portuguese judicial authority.

3.8.2. Temporary transfer of the requested person (Law 65/2003, art. 6 pars. 1-b) and 6)

In this case, the person is supposed to appear personally for an urgent procedure (that is incompatible with the normal surrender procedure).

Where the presence of the person has been requested and obtained in the framework of a Portuguese case, 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.

- Where a mutual agreement is reached, as referred above, there is the possibility of holding a videoconference:

in cases (hearing of an accused person by videoconference with his/her consent) and conditions provided for by Article 10, paragraph 9, of the Convention on Mutual Assistance in Criminal Matters between the Members States of the European Union, implemented in Portugal (Parliament Resolution n.º 63/2001 and Decree of the Presidency of the Republic n.º 53/2001, *in* DR I-A n.º 240 of 16 October 2001).

- Submitting the request: the Portuguese judicial authority may submit the request when transmitting the warrant or at a later stage.

In the first case, the judicial authority may fill in the table of subheading f) of the EAW form, for the requested purpose.

In the second case, the request shall comply with the rules set forth in article 5, paragraph 3, of Law n.º 65/2003: the request may be forwarded by any secure means capable of producing written records under conditions allowing the executing Member State to establish its authenticity.

Note: the need for these requests should be carefully assessed before taking any action, considering the financial costs involved in a temporary transfer.

3.9. Privileges and immunities (Law 65/2003, art. 27, par. 3; FD art. 20)

Where the requested person enjoys a privilege or immunity regarding jurisdiction or execution and the power to waive the privilege or immunity lies with an international organisation or an authority from a State other than the executing State, the Portuguese issuing judicial authority shall request that organisation or authority to exercise that power.

3.10. Acts following a decision in the executing State

3.10.1. Time limit for surrender of the requested person (Law 65/2003, art. 29; FD art. 23)

The surrender shall take place as soon as possible, on a date agreed between the issuing and the executing judicial authorities and no later than 10 days after the final decision on the EAW execution (FD art. 23, pars. 1-2 and Law 65/2003, art. 29, pars. 1-2).

Since Law n.º 65/2003 is not very specific on this point, it is assumed that the general system of international judicial co-operation in criminal matters applies here, and that the procedures for surrender to Portuguese authorities are in charge of INTERPOL.

The surrender within that time limit may be prevented by circumstances **beyond the control** of any of the Member States. Both parties shall then contact each other and agree on a new surrender date, which shall take place within 10 days of the date thus agreed.

The surrender may be temporarily postponed for **serious humanitarian reasons** (e.g.: danger for the requested person's life or health). As soon as those grounds have ceased to exist, a new surrender date shall be agreed and the surrender shall take place within 10 days of the newly agreed date.

3.10.2. Deduction of the period of detention served in the executing State (Law 65/2003, art. 10 par.1)

The period of detention arising from the execution of an EAW in the executing State until the date of surrender in the framework of a case pending in Portugal shall be deducted from the total period of detention to be served as a result of that proceeding. To that end, the competent authority of the executing MS shall transmit the necessary information to the Portuguese judicial authority.

3.10.3. Postponed or conditional surrender (Law 65/2003, art. 31; FD art. 24)

- The executing judicial authority may decide to execute the EAW but to postpone the surrender of the requested person – so that he/she may be prosecuted in the executing Member State or so that he/she may serve a custodial sentence in the framework of a Portuguese case – or, instead, decide his/her **temporary surrender** to the Portuguese judicial authority (at the latter's request) under conditions to be agreed in writing.
- The conditions of that agreement shall be binding on all Portuguese authorities.
- In the framework of the above referenced mutual agreement, the possibility of holding a videoconference may be considered:

in cases (hearing of an accused person by videoconference with his/her consent) and conditions provided for by Article 10, paragraph 9, of the Convention on Mutual Assistance in Criminal Matters between the Members States of the European Union, implemented in Portugal (Parliament Resolution n.º 63/2001 and Decree of the Presidency of the Republic n.º 53/2001, *in* DR I-A n.º 240 of 16 October 2001).

Note: the need for these requests should be carefully assessed before taking any action, considering the financial costs involved in a temporary transfer.

3.10.4. Seizure and handing over of property (Law 65/2003, art. 32; FD art. 29)

Portuguese judicial authorities may also request the executing judicial authority to order, in accordance to its national law, the seizure and handing over of property that may be required as evidence or having been acquired by the requested person as a result of the offence.

For that purpose, item g) of the EAW form should be filled in.

Hence, under this provision, the EAW is a sufficient legal basis that allows requesting the executing judicial authority to seize property, while the EWA is also executed for surrender of a requested person.

It should be noted that the executing judicial authority might also provide for the seizure on its own initiative. In any event, it is up to the **executing judicial authority to define** to what extent, under its legislation, the property may be seized **exclusively on the basis of an EAW** or whether, for example, a supplementary rogatory letter (request for mutual legal assistance in criminal matters) should be issued.

The property shall be handed over even if the EAW cannot be carried out owing to the death or escape of the requested person.

The executing judicial authority may temporarily retain the property, if needed in connection with pending criminal proceedings, or hand it over on the condition that it is returned, namely in case of acquired rights of that MS or of third parties over that property.

4. Transit (Law 65/2003, art. 38)

The principle: Portugal may request transit through or over the national territory of another MS of a person who has been surrendered in execution of an EAW (art. 38, paragraph 1) or of an extradition request (art. 38, paragraph 7).

Authority that submits the request: *Procuradoria-Geral da República* – Prosecutor General's Office, in Portugal (art. 38 paragraph 3, by analogy).

5. Effects of the surrender:

5.1. Speciality rule (Law 65/2003, art. 7)

A. The principle: a person surrendered to Portugal 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, **unless a new request is addressed to the executing State** (art. 7 par. 1).

B. Exceptions: in general, they consist of cases where the surrendered person gave his/her consent or of less serious offences. Therefore, the speciality rule does not apply in the following cases:

- **Tacit consent of the person:** where the person surrendered to Portugal, having had the opportunity to leave Portuguese territory, has not done so within 45 days of his/her final discharge, or has (voluntarily) returned to Portugal [art. 7, par. 2-a)];
- **Non-application of a custodial sentence:** where the offence is not punishable by a custodial sentence or detention order [art. 7, par. 2-b)];

- **Impossibility of certain procedural measures:** where the criminal proceedings do not give rise to the application of measures restricting personal liberty [art. 7, par. 2-c)];
- **Application of a non-custodial sentence:** where 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 [art. 7, par. 2-d)]. This covers cases provided for by section 49 of the Criminal Code (conversion of unpaid fine into subsidiary custody);
- **Consent of the person prior to his/her surrender to Portugal*:** where the person has consented to be surrendered and renounced to the speciality rule before the executing judicial authority prior to his/her surrender [art. 7, par. 2-e)]. For that purpose, the renunciation must be recorded in such a way as to show that the person concerned has expressed it voluntarily and in full awareness of its consequences, and that he/she had the right to be assisted by a legal counsel [under art. 13 of the FD, by remission from its art. 27, par. 3-e)].
- **Consent of the person after his/her surrender to Portugal*:** where the person, after his/her surrender, has expressly renounced entitlement to the speciality rule, with regard to specific offences committed before his/her surrender and subject to one or more proceedings in Portugal [art. 7, par. 2-f)]. In that case, the consent is given before the competent *Tribunal da Relação*, under paragraphs 5 and 6 of Article 18: the judge shall inform the arrested person of the possibility to renounce the entitlement to the speciality rule; that information and the statement of the arrested person are formally recorded in a written record, signed by the arrested person and his/her legal counsel or lawyer. The consent may also be given before the Court where the renunciation is expected to be enforced. In that case, a new hearing before the *Tribunal da Relação* is not necessary [art. 7, par. 3-a)].
- **Consent of the judicial authority*:** where the executing judicial authority that has taken the decision on the surrender gives its consent thereto [art. 7 pars. 2-g) and 4]. In this case, a new request must be submitted (see below, item C).

*NB – Even though the provisions of Article 7 of Law n.º 65/2003 may lead to ambivalent interpretations, the Portuguese issuing authority should follow one of the described approaches in order to safeguard the principles of the “speciality rule”.

C. New request

When, as referred above, the executing judicial authority is invited to give its consent under Article 7, par. 2 - g), this means that the requested person has not given his/her consent, as required by Article 7, par. 2 - e) and f).

Who requests the consent: the *Procuradoria-Geral da República* (Public Prosecution Central Office) (art. 7, par. 5).

Form and content of the request: the request, accompanied by a document with the statements of the requested person and by a new EAW, is submitted by the same channels and in the same language of the previous request [art. 7, par. 4-b)].

The request is considered under the legal regime of the European arrest warrant. Therefore, where necessary, the issuing authority should provide the guarantees set forth in Article 13 of Law n.º 65/2003, which apply where the issuing Member State is Portugal (art. 7, par. 4; see also FD art. 27, par. 4).

6. Central authority (Law 65/2003, art. 9)

Central authorities, which used to play a significant role in the case of extradition, are no longer part of the EAW procedures as a rule, although they may provide support and general information to both parties.

In the case of Portugal, this situation is made clear by certain legal provisions on the duties of the *Procuradoria-Geral da República* (Public Prosecution Central Office) regarding the European Arrest Warrant.

Indeed, Law 65/2003 provides the PGR (Public Prosecution Central Office) with the following powers:

- art. 5, par. 4: assisting judicial authorities in case of difficulties concerning the transmission of the request or the authenticity of any documents needed for execution of the EAW, where not be resolved by direct contacts between the judicial authorities involved;
- art. 7, par. 5: requesting the executing judicial authority its consent for waiver of the speciality rule;
- art. 8, par. 7: requesting the executing judicial authority its consent for subsequent surrender of the requested person to another Member State or for subsequent extradition of that person;
- art. 10, par.2: providing information to the issuing judicial authority on the period of detention served in execution of an EAW (see FD art. 26);
- art. 26, par. 5: informing EUROJUST where, in exceptional circumstances, it is not possible to comply with the time limits for a decision on the person's surrender;
- art. 38, par. 3: receiving and forwarding transit requests.

Article 7 of the FD on the EAW provides for exceptions to this rule, as each Member State may designate a central authority that will be responsible for the administrative transmission and reception of European arrest warrants, when required by the judicial system of the relevant MS.

The identification and coordinates of central authorities, when appointed by Member States, may be consulted in the EAW Atlas, which may be accessed on the EJN website.

7. Portuguese case-law*

- **Enforcement of Article 7 of Law 65/2003 (speciality rule)
Supreme Court Ruling of 21 October 2004 (CJ-ASTJ, year XII, vol. III, p. 200):**

The Supreme Court examined a request for *habeas corpus* on the basis of section 222 (2) of the Code of Criminal Procedure, in a case where the Portuguese court had requested and obtained the surrender of a person for a specific offence after the person had declared that he/she would not renounce the speciality rule.

After the surrender, the first instance court issued a (second) EAW that was supposed to work as a “request for extension of competence”, so that the requested person might be tried for facts other than those for which he/she had been surrendered, in the framework of another case. This EAW was pending and waiting for a reply when the requested person was detained in connection to the proceedings having led to the EAW, as the legal requirements for a detention order were met.

The Supreme Court has ruled that, since the requested person had been arrested in connection to the perpetration of a specific offence, the relevant legal procedures should have been enforced so that the person might be tried and punished for one or more offences other than those referred in the (initial) EAW, prior to his/her departure from Portuguese territory. Therefore, the detention, having taken place in violation of the relevant rules, was illegal and should cease immediately, as the case fell under the provisions of section 222, paragraph 2, b) of the Code of Criminal Procedure.

- **Implementation of Article 7, par. 2, c) of Law n.º 65/2006 (speciality rule)
Ruling of the *Tribunal da Relação* of 4 January 2007 (case n.º 1007/05-9th Section – <http://www.dgsi.pt>)**

The Court of Appeal has ruled that, “for the purposes of Article 27, par. 3, c) of the Framework Decision and of Article 7, par. 2, c) of Law n.º 65/2003, nothing will prevent the continuation of prosecution against the defendant, now appellant, for the facts described in the accusation because no detention order was applied or requested against the defendant besides his submission to TIR (*Termo de Identidade e Residência* – Statement on Identity and Residence) which is a measure directly enforced under the law whenever the relevant person is formally declared as a suspect/accused person, hence inherent to the status of an accused person [see, in this regard, sections 196 (1), 58, 60 and 61 of the Code of Criminal Procedure]”.

A summary of this Court ruling is available in the **case-law section of the Lisbon District Prosecution Department**: <http://www.pgdlisboa.pt/pgdl/>

* The court decisions described here correspond to the available information and are not exhaustive. Since this is an important issue, Judges and Prosecutors are invited to complete and update the relevant data, by keeping the PGR (Prosecution Central Office)/Central Authority informed on any decisions found relevant in this regard.

8. Subsequent international requests

Competent authorities in Portugal may have to request permission to other Member States before taking a decision on subsequent surrender to other States of a person previously surrendered to Portugal. Hence:

- Subsequent surrender or extradition (Law 65/2003, arts. 8 and 14)
 - The principle: **unless a new request is addressed to the executing State**, a person surrendered to Portugal in compliance with a European arrest warrant may not be surrendered by Portugal to another MS nor extradited to a third country for one or more offences committed before his/her surrender to Portugal (Law 65/2003, art. 8, pars. 1 and 5).
 - Exceptions: in general, exceptions to this principle consist of cases where the requested person and/or the executing authority gave their consent for that purpose. Therefore, the rule does not apply in cases provided for by Article 7, par. 2 of Law 65/2003, by remission from its Article 8.
 - Surrender of a person after a EAW surrender
 1. Specific situation: Portugal wishes to surrender to another EU Member State a person who was surrendered by a Member State further to an EAW issued by a Portuguese judicial authority.
 2. Request for consent to the executing MS: the request is submitted by the *Procuradoria-Geral da República* – Prosecution Central Office (Law 65/2003, art. 8, par. 7).
 - Extradition after surrender
 1. Specific situation: Portugal wishes to surrender to a third country – that transmitted an extradition request - a person who was previously surrendered by an EU Member State following an EAW issued by a Portuguese judicial authority.
 2. Request for consent of the executing MS: the request is submitted by the *Procuradoria-Geral da República* – Prosecution Central Office (Law 65/2003, art. 8, par. 7).
 - Surrender after extradition
 1. Specific situation: Portugal wishes to surrender to an EU Member State – in compliance with an EAW – a person who was received from a third country in compliance with an extradition request submitted by Portugal.

2. Request for consent of the third country (requested party): the request is submitted by the *Procuradoria-Geral da República* – Prosecution Central Office (Law 65/2003, arts. 8 and 14, par. 2).

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APPENDIX I

NOTES ON THE EAW FORM

ISSUING THE EAW: PROCEDURES

1. The EAW is a standard form. The lawmaker's intention was to implement a working tool that might easily be recognised and identified as such by the executing judicial authorities. Therefore, the form may be printed and filled in, **but not changed, modified or cut** in any of its tables.

2. The EAW form **may be printed and filled in** after being downloaded from the following websites:

<http://www.ejn-crimjust.europa.eu/>
(EJN website)

http://ue.eu.int/ueDocs/cms_Data/docs/polju/EN/EJN416.pdf
(shortcut to the form in PT)

The electronic format for EAW forms is available, in all official languages of the European Union, at the European Judicial Network website.

The form is also available at the **HABILUS** system.

3. The following notes consist of comments on the EAW form, in order to make it more accessible and to assist judicial authorities when filling the form:

CRITERIA TO APPLY WHEN ISSUING AN EAW

Considering the severe consequences of the execution of an EAW as regards restrictions on physical freedom and free movement of the requested person, the competent authorities should, before deciding to issue a warrant, bear in mind considerations of **proportionality**, by weighing the usefulness of the EAW in the specific case. Therefore, the EAW should not be chosen where the coercive measure that seems proportionate, adequate and applicable to the relevant case is not preventive detention.

The Warrant should not be issued, for instance, where, even though preventive detention is admitted, another coercive, non-custodial, measure may be chosen, such as a statement on identity and residence - *Termo de Identidade e Residência (TIR)* - or another non-custodial coercive measure, which would imply the immediate release of the person after the first judicial hearing.

This interpretation seems consistent with the provisions on the EAW and with the general philosophy behind its implementation, so that the EAW may be an adequate tool for combating serious and organised crime.

It should be noted that where a person is detained abroad in execution of a EAW and later released, for example in circumstances described above, Portugal might be submitted to international courts for violation of human rights of the accused, as the applied measure might be found disproportionate to the intended result.

It should also be reminded that when the accused person may not appear in court, for instance as he/she is abroad, the Portuguese Code of Criminal Procedure provides for alternatives that may be considered before issuing an EAW (see section 334, par. 2, of the CCP).

2. The form should be fully and adequately filled. We suggest that, where tables are not supposed to be filled, the expression NÃO APLICÁVEL / NOT APPLICABLE should be added.

TRANSMISSION CHANNELS

3. *Memo/Circular PGR 4/2004: transmission of the EAW*

The transmission of the European Arrest Warrant does not require a previous authorisation from the Prosecutor General of the Republic. (point 3)

The original warrant shall be transmitted together with a translated form in the language of the executing State or in another language accepted by that State (see above, section 3.4. of this Handbook). The issuing Court is responsible for getting a translation.

4. Therefore, **in a given case**, the national judicial authority should act as follows:

- **A) Where the person to arrest has been located**, an EAW form should be filled in and translated and then directly forwarded to the competent judicial authority of the State where the person is located, for execution.

At the same time, **in order to prevent mobility of the person** to arrest, the issuing authority should also send directly (point 6):

- One filled form directly to the **SIRENE National Office** (at Alameda Salgueiro Maia — Capitão de Abril n.º 13, P - 2660-329 Santo António dos Cavaleiros) for diffusion in the European Union Member States that are part of the Schengen area;
- Three filled forms directly to the **INTERPOL National Office** (at Rua Gomes Freire n.º 213, P - 1150-178 Lisboa) for diffusion in the following EU Member States that are not part of the Schengen Information System yet: Cyprus, Czech Republic, Slovakia, Slovenia, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania and Bulgaria;
- Since Ireland and the United Kingdom aren't part of the Schengen Information System as well and as they consistently don't accept any EAWs unless the requested person has already been located in their territory, the following procedures are suggested:
 - If there is no available information on the location of the requested person, the EAW should be forwarded to the INTERPOL National Office with the indication that its diffusion in the UK and Ireland is not requested. This would prevent the allocation of human and financial resources to the translation and adjustment of the information on the form to the specific requirements of the legal systems of these two countries.
 - Where specific information is available on the whereabouts of the person to be arrested, the general regime should be followed. A form, **duly translated into English**, should then be forwarded to the INTERPOL National Office, for diffusion in the United Kingdom and Ireland as well.

IN OTHER WORDS: 5 originals of the form should be provided, as a whole.

- **B) Where the location of the requested person is not known**, and in order to prevent his/her mobility, the following data should, in all cases, be transmitted (point 6):
 - One filled form should be sent directly to the **SIRENE National Office** (at Alameda Salgueiro Maia — Capitão de Abril n.º 13, P - 2660-329 Santo António dos Cavaleiros) for diffusion in the EU Member States that are part of the Schengen area;
 - Three filled forms directly to the **INTERPOL National Office** (at Rua Gomes Freire n.º 213, P - 1150-178 Lisboa) for diffusion in the following MS that are not part of the Schengen Information System yet: Cyprus, Czech Republic,

- Slovakia, Slovenia, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania and Bulgaria;
- In the case of the United Kingdom and Ireland, as explained in section A) above, the transmission of an EAW is not necessary. The EAW should then be forwarded to the INTERPOL National Office with the indication that its diffusion in the UK and Ireland is not requested. This will avoid allocating human and financial resources to the translation and adjustment of the information on the form to the specific requirements of the legal systems of these two countries.
 - Four international arrest warrants should be sent to the **Procuradoria-Geral da República** (Prosecutor General's Office) as explained in Memos/*Circulares* 35/78 and 1/88, for approval and diffusion, via the Interpol National Office, outside the European Union.

IN OTHER WORDS: in this case, 4 of the originals referred in A) should be provided, plus 4 International Arrest Warrants under the extradition regime.

The Prosecutor General's Office should be informed whenever an European arrest warrant is transmitted to the above referenced Offices, simply for statistic reasons, by sending a copy by e-mail or on paper. (point 7)

- The transmission of European arrest warrants should also be reported to **EUROJUST**, by addressing an information to the National Member (contact above, section 3.7), with a copy of the warrant by e-mail or on paper (**Memo/Circular PGR 15/2004**, point 1);

5. In cases referred in section B) above, where the person still hasn't been located, the court should be warned on the need to regularly confirm the interest of his/her arrest, so that any possible changes may be transmitted in due time to the SIRENE Office and the INTERPOL National Office.

6. The EAW form does not require any additional documents (Law 65/2003, art. 3, par. 1).

However, where available, the relevant identification data should be transmitted, as noted at the end of table a) of the form.

* SISone4ALL – These countries, except for Cyprus, Romania and Bulgaria, have implemented the SISone4ALL computer system, which will allow them to be part of the Schengen Information System and, therefore, to insert data on any persons searched in the SIS. This will follow the approval by the EU Council of the entry into effect of the SIS regarding those countries, upon completion of the technical testing that was supposed to end on 31 August 2007, as well as the evaluation stage.



EUROPEAN ARREST WARRANT¹

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.

<p>a) Information regarding the identity of the requested person:</p> <p>Name:</p> <p>.....</p> <p>Forename(s):</p> <p>....</p> <p>Maiden name, where applicable:</p> <p>.....</p> <p>Aliases, where applicable:</p> <p>Sex:</p> <p>.....</p> <p>Nationality:</p> <p>.....</p> <p>Date of birth:</p> <p>..</p> <p>Place of birth:</p> <p>....</p> <p>Residence and/or known address:</p> <p>.....</p> <p>.....</p> <p>Language(s) which the requested person understands (if known):</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>Distinctive marks/description of the requested person:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>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)</p>

¹ This warrant must be written in, or translated into, one of the official languages of the executing Member State, when that State is known, or any other language accepted by that State.

<p>b) Decision on which the warrant is based:</p> <p>1. Arrest warrant or judicial decision having the same effect:</p> <p>....</p> <p>Type:</p> <p>.....</p> <p>2. Enforceable judgement:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>Reference:</p>

The form should only be filled in items related to the requested purpose. The following tables must be filled according to the selected option, as follows:

N.º 1: should be filled where the EAW is issued for conducting a criminal prosecution. *The decision having led to the detention order should be identified (ex: judicial decision of dd/mm/yyyy imposing a coercive measure of preventive detention).*
 Where n.º 1 of b) has been filled, n.º 1 of c) should also be filled in.

N.º 2: should be filled where the EAW is issued for execution of a custodial sentence. *In case of final judgements, n.º 2 should be filled in, by referring the relevant judgement or ruling, which became final on dd/mm/yyyy.*

Where the EAW is issued so that a person tried in absentia may appear in court: since that judgement does not become final, we suggest that the EAW be filled in as an EAW for purposes of conducting a criminal prosecution. Therefore, it should be filled as follows:

. n.º 1 of subheading b) should specifically mention that a trial has taken place; a note should be added on the Portuguese legal system in this case, making clear that this corresponds to cases under the **first indent of subheading d)**, the second indent of the same subheading corresponding to a contumacy situation.

. n.º 1 of subheading c) should indicate which sanction applies, in abstract, to the offence and which sentence was imposed at the end of a trial in absentia, by explicitly indicating that the sentence is not final yet;

. the first indent of subheading d) should be marked with a clear remission to data on subheading b).

. the following information should be inserted in n.º 1 of subheading b): the sentence rendered in absentia of the summoned person is not final and implies the need for an EAW for the purposes of conducting a criminal prosecution. Therefore, under Portuguese procedure law, where the person was summoned and tried in absentia and the sentence doesn't become final, the requested person is notified as soon as he/she is detained or appears before the competent authorities. An appeal may be lodged within fifteen days as of the date when the judgement has been notified (sections 334 par. 6 and 411 of the Criminal Procedure Code). Where the defendant may not be notified, the law provides that he/she may not be tried in absentia and the proceedings shall be suspended until he/she appears before the authorities or is detained. However, all urgent measures shall be carried out, so that evidence may not be affected or lost (section 335 of the Criminal Procedure Code).

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:

.....

N.º 1: applies where the surrender is requested for conducting a criminal prosecution or where the sentence hasn't become final. In this case, please indicate which sanction applies in abstract. *It should be noted that, under art. 2, par. 1 of Law 65/2003 of 23.8.2003, the EAW may be issued for facts punishable by a custodial sentence or a detention order for a maximum period of at least 12 months.*

As referred above, according to the proportionality principle that should apply when deciding to transmit an EAW, the latter should only be issued where there is an effective chance that the requested person will be submitted to preventive detention.

N.º 2: this possibility only applies to surrender requests for execution of a custodial sentence following a final decision. In this case, *the length of the custodial sentence or detention order imposed should be indicated. Under article 2, par. 1 of Law 65/2003 of 23.8.2003, the EAW may be issued for this purpose as long as the imposed sanction is not lower than 4 months. In other words, unlike the European Convention on Extradition, the FD on the EAW has not set a minimum amount of the remaining sentence for an EAW to be issued. Indeed, the provisions of article 2, par. 1, of the FD only apply to a sentence of at least 4 months, in case of a conviction. However, on grounds of proportionality as referred above, the decision to issue a warrant should be carefully weighed where the remaining sentence is lower than 4 months and should be limited, namely, to situations where the specific circumstances of the case imply the need to issue a EAW.*

Shortly, an EAW should only be issued for sentences of at least 4 months or where the remaining sentence to be served is not lower than 4 months.

d) Decision rendered in absentia and:

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

or

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

Specify legal guarantees:

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

Under the Portuguese legal system, the issuing body may only fill in the **first indent** in the relevant cases, as the second indent would rather apply to situations of contumacy.

Therefore, this table should be filled in articulation with section 1. of table b) - see the corresponding note – in the following manner: filling in the first indent and clearly remitting to the indications included in table b).

NB: It should be noted that, since Portuguese law does not provide for the right to request a new trial, there was a case where the surrender was denied by Dutch authorities for lack of sufficient guarantees. The need to clarify this issue has been raised by the Portuguese Member of EUROJUST under article 32, par. 1 of Decision 2002/187/JHA of 28.02.2002 (setting up EUROJUST) and article 13 of Law n.º 36/2003 of 22.8.2003 (implementing rules of the Council Decision).

e) Offence(s):

This warrant relates to in total . . . offence(s).

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;

<p>0 arson; 0 crimes within the jurisdiction of the International Criminal Court; 0 unlawful seizure of aircraft/ships; 0 sabotage.</p> <p>II. Full description of offence(s) not covered by section I above:</p>

This section should include a short explanation on the facts justifying the detention request, in compliance with the relevant constitutional and statutory provisions on the rights of offenders [CPC, sections 58-61, *maxime* 61- g), and 258.].
It should be reminded that the fact description should consist only of a short summary and not, as sometimes is the case, of a transcript of whole pages of the files (i.e. proven facts, the judge's considerations or decisions, etc.)..

Where the offence is one of those mentioned in the list of section I (see art. 2, par. 2, of Law n.º 65/2003 of 23.8.2003), the specific offence giving rise to the request should be ticked on the list. Indeed, the system allows the requested option or options to be indicated in each particular item.

If the offence(s) is/are not covered by the list, it/they should be added by filling in the section II of table e) above.

<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>

This item may correspond to the need felt by the Portuguese judicial authority to avail itself of the possibilities provided by article 6 of Law n.º 65/2003: to make arrangements for the hearing of the requested person or for his/her temporary transfer, where that request is submitted together with the EAW (see [item 3.8](#) of this Handbook, above). [See also item 3.9](#)



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):

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

Where this kind of cooperation is not requested, the expression “Does not apply” will be included here. [See item 3.10.4.](#)

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.

In the case of Portugal, the expression “Does not apply” should also be included here, as the Portuguese legal system does not allow the enforcement of custodial life sentences or lifetime detention orders.



i) The judicial authority which issued the warrant:

Official name:
.....
.....

Name of its representative¹ (1):
.....
.....

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

File reference:
.

Address:
.....
.....

Tel: (country code) (area/city code) (...)

Fax: (country code) (area/city code) (...)

E-mail:
.....

Contact details of the person to contact to make the 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: (country code) (area/city code) (...)

¹ In the different language versions, a referente to the ‘holder’ of the judicial authority will be included.



Fax: (country code) (area/city code) (...)
.....
E-mail:
.....

Data of the judicial authority that filled the form should be included above.
The expression “Does not apply” will be included in the item on the Central Authority.
As a matter of fact, although Law 65/2003 has granted specific powers to the *Procuradoria-Geral da República*, Portugal has not appointed a Central Authority with competence to transmit EAWs under article 7 of the FD 2002/584/JHA of 13.6.2002 (see Doc. 5165/04 of 9 January 2004, COPEN 5 EJM 1 EUROJUST 1, available on the EU Council General Secretariat website). Under Law 65/2003, the Prosecutor General’s Office has the following competences:

- art. 5, par. 4: assisting judicial authorities in case of difficulties concerning the transmission of the request or the authenticity of any document needed for the execution of the EAW, where these may not be dealt with by direct contacts between the judicial authorities involved
- art. 7, par. 5: requesting the executing judicial authority its consent to waiver the benefit of the speciality rule
- art. 8, par. 7: requesting the executing judicial authority its consent to the ulterior surrender of the requested person to another Member State or to the ulterior extradition of that person

For further information, see [section 6](#) of this Handbook, above.

Signature of the issuing judicial authority and/or its representative:
.....
.....
.....
Name:
.....
Post held (title/grade):
.....
Date:
.....
Official stamp (if available)

APPENDIX II

4 EXAMPLES OF EAWs

1ST EXAMPLE OF A
EUROPEAN ARREST WARRANT²
(EAW for purposes of conducting a criminal prosecution — simple version)

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.

² 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.

Case n.º: 00/00/0.XXXXXX

Our reference: **0000000**

a) Information regarding the identity of the requested person:

Name: **FF**.

Forename(s): **E**

Maiden name, where applicable:

Aliases, where applicable: **fill in, where applicable**

Sex: **fill in**

Nationality: **fill in**

Date of birth: **fill in** .

Place of birth: **fill in** .

Residence and/or known address: **fill in**.

Language(s) which the requested person understands (if known): **where applicable**.

Distinctive marks/description of the requested person: **fill in, where applicable**.

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)

b) Decision on which the warrant is based:

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

Type: **Court order rendered on dd/mm/yyyy having determined a coercive measure of preventive detention under sections 191, 193, 200 (1) a) and 204 of the Criminal Procedure Code.**

2. Enforceable judgement: **does not apply**

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): **the files show that the requested person may have committed an offence of trafficking in drugs punishable with a custodial penalty of 4 to 12 years**

2. Length of the custodial sentence or detention order imposed:

Remaining sentence to be served: **does not apply**

d) Decision rendered in absentia and: **does not apply**

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

or

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

Specify legal guarantees:

e) Offence(s):

This warrant relates to in total **1** offence.

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: **on 24 December 2005 at Lisbon Airport, the Judiciary Police found out that an aeroplane of Air Portugal TAP flight 3452 had carried a suitcase that had been sent by the defendant from Eldorado Airport of Santa Fé, Bogotá. The suitcase contained 2359 grams of a product that, once tested, was confirmed as cocaine. This product which, just like the suitcase, belonged to the defendant, was supposed to be sold to third parties, against payment, in Amsterdam, the destination city of the defendant, or in other towns of the Netherlands, where he has his residence.**

Nature and legal classification of the offence(s) and the applicable statutory provision/code: **1 offence of trafficking in drugs, in violation of article 21 of Decree-Law n.º 15/93 of 22nd January 1993.**

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: **does not apply.**

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) **We request the temporary surrender of the person referred above and request his detention and surrender during the execution procedure, for personal confrontation in the framework of a criminal prosecution related to this European Arrest Warrant. We guarantee that during the proceedings in Portugal the requested person will remain under custody and that, once these procedures have been performed, he will be returned to the State of execution.**

g) This warrant pertains also to the seizure and handing over of property which may be required as evidence: **does not apply**

This warrant pertains also to the seizure and handing over of property acquired by the requested person as a result of the offence: **does not apply**

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: **does not apply.**

- 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: **Number/Name of the Criminal Court in Lisbon**

Name of its representative¹ **J. P. P. SILVA**

Post held (title/grade): **Judge**

File reference: **Case n.º 00/00/0.XXXXX.**

Address **of the issuing authority**

Tel: (country code) (area/city code) (...) **of the issuing authority**

Fax: (country code) (area/city code) (...) **.of the issuing authority**

E-mail **of the issuing authority**

Contact details of the person to contact to make the necessary practical arrangements for the surrender: **if possible, please indicate the name and contact details of a judicial official who is familiar with a foreign language (French/English)**

Where a central authority has been made responsible for the transmission and administrative reception of European arrest warrants: **does not apply**

Name of the central authority: **does not apply**

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

Address:

Tel: (country code) (area/city code) (...)

Fax: (country code) (area/city code) (...)

E-mail:

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

J.P.P. SILVA
Judge

Date:

Official stamp (if available):

¹ In the different language versions, a referente to the ‘holder’ of the judicial authority will be included.

2ND EXAMPLE OF A EUROPEAN ARREST WARRANT³

(EAW for purposes of conducting a criminal prosecution — complex version)

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.

³ 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.

Case n.º: 00/00/0.XXXXXX

Investigation

Our reference: **0000000**

a) Information regarding the identity of the requested person:

Name: **XX**.

Forename(s): **P**

Maiden name, where applicable:

Aliases, where applicable: **fill in, where applicable**

Sex: **fill in**

Nationality: **fill in**

Date of birth: **fill in** .

Place of birth: **fill in** .

Residence and/or known address: **fill in**.

Language(s) which the requested person understands (if known): **where applicable**.

Distinctive marks/description of the requested person: **fill in, where applicable**.

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)

b) Decision on which the warrant is based:

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

Type: **decision rendered on dd/mm/yyyy by the Public Prosecutor at the Department on Prosecution and Criminal Investigation (DCIAP) having ordered the presence of the suspect for judicial interrogation, under sections 202 (1) a), 254 (1) a) and 257 (1), all of the Criminal Procedure Code.**

2. Enforceable judgement: **does not apply**

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): **the files show that the requested person may have been a co-perpetrator, in effective participation with other offenders, of: three offences of aggravated illegal restraint, punishable with a custodial penalty of 2 to 10 years; one offence of non-assistance punishable with a custodial penalty of not more than 2 years or fine of not more than 240 days; one offence of aggravated homicide in the attempted form, punishable with a custodial penalty between 2 years 4 months and 24 days and 16 years and 8 months; and an offence of aggravated homicide in the achieved form, punishable with a custodial penalty of 12 to 25 years**

2. Length of the custodial sentence or detention order imposed:

Remaining sentence to be served: **does not apply**

d) Decision rendered in absentia and: **does not apply**

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

or

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

Specify legal guarantees:

e) Offence(s):

This warrant relates to in total **6** 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*: **some time between 7 and 12 March 2004, unknown persons have entered a house that belonged to the defendant PXX, in the neighbourhood of Cova da Moura, from where a significant amount of narcotic drugs was stolen.**

The said defendant, together with a group of individuals who normally hang out with him and who act under his leadership – identified in the files as TXX, JYY and FZZ – has deprived of their freedom two residents of the neighbourhood of Cova da Moura, FF and GG, in order to force them to inform where were the stolen narcotic drugs and who had taken them.

On 12 March 2004 at undetermined time, in order to achieve a previously agreed plan under the leadership of PXX, the defendants FZZ, TXX and an unidentified person have gone twice to the neighbourhood of Reboleira-Amadora. Once there, by exhibiting weapons, they compelled FF and GG to enter the vehicle they drove, with unidentified plate. These persons were taken to a house at undetermined location but probably at Amadora, where they were kept until 14 March 2004 inclusive.

During that time, FF and GG were punched and kicked by members of the gang, including all defendants directed by PXX. However, FF and GG did not indicate the location of the narcotic drugs, nor who had stolen them.

Later on, the gang drove in several cars to the neighbourhood of Cova da Moura in order to hold other men and compel them to reveal the location of the narcotic drugs. Following an arranged plan, on 13 March 2004 at 8:30 PM, at least three covered men, under the direction of PXX, went to the same neighbourhood, where they shot guns in several directions. One of those shots injured the victim HH who suffered wounds that would be likely, in themselves, to cause his death. The only reason why he did not die was the timely assistance of his relatives who were with him and who took him to a hospital where he had surgery.

After that, they saw the victim MM and shot twice at him. They dragged him towards the cars and took him to the same house where they kept FF and GG. Four hours after shooting MM, as he was in a lot of pain and didn't stop screaming for help, the members of the gang and their leader PXX ordered two unidentified members of the group to take him to the hospital. They chose a private hospital rather than a public one, in order to avoid Police control, and took an ID card from the victim FF, belonging to a friend of his, so that MM might give it at the hospital reception as though it was his. MM died just before being examined by the doctor, as he had a haemorrhage caused by the severe wounds he had suffered when he was shot.

*NB: In more complex cases, like this one, a longer description is necessary in order to document the main aspects of the facts. However, it should be noted that the description should be as short as possible and should only include those data that are essential for a decision on the EAW by the executing authority. The full transcript of documents in the files should therefore be avoided. A short description will also be useful for the insertion of alerts in the SIS by the SIRENE National Office.

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

3 offences of illegal restraint, contrary to section 158 (1) and (2), subheadings a) and b) of the Criminal Code;

1 offence of non-assistance to a wounded person, contrary to section 200 (2) of the Criminal Code;

1 offence of aggravated homicide in the attempted form, contrary to sections 131, 132 (1) and (2) g), 22, 23, 72 and 73 of the Criminal Code;

1 offence of aggravated homicide in the achieved form, contrary to sections 131, 132 (1) and (2) g) of the Criminal 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 description of offence(s) not covered by section I above: **1 offence of non-assistance to a wounded person, contrary to section 200 (2) of the Criminal Code.**

f) Other circumstances relevant to the case (optional information): **does not apply**

(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: **we request the seizure and handing over of the gun described below, as there are strong reasons to believe that the requested person is in its possession, as well as any ID or travel documents in his possession when arrested.**

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): **please describe the weapon here**

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: **does not apply.**

- 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: ***Departamento Central de Investigação e Acção Penal (Department on Prosecution and Criminal Investigation in Lisbon)***

Name of its representative¹ **R. P. P. SILVA**

Post held (title/grade): **Public Prosecutor**

File reference: **Investigation n.º 00/00.0XXXXX.**

Address **of the issuing authority**

Tel: (country code) (area/city code) (...) **of the issuing authority**

Fax: (country code) (area/city code) (...) **.of the issuing authority**

E-mail **of the issuing authority**

Contact details of the person to contact to make the necessary practical arrangements for the surrender: **if possible, please indicate the name and contact details of a judicial official who is familiar with a foreign language (French/English)**

Where a central authority has been made responsible for the transmission and administrative reception of European arrest warrants: **does not apply**

Name of the central authority: **does not apply**

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

Address:

Tel: (country code) (area/city code) (...)

Fax: (country code) (area/city code) (...)

E-mail:

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

R.P.P. SILVA
Public Prosecutor

Date:

Official stamp (if available):

¹ In the different language versions a referente to the ‘holder’ of the judicial authority will be included.

3RD EXAMPLE OF A
EUROPEAN ARREST WARRANT⁴
(EAW for execution of a sentence)

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.

⁴ 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.

Case n.º: 00/00.0XXXXX

Proceedings for cancellation of prison leave

Our reference: **0000000**

a) Information regarding the identity of the requested person:

Name: **MM.**

Forename(s): **J**

Maiden name, where applicable:

Aliases, where applicable: **fill in, where applicable**

Sex: **fill in**

Nationality: **fill in**

Date of birth: **fill in** .

Place of birth: **fill in** .

Residence and/or known address: **fill in**.

Language(s) which the requested person understands (if known): **where applicable**.

Distinctive marks/description of the requested person: **fill in, where applicable**.

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)

b) Decision on which the warrant is based:

1. Arrest warrant or judicial decision having the same effect: **does not apply**

Type:

2. Enforceable judgement: **final as of 21 May 1995**

Reference: **case n.º 00/00 of the Court of Chaves**

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): **does not apply**

2. Length of the custodial sentence or detention order imposed: **19 months**

Remaining sentence to be served: **12 months and 17 days**

d) Decision rendered in absentia and: **does not apply**

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

or

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

Specify legal guarantees:

e) Offence(s):

This warrant relates to in total **1** offence.

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*: **on 4 and 5 May 1995 during the night, the requested person led the minor ZZ to prostitute herself at ..., in the town of Chaves, and took for himself the money she made from that activity.**

Nature and legal classification of the offence(s) and the applicable statutory provision/code: **encouragement to prostitution, contrary to section 176 (1) of the Criminal 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 description of offence(s) not covered by section I above: **does not apply**

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)

Unlawful absence from Prison because the offender did not return to the Prison facility after a long-term leave from 13 to 19 November 1995

g) This warrant pertains also to the seizure and handing over of property which may be required as evidence: **does not apply**

This warrant pertains also to the seizure and handing over of property acquired by the requested person as a result of the offence: **does not apply**

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: **does not apply.**

- 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: ***Tribunal de Execução das Penas do Porto*** (Court of Execution of Penalties of Porto)

Name of its representative¹ **J. P. P. SILVA**

Post held (title/grade): **Judge**

File reference: **Proceedings for revocation of prison leave n.º 00/00.0XXXXX.**

Address: **of the issuing authority**

Tel: (country code) (area/city code) (...) **of the issuing authority**

Fax: (country code) (area/city code) (...) **.of the issuing authority**

E-mail: **of the issuing authority**

Contact details of the person to contact to make the necessary practical arrangements for the surrender: **if possible, please indicate the name and contact details of a judicial official who is familiar with a foreign language (French/English)**

Where a central authority has been made responsible for the transmission and administrative reception of European arrest warrants: **does not apply**

Name of the central authority: **does not apply**

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

Address:

Tel: (country code) (area/city code) (...)

Fax: (country code) (area/city code) (...)

E-mail:

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

J.P.P. SILVA
Judge

Date: **dd-mm-yyyy**

Official stamp (if available):

¹ In the different language versions a referente to the ‘holder’ of the judicial authority will be included.

4TH EXAMPLE OF A
EUROPEAN ARREST WARRANT⁵
(EAW issued in cases of a sentence rendered in absentia)

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.

⁵ 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.

Case n.º: 00/00/0.XXXXXX
X Criminal Court of Lisbon

Our reference: **0000000**

a) Information regarding the identity of the requested person:

Name: **XX**

Forename(s): **A**

Maiden name, where applicable:

Aliases, where applicable: **fill in, where applicable**

Sex: **fill in**

Nationality: **fill in**

Date of birth: **fill in** .

Place of birth: **fill in** .

Residence and/or known address: **fill in**.

Language(s) which the requested person understands (if known): **where applicable**.

Distinctive marks/description of the requested person: **fill in, where applicable**.

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)

b) Decision on which the warrant is based:

Example 1 (the court orders the arrest for execution of a coercive measure of preventive detention)

1. Arrest warrant or judicial decision having the same effect: **court decision rendered on dd/mm/yyyy, having determined the detention for execution of a coercive measure of preventive detention, following a conviction after the offender's judgement in absentia**

NB: the decision rendered in absentia does not become final and gives rise to an EAW for purposes of conducting a criminal prosecution. Therefore, under the Portuguese procedural system, where

the defendant has been summoned and tried in absentia, the sentence does not become final and is notified to the defendant as soon as he/she is arrested or appears before the authorities on his/her own initiative. The time limit to lodge an appeal is fifteen days as of the date of notification of the sentence (sections 334 (6) and 411 (1) of the Criminal Procedure Code). Where it is not possible to summon the defendant, the law provides that he/she may not be tried in absentia and the proceedings will be suspended until his/her presentation or detention. However, urgent acts or formalities in order to avoid the loss of evidence may be carried out (section 335 of the Criminal Procedure Code).

Example 2 (the court orders the detention for notification of the sentence)

NB: in these cases, the need to issue an EAW should be carefully examined considering, on one hand, the intended goals and, on the other hand, the fact that the surrender procedure implies the deprivation of freedom of the requested person.

1. Arrest warrant or judicial decision having the same effect: **court decision rendered on dd/mm/yyyy, having determined the detention for execution of a procedure of notification of a sentence rendered after the trial in absentia of the defendant. We remind that the foreign judicial authority does not make a notification but might possibly rather order the surrender following the execution procedure, after which the Portuguese authority will make the notification as soon as the requested person is already on Portuguese territory.**

NB: the sentence rendered in absentia does not become final and gives rise to an EAW for purposes of conducting a criminal prosecution. Therefore, under the Portuguese procedural system, where the defendant has been summoned and tried in absentia, the sentence does not become final and is notified to the defendant as soon as he/she is arrested or appears before the authorities on his/her own initiative. The time limit to lodge an appeal is fifteen days as of the date of notification of the sentence (sections 334 (6) and 411 (1) of the Criminal Procedure Code). Where it is not possible to summon the defendant, the law provides that he/she may not be tried in absentia and the proceedings will be suspended until his/her presentation or detention. However, urgent acts or formalities in order to avoid the loss of evidence may be carried out (section 335 of the Criminal Procedure Code).

NB: on the table of subheading d), the first option should be clearly indicated.

2. Enforceable judgement: **does not apply**

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): **imprisonment for 4 to 12 years. After a judgement in absentia that did not become final, a custodial sentence of 5 years and 3 months was imposed.**

2. Length of the custodial sentence or detention order imposed: **see item 1**

Remaining sentence to be served: **see item 1**

d) Decision rendered in absentia and:

- **the person concerned has been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered in absentia: see subparagraph b), item 1.**

or

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

Specify legal guarantees: **does not apply**

e) Offence(s):

This warrant relates to in total **1** offence.

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: **it was proven that, on 24 December 2005, in Lisbon Airport, a TAP aeroplane, after making flight TP 3452, was bringing on board a suitcase that had been sent by the defendant at Eldorado Airport, in Santa Fé de Bogotá, which contained 2359 grams of a product that, once tested, was confirmed as cocaine. That product which, just like the suitcase, belonged to the defendant, was supposed to be sold for profit to third parties in Amsterdam, which was the destination city of the defendant, or in other towns of the Netherlands, where the defendant had his residence.**

Nature and legal classification of the offence(s) and the applicable statutory provision/code: **1 offence of trafficking in narcotic drugs, contrary to article 21 of Decree-Law n.º 15/93 of 22nd January 1993**

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;**

0 illicit trafficking in weapons, munitions and explosives;

0 corruption;

0 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;

0 laundering of the proceeds of crime;

0 counterfeiting of currency, including the euro;

0 computer-related crime;

0 environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;

0 facilitation of unauthorised entry and residence;

0 murder, grievous bodily injury;

0 illicit trade in human organs and tissue;

0 kidnapping, illegal restraint and hostage-taking;

0 racism and xenophobia;

0 organised or armed robbery;

0 illicit trafficking in cultural goods, including antiques and works of art;

0 swindling;

0 racketeering and extortion;

0 counterfeiting and piracy of products;

0 forgery of administrative documents and trafficking therein;

0 forgery of means of payment;

0 illicit trafficking in hormonal substances and other growth promoters;

0 illicit trafficking in nuclear or radioactive materials;

0 trafficking in stolen vehicles;

0 rape;

0 arson;

0 crimes within the jurisdiction of the International Criminal Court;

0 unlawful seizure of aircraft/ships;

0 sabotage.

II. Full description of offence(s) not covered by section I above: **does not apply**

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) **does not apply**

g) This warrant pertains also to the seizure and handing over of property which may be required as evidence: **does not apply**

This warrant pertains also to the seizure and handing over of property acquired by the requested person as a result of the offence: **does not apply**

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: **does not apply.**

- 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: ***Vara Criminal X de Lisboa (X Criminal Court of Lisbon)***

Name of its representative¹ **J. P. P. SILVA**

Post held (title/grade): **Judge**

File reference: **Case n.º 00/00.0XXXXX.**

Address: **of the issuing authority**

Tel: (country code) (area/city code) (...) **of the issuing authority**

Fax: (country code) (area/city code) (...) **of the issuing authority**

E-mail: **of the issuing authority**

¹ In the different language versions a referente to the ‘holder’ of the judicial authority will be included.

Contact details of the person to contact to make the necessary practical arrangements for the surrender: if possible, please indicate the name and contact details of a judicial official who is familiar with a foreign language (French/English)

Where a central authority has been made responsible for the transmission and administrative reception of European arrest warrants: **does not apply**

Name of the central authority: **does not apply**

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

Address:

Tel: (country code) (area/city code) (...)

Fax: (country code) (area/city code) (...)

E-mail:

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

J.P.P. SILVA
Judge

Date: **dd-mm-yyyy**

Official stamp (if available):