

# Ministerio de Justicia



**ACT 23/2014, OF 20 NOVEMBER, ON  
MUTUAL RECOGNITION OF JUDICIAL  
DECISION IN CRIMINAL MATTERS IN  
THE EUROPEAN UNION**

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# ACT 23/2014, OF 20 NOVEMBER, ON MUTUAL RECOGNITION OF JUDICIAL DECISIONS IN CRIMINAL MATTERS IN THE EUROPEAN UNION

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## PREAMBLE

### I

More than a decade after the Treaty of Amsterdam foresaw the creation of an area of freedom, security and justice in the European Union, the Member States, and Spain among them, continue to reinforce their judicial cooperation mechanisms by applying the two basic principles behind such cooperation, namely, harmonisation of the laws and regulations and mutual recognition of judicial decisions.

The principle of mutual recognition, based on the mutual trust amongst the Member States and enshrined at the Tampere European Council as the “cornerstone” of civil and criminal judicial cooperation within the European Union, amounted to a true revolution in cooperation relations among Member States, by allowing a resolution issued by a judicial authority of a Member State to be recognised and executed in another Member State, except when any of the grounds concurs permitting such a recognition to be refused. Finally, the Treaty on the Functioning of the European Union has entailed enshrining mutual recognition as the legal principle on which, pursuant to its Article 82, judicial cooperation in criminal matters is based.

This new model of judicial cooperation brings about a radical transformation in the relations among the Member States of the European Union, by replacing the former communications between central or governmental authorities with direct communication between judicial authorities, suppressing the principle of double criminality in relation to a pre-established list of crimes and regulating, as exceptional, rejection of recognition and execution of a decision, based on a limited list of reasons

for rejection. Moreover, it has managed to simplify and expedite the procedures for transmission of judicial decisions, by using a form or certificate that must be filled in by the competent judicial authority to forward a decision to another Member State.

In the criminal field, according to the terms set forth in the Programme of measures intended to implement the principle of mutual recognition of decisions on criminal matters, said principle must be applicable to each one of the phases of the criminal proceedings, before, during and even after a condemnatory judgement is handed down.

## II

The first time this mutual recognition principle was embodied, within the field of Criminal Law, in a legal instrument of the European Union was in Framework Decision 2002/584/JHA, on the European arrest warrant and the surrender procedures between Member States, by a surrender process with greater speed and legal security. That regulation was immediately transposed to Spanish Law through Act 3/2003, of 14 March, on the European arrest and surrender warrant and Organic Act 2/2003, of 14 March, that complements the former.

The second framework decision adopted in this field was Framework Decision 2003/577/JHA, of 22 July 2003, on execution in the European Union of orders freezing property or evidence, which allows the judicial authority of the State of origin to take a decision resolving enforcement of a provisional seizure in another Member State, of properties that are to be subject to subsequent confiscation, or that are to be used as evidence in trial. Transposed to Spanish Law through Act 18/2006, of 5 June, on enforcement in the European Union of decisions on freezing of property and evidence in criminal proceedings, and Organic Act 5/2006, of 5 June, that complements the former, by amending Organic Act 6/1985, of 1 July, on the Judiciary.

Thirdly, Framework Decision 2005/214/JHA, of 24 February 2005, on application of the principle of mutual recognition to financial penalties, allowed the issuing State to have recourse to the judicial authority of the State in which the person obliged to pay a financial penalty arising from committing a criminal offence (or administrative one in certain cases) owns property, obtains income or has his or her ordinary residence, to execute that penalty. Transposition of that provision to Spanish Law was performed by means of Act 1/2008, of 4 December, on execution in the European Union of decisions imposing financial penalties, and Organic Act 2/2008,

of 4 December, on amendment of Organic Act 6/1985, of 1 July, on the Judiciary, that complements the former.

One year after, Framework Decision 2006/783/JHA, of 6 October 2006, on application of the principle of mutual recognition to confiscation orders, allowed a decision handed down in one State ordering confiscation of an array of properties to be recognised and executed by a Court of the State where the properties affected are located. Until today, this has been the latest framework decision on mutual recognition of judgements in criminal matters transposed to Spanish Law, through Act 4/2010, of 10 March, on enforcement in the European Union of judicial decisions on confiscation and Organic Act 3/2010, of 10 March, on amendment of Organic Act 6/1985, of 1 July, on the Judiciary, complementing the former.

In 2008, various Framework Decisions were adopted on mutual recognition of judicial resolutions handed down in criminal matters. Firstly, Framework Decision 2008/909/JHA, of 27 November 2008, on application of the principle of mutual recognition of judgements in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union was adopted. This allows a condemnatory resolution imposing custodial sentences or measures involving deprivation of liberty to be executed in another Member State when this contributes to facilitate reintegration of the sentenced person into society. It was also accompanied by Framework Decision 2008/947/JHA, of 27 November 2008, on application of the principle of mutual recognition to judgements and probation decisions with a view to the supervision of probation measures and alternative sanctions, which allows transfer to another Member State other than that sentencing of the responsibility to ensure the person sentenced complies with the probation measures or alternative sanctions previously imposed in the former. Lastly, in 2008, Framework Decision 2008/978/JHA, of 18 December 2008, on the European evidence warrant (EEW) for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters, was adopted, covering judicial decisions issued by the competent authorities of a Member State for the purpose of obtaining objects, documents and data from another Member State for use in proceedings in criminal matters.

In 2009, within this sphere, the first Framework Decision amending previous ones was approved, namely, Framework Decision 2009/299/JHA, of 26 February 2009, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial. Among these regulations there is also Framework Decision 2009/829/

JHA, of 23 October 2009, on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention, allowing the judicial authorities of a Member State to supervise resolutions passed in criminal proceedings held in another Member State imposing one or more probation supervision measures on a natural person.

Finally, as a consequence of the changes introduced by the Treaty of Lisbon in the structure of the European Union and in its regulatory instruments, the first directive in this field was approved on 13 December 2011. It is Directive 2011/99/EU, of 13 December 2011, on the European protection order, that is also included in this Act, and that has the object of extending the protection imposed through the relevant measures by the competent authority of a Member State to protect a person from possible criminal acts by another, in the territory of the Member State to which that person may travel to reside or stay for a specific period of time.

Faced with that prolific regulatory task carried out by the institutions of the European Union, Member States have the obligation to undertake intense legislative work to include the provisions approved to date in their laws. In Spain, moreover, if the regulatory technique used up to present in the transposition of the first four Framework Decisions were to remain unchanged this would involve an enormous production of legal provisions, not only due to the multiple ordinary Acts of Parliament that would have to be passed, but also due to the relevant complementary Organic Acts that would be required to systematically amend the Organic Act on the Judiciary.

Due to this, it has been decided to change the regulatory technique used until present in the transposition of these European provisions, with the aim not only of guaranteeing better transposition but also of reducing regulatory dispersion and the complexity of provisions that, moreover, must allow the different legal operators to perform their task of applying the Law in a field that is in itself both complex and new.

Thus, this Act brings to an end the technique of individual inclusion of each Framework Decision or European Directive into an ordinary Act and its relevant complementary Organic Act. Rather, this Act is an amalgamated text that gathers into one all the Framework Decisions and the Directive approved up to present on matters of mutual recognition of decisions on criminal matters. It includes both those already transposed into Spanish Law, as well as those pending transposition, avoiding the regulatory dispersion mentioned and facilitating knowledge and use thereof by legal

professionals. Moreover, it is carried out through a scheme that makes it easy to include future directives that may be adopted on such matters.

This Act is also accompanied by an Organic Act amending the Organic Act on the Judiciary, which avoids the continual reforms it would have to be subject to if the task of transposition were to be performed individually.

### III

The Act begins with a brief Preliminary Title, going on to being structured in a series of Titles. The first of these Titles contains the regime, both of transmission as well as recognition of decisions on criminal matters in the European Union, including rules not only applicable to different instruments but also some in a more reduced field in relation to just one or several of these instruments. Thus, in each specific case, the persons entrusted with implementation are required to follow both these general rules that assure overall coherence, as well as the specific provisions of each one of such instruments.

The following Titles regulate each one of the instruments of mutual recognition, following an identical scheme in which some common provisions are set out, other provisions are established to indicate the competent judicial authority in each case, as well as in order to transmit a decision on mutual recognition to other States of the European Union and, finally, other provisions set out the rules for execution in Spain of the decisions that are transmitted by the competent authorities of the other Member States. The final part of the Act contains three Additional Provisions, three Transitional Provisions, one Repealing Provision, four Final Provisions and thirteen Addenda. The latter include the forms or certificates that must be used by the Spanish judicial authorities to transmit judicial decisions or to serve the notices required by the Act.

### IV

The Preliminary Title contains the basic provisions that form the legal regime for mutual recognition of decisions on criminal matters in the European Union. The Act lists the legal decisions involved, that it then regulates, establishing in that regard respect for the fundamental rights and liberties as main criterion for action, the supplementary application of the Criminal Procedure Act in this matter and how the State of issuance or enforcement is defined. The Act does not overlook the need to know the dynamics of these kinds of judicial cooperation by means of their reflection in statistical data.

## V

Title I contains the general rules for transmission and recognition and execution of the instruments of mutual recognition in the European Union. An effort is made here to identify the common elements that are to be found in the different rules for mutual recognition of judicial decisions in criminal matters. These provisions intend to generalise rules that the Framework Decisions of the European Union had recognised with divergent formulas and uncritical inclusion of which would have generated differences lacking justification, whilst complicating implementation of this Act.

Thus, this Title recognises the basic characteristics of the new system of judicial cooperation based on mutual recognition. Its Articles contain common rules that are applicable both for transmission of European orders and of judicial decisions to other Member States, as well as their execution in Spain, the general reasons for rejection of recognition and execution, and the rules on appeals, expenses and compensations and reimbursements, among others.

Jurisdiction, both for transmission as well as execution of the different instruments of mutual recognition is distributed among the Courts and Tribunals and the Public Prosecutor. The Act provides for a generalised prior hearing of the Public Prosecutor when it is a Judge or Court that is hearing any of those instruments.

The list of criminal categories to which the principle of double criminality is not applicable is particularly important, as it embodies a basic commitment by the countries of the European Union to renounce control of double criminality for a series of offences. Thus, judicial decisions handed down in other Member States and transmitted to Spain for recognition and execution shall not be subject to double criminality verification by the Spanish Judge or Court, to the extent that they refer to any of the offences listed, and as long as the conditions required for each type of judicial decision are fulfilled. As a consequence of the implementation of the principle of mutual recognition, a decision by a competent authority to recognise and execute a European order handed down by the foreign legal authority is almost automatic, without the need to verify that it complies with its internal legal order, and it limits cases of rejection of execution of the decision transmitted to established grounds that are strictly foreseen by this Act.

These general rules show the particular nature of the mutual recognition arising from the direct relation between the judicial authorities of the different States. This is a feature whose implementation requires immediate communication of the different decisions adopted in each case, as well as prior consultations in many cases in order to allow the competent authorities to assess whether or not it is convenient to resort to such instruments.

The importance of these principles applicable to the set of instruments of mutual recognition becomes apparent from their content, which includes matters such as notices, translations, and regime of appeals, common cases of postponement or rejection of execution of a decision transmitted in Spain, among others.

## VI

Title II is the first that proceeds to address a specific instrument, namely, the European arrest and surrender warrant, the provisions whereof do follow the terms set out up to present in Act 3/2003, of 14 March, on the European arrest and surrender warrant, but has also updated them, following the experience already accumulated in this matter. This has resulted in a reinforcement of the legal guarantees, especially with the introduction of the criteria of proportionality, some improvements in regulatory technique and other amendments that aim to improve practical application of the regulation. This procedure is thus perfected, allowing any Spanish judicial authority to request surrender of a person to another Member State to continue criminal proceedings or to serve a sentence imposed, as well as to surrender a person when a European arrest and surrender warrant has been received from the judicial authority of another Member State.

## VII

Title III covers judgments on custodial sentences or measures of deprivation of liberty. These provisions are used to transpose a Framework Decision not implemented up to now, which allows a sentence handed down in a Member State to be executed in another Member State, in order to facilitate reintegration of the individual sentenced into society. The Spanish judicial authorities may thus transmit condemnatory judgements to other States, when these impose custodial sentences or measures of deprivation of liberty and fulfil the conditions stated by the Law, and they must also execute those transmitted to them in the same way.

## VIII

On its part, Title IV contains the provisions on the so-called probation decision, establishing the regime of transmission and execution of resolutions adopted in the framework of measures consecutive to serving a sentence. This Title thus contains both the procedure by which the Spanish judicial authorities may transmit a decision granting probation or an alternative penalty and the execution procedure of such decisions in Spain when they have been handed down in other Member States. Mutual recognition of these resolutions has the object of increasing the possibilities of social rehabilitation of the sentenced person by allowing him or her to preserve his or her family, linguistic and cultural bonds, as well as to improve control of serving of the supervised probation measures and alternative penalties in order to avoid re-offending, taking into account the principle of protection of the victims.

## IX

Title V is that dedicated to decisions on probation supervision measures, allowing a State other than that which imposed the supervision measure to be able supervise its fulfilment on application, and as long as the legally established requisites are met. Thus, a better organisation of the action of States in this criminal field is secured, avoiding a resident of a Member State being taken out of his or her environment as a consequence of committing a criminal offence during the time that elapses until the trial is held. With this, greater public security is also achieved by allowing the person subject to criminal proceedings in a Member State other than that of his or her residence to remain under supervision by the authorities of the latter while waiting for the trial to be held, avoiding resorting to more repressive means such as provisional detention, or more insecure ones such as unsupervised probation.

## X

Title VI regulates transmission and execution of a European protection order in another Member State. Such an order is a decision in criminal matters that may be handed down by the competent authority of any Member State in relation to a protection measure previously passed by that State, which entitles the competent authority of another Member State to pass the appropriate measures in favour of the victims or possible victims of offences who are in danger, when they have travelled to its territory. This regulation allows protection measures adopted to benefit the victim to accompany that person anywhere in the European Union that is

the destination of occasional or permanent travel. The offender causing that danger shall also have to face the consequences of breaching that European order.

The measures foreseen shall be characterised by their flexibility to adapt to the needs to protect the victim at all times, which also means that the competent authority may resolve their extension, review, amendment or revocation. The effectiveness throughout the whole territory of the Union of the protection measures handed down by any Member State in favour of a threatened person is thus guaranteed.

## XI

Title VII establishes the regime of recognition of a decision on freezing of property or evidence, which includes, with some amendments, the provisions of Act 18/2006, of 5 June, on enforcement in the European Union of decisions on freezing of property and evidence in criminal proceedings. This mechanism shall be used by the Spanish legal authorities to transmit measures freezing property or evidence ordered in criminal proceedings to other Member States in which the objects, data or documents the measure concerns may be located. It also determines the way in which the Spanish judicial authorities are to recognise and execute such decisions when they are issued by a judicial authority of another Member State. It is important to emphasise how the concept of assurance of measures applied to this instrument includes the measures that affect property of the accused to a degree sufficient to cover his or her monetary liability. The requisites of mutual recognition lead to this instrument covering a wide range of actions to assure evidence of the crime, such as its collection, or conservation, intervention, confiscation or storage in a judicial warehouse. All this is with the due guarantees to protect the rights of the parties and those of third parties with a *bona fide* interest.

## XII

Title VIII establishes the regime of decisions on confiscations and includes, with some adaptations, the present content of Act 4/2010, of 10 March, on enforcement in the European Union of judicial decisions on confiscation. It thus regulates the procedure by which the Spanish judicial authorities are to notify final judgements imposing confiscation to other Member States of the European Union, and it establishes the way in which the Spanish judicial authorities are to recognise and execute such resolutions transmitted to them by another Member State. The effect the provisions of the European Union have had on such matters when specifying the

concept of confiscation is already known, affecting property obtained by criminal activity performed by the sentenced person during a period prior to sentencing, or when there is a record that the value of the property is out of proportion to the lawful income of the sentenced person and a national judicial authority, on the basis of specific facts, is fully convinced of the criminal origin thereof. On the other hand, this Act does not cover cases of reinstatement of properties to their legitimate owners.

The Act also includes novelties by means of which an attempt is made to remedy problems arising from doubts over location of the property confiscated, and in which a judicial authority is allowed to notify its decision simultaneously to various Member States of the European Union. It is a provision that, in turn, requires there to be better communication among judicial authorities to avoid excess enforcement.

### XIII

Title IX has the object of regulating the resolution that demands payment of a monetary penalty, including the content of Act 1/2008, of 4 December, on execution in the European Union of decisions imposing financial penalties, with minor amendments. These provisions determine the procedure through which Spanish judicial authorities are to notify final resolutions that require payment of a monetary penalty by a natural or legal person as a consequence of committing a criminal offence, to other Member States of the European Union in which that person owns properties, obtains revenue or has his or her ordinary residence. Likewise, the procedure by means of which the Spanish judicial authorities are to recognise and execute such resolutions when they are transmitted by another Member State and the sentenced person has those properties, income or residence in Spain is regulated.

It must be clarified that the concept of monetary penalty of this instrument does not refer solely to the amount of money demanded as a fine imposed as a consequence of committing an offence, but also includes the amount of money imposing in the same decision for judicial costs, as well as compensation for the victims, or for a public fund or victim support organisation. Moreover, the penalties imposed may be due to a criminal or administrative offence having been committed, pursuant to the provisions that regulate this.

#### **XIV**

The last Title, X, regulates the European evidence warrant (EEW), which transposes a new Framework Decision by establishing the provisions on transmission and execution of a decision that the Spanish authorities may send or receive from another Member State in order to gather objects, documents or data for use in criminal proceedings. A European evidence warrant to obtain evidence may also refer to procedures commenced by the competent authorities of other Member States of the European Union due to the commission of acts classified as administrative offences under their laws, when the decision may give rise to proceedings before a jurisdictional body in the criminal order. That is not the case of administrative offences committed in Spain, as under Spanish Law the competent administrative authorities are not in the situation foreseen under European Law, as their decisions may be reviewed judicially through contentious-administrative but not through criminal proceedings; which has prevented the inclusion thereof within this cooperation mechanism. It must be emphasised that the Spanish Judge or Public Prosecutor shall always intervene in the execution of a decision when it is transmitted by another State, thus allowing dispensing with the requisite of validation by that issuing authority, as the Judge and Public Prosecutor already assess the proportionality of the measure applied for, as well as if it involves a limitation of fundamental rights.

#### **XV**

Mention must be made of the addenda that conclude the Act, which contain the models of the forms and certificates through which notifications are served between judicial authorities in the European Union. These forms and certificates are identical in all countries, so they are perfectly comprehensible based on the form translated into each language, providing to that relation the greatest degree of agility and legal security.

#### **XVI**

To sum up, this Act is configured as an integration instrument that, in addition to complying with the European regulatory obligations, responds to the commitment to improve judicial cooperation in criminal matters in the European Union and to fight crime, guaranteeing the security and rights of the citizens as a purpose of the State that cannot be waived.

## PRELIMINARY TITLE

### GENERAL REGIME OF MUTUAL RECOGNITION OF DECISIONS ON CRIMINAL MATTERS IN THE EUROPEAN UNION

**Article 1.** *Mutual recognition of decisions on criminal matters in the European Union.*

In application of the principle of mutual recognition of decisions on criminal matters in the area of freedom, security and justice of the European Union, the Spanish judicial authorities who hand down an order or a decision comprised within the provisions of this Act, may transmit it to another Member State for its recognition and execution.

In application of the principle of mutual recognition of decisions on criminal matters, the competent Spanish judicial authorities shall recognise and execute European orders and decisions on criminal matters foreseen in this Act within the term foreseen, when they have been transmitted correctly by a competent authority of another Member State and no established ground to refuse recognition or execution concurs.

**Article 2.** *Instruments of mutual recognition.*

**1.** An instrument of mutual recognition is the European order or decision issued by the competent authority of a Member State of the European Union that is transmitted to another Member State for its recognition and execution therein.

**2.** The instruments of mutual recognition regulated in this Act are as follows:

- a) a European arrest and surrender warrant;
- b) a decision imposing a custodial sentence or a measure of deprivation of liberty;
- c) a probation decision;
- d) a decision on probation supervision measures;
- e) a European Protection Order;
- f) a decision on freezing property or evidence;
- g) a confiscation order;
- h) a decision imposing financial penalties;
- i) a European evidence warrant (EEW).

**Article 3. *Respect for fundamental rights and liberties.***

This Act shall be applied respecting the fundamental rights and liberties and the principles set forth in the Spanish Constitution, in Article 6 of the European Union Treaty and the Charter of Fundamental Rights of the European Union, and in the European Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe of 4 November 1950.

**Article 4. *Legal regime.***

1. Registration and execution of the mutual recognition instruments that are listed in Article 2 shall be governed by the terms set forth in this Act, by the provisions of the European Union and those contained in the international conventions in force of which Spain is a party. In the absence of specific provisions, the legal regime provided by the Criminal Procedure Act shall be applicable.

2. The provisions of Title I shall be applied without prejudice to the specific regulations for each mutual recognition instrument foreseen in the remaining Titles of this Act.

3. Interpretation of the provisions set forth in this Act shall be performed pursuant to the rules of the European Union that regulate each one of the mutual recognition instruments.

**Article 5. *Issuing State and executing State.***

The following terms shall apply:

a) issuing State: the Member State of the European Union in which the competent authority has delivered an order or decision of those regulated in this Act in order for it to be recognised and executed in another Member State;

b) executing state: the Member State of the European Union to which an order or decision delivered by the competent judicial authority of another Member State is forwarded for the purposes of its recognition and enforcement.

**Article 6.** *Duty of information to the Ministry of Justice. Central Authority.*

1. The Judges or Courts that forward or execute the mutual recognition instruments foreseen in this Act shall show this in the quarterly statistical bulletins and send them to the Ministry of Justice.
2. Each semester, the General Public Prosecutor shall send to the Ministry of Justice a list of the mutual recognition instruments issued or executed by the representatives of the Public Prosecutor.
3. The Ministry of Justice shall be the Central Authority that has the function of aiding the judicial authorities.

TITLE I

**GENERAL REGIME OF TRANSMISSION, RECOGNITION AND  
EXECUTION OF MUTUAL RECOGNITION INSTRUMENTS IN THE  
EUROPEAN UNION**

CHAPTER I

**TRANSMISSION OF MUTUAL RECOGNITION  
INSTRUMENTS BY THE SPANISH JUDICIAL  
AUTHORITIES**

**Article 7.** *Issue and documentation of orders and resolutions for execution under the scope of the principle of mutual recognition.*

1. When the effectiveness of a Spanish criminal resolution requires the practice of procedural actions in another Member State of the European Union, in the case of any mutual recognition instrument regulated by this Act, the competent Spanish judicial authority shall document it on the form or mandatory certificate, which shall be transmitted to the competent authority of another Member State to proceed to its execution.

It shall be mandatory to forward, together with the certificate, an attestation of the decision in criminal matters that is the basis of such certificate, unless it is a European arrest and surrender warrant, a European evidence warrant (EEW) or a European Protection Order, which shall be documented exclusively through the relevant form.

The original of the decision or the certificate shall be sent only when so requested by the executing authority.

2. The certificate or form shall be signed by the competent judicial authority to hand down the decision that is documented.

3. The certificate or the form shall be translated into the official language or one of the official languages of the Member State addressed or, where appropriate, into an official language of the Community institutions that said State has accepted, except if conventional provisions allow them to be sent in Spanish with regard to that State.

The decision in criminal matters shall only be translated when so required by the executing judicial authority.

**Article 8.** *Transmission of orders and resolutions for execution under the principle of mutual recognition.*

1. Transmission of the mutual recognition instruments, as well as any other notification performed pursuant to this Act shall be performed directly to the competent judicial authority of the executing State, by any means capable of producing a written record under conditions that allow their authenticity to be proven.

Any difficulty that arises in relation to the transmission or the authenticity of any document necessary for execution of a mutual recognition instrument shall be resolved by direct communication between the judicial authorities involved or, when appropriate, in relation to a European arrest and surrender warrant or a European evidence warrant (EEW), with participation by the central authorities of the Member States.

2. When the competent executing judicial authority is not known, the relevant information shall be requested by all the necessary means, including the Spanish points of contact on the European Judicial Network (EJN) and other existing cooperation networks.

3. The mutual recognition instruments regulated in this Act may be transmitted to the competent judicial authority, securing the collaboration of the National Member for Spain at Eurojust when appropriate, pursuant to the rules that regulate such.

**Article 9.** *Mandatory information for Eurojust in relation to the mutual recognition instruments.*

1. When a mutual recognition instrument directly affects at least three Member States and applications or decisions for judicial cooperation to at

least two Member States, Eurojust must be informed under the terms established in its regulations.

2. The judicial authority following the procedure may resolve that the information be accompanied by a request for assistance from Eurojust.

**Article 10.** *Description of the offence and of the penalty.*

The judicial authority that issues the form or the certificate that documents the judicial decision whose execution is transmitted to another Member State of the European Union, shall specify whether the offence forming the judicial decision lies within any of the categories that are exempt double criminality verification of the conduct in the executing State, pursuant to Article 20, and if the penalty foreseen for the offence is, under abstract terms, at least three years of deprivation of liberty.

**Article 11.** *Subsequent loss of the enforceability of the decision transmitted for execution.*

The issuing Spanish judicial authority shall immediately inform the authority entrusted with execution, regarding adoption of any decision or measure intended to leave the enforceability of the order or decision without effect, the execution of which has previously been transmitted, requesting return of the form or the certificate.

**Article 12.** *Transit through another Member State by the requested person by the Spanish judicial authority.*

When the Spanish judicial authority issuing a European arrest and surrender warrant or a decision imposing a custodial sentence or a measure of deprivation of liberty understands that transit of the requested person through a Member State other than the executing State is necessary, it shall apply to the Ministry of Justice to request authorisation, sending a copy of the judicial decision and the certificate issued, translating the latter into one of the languages accepted by the State of transit.

The Ministry of Justice shall request information from the State of transit on whether it may guarantee that the sentenced person shall not be pursued, arrested or submitted to any other restriction of his individual liberty in its territory, due to prior acts or sentences. In such an event, the Ministry of Justice, at the request of the judicial authority issuing, may withdraw the application.

**Article 13.** *Appeals against the decisions on transmission of mutual recognition instruments.*

1. The appeals foreseen in the Spanish legal order may be filed against decisions ordering transmission of a mutual recognition instrument, which shall be processed and resolved exclusively by the competent Spanish judicial authority pursuant to Spanish Law.

2. In the event of an appeal being admitted, the Spanish judicial authority shall immediately notify the authority that is processing the execution.

3. In the case of a pardon being granted that affects the decision appealed, the Spanish judicial authority shall immediately notify the authority that is processing the enforcement.

Granting a pardon may not, in any case, cover the item of costs or administrative expenses generated in the process, nor the compensation granted to benefit the victim.

4. No appeal whatsoever shall be admitted against the decision to transmit a mutual recognition instrument ordered by the Public Prosecutor in his investigation proceedings, without prejudice to subsequent evaluation thereof in the relevant criminal proceedings, pursuant to the terms foreseen in the Criminal Procedure Act.

**Article 14.** *Expenses.*

The Spanish State shall cover the expenses arising from execution of an order or decision of mutual recognition transmitted by another Member State, except those arising in the territory of the executing State.

If, in execution of a judicial confiscation order issued by the Spanish Judge or Court, a notification is received from the executing State proposing distribution of the expenses caused, the Court Clerk shall approach in writing the Spanish Ministry of Justice within the term of five days from receipt of that notification, in order for the proposal by the executing State to be accepted or rejected and to reach an agreement over distribution of the costs.

**Article 15.** *Compensations and reimbursement.*

Except if this Act provides otherwise, the Spanish State shall only reimburse the executing State the sums paid by it in compensation of

damages and losses caused to third parties as a consequence of execution of the order or decision submitted, as long as these are not exclusively due to the activity of that State.

CHAPTER II  
RECOGNITION AND EXECUTION OF MUTUAL  
RECOGNITION INSTRUMENTS BY THE SPANISH  
JUDICIAL AUTHORITIES.

**Section 1. General provisions**

**Article 16.** *Immediate recognition and enforcement.*

1. The competent Spanish judicial authorities shall recognise and execute an order or decision transmitted for execution by a judicial authority of another Member State with no further formalities than those established in this Act and within the deadline established in each case herein.
2. The decision that declares that the judicial authority that has received the order or decision lacks jurisdiction to execute it must also resolve its immediate submission to the judicial authority understood to have jurisdiction, notifying the Public Prosecutor and the judicial authority of the issuing State of that decision.
3. The decision that declares refusal of recognition or execution of the order or judicial decision transmitted for execution in Spain must also order its immediate, direct return to the issuing judicial authority when such order is final.

**Article 17.** *Translation of the certificate.*

1. When the form or certificate is not translated into Spanish, it shall immediately be returned to the judicial authority of the issuing State that has signed it in order for it to perform the relevant translation, except if a convention in force with that State, or a declaration deposited before the Secretariat General of the Council of the European Union allows it to be sent in another language.
2. It shall not be obligatory for the judicial decision in which the certificate is based to be received translated into Spanish, without prejudice to the judicial authority requesting its translation when it is considered indispensable for execution thereof.

**Article 18. *Issuing notifications.***

1. The Spanish judicial authorities shall admit dispatch by registered mail or computer or telematic means if the documents are signed electronically allowing their authenticity to be verified. Notifications sent by fax shall also be admitted, provided the original documentation is subsequently forwarded by the issuing judicial authority, receipt whereof determining commencement of calculation of the terms foreseen in this Act.

2. Communications to the issuing authority that must be made by virtue of the terms established in this Act by the Spanish judicial authority shall be direct and may be issued in Spanish by registered mail, by certifiable electronic means or fax, without prejudice to sending the foreign authority the relevant attestation should it so require.

**Article 19. *Correcting the certificate.***

1. In cases of insufficiency of the form or certificate or when it is missing, or manifestly does not correspond to the judicial decision for which enforcement is transmitted, the judicial authority shall notify the issuing authority, setting a term for the certificate to be submitted again or be completed or amended.

2. In the case of a decision to freeze property or assure evidence, the judicial authority may adopt any of the following decisions after hearing the Public Prosecutor within a term of three days, who shall give his opinion, within that same term:

- a) to set a term for the certificate to be submitted again, to be completed or amended;
- b) to accept an equivalent document from the competent authority of the issuing State that completes the necessary information;
- c) to dispense the judicial authority issuing from submitting it, if it considers the information supplied to be sufficient.

3. In cases in which the transmission is mandatory, the judicial decision whose enforcement is applied for is missing, the judicial authority shall set out a term for it to be sent by the issuing judicial authority.

**Article 20.** *Absence of control of double criminality and exceptions thereto.*

1. When an order or decision handed down in another Member State is transmitted to Spain for recognition and enforcement, such instruments shall not be subject to double criminality control by the Spanish Judge or Court, to the extent that they refer to any of the offences listed below and the conditions required by the Act are fulfilled for each type of mutual recognition instrument.

The offences are as follows:

- 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
- Laundering of the proceeds of crime
- Counterfeiting of currency
- 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.

**2.** For mutual recognition of judicial decisions imposing financial penalties, in addition to those stated in the preceding Paragraph, the principle of double criminality shall not apply to judicial decisions that punish acts judged as any of the following crimes or offences:

Conduct which infringes road traffic regulations, including breaches of regulations pertaining to driving hours and rest periods and regulations on hazardous goods

Smuggling of goods

Infringements of intellectual property rights

Threats and acts of violence against persons, including violence during sport events

Criminal damage

Theft

Offences established by the issuing State and by virtue of the Community regulations.

**3.** Mutual recognition and enforcement of European Protection Orders shall always be performed with control of double criminality.

**4.** When the order or judicial decision received is to punish an act classified as an offence other than those foreseen in this Article, their recognition and enforcement may be subject to fulfilment of the double criminality requisite, as long as the conditions required by the Act are fulfilled for each mutual recognition instrument.

Notwithstanding the foregoing, when the order or decision has been imposed due to a criminal offence in tax, customs or currency exchange matters, enforcement of the decision may not be refused if the grounds were that Spanish legislation does not establish the same tax, or does not contain the same regulations in tax, customs and currency exchange matters as the legislation of the issuing State.

**Article 21.** *Regulations applicable to enforcement.*

1. Enforcement of the order or decision that has been transmitted by another Member State shall be governed by Spanish Law and shall be implemented in the same way as if handed down by a Spanish judicial authority.

Notwithstanding the foregoing, the competent Spanish judicial authority shall observe the formalities and procedures specifically indicated by the judicial authority of the issuing State, as long as such formalities and procedures are not contrary to the fundamental principles of Spanish Law.

2. Enforcement of the order or decision shall comply with its terms, and it may not be extended to persons, property or documents not covered by it, without prejudice to the terms set forth for the European evidence warrant (EEW).

**Article 22.** *Notification of the recognition and execution. Hearing.*

1. When the party affected has his domicile or residence in Spain and except if the foreign procedure has been declared secret or if its notification were to thwart the ends intended, the foreign orders or judicial decisions whose enforcement has been applied for shall be notified to him.

Serving such notice shall amount to recognition of the right to intervene in the process, if considered convenient, appearing with a barrister and a solicitor.

2. The Spanish judicial authority shall inform the competent judicial authority of the issuing State and the Public Prosecutor, without delay, of the decision on recognition or refusal of the order or decision transmitted, or of any incident that might affect its execution, especially in cases of impossibility thereof, without being able to execute alternative measures not foreseen under Spanish Law.

**3.** Exercising the right to hearing of the accused throughout the proceedings may be carried out by applying the instruments of International or European Union Law that foresee the possibility of hearings being held by telephone or video-conference.

**Article 23.** *Suspension of execution of the decision.*

**1.** Execution shall be suspended for any of the legally foreseen grounds and when the issuing judicial authority notifies the executing Spanish authority that the order or judicial decision transmitted is no longer enforceable.

**2.** The Spanish judicial authority shall immediately notify the judicial authority of the issuing State of suspension of the execution of the order or judicial decision received, the reasons for the suspension and, if possible, the duration thereof.

**3.** As soon as the reasons for suspension disappear, the Spanish judicial authority shall immediately take the appropriate measures to execute the order or judicial decision, and shall inform the competent judicial authority of the issuing State thereof.

**4.** Should the ground of suspension make it foreseeable that it shall not cease to exist, the form or certificate shall be returned with all the written record of the proceedings to the issuing judicial authority.

**Article 24.** *Appeals.*

**1.** Against the decisions handed down by the Spanish judicial authority resolving with regard to European mutual recognition instruments, the appropriate appeals may be filed according to the general rules foreseen in the Criminal Procedure Act.

Filing the appeal may suspend execution of the order or decision when it may create irreversible situations or cause damage that it is impossible or difficult to put right, adopting the injunctive measures that allow the efficiency of the decision to be assured in all cases.

**2.** The competent judicial authority shall notify the judicial authority of the issuing State both of filing any appeal as well as its reasons, as well as the decision handed down thereon.

**3.** The underlying reasons for which the order or decision has been adopted may only be contested by means of an appeal filed by the Member State of the issuing judicial authority.

**4.** No appeal may be lodged against the decisions by the Public Prosecutor in enforcement of the mutual recognition instruments, without prejudice to possible motions to contest the underlying matter before the issuing authority and subsequent valuation in the criminal proceedings conducted in the issuing State.

**Article 25. Expenses.**

**1.** Expenses arising in the Spanish territory from execution of a mutual recognition instrument shall be borne by the Spanish State. Other expenses and, specifically, expenses of transferring sentenced persons and those caused exclusively in the territory of the issuing State, shall be borne by the latter.

**2.** In execution of the judicial confiscation order, should Spain have incurred exceptional expenses, the judicial authority may declare that circumstance, addressing a notification to the Spanish Ministry in order for it, should it consider it convenient, to make a proposal to the issuing State on possible distribution of the expenses caused, and to reach the appropriate agreement.

**Article 26. Compensations and reimbursements.**

The Ministry of Justice shall issue a claim to the issuing State for reimbursement of the sums that, according to Spanish Law, it has had to pay in compensation of damages and losses caused to third parties, as long as these are not exclusively the liability of Spain due to abnormal functioning of the Administration of Justice or due to a judicial mistake.

**Article 27. Transit of persons through Spanish territory in enforcement of a European warrant or judicial decision transmitted by another Member State.**

**1.** The Ministry of Justice shall be competent to authorise transit through Spanish territory by a person who is being transferred from the executing State of a European arrest and surrender warrant or a decision imposing a custodial sentence or a measure of deprivation of liberty to the issuing State, as long as the transit application is sent accompanied by a copy of the certificate issued for enforcement of the decision.

The Ministry of Justice may apply to the issuing State for it to send it a copy of the form or certificate translated into Spanish.

**2.** The Ministry of Justice shall inform the issuing State if it cannot guarantee that the sentenced person shall not be pursued, arrested or subjected to any other restriction of his individual liberty in Spain, for acts or sentences prior to him leaving the executing State.

**3.** The Ministry of Justice shall notify his decision to the competent authority of the issuing State within the maximum term of one week from receipt of the application, except if translation of the form or certificate has been requested, in which case the decision may be postponed until the translation is received.

Under no circumstance may detention of the person be prolonged beyond the time strictly necessary to execute the transfer.

**4.** A transfer application shall not be required in cases of air transit without stopovers, except in cases of forced landing, in which case the Ministry of Justice shall grant its authorisation within the term of 72 hours.

**Article 28.** *Transit of the requested person by a Member State in an enforcement ordered by the Spanish authority.*

Should transit of the requested person be necessary by virtue of a European arrest and surrender warrant or a decision imposing a custodial sentence or a measure of deprivation of liberty by a third Member State, the executing Spanish judicial authority shall notify the foreign judicial authority issuing, in order for that authority to obtain the relevant authorisation from the authorities of the State of transit.

## **Section 2. Refusal of recognition or execution of a mutual recognition instrument**

**Article 29.** *Refusal of recognition or execution of a mutual recognition instrument.*

Recognition or execution of a mutual recognition instrument that has been correctly transmitted by the competent authority of another Member State of the European Union may only be refused, explaining the reasons, when any of the established grounds foreseen in this Act concurs.

**Article 30.** *Request for complementary information.*

In cases in which a ground of refusal of recognition or execution may concur that justifies such, or a corrigible defect in the issue or transmission, the competent judicial authority may request complementary information from the authority of the issuing State, setting a term for that information to be sent.

**Article 31.** *Application to lift immunity.*

1. When, in relation to the object of the mutual recognition instrument, there is immunity of jurisdiction or execution in Spain, the executing Spanish judicial authority shall apply for the lifting of that privilege without delay if doing so is the competence of the Spanish authority. If the lifting of immunity is the remit of another State or an international organisation, the judicial authority that has issued the order or decision intended to be enforced shall make the application, to which end the executing Spanish judicial authority shall notify the issuing authority of this.

2. Until a decision is taken on the application to lift the immunity referred to in the preceding Section, the executing Spanish judicial authority shall adopt the injunctive measures it considers necessary, where appropriate, to guarantee effective enforcement of the order or decision once the immunity is lifted.

3. When the executing Spanish judicial authority has been informed of the lifting of the immunity, the terms foreseen in this Act for the enforcement concerned shall begin to be calculated.

**Article 32.** *General reasons to refuse recognition or execution of the measures requested.*

1. The Spanish judicial authorities shall not recognise or execute orders or decisions transmitted in the cases regulated for each mutual recognition instrument and, in general terms, in the following cases:

- a) when a final decision has been handed down in Spain or another State other than that of issue, condemning or acquitting the same person and with regard to the same events, and if enforcement thereof were to breach the principle of non bis in idem under the terms foreseen in the international laws, conventions and treaties to which Spain is party and even when the sentenced person has subsequently been pardoned;

b) when the order or decision refers to facts for trial of which the Spanish authorities are competent, and if the sentence is handed down by a Spanish jurisdictional body, the penalty imposed has expired pursuant to Spanish Law;

c) when the form or certificate that is to accompany the application to adopt the measures is incomplete, or is manifestly incorrect, or does not respond to the measure, or when the certificate is missing, without prejudice to the terms set forth in Article 19;

d) when there is an immunity that prevents execution of the decision.

**2.** The Spanish judicial authority may also refuse recognition of execution of a decision when it has been imposed for an offence other than those regulated in Section 1 of Article 20, that is not defined as an offence under Spanish Law, or in Section 2 of the same Article, when not defined as an offence in Spain either, and in the case of a decision imposing financial penalties.

**3.** The Spanish judicial authority may refuse to recognise and execute an order or decision when it refers to acts that Spanish Law considers to be fully or mainly or fundamentally committed in Spanish territory.

**4.** Decisions to refuse to recognise or execute the measures must be adopted without delay and in a reasoned manner and shall immediately be notified to the issuing judicial authorities and the Public Prosecutor.

**5.** The reasons for non-recognition or non-execution listed in Letter c) of Section 1 and in Section 3 of this Article shall not be applicable in relation to measures to freeze property or assure evidence.

**Article 33.** *Resolutions handed down in the absence of the accused.*

**1.** The Spanish judicial authority shall also refuse execution of the order or decision transmitted to it when the accused has not appeared in the trial in which the decision is issued, unless it records any of the following circumstances according to the other requisites foreseen in the procedural laws of the issuing State:

a) that, enough time in advance, the accused was summoned in person and informed of the date and place foreseen for the trial from which that decision arises, or received that official information by other

means that leave a record of his effective knowledge and that, moreover, he was informed that a decision might be handed down in absentia;

b) that, having knowledge of the date and place foreseen for the trial, the accused appointed legal counsel for his defence on trial and was effectively defended by such at the trial held;

c) that, after he was notified of the decision and specifically informed of his right to a new trial or to file an appeal with the possibility that, in such new proceedings, he would be entitled to appear, a decision contrary to the initial one is handed down, the accused specifically declared that he did not contest the decision, or did not apply for new trial, nor filed an appeal within the term foreseen for the purpose.

**2.** This Article shall not be applicable to orders freezing property or evidence, under a European evidence warrant (EEW), nor resolutions imposing alternative measures to provisional detention.

## TITLE II

### EUROPEAN ARREST AND SURRENDER WARRANT

#### CHAPTER I

#### GENERAL PROVISIONS

**Article 34.** *European arrest and surrender warrant.*

A European arrest and surrender warrant is a judicial decision handed down in a Member State of the European Union with a view to arrest and surrender by another Member State of a person who is claimed to take criminal actions against him or to enforce a custodial sentence or measure of deprivation of liberty, or a measure of internment in a centre for minors.

**Article 35.** *Competent authorities in Spain to issue and enforce a European arrest and surrender warrant.*

**1.** The competent judicial authorities to issue a European arrest and surrender warrant are the Judge or Court hearing the case in which such orders are appropriate.

**2.** The competent judicial authority to execute a European arrest warrant shall be the Central Judge of Criminal Investigation of the National High

Court. When the order refers to a minor, jurisdiction shall lie with the Central Judge for Minors.

**Article 36.** *Content of the European arrest and surrender warrant.*

A European arrest and surrender warrant shall be documented in the form provided in Annex I, specifically mentioning the following information:

- a) the identity and nationality of the requested person;
- b) the name, address, telephone and fax numbers and e-mail address of the judicial authority issuing;
- c) indication of the existence of a final judgement, of an arrest warrant, or any other enforceable judicial decision having the same effect as foreseen in this Title;
- d) the nature and legal classification of the offence;
- e) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence of the requested person;
- f) the penalty imposed, if there is a final judgement or the prescribed scale of penalties for the offence under the law;
- g) if possible, other consequences of the offence.

CHAPTER II  
ISSUANCE AND TRANSMISSION OF A EUROPEAN  
ARREST AND SURRENDER WARRANT

**Article 37.** *Object of a European arrest and surrender warrant.*

A Spanish judicial authority may hand down a European arrest and surrender warrant in the following cases:

- a) in order to proceed to exercise criminal prosecution, for acts for which Spanish Criminal Law establishes a custodial sentence or a measure of deprivation of liberty with a maximum duration of at least twelve months, or an internment measure under closed regime for a minor for the same term;
- b) in order to proceed to execute a sentence to a custodial sentence or measure of deprivation of liberty of not less than four months, or an internment measure under closed regime for a minor for the same term.

**Article 38.** *Obtaining a statement prior to issuing a European arrest and surrender warrant.*

Prior to issuing a European arrest and surrender warrant, the competent Judge may request authorisation from the State in which the requested person is located in order to obtain his statement through application for judicial assistance pursuant to the Convention on Judicial Assistance in Criminal Matters between the Member States of the European Union, of 29 May 2000.

**Article 39.** *Requisites to issue of European arrest and surrender warrant in Spain.*

1. A Spanish judicial authority may hand down a European arrest and surrender warrant to enforce measures in criminal matters when, whilst complying with the requisites foreseen for such under this Act, it also fulfils those foreseen in the Criminal Procedure Act to order provisional detention of the requested person, or those of Organic Act 5/2000, of 12 January, on the criminal liability of minors, to resolve injunctive internment of the minor.

2. Moreover, a Spanish judicial authority may only hand down a European arrest and surrender warrant for serving of the penalty by the requested person when, complying with the requisites established for the purposes under this Act, it is not possible to substitute or suspend a custodial sentence to which he has been sentenced.

3. Prior to the issuance, the Judge shall request the Public Prosecutor and, when appropriate, the private prosecutor for report thereon, within the term of two days, except if, for reasons of urgency, this must be done within a shorter term. Only if the Public Prosecutor or, where appropriate, the private prosecutor, were to call for the handing down of a European arrest and surrender warrant to carry out criminal proceedings, may this be ordered by the Judge, in a reasoned ruling.

**Article 40.** *Transmission of a European arrest and surrender warrant.*

1. When the location of the requested person is known, the Spanish judicial authority may communicate directly with the competent judicial authority to execute the European arrest and surrender warrant.

2. If such whereabouts are not known, the issuing Spanish judicial authority may decide to issue an alert for the requested person in the Schengen Information System (SIS).

3. Without prejudice to the terms set forth in Section 1, the Spanish judicial authority may decide, under any circumstance, to input a description of the requested person in the Schengen Information System.

4. Such an alert shall be effected in accordance with the provisions set forth in Article 95 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985, on the gradual abolition of controls on the common borders, of 19 June 1990. An alert in the Schengen Information System, accompanied by the information set out in Article 36, shall be equivalent, to all effects, to a European arrest and surrender warrant.

5. If it is not possible to resort to the Schengen Information System, the Spanish judicial authority may resort to the services of Interpol to notify the European arrest and surrender warrant.

6. The Spanish judicial authority shall submit a copy of the European arrest and surrender warrants sent to the Ministry of Justice.

7. The Ministry of Internal Affairs shall notify the Ministry of Justice of the arrests and surrenders performed in enforcement of European arrest and surrender warrants.

**Article 41.** *Submitting complementary information.*

After transmission of the European arrest and surrender warrant, the Spanish judicial authority issuing may send to the executing judicial authority as much complementary information as may be of use to it to proceed to execution thereof, either ex officio or at the request of the Public Prosecutor or, where appropriate, of the private prosecutor, as well as at the request of the actual executing authority if the latter so demands.

**Article 42.** *Application for delivery of objects.*

When the Spanish judicial authority issues a European arrest and surrender warrant, it may request, when necessary, the executing authorities, pursuant to their national law, to deliver the objects that constitute the means of evidence, or the proceeds of the criminal offence, and that the relevant assurance measures be adopted.

The description of the objects requested shall be recorded in the Schengen Information System.

**Article 43.** *Application for temporary surrenders and obtaining statements in the executing State.*

1. Temporary surrender of the requested person may only be requested to take criminal actions against him, without it being possible for the requested person to serve a sentence already handed down in Spain.

2. Temporary surrender may be requested, even before the executing authority has issued its pronouncement on definitive surrender, to carry out criminal proceedings or to hold an oral hearing.

3. To that same end, temporary surrender may be requested if the executing authority, after having ordered surrender of the requested person, were to decide to suspend it due to holding a trial or serving of a penalty imposed for a different act to that giving rise to the European arrest and surrender warrant being pending in the executing State.

**Article 44.** *Response in cases of conditional surrender.*

Should the executing authority establish conditions for surrender of its national or resident, for him to be returned to the executing State for serving of the custodial sentence or measure of deprivation of liberty or the measure to intern a minor that may be issued against him in Spain, when the issuing Spanish judicial authority is required to commit itself in that sense, the Judge or Court shall hear the parties to the proceedings during three days and, after that, shall hand down an order accepting or rejecting the condition.

The order of commitment to transmit enforcement of the custodial sentence or measure of deprivation of liberty to another State shall be binding for all judicial authorities that, where appropriate, are competent in the subsequent phases of the Spanish criminal proceedings.

**Article 45.** *Procedure when the requested person is handed over to the issuing Spanish judicial authority.*

1. If a European arrest and surrender warrant has been issued to exercise criminal proceedings, when the person is handed over to the Spanish judicial authority that issued the order, a hearing of such shall be called within the terms and in the manner foreseen in the Criminal Procedure Act or, where appropriate, the Organic Act on the criminal liability of minors, in order to decide on the personal situation of the arrested person. The Spanish judicial authority shall deduct from the maximum term of

provisional detention any period of deprivation of liberty suffered by the requested person arising from enforcement of a European arrest and surrender warrant.

**2.** If a European arrest and surrender warrant is issued for serving of a custodial sentence of the sentenced person, when the requested person is handed over to the Spanish judicial authority that issued the order, it shall decree his admittance to prison as a sentenced person due to the cause that gave rise to handing down the European order. The Spanish judicial authority shall deduct from the total period of deprivation of liberty that must be served in Spain as a consequence of a sentence to a custodial sentence or measure of deprivation of liberty, any period of deprivation of liberty arising from enforcement of the European arrest and surrender warrant.

**Article 46.** *Notification of incidents to the Ministry of Justice.*

The Spanish judicial authority shall notify the Ministry of Justice of breaches of the terms for surrender of an arrested person that are due to the executing State, as well as refusals or repeated difficulties in recognition and execution of European arrest and surrender warrants issued by Spain.

The Ministry of Justice shall notify Eurojust of cases of repeated infringement as stated in the preceding Paragraph in execution of European arrest and surrender warrants issued by Spain.

CHAPTER III  
EXECUTION OF A EUROPEAN ARREST AND  
SURRENDER WARRANT

**Article 47.** *Acts giving rise to surrender.*

**1.** When a European arrest and surrender warrant has been issued for an offence that belongs to one of the categories of offences listed in Section 1 of Article 20 and that offence is punishable in the issuing State with a custodial sentence or measure of deprivation of liberty, or with a measure of internment under closed regime for a minor, the maximum duration of which is at least three years, surrender of the requested person shall be ordered without control of double criminality of the acts.

**2.** In the remaining cases not considered in the preceding Section, as long as these are punished in the issuing State with a custodial sentence or

measure of deprivation of liberty, or with a measure of internment under closed regime of a minor with a maximum duration of at least twelve months, or when the object of the claim is the serving of a sentence to a penalty or measure of not less than four months of deprivation of liberty, the surrender may be subject to the requisite of the facts justifying handing down a European arrest and surrender warrant constituting an offence under Spanish Law, notwithstanding the elements constituting it or its classification.

**Article 48.** *Refusal to execute a European arrest and surrender warrant.*

1. The Spanish judicial authority executing shall refuse execution of a European arrest and surrender warrant as well as in the cases foreseen in Articles 32 and 33, also in the following cases:

- a) if the requested person has been pardoned in Spain for the penalty imposed for the same act on which a European arrest and surrender warrant is based and this is subject to prosecution under Spanish Law;
- b) if final halting of the proceedings has been ordered in Spain for the same act;
- c) if the person who is subject to a European arrest and surrender warrant has had a final decision handed down in another Member State of the European Union for the same act, which definitively prevents subsequent exercise of criminal proceedings;
- d) when the person subject to a European arrest and surrender warrant has been finally judged for the same act in a third State that is not a member of the European Union, provided that, if he has been sentenced, the penalty has been served, or is currently being served, or can no longer be served by virtue of the Law of the sentencing State;
- e) when the person who is subject to a European arrest and surrender warrant cannot yet be considered criminally responsible for the acts on which that order is based, under Spanish Law, due to his age.

2. The Spanish executing judicial authority may refuse execution of a European arrest and surrender warrant in the following cases:

- a) when the person subject to a European arrest and surrender warrant is under criminal prosecution in Spain for the same act as gave rise to the European arrest and surrender warrant.

b) when a European arrest and surrender warrant has been handed down for the purposes of execution of a custodial sentence or measure of deprivation of liberty, the requested person being a Spanish national, except if he consents to serve the same in the issuing State. Otherwise, he must serve the sentence in Spain.

c) when a European arrest and surrender warrant refers to acts committed outside the issuing State and Spanish Law does not allow prosecution of such offences when they are committed outside its territory.

**Article 49. *Refusal of execution of a European arrest and surrender warrant due to it having been handed down in absentia.***

1. In addition to the cases foreseen in Article 33, the Spanish judicial authority may also refuse execution of a European arrest and surrender warrant when the accused has not appeared in the trial giving rise to the decision, unless the European arrest and surrender warrant records, according to the other requisites foreseen in the procedural laws of the issuing State, that the accused was not personally notified of the decision, but that he shall be notified without delay after surrender, at which moment he shall be informed of his right to retrial or to file an appeal, stating the time limits foreseen for that purpose, with the possibility of such new proceedings in which he would be entitled to appear, could end in a decision reversing the initial one.

2. In the event of a European arrest and surrender warrant being issued in order to execute a custodial sentence, or an arrest warrant pursuant to the terms of the preceding Paragraph, and if the person concerned has not previously received official information on the existence of criminal proceedings against him, that person, on being informed of the content of the European arrest and surrender warrant, may request, merely for informative purposes, receipt of a copy of the judgement prior to his surrender.

The issuing authority, through the Spanish judicial authority, shall immediately provide the person concerned a copy of the judgement, without the request for a copy delaying the surrender procedure in any case, or the decision to execute a European arrest and surrender warrant.

3. Should a person be surrendered under the conditions foreseen in Section 1 of this Article, and have requested retrial or filed an appeal, his detention shall be reviewed, either periodically, or at the request of the

person concerned, according to the laws of the issuing State, for the purposes of determining its possible suspension or interruption, until the actions have concluded.

**Article 50.** *Arrest and surrender to the judicial authority.*

1. Arrest of a person affected by a European arrest and surrender warrant shall be performed in the manner and with the requisites and guarantees foreseen in the Criminal Procedure Act.

2. Within the maximum term of seventy-two hours after his arrest, the person arrested shall be handed over to the Central Judge of Criminal Investigation at the National High Court. That circumstance shall be notified to the issuing judicial authority.

3. When the person arrested is handed over to the Court, he shall be informed of the existence of a European arrest and surrender warrant, of its content, of the possibility of consenting irrevocably in the hearing before the Judge and to his surrender to the issuing State, as well as the rest of the rights to which he is entitled.

**Article 51.** *Hearing the arrested person and decision on surrender.*

1. Hearing the person arrested shall take place within the maximum term of seventy two- hours from him being handed over, attended by the Public Prosecutor, by the legal counsel to the arrested person and, when appropriate, in interpreter, and it must be performed pursuant to the provisions foreseen for detainees to declare under the Criminal Procedure Act. The right of defence shall also be guaranteed and, where legally appropriate, free legal aid shall be provided.

2. Firstly, the arrested person shall be heard regarding granting irrevocable consent to surrender.

Should the arrested person be Spanish or resident in Spain, he shall also be heard as to whether he requests to be returned to Spain to serve the custodial sentence or measure of deprivation of liberty that may be handed down against him by the issuing State.

3. Should the arrested person consent to surrender, a certificate stating that particular shall be issued and signed by the arrested person, his legal counsel and, if appropriate, the interpreter, as well as the Public Prosecutor

and the Judge. The certificate shall record the renunciation to resort to the speciality rule, if this concurs.

In any event, the Central Judge of Criminal Investigation shall verify whether consent to surrender by the arrested person has been freely provided and with full knowledge of the consequences, especially its irrevocable nature. He shall proceed likewise regarding the renunciation to resort to the speciality rule.

**4.** Should the person affected have consented to being surrendered to the issuing State and the Central Judge of Criminal Investigation does not note grounds to refuse or condition the surrender, he shall issue an order of surrender to the issuing State. No appeal whatsoever may be filed against that order.

**5.** If the arrested person has not consented, the Central Judge of Criminal Investigation shall call the parties to hold a hearing, that must be held within a maximum term of three days and that shall be attended by the Public Prosecutor, the requested person assisted by his legal counsel and, if necessary, an interpreter. At that hearing, the means of evidence admitted may be produced regarding the concurrence of reasons to refuse or condition the surrender. The Central Judge of Criminal Investigation shall hear the parties on such particulars and shall admit or refuse the evidence proposed to accredit the grounds alleged.

**6.** Should the evidence not be provided during the hearing, the Judge shall set a term to secure it, taking into account the need to abide by the deadlines foreseen in this Act.

**7.** Should the requested person have been granted probation and not have attended the hearing in spite of being duly summoned to appear before the Central Judge of Criminal Investigation, it shall be held in absentia and whatever is legally appropriate shall be resolved.

**8.** The Central Judge of Criminal Investigation shall resolve by order that must be handed down within the maximum term of ten days from the hearing. A remedy of appeal may be filed against that order directly before the Criminal Chamber of the National High Court, under the terms set forth in the Criminal Procedure Act, which shall have preferential status.

**Article 52.** *Decision on temporary transfer or obtaining a declaration from the requested person.*

1. Where a European arrest and surrender warrant issued has the purpose of exercising actions in criminal matters, if the judicial authority so requests, the Central Judge of Criminal Investigation shall order, having heard the Public Prosecutor within the term of three days, for a statement to be taken from the requested person, or for him to be temporarily transferred to the issuing State.

2. Taking the declaration by the requested person shall be performed by the judicial authority issuing the order that shall travel to Spain, with assistance where appropriate of the person it appoints pursuant to the Law of the issuing State, and an interpreter must be appointed in order to translate the essential aspects of the proceedings into Spanish. This must be performed in the presence of the Spanish judicial authority that shall ensure this is performed as foreseen by Spanish Law and in the conditions agreed by both judicial authorities, and they may include respect of the requisites and formalities required under the laws of the issuing State as long as these are not contrary to the fundamental principles of Spanish Law. In all cases, the right to legal counsel of the arrested person shall be respected, as shall his right not to declare against himself and not to admit to being guilty, as well as to be assisted by an interpreter.

The Court Clerk shall also be present in these proceedings, taking a record of compliance with the conditions foreseen in this Article and those agreed between the judicial authorities who hear the proceedings.

3. Should temporary transfer of the arrested person be ordered, this shall be carried out under the conditions and with the duration agreed by the issuing judicial authority. In any event, the requested person must return to Spain to attend the hearings related to him within the framework of the surrender proceedings.

**Article 53.** *Personal situation of the requested person.*

1. In the course of the hearing or session referred to in Article 51, the Central Judge of Criminal Investigation, having heard the Public Prosecutor in all cases, shall decree the arrested person being remanded in custody or being released, adopting the necessary injunctive measures that may be necessary and proportionate to prevent the requested from absconding, pursuant to the provisions of the Criminal Procedure Act.

2. The Judge shall resolve according to the circumstances of the case and with the aim of securing execution of the European arrest and surrender warrant.

3. At any time during the proceedings and according to the circumstances of the case, the Judge, having heard the Public Prosecutor, may resolve to revoke the detention order, but in such case, he must adopt any one or number of the injunctive measures referred to in Section 1 of this Article.

4. Against the judicial decisions referred to in this Article, a remedy of appeal may be filed before the Criminal Chamber of the National High Court, under the same conditions established in Section 8 of Article 51. A hearing shall be held when requested by any of the parties.

**Article 54.** *Terms to execute a European arrest and surrender warrant.*

1. A European arrest and surrender warrant shall be processed and executed urgently.

2. If the requested person consents to surrender, the judicial decision must be handed down within ten days of the hearing being held.

3. If no consent is given, the maximum term to adopt a final decision shall be sixty days from the arrest taking place.

4. When, for justified reasons, it is not possible to decide within the terms stated, these may be extended for a further thirty days. The issuing judicial authority shall be notified of such a circumstance and the necessary conditions for surrender meanwhile shall be maintained.

**Article 55.** *Conditional surrender decision.*

1. If the offence on the basis of which the European arrest and surrender warrant has been issued is punishable by custodial life sentence or a life-time measure, the execution of the European arrest and surrender warrant by the Spanish judicial authority shall be subject to the condition that the issuing Member State has provisions in its legal system to review the penalty imposed or for the application of measures of clemency to which the person may resort in order for the penalty or measure not to be executed.

2. Likewise, when the person who is subject to a European arrest and surrender warrant for the purposes of taking criminal action is a Spanish

national or resident in Spain, his surrender may be subject, after being heard in that regard, to the condition of him being returned to Spain to serve the custodial sentence or measure of detention that may be handed down against him by the issuing State. Compliance with that condition shall be articulated through the terms set forth in the decision on serving of custodial sentences or measures of deprivation of liberty.

**Article 56.** *Suspended surrender decision.*

When the requested person has criminal proceedings pending before the Spanish jurisdiction for acts other than that giving rise to the European arrest and surrender warrant, the Spanish judicial authority, although it may have resolved to fulfil the order, may suspend surrender until the trial is held or until the sentence handed down is served.

In such a case, the Spanish judicial authority shall resolve, if so requested by the issuing judicial authority, on the temporary surrender of the requested person under conditions to be formalised in writing with that judicial authority and that shall be binding for all the authorities of the issuing Member State.

**Article 57.** *Decision in the case of multiple requests.*

**1.** In the event of two or more Member States having issued a European arrest and surrender warrant in relation to the same person, the decision on the priority of execution shall be taken by the Central Judge of Criminal Investigation, after hearing the Public Prosecutor, taking into account all the circumstances and, in particular, the place and relative seriousness of the offences, the respective dates of the warrants, as well as the fact of the warrant having been handed down for the purposes of criminal prosecution, or for the purposes of execution of a custodial sentence or a security measure of deprivation of liberty.

**2.** In the event of conflict between a European arrest and surrender warrant and a request for extradition application by a third State, the Spanish judicial authority shall suspend the proceedings and send all the documentation to the Ministry of Justice. The proposed decision on whether preference must be given to the European arrest and surrender warrant or to the extradition application shall be submitted by the Minister of Justice to the Council of Ministers, after having considered all the circumstances and, in particular, those considered in Section 1 and those mentioned in the applicable convention or agreement. That formality shall

be governed by the terms set forth in Act 4/1985, of 21 March, on Passive Extradition.

**3.** In the event of deciding to grant preference to the request for extradition, the Spanish judicial authority shall be notified and the latter shall so inform the issuing judicial authority.

Should it be decided to grant preference to the European arrest and surrender warrant, the Spanish judicial authority shall be informed in order to continue with the proceedings in the formalities that were suspended.

**4.** The terms set forth in this Article are understood to be without prejudice to the obligations under the Statute of the International Criminal Court.

**Article 58.** *Surrender of the requested person.*

**1.** Surrender of the requested person shall be performed by a Spanish Police Officer, giving prior notice to the authority appointed for that purpose by the issuing judicial authority of the place and date set, but within the ten days following the judicial decision on surrender.

**2.** If, for reasons beyond the control of the issuing or executing State, surrender could not be carried out within that term, the judicial authorities involved shall immediately contact each other to set a new date, within a further term of ten days from the date initially set.

**3.** Exceptionally, the judicial authority may provisionally suspend surrender for severe humanitarian reasons, but surrender must be carried out when such reasons cease to be present. Surrender shall be carried out within the ten days following the new date resolved when such reasons cease to be present.

**4.** In the event of it being necessary to suspend or postpone surrender of the requested person due to him having criminal proceedings pending in Spain, and such person is held in custody, the Spanish judicial authority hearing the European arrest and surrender warrant procedure shall receive information on the future release of the requested person in order to immediately adopt the relevant decision on his personal situation for the purposes of surrender to the executing authority.

Should the requested person be serving a sentence, the penitentiary centre shall inform the Spanish judicial authority hearing the European arrest and surrender warrant proceedings of the effective date of fulfilment

at least fifteen days in advance, in order for it to adopt the relevant decision regarding his personal situation.

Should the requested person be in provisional detention due to a case open in Spain, the Court hearing that procedure must immediately make the requested person available to the Spanish judicial authority hearing the European arrest and surrender warrant proceedings, notifying the decision to order release in the proceedings, so that it may decide within the term of seventy- two hours regarding his personal situation, in order to guarantee execution of the surrender.

**5.** Once the maximum terms for surrender have elapsed without the requested person having been received by the issuing State, the requested person shall be released, or an application shall be made for the appropriate measures pursuant to the Criminal Procedure Act, if he has any case pending in Spain, without that being a ground for refusal of execution of a subsequent European arrest and surrender warrant based on the same acts.

**6.** In any event, at the moment of surrender, the Court Clerk shall notify the issuing judicial authority of the period of deprivation of liberty suffered by the person requested under the European arrest and surrender warrant, in order for this to be deducted from the penalty or security measure imposed, as well as whether or not the arrested person has renounced the speciality rule.

**Article 59.** *Delivery of objects.*

**1.** At the request of the issuing judicial authority, or ex officio, the Central Judge of Criminal Investigation shall intervene and deliver, pursuant to national law, the objects that constitute the means of evidence, or proceeds from crime, without prejudice to the rights the Spanish State or third parties may have acquired thereon. In the latter case, once the trial has concluded, they shall be returned.

**2.** The objects mentioned in the preceding Section must be delivered when the European arrest and surrender warrant cannot be executed due to death or escape of the requested person.

**3.** In the event of the items being subject to freezing of property or confiscation in Spain, the Spanish judicial authority may refuse to deliver them, or do so merely on a temporary basis, if that is necessary for the criminal proceedings pending.

## CHAPTER IV OTHER PROVISIONS

**Article 60.** *Application of the speciality rule to execution of a European arrest and surrender warrant.*

1. Consent or authorisation for trial, sentencing or arrest for the purposes of enforcing a custodial sentence or a security measure involving deprivation of liberty, for all offences committed prior to surrender of a person, and that are different to that which gave rise to such surrender to the Spanish State, shall be presumed to exist whenever the State of the executing judicial authority has notified the Secretariat General of the Council of the European Union of its favourable disposition in that regard, except if in a particular case, the executing judicial authority declares the contrary in its surrender decision.

2. If the declaration stated in the preceding Section has not been notified, the person delivered to Spain may not be prosecuted, sentenced or deprived of liberty for an offence committed prior to his surrender other than that which has given rise thereto, except if the executing State were to authorise this. To that end, the Spanish issuing judicial authority shall submit an application for authorisation to the executing judicial authority, accompanied by the information mentioned in Article 36.

3. In the event of Spain being the executing State, until notice to the Secretariat General of the Council referred to in Section 1 is performed, for trial sentencing or arrest for the purposes of execution of a custodial sentence or measure of deprivation of liberty for any offence committed prior to surrender of a person, and that is different to that which gave rise to such surrender, the issuing State must request the authorisation stated in the preceding Paragraph.

The Public Prosecutor shall be heard within the term of five days to decide on the authorisation. After this, legal counsel must be appointed to defend the interest of the requested person, if he has none, and he shall be notified so he may submit allegations within the term of five days. The Central Judge of Criminal Investigation shall decide by reasoned order within the term of ten days, without the processing the application received exceeding the term of thirty days from receipt. The authorisation shall be granted if the conditions concur to execute a European arrest and surrender warrant and if none of the grounds foreseen to refuse its execution concurs.

4. The preceding Sections shall not be applicable when any of the following circumstances concurs:

- a) if the person has specifically renounced the speciality rule before the executing judicial authority prior to surrender;
- b) if the person has specifically renounced, prior to surrender, resorting to the speciality rule in relation to certain offences prior to surrender. The renunciation shall be made before the competent judicial authority of the issuing Member State, and certification thereof shall be recorded pursuant to its national law. The renunciation shall be made under conditions that evidence that the person has done so voluntarily and being fully aware of the consequences thereof. To that end, the person shall be entitled to legal counsel;
- c) where, having had the opportunity to leave the territory of the Member State to which he has been surrendered, the person has not done so within the term of forty–five days from his final discharge, or has returned to that territory after leaving;
- d) if the offence is not subject to a custodial sentence or to a measure involving deprivation of liberty;
- e) if the criminal proceedings do not conclude with application of a measure restricting the individual liberty of the person;
- f) if the person is subject to a non–custodial sentence or measure, including financial penalties, or an equivalent measure, even when that penalty or measure may restrict his individual freedom.

**Article 61.** *Subsequent surrender for extradition.*

1. In the event of the requested person having been extradited to Spain from a third State, and if protected by provisions of the agreement pursuant to which he has been extradited in relation to the speciality rule, the Spanish executing judicial authority shall apply for authorisation to the State that has extradited him in order for him to be surrendered to the issuing State. The terms set out in Article 54 shall begin to elapse on the date on which those rules regarding the speciality rule cease to be applied.

2. While the authorisation is being formalised, the Spanish executing judicial authority shall guarantee that the necessary material conditions for effective surrender continue to subsist.

**Article 62.** *Subsequent extradition.*

1. When the person has been delivered to Spain by virtue of a European arrest and surrender warrant, if extradition is subsequently requested by a State that is not a member of the European Union, that extradition may not be granted without the consent of the executing judicial authority that resolved the surrender, to which end the Central Judge of Criminal Investigation shall submit the relevant application.

2. Should the Spanish judicial authorities have resolved to surrender the person to another Member State of the European Union, by virtue of a European arrest and surrender warrant, and their consent were requested by the issuing judicial authorities in order to proceed to his extradition to a third State that is not a member of the European Union, such consent shall be provided pursuant to the bilateral or multilateral conventions to which Spain is a signatory, the request for authorisation having the status of a request for extradition to those ends.

TITLE III

**DECISION IMPOSING A CUSTODIAL SENTENCE OR A MEASURE  
OF DEPRIVATION OF LIBERTY**

CHAPTER I  
GENERAL PROVISIONS

**Article 63.** *Decision imposing a custodial sentence or a measure of deprivation of liberty.*

1. Sentences whose regime of recognition and execution is regulated under this Title are final judicial decisions issued by the competent authority of a Member State after conducting criminal proceedings, imposing on a natural person a custodial sentence or measure of deprivation of liberty as a consequence of having committed a criminal offence, including internment measures imposed pursuant to the Organic Act on the criminal liability of minors.

2. The terms set forth in this Title solely apply to penalties or measures that are totally or partially pending execution. When these have been totally served, their consideration in further criminal proceedings shall be governed by Organic Act 7/2014, of 12 November, on exchange of

information on criminal records and consideration of judicial decisions on criminal matters in the European Union.

**Article 64.** *Competent judicial authorities in Spain to transmit and execute a decision imposing a custodial sentence or measure of deprivation of liberty.*

1. The competent authorities to transmit a decision imposing a custodial sentence or measure of deprivation of liberty are the Penitentiary Surveillance Judges, as well as the Judges for Minors when it is a measure imposed pursuant to the Organic Act on the criminal liability of minors. In cases in which serving of the sentence has not commenced, the competent authority shall be the court that handed down the judgement at first instance.

2. The competent authority to recognise and order execution of a decision imposing a custodial sentence or measure of deprivation of liberty shall be the Central Criminal Judge. In order to carry out execution thereof, the competent authority shall be the Central Penitentiary Surveillance Judge. When the decision refers to an internment measure under closed regime for a minor, jurisdiction shall lie with the Central Judge for Minors.

3. The judicial authority shall submit a copy of the certificates processed or recognised in Spain to the Ministry of Justice within the term of three days from issue, or from recognition and execution.

## CHAPTER II

### FORWARDING OF A DECISION IMPOSING A CUSTODIAL SENTENCE OR A MEASURE OF DEPRIVATION OF LIBERTY

**Article 65.** *Applications for forwarding of a decision imposing a custodial sentence or measure of deprivation of liberty.*

1. A decision imposing a custodial sentence or measure of deprivation of liberty may be forwarded by the competent Spanish judicial authority ex officio or at the request of the executing State or of the sentenced person.

The application by the sentenced person for commencement of proceedings to transmit the decision may be made before the competent Spanish authority or before the executing State.

Applications by the competent authority of the executing State and the sentenced person shall not oblige the competent Spanish judicial authority to forward the decision.

**2.** Prior to commencement of execution of a sentence, in the event of the sentenced person not serving any other, the Judge or Court sentencing, once the judgment is final, may forward the decision to the competent authority of the executing State directly or through the Penitentiary Surveillance Judge.

**Article 66.** *Requisites to transmit a decision imposing a custodial sentence or measure of deprivation of liberty.*

**1.** The competent Spanish judicial authority may forward a decision imposing a custodial sentence or measure of deprivation of liberty to the competent authority of another Member State of the European Union in order for it to proceed to execution thereof, whenever the following requisites concur:

- a) that the sentenced person is in Spain or in the executing State;
- b) that the Spanish judicial authority considers that execution of the sentence by the executing State shall contribute to achieving the objective of facilitating social reinstatement of the sentenced person, after having consulted the executing State, when appropriate;
- c) for consent to be granted by the sentenced person, except when this is not necessary, under the terms foreseen in the following Article.

**2.** The fact that, in addition to the custodial sentence or measure of deprivation of liberty, a financial penalty or confiscation may have been ordered, that has not yet been paid or enforced, shall not prevent forwarding of the decision imposing a custodial sentence or a measure of deprivation of liberty. Condemnatory pronouncements affecting property may support the forwarding of judicial decisions on confiscation or financial penalties by the sentencing Judge or Court.

**3.** Before forwarding a decision, the competent judicial authority shall ensure that there is no condemnatory sentence not yet final in relation to the sentenced person.

**Article 67.** *Consent by the sentenced person.*

1. Forwarding of the decision imposing a custodial sentence or measure of deprivation of liberty by the competent Spanish judicial authority to another Member State for recognition and execution shall require securing the prior consent of the sentenced person before the competent judicial authority, who for such purposes must receive legal counsel and have, when appropriate, interpreter, and shall have to be informed under clear and understandable terms of the purpose of the hearing and consent.

2. However, his consent shall not be necessary when the executing State is:

a) the State of nationality of the sentenced person in which he has links due to his ordinary residence and family, labour or professional bonds;

b) the Member State to which the sentenced person is to be deported on release, based on a deportation or transfer order contained in the judgment, or in a judicial or administrative decision arising from the judgment;

c) the Member State to which the sentenced person has fled, or has returned in the event of criminal proceedings against him in Spain, or due to having been condemned in Spain.

3. In all cases, the competent judicial authority shall provide the sentenced person who is in Spain the opportunity to provide his opinion verbally or in writing. This shall be taken into account when deciding on forwarding of the decision and shall be sent to the authority of the executing State along with the rest of the documentation.

When the sentenced person cannot express his opinion due to his age, physical or mental state, this shall be obtained through his legal representative.

**Article 68.** *Consultation on forwarding of a decision imposing a custodial sentence or measure of deprivation of liberty between the issuing State and that enforcing.*

1. Prior to forwarding of the decision imposing a custodial sentence or measure of deprivation of liberty, the competent judicial authority may consult the competent authority of the executing State, by all the appropriate means, regarding the aspects that permit to conclude that forwarding of the decision shall contribute to facilitate rehabilitation of the sentenced person.

2. Such consultation shall be mandatory in cases in which the decision is transmitted to an executing State other than that in which the sentenced person lives and of which he is a national, or that to which he is to be deported on release.

3. When the executing State has responded to the consultation made, the competent judicial authority shall decide whether or not it shall forward the decision or withdraw it, should it already have been forwarded.

**Article 69.** *Documentation of the decision imposing a custodial sentence or measure of deprivation of liberty.*

Once the competent judicial authority has decided execution of the condemnatory sentence in another Member State of the European Union, it shall forward that sentence to the competent authority along with the certificate recorded in Annex II, duly filled in.

**Article 70.** *Notification of the forwarding of a decision imposing a custodial sentence or a measure of deprivation of liberty.*

The order by which the competent judicial authority resolves the forwarding of a decision imposing a custodial sentence or measure of deprivation of liberty shall be notified personally to the sentenced person, assisted by an interpreter if necessary, and according to the certificate of Annex III.

When, on handing down the order, the sentenced person is in the executing State, the certificate of Annex III shall be transmitted to the competent judicial authority thereof so it may serve the notification.

**Article 71.** *Forwarding of a decision imposing a custodial sentence or measure of deprivation of liberty.*

1. The decision imposing a custodial sentence or measure of deprivation of liberty shall be transmitted to a sole executing State.

2. It may be transmitted to one of the following Member States:

- a) the State of which the sentenced person is a national and where he is ordinarily resident;
- b) the State of which the sentenced person is a national and to which, according to the sentence or administrative decision, he shall be deported on release;
- c) any other Member State whose competent authority consents the decision being forwarded to it;

d) any other Member State, without the need to obtain its consent, when it has thus declared before the Secretariat General of the Council of the European Union, as long as there is reciprocity and when at least one of the following requisites concurs:

1. That the sentenced person has resided legally and continuously in that State for at least five years and maintains his right of permanent residence there;
2. That he is a national of that executing State but is not ordinarily resident there.
3. Forwarding of the decision shall be notified to the Judge or Court that handed down the condemnatory sentence.

**Article 72.** *Application by the Penitentiary Surveillance Judge for injunctive measures regarding the sentenced person to be adopted by the executing authority.*

Should the sentenced person be in the executing State, the Penitentiary Surveillance Judge, at the request of the Public Prosecutor, may apply to the competent authority of the executing State to adopt a measure restricting the personal liberty of the sentenced person or any other measure intended to guarantee he remains in that territory. Such application may be made even before the executing authority receives the decision imposing a custodial sentence or measure of deprivation of liberty, or before deciding whether to proceed to execution thereof.

If a measure of deprivation of liberty of the sentenced person is adopted by the executing authority, the time of deprivation of liberty that elapses shall be counted in the relevant serving of the sentence.

**Article 73.** *Transfer of the sentenced person to the executing State.*

1. When the executing authority notifies that it accepts execution of the decision imposing a custodial sentence or measure of deprivation of liberty, it shall proceed to transfer the sentenced person to the executing State if he is in Spain.
2. The term to enforce the transfer may not exceed thirty days from the executing State issuing the final decision on recognition and execution of the decision imposing a custodial sentence or measure of deprivation of liberty.

In the event that, due to unforeseen circumstances, it is not possible to transfer the person within that term, the competent judicial authority shall immediately inform the executing authority, agreeing a new date for transfer, which shall take place within the maximum term of ten days from the new date agreed.

**Article 74.** *Withdrawal of the decision imposing a custodial sentence or measure of deprivation of liberty by the issuing Penitentiary Surveillance Judge.*

1. Prior to commencement of execution of the sentence, the Penitentiary Surveillance Judge, after hearing the Public Prosecutor and the parties to the proceedings within five days, may resolve to withdraw the certificate by reasoned order that must be handed down within the term of five days and in which the executing State shall be requested not to pass any enforcement measure.

Withdrawal of the certificate may be performed in the following cases:

- a) if there has been no prior consultation whatsoever and if a finding or opinion were to be received from the executing authority regarding serving the sentence in the executing State not contributing to the objective of facilitating social reinstatement or successful reintegration of the sentenced person in society;
- b) if an agreement is not reached with the executing authority in relation to partial execution of the sentence;
- c) if, after requesting information from the executing authority on provisions applicable in matters of early release or probation, an agreement is not reached over implementation thereof.

2. When the executing State requests, the Penitentiary Surveillance Judge may notify the executing authority of the applicable provisions of Spanish Law in relation to early release or probation of the sentenced person, as well as request information from it regarding the applicable provisions in such matters under the laws of the executing State. Once he has received such information and heard the parties to the proceedings for five days, the Penitentiary Surveillance Judge shall hand down a reasoned order within the term of a further five days. The order shall contain the provisions to be applied by the executing authority or shall resolve withdrawal of the certificate.

**Article 75.** *Consequences of the Spanish procedure for execution in another Member State of the decision imposing a custodial sentence or measure of deprivation of liberty.*

Once execution of a decision imposing a custodial sentence or measure of deprivation of liberty has commenced, the Penitentiary Surveillance Judge shall cease to have jurisdiction to pass resolutions on a custodial sentence or measure of deprivation of liberty imposed on the sentenced person, including the reasons for early release or probation, without prejudice to the terms set forth in Section 2 of the preceding Article.

That circumstance, as well as subsequent withdrawal of the certificate or reversion of execution to Spain, shall be notified to the sentencing bodies that have pronounced the sentence of deprivation of liberty for which enforcement has been transmitted, withdrawn or reverted.

**Article 76.** *Reversion of execution of the sentence in Spain.*

Execution of the sentence in Spain may recommence when the competent authority of the executing State informs the Penitentiary Surveillance Judge of non- execution of the sentence due to the sentenced person having fled.

### CHAPTER III EXECUTION OF A DECISION IMPOSING A CUSTODIAL SENTENCE OR A MEASURE OF DEPRIVATION OF LIBERTY

**Article 77.** *Requisites for recognition and execution in Spain of a decision imposing a custodial sentence or a measure of deprivation of liberty.*

1. The Central Criminal Judge shall recognise a decision imposing a custodial sentence or a measure of deprivation of liberty transmitted by other Member States of the European Union when this facilitates the social reinstatement of the sentenced person and if any of the following circumstances concurs:

- a) that the sentenced person is Spanish and resides in Spain;
- b) that the sentenced person is Spanish and is to be deported to Spain due to that sentence;

c) even when such conditions do not concur, if the Central Criminal Judge has consented execution of the sentence in Spain, except if, by virtue of the declarations made by the Spanish State, that consent is not necessary.

**2.** Execution in Spain of a decision imposing a custodial sentence or measure of deprivation of liberty transmitted by the issuing State shall not be subject to double criminality verification when it refers to acts classified as some of the offences listed in Section 1 of Article 20, as long as these are punishable in the issuing State by a custodial sentence or a measure of deprivation of liberty with a maximum duration of at least three years.

**Article 78.** *Consultation regarding forwarding of a decision imposing a custodial sentence or a measure of deprivation of liberty.*

**1.** The Central Criminal Judge shall respond to applications for information addressed to the issuing authority regarding forwarding to Spain of a decision imposing a custodial sentence or measure of deprivation of liberty within a maximum term of twenty days from its receipt.

**2.** When the consultation concerns knowledge of the possibilities of social reinstatement of the sentenced person in Spain, the Central Criminal Judge shall hear the person concerned if he is in Spain, shall gather the information that is understood to be necessary regarding the roots of the sentenced person in Spain, shall hear the Public Prosecutor in that regard, and shall send his reply to the authority that issued the query.

**3.** In cases in which no consultation has taken place and the sentence and certificate have been transmitted in turn, the Central Criminal Judge may submit a finding on the eventual execution of the sentence in Spain and its contribution to social reinstatement of the sentenced person.

**Article 79.** *Application for forwarding of a decision imposing a custodial sentence or a measure of deprivation of liberty.*

The Central Criminal Judge, of his own motion or at the request of the sentenced person, may apply to the competent authority of the issuing State, with prior hearing of the Public Prosecutor or at his behest, to forward decision imposing a custodial sentence or a measure of deprivation of liberty for execution in Spain.

**Article 80.** *Agreement for partial execution of the sentence.*

1. The Central Criminal Judge shall consult the competent authority of the issuing State regarding possible recognition and partial execution of a condemnatory decision, before deciding to refuse total recognition and execution of the decision.

2. According to the terms foreseen in the preceding Section and according to the circumstances of the specific case, the Central Criminal Judge may reach an agreement with the competent authority of the issuing State to recognise and partially enforce a condemnatory decision. Should an agreement not be reached, the certificate shall be returned.

The order on recognition and partial execution of the decision may not give rise to an increase in the term of the sentence in any case.

**Article 81.** *Procedure for recognition of the decision imposing a custodial sentence or a measure of deprivation of liberty for the purposes of its serving in Spain.*

1. Within the five days following receipt of the certificate, the Public Prosecutor shall be notified so that, within the term of ten days, he may issue an opinion on the appropriateness of the recognition and execution of the decision.

2. The Central Criminal Judge shall verify whether any reason to refuse recognition or execution concurs, and also whether the sentenced person has granted consent, except if this is not necessary by virtue of the laws of the issuing State. In any event, consent from the sentenced person shall not be necessary when:

- a) he is Spanish and resides in Spain;
- b) he is to be deported to Spain after release in the issuing State due to a deportation or transfer order set forth in the sentence or in a judicial or administrative decision arising from the sentence;
- c) he has fled or returned to Spain due to the sentence handed down, or due to criminal proceedings conducted in the issuing State.

3. The Central Criminal Judge shall resolve by order within the term of a further ten days on recognition of the condemnatory decision or its refusal.

In any event, within the term of ninety days, a reasoned and final order that recognises or refuses enforcement must be handed down and shall be sent, where appropriate, to the Central Penitentiary Surveillance Judge for him to execute the custodial sentence or a measure of deprivation of liberty.

**4.** The order shall determine the total period of deprivation of liberty that must be served in Spain, only deducting therefrom the time already served in the issuing State, or when appropriate due the time the sentenced person was subject to provisional detention or any other measure restricting his liberty adopted by the authority of the issuing State, that was calculable.

**Article 82.** *Withdrawal of the certificate of the decision imposing a custodial sentence or a measure of deprivation of liberty.*

If the competent authority of the issuing State were to notify the withdrawal of the certificate before commencement of execution of the sentence, the Central Criminal Judge shall file the case and send the former the written record of the proceedings.

When returning the certificate, a record shall be provided of the time that, if appropriate, the sentenced person has remained deprived of liberty in Spain to fulfil any injunctive measure.

**Article 83.** *Adaptation of the sentence.*

**1.** Should the term of the sentence imposed in the decision be incompatible with the Spanish Law in force at the moment of requesting recognition of the decision, due to it exceeding the limit of the maximum penalty foreseen for that offence, the Central Criminal Judge may adapt the sentence. The adaptation shall consist of limiting the term of the sentence to the maximum amount foreseen in said legislation for the offences committed by the sentenced person.

**2.** Should the sentence, due to its nature, be incompatible with Spanish Law, the Central Criminal Judge may adapt the sentence to the penalty or measure considered in Spanish Law for the offences committed by the sentenced person. The adapted penalty must correspond to the penalty imposed in the foreign judicial decision and, thus, may not become a penalty of another nature, such as a fine.

3. In none of these cases may the adaptation aggravate the sentence imposed in the issuing State.

**Article 84.** *Postponement of recognition of the decision imposing a custodial sentence or a measure of deprivation of liberty.*

1. The Central Criminal Judge shall postpone recognition of the condemnatory decision when the certificate he has been sent by the competent authority of the issuing State is incomplete or manifestly does not correspond to the decision that must be executed.

2. The new term granted for the issuing authority to complete or correct the certificate may not exceed sixty days.

**Article 85.** *Refusal of recognition and execution of the decision imposing a custodial sentence or a measure of deprivation of liberty.*

1. The Central Criminal Judge shall refuse recognition and execution of the decision imposing a custodial sentence or a measure of deprivation of liberty, in addition to the cases foreseen in Articles 32 and 33, in the following cases:

- a) when, by virtue of his age, the sentenced person could not have been declared criminally responsible for the acts giving rise to the condemnatory decision pursuant to Spanish Criminal Law;
- b) when the competent Spanish judicial authority notes that, at the moment of receiving the condemnatory decision, the part of the sentence that remains to be served is less than six months;
- c) when, without prejudice to the terms set forth in Article 81, the decision forwarded imposes a measure of deprivation of liberty that is not executable pursuant to Spanish Law;
- d) when, prior to deciding on recognition and execution of the condemnatory decision, the Central Criminal Judge submits an application for the person concerned to be indicted, condemned or deprived of liberty in Spain for an offence committed prior to his transfer and other than that which has given rise thereto, and the competent authority of the issuing State does not grant its consent;
- e) when the requisites established for forwarding of a decision imposing a custodial sentence or a measure of deprivation of liberty are not fulfilled.

2. In the event of any of the grounds for refusal of recognition and execution foreseen in Letters a) and c) of Section 1 or in Section 3 of Article 32, in Section 1 of Article 33, or in Letters c) and e) of the preceding Section concurs, before refusing recognition and execution of the decision, the Central Criminal Judge shall consult the competent authority of the issuing State in order for it to clarify the situation and, where appropriate, to correct the defect incurred.

**Article 86.** *Applicable legislation in the execution of the decision imposing a custodial sentence or a measure of deprivation of liberty.*

1. The Central Penitentiary Surveillance Judge must execute the condemnatory decision according to the terms set forth in the Spanish legal order, deducting the period of deprivation of liberty already served, where appropriate, in the issuing State in relation to the same condemnatory decision, of the total period that is to be served in Spain.

Notwithstanding this, the effects of the decision forwarded on sentences handed down by Spanish Courts, or on resolutions that, pursuant to the terms set forth in Paragraph Three of Article 988 of the Criminal Procedure Act, set the limits to serving the sentence, shall be determined pursuant to what is set forth in Article 14 and the Sole Additional Provision of Organic Act 7/2014, of 12 November, on exchange of information on criminal records and consideration of judicial decisions on criminal matters in the European Union.

2. The Central Penitentiary Surveillance Judge shall be the only competent authority to determine the enforcement procedure and related measures to be adopted, including eventually granting probation. Should the issuing authority report the date by virtue of which the sentenced person would be entitled to probation, pursuant to his laws, the Central Penitentiary Surveillance Judge may take this into account.

**Article 87.** *Injunctive measures restricting the liberty of the sentenced person when in Spain.*

1. If the sentenced person is in Spain, at the request of the issuing authority or the Public Prosecutor, the Central Criminal Judge may adopt injunctive measures restricting the liberty of the sentenced person to guarantee he remains in Spain until recognition and execution of the sentence.

2. After receiving the application, the Central Criminal Judge may order the arrest of the sentenced person and, after he is made available to him,

shall hold a hearing in the manner foreseen in the Criminal Procedure Act. He may also order another injunctive measure restricting the liberty of the sentenced person, always in keeping with the rules foreseen in the Criminal Procedure Act.

**3.** These measures may be requested by the issuing authority before transmitting the decision imposing a custodial sentence or a measure of deprivation of liberty.

**4.** The time of arrest and provisional detention shall be calculated in the liquidation of the sentence to be executed in Spain by virtue of the recognition and execution of the decision to guarantee which the measure was adopted.

**Article 88.** *Transfer of the sentenced person to Spain to serve the deprivation of liberty sentence or measure.*

If the sentenced person is in the issuing State, he shall be transferred to Spain at the moment agreed between the issuing authority and the Central Criminal Judge, always within thirty days following the final status of the order on recognition and execution of the decision.

If, due to unforeseen circumstances, it is not possible to transfer the sentenced person at the moment agreed, a new date shall be set, immediately after such circumstances disappear, from which the transfer must be carried out within the term of ten days.

**Article 89.** *Suspension of execution of a decision imposing a custodial sentence or a measure of deprivation of liberty.*

The Central Criminal Judge shall suspend execution of the decision as soon as the competent authority of the issuing State informs it of adopting any decision or measure that has the effect of annulling or leaving the decision without effect.

**Article 90.** *Return to the issuing authority of the decision imposing a custodial sentence or a measure of deprivation of liberty.*

If the sentenced person escapes during execution of the decision imposing a custodial sentence or a measure of deprivation of liberty, without delay the Central Penitentiary Surveillance Judge shall notify the Central Criminal Judge who, in addition to notifying the issuing authority of that

incident, shall investigate the criminal liabilities the sentenced person may have incurred.

When return of the certificate is appropriate, a record shall be provided of the time the sentenced person has remained deprived of liberty in Spain in execution of that decision.

**Article 91.** *Execution of sentences arising from a European arrest and surrender warrant.*

When a European arrest and surrender warrant is refused or conditioned based on the Spanish nationality of the sentenced person, the Central Criminal Judge shall apply the provisions of this Chapter for the purposes of fulfilling the sentence imposed by another Member State, preventing impunity of the sentenced person.

#### CHAPTER IV OTHER PROVISIONS

**Article 92.** *Application of the speciality rule to execution of a decision imposing a custodial sentence or a measure of deprivation of liberty.*

1. The person transferred to Spain within the framework of the process of recognition and execution of a decision imposing a custodial sentence or a measure of deprivation of liberty may not be prosecuted, condemned or deprived of liberty in Spain as a result of having committed a prior offence other than that which has given rise to the transfer.

2. The preceding Section shall not be applicable when any of the following circumstances concurs:

- a) when the sentenced person has had the opportunity to leave Spain and has not done so within the term of forty–five days from definitive release, or has done so but has returned after having left;
- b) when the offence may not be penalised with a custodial sentence or an internment order;
- c) when the criminal proceedings do not conclude with application of a measure that restricts individual liberty;
- d) when the sentenced person may be submitted to a sentence or a measure not involving deprivation of liberty, even when his individual liberty may be restricted;

- e) when the sentenced person has granted consent to the transfer;
- f) when, after the transfer, the sentenced person has specifically and voluntarily renounced resorting to the speciality rule in relation to certain offences prior to his transfer.

The renunciation must be made by the sentenced person, with legal counsel, before the Central Criminal Judge, who shall attest it.

- g) when the issuing State grants its consent, pursuant to the terms set forth in the following Section.

**3.** The Central Criminal Judge, as executing authority, shall send the relevant application for consent to the competent authority of the issuing State, accompanied by a European arrest and surrender warrant.

**4.** In the event of Spain being the issuing State, the competent judicial authorities shall consent non-application of the speciality rule when the executing State submits an application for consent accompanied by a European arrest and surrender warrant and if there is the obligation to surrender pursuant to the terms set forth in this Act.

In this case, the competent Spanish judicial authority shall give its consent within a term not exceeding thirty days from receipt of the application.

## TITLE IV

### DECISION ON PROBATION

#### CHAPTER I

#### GENERAL PROVISIONS

**Article 93.** *Decision on probation.*

**1.** The sentences whose regime of recognition and execution is regulated by this Title are final resolutions handed down by the competent authority of a Member State imposing a custodial sentence or a measure of deprivation of liberty or any of the measures foreseen in Article 94 on a natural person, when the following is resolved in relation to serving thereof:

- a) conditional release on the basis of that sentence, or by a subsequent probation decision;

- b) suspension of the sentence, either partially or totally, imposing one or more probation measures, that may be included in the sentence itself, or be determined in a separate probation decision;
- c) substitution of the penalty by another imposing deprivation of a right, an obligation or a prohibition that does not constitute a custodial sentence or a measure of deprivation of liberty or a financial penalty;
- d) pursuant to the laws of the issuing State, a conditional sentence by means of which one or more probation measures are imposed, being able, when appropriate, to differ from the conditional form of the custodial sentence imposed.

**2.** The provisions of this Title also govern recognition and execution of the decision on probation when this has been adopted by the competent authority for execution of the custodial sentence or measure of deprivation of liberty in the issuing State.

**3.** The provisions of this Title shall not apply to cases of recognition and execution of decisions imposing custodial sentences, financial penalties or confiscation foreseen under this Act.

**Article 94.** *Scope of application of the probation decision.*

The following probation measures are liable to forwarding and execution in another Member State of the European Union, or to receipt by the competent Spanish judicial authorities:

- a) an obligation of the sentenced person to inform a specific authority of any change of residence or working place;
- b) an obligation not to enter certain localities, places or defined areas in the issuing or executing State;
- c) an obligation imposing limitations on leaving the territory of the executing State;
- d) instructions relating to behaviour, residence, education and training, leisure activities or containing limitations on the modalities of carrying out a professional activity;
- e) an obligation to report at specific times to a specific authority;
- f) an obligation to avoid all contact with specific persons;

- g) an obligation to avoid all contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence;
- h) an obligation to financially compensate for the prejudice caused by the offence and/or to provide proof of compliance with such an obligation;
- i) an obligation to carry out community service;
- j) an obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons;
- k) an obligation to undergo therapeutic treatment or treatment for addiction.

**Article 95.** *Competent judicial authorities in Spain to forward and execute a probation decision.*

**1.** The issuing authorities of a probation decision are the Judges or Courts hearing the execution of the sentence or probation decision.

**2.** The competent authority to recognise and order execution of a probation decision forwarded by the competent authority of another Member State of the European Union is the Central Criminal Judge. When a probation decision transmitted concerns a minor, the Central Judge for Minors shall have jurisdiction.

## CHAPTER II FORWARDING OF A PROBATION DECISION

**Article 96.** *Requisites to issue a probation decision.*

**1.** The following are the requisites for the competent Spanish judicial authority to issue a probation decision to another Member State:

- a) for a final judicial decision of probation to have been handed down under the terms specified in this Act;
- b) for the sentenced person not to have his lawful and ordinary residence in Spain;
- c) for him to have returned to the State where he has his lawful and ordinary residence or if, even while being in Spain, he has declared his will to return to it or another Member State that authorises such.

2. The fact that, in addition to probation, a monetary penalty or a confiscation order has been issued that has not yet been paid or executed shall not prevent the passing of a probation decision. Property based condemnatory pronouncements may cover the issue of confiscation orders or financial penalties by the Judge or Court sentencing.

**Article 97.** *Documentation of a European probation decision.*

A probation decision shall be accompanied by the certificate provided in Annex IV, specifically mentioning the measures forwarded for enforcement, whether these are those foreseen in general terms, or the specific ones that the executing State has accepted in the declaration made before the Secretariat General of the Council of the European Union.

The sentence shall be sent along with the certificate and, where appropriate, the final judicial decision.

**Article 98.** *Forwarding of a probation decision.*

1. The competent Spanish judicial authority shall forward the probation decision to the competent authority of the Member State in which the sentenced person has his lawful and ordinary residence and to which he has returned or wishes to return.

It may also be forwarded to a Member State other than that in which the sentenced person has his lawful and ordinary residence, at the request of the sentenced person and as long as the competent authority of the State of residence of the sentenced person has given its consent to the forwarding.

2. Prior to the forwarding of a probation decision, the judicial authority shall ask the sentenced person if he wishes to return or remain in his State of residence, granting him the term of thirty days for that purpose.

Should the sentenced person declare he wishes to comply with the measure in a different State, the judicial authority shall apply to the competent authority thereof for consent to forward the decision.

3. The competent Spanish judicial authority shall forward the sentence and, where appropriate, the probation decision, to a sole executing State each time.

4. The Spanish judicial authority shall also transmit the competent authority of the executing State the measures that, if appropriate, may have been imposed on the sentenced person to cover the civil liability arising from the offence and other monetary liabilities, the settlement of which must be proved by him.

**Article 99.** *Consequences of the probation decision.*

1. Once the competent authority of the executing State notifies recognition of the probation decision that it has been forwarded, the Spanish judicial authority shall cease to have jurisdiction both for supervision of the probation measures, as well as to adopt subsequent resolutions in relation thereto, except when the executing State has made a declaration to the contrary.

2. After forwarding the probation decision, the Judge or Court issuing, ex officio or at the request of the Public Prosecutor or any of the parties concerned, may apply to the executing authority to notify it of the maximum duration of the penalty of the custodial sentence foreseen by the national law of the executing State in cases of breach of the measures whose enforcement has been transmitted with the probation decision.

**Article 100.** *Return of the probation decision.*

1. The issuing Judge or Court may withdraw the certificate, requesting the executing State not to adopt any measure whatsoever, as long as it has not yet commenced execution of the probation decision and within the maximum term of ten days:

a) from receipt of the information requested in relation to the maximum term of the custodial sentence foreseen in the laws of the executing State for the offence that gave rise to the decision and that might be imposed in the event of breach of the probation measure;

b) or from receipt of the information on the reasoned decision by the executing State to adapt the probation measures imposed to those applicable for equivalent offences under its laws.

After receiving the information from the executing State, the Judge or Court shall hear the Public Prosecutor within the term of five days and shall issue an order, which must be reasoned, within the five days following.

2. The issuing Judge or Court may request return of the probation decision whose execution has been commenced in another Member State, when new criminal proceedings are being brought against the party concerned in Spain.

3. When the authority of the executing State transfers back the jurisdiction regarding supervision of the probation measures and to adopt subsequent decisions, this shall be exercised again by the competent Judge or Court, taking into account the period and degree of serving in the executing State, as well as the subsequent decisions that may already have been adopted.

### CHAPTER III EXECUTION OF A PROBATION DECISION

**Article 101.** *Requisites for forwarding a probation decision to Spain.*

1. Recognition by Spain of a probation decision handed down by another Member State of the European Union shall not be subject to double criminality verification when it concerns acts classified as some of the offences listed in Section 1 of Article 20, as long as these are punishable in the issuing State with a custodial sentence or a measure of deprivation of liberty with a maximum term of at least three years.

2. Probation decisions may only be recognised:

a) when the sentenced person has his lawful and ordinary residence in Spain and there is a certifiable record that he has returned to Spain or has declared his will to do so before the issuing authority;

b) when, in spite of the sentenced person not having his lawful and ordinary residence in Spain, this is the status held, since at least five years, by his ascendants, descendents or siblings, his spouse or partner in a similar relation, as long as the sentenced person has obtained a work contract, or has requested that the probation decision be served in Spain.

**Article 102.** *Application for Spain to provide its consent to the forwarding of a probation decision.*

When a sentenced person does not have his lawful and ordinary residence in Spain, the Central Criminal Judge who receives the application from the issuing authority to provide his consent to the probation decision being

forwarded to Spain, may only grant it if the conditions foreseen in Letter b) of Section 2 of the preceding Article are complied with.

**Article 103.** *Procedure for recognition of a probation decision.*

1. The Central Criminal Judge, within the term of five days from receipt of the certificate, shall hear the Public Prosecutor on whether it is appropriate to recognise and execute the probation decision, and this shall be done within the term of ten days. The Central Criminal Judge shall then decide within the term of another ten days.

2. The Central Criminal Judge shall verify whether there is any ground to refuse recognition or execution, and whether the requisites are complied with in relation to residence of the sentenced person in Spain, his return or intention to return to Spain.

3. In any event, within the term of sixty days from receipt of the probation decision in Spain, the Judge must issue a reasoned order recognising or refusing its execution. Under exceptional circumstances in which such a term cannot be respected, the issuing authority must be informed of the reasons, as well as the date on which it is estimated that the decision shall be adopted.

**Article 104.** *Adaptation of a probation decision.*

1. In the event of the measure recorded in a probation decision being incompatible with Spanish Law due to its duration, due to it exceeding the maximum limit foreseen under Spanish Law, the Central Criminal Judge shall adapt the sentence. The adaptation shall consist of limiting the term of the probation decision to the maximum term foreseen under Spanish Law for equivalent offences that correspond to those handed down in the issuing State.

2. In the event of a probation measure, being incompatible with Spanish Law due to its nature, the Central Criminal Judge shall adapt the measure to that considered under Spanish Law for similar cases. The adapted measure shall correspond as much as possible to the measure imposed in the sentence or decision of the issuing State.

3. In neither of these two cases may the adaptation be more severe or longer than the probation measure imposed in the issuing State.

**Article 105. Refusal to recognise and execute a probation decision.**

1. The Central Criminal Judge shall refuse to recognise and execute probation decisions, as well cases foreseen in Articles 32 and 33, in the following cases:

- a) when, owing to his age, the sentenced person cannot be held criminally liable for the acts in respect of which the judgment was issued, pursuant to Spanish Criminal Law;
- b) the probation measure or alternative penalty is of less than six months' duration;
- c) the judgment or, where appropriate, the probation decision provides for medical/therapeutic treatment which, according to Spanish Law, the Central Criminal Judge is unable to supervise;
- d) when the conditions required for forwarding of a probation decision are not complied with.

2. In the event of any of the grounds for refusal of recognition and execution foreseen in Letters a) and c) of Section 1 or Section 3 of Article 32, in Section 1 of Article 33 or in Letters b), c) and d) of the preceding Section concurs, prior to refusing recognition and execution of the sentence or probation decision, the Central Criminal Judge shall consult the authority of the issuing State to clarify the situation and, if appropriate, to correct the defect that has been incurred.

3. When the Central Criminal Judge has decided that any of the grounds for refusal considered in Sections 2 and 3 of Article 32 concurs, he may reach an agreement with the competent authority of the issuing State to perform supervision of the probation measures or alternative penalties, without bearing responsibility for adopting any subsequent decision.

In that case, the Judge shall inform the competent authority of the issuing State, through the certificate provided in Annex V, in the event of breach of the probation measure, or alternative penalty by the sentenced person.

**Article 106. Adoption by the Central Criminal Judge of subsequent resolutions in relation to probation.**

1. The Central Criminal Judge shall have jurisdiction to adopt subsequent resolutions in relation to the probation in the event of breach of the probation measure or if a further criminal offence is committed by the

sentenced person, except if it is the remit of the issuing authority to adopt such due to it being any of the following cases:

- a) when the judgment does not impose a custodial sentence or a measure of deprivation of liberty that must be applied in the event of breach of the obligations or prohibitions comprising the probation measure;
- b) in cases of conditional sentences;
- c) in cases in which the sentence refers to acts that do not constitute a legal offence under Spanish Law.

Should any of these cases concur, the issuing State shall be notified without delay, requiring it to adopt the appropriate decision, maintaining the supervision measures of the sentenced person meanwhile.

**2.** Among the subsequent decisions that the Spanish judicial authority may adopt, according to Spanish Law, there are:

- a) amendment of the obligations or prohibitions contained in the probation measure, as well as their duration;
- b) revocation of suspension of execution of the sentence or decision regarding release on probation;
- c) imposing a custodial sentence or a measure of deprivation of liberty when these have already been specified by the issuing authority.

**3.** The custodial sentence or measures of deprivation of liberty that it may be appropriate to enforce pursuant to these subsequent resolutions shall be implemented pursuant to Spanish Law.

**4.** The Central Criminal Judge shall inform the competent authority of the issuing State of adoption of any of the decisions stated in this Article, as well as their execution and those that refer to extinction of the probation measures or the alternative penalties.

**5.** The Central Criminal Judge shall also report, on prior application by the issuing authority, on the maximum duration of the custodial sentence foreseen in the Criminal Code for the offence that gave rise to the offence sentenced and that could be imposed on the sentenced person in the event of breaching the terms of the sentence.

If, once the probation decision is received, the issuing authority were to request information on the maximum duration of the custodial sentence

foreseen under Spanish Law for the offence that gave rise to the decision and that might be imposed in the event of breach of the probation measures by the sentenced person, the Central Criminal Judge shall inform the issuing authority thereof.

**Article 107.** *Withdrawal of the probation decision by the issuing authority.*

If the issuing authority were to withdraw the probation decision, the Central Criminal Judge shall return the order and send all the proceedings back to the issuing authority.

**Article 108.** *Return of the probation decision to the issuing authority.*

The Central Criminal Judge shall transfer jurisdiction back to the competent authority of the issuing State regarding supervision of the probation measures and the alternative penalties and any subsequent decision related to the sentence:

- a) in the case of the sentenced person absconding;
- b) in the event of the sentenced person no longer having his ordinary residence in Spain;
- c) at the request of the issuing State, when there are new criminal proceedings taking place against the person concerned in that State.

## TITLE V

### DECISIONS ON ALTERNATIVE MEASURES TO PROVISIONAL DETENTION

#### CHAPTER I

#### GENERAL PROVISIONS

**Article 109.** *Decision on alternative measures to provisional detention.*

**1.** Decisions whose regime of recognition and execution is regulated by this Title are those adopted in criminal proceedings by the competent authority of a Member State imposing one or more supervision measures on a natural person as an alternative to provisional detention.

**2.** With the forwarding of a decision on alternative measures to provisional detention, the due course of justice and, in particular, that the person concerned will be available to stand trial must be ensured.

Likewise, the protection of the victims, safety for citizens and the adoption of probation decisions in relation to persons sentenced who are not resident in the Member State where the criminal proceedings are brought against them shall be promoted.

**Article 110.** *Scope of application of the decision on alternative measures to provisional detention.*

1. The following supervision measures are liable to forwarding and execution in another Member State of the European Union, or to receipt by the competent Spanish judicial authorities:

- a) an obligation for the person to inform the competent authority in the executing State of any change of residence, in particular for the purpose of receiving a summons to attend a hearing or a trial in the course of criminal proceedings;
- b) an obligation not to enter certain localities, places or defined areas in the issuing or executing State;
- c) an obligation to remain at a specified place, where applicable during specified times;
- d) an obligation containing limitations on leaving the territory of the executing State;
- e) an obligation to report at specified times to a specific authority;
- f) an obligation to avoid contact with specific persons in relation with the offences allegedly committed.
- g) an obligation not to engage in specified activities in relation with the offences allegedly committed, which may include involvement in a specified profession or field of employment;
- h) an obligation not to drive a vehicle;
- i) an obligation to deposit a certain sum of money or to give another type of guarantee, which may either be provided through a specified number of instalments or entirely at once;
- j) an obligation to undergo therapeutic treatment or treatment for addiction;
- k) a prohibition on owning and carrying weapons or other specific objects related to the offence judged.

2. Notwithstanding the terms set forth in the preceding Section, the measures foreseen in Letters g) to k) thereof may only be forwarded to Member States of the European Union that undertake their supervision by notification to the Secretariat General of the Council of the European Union.

3. The decision on alternative measures to provisional detention handed down by a foreign authority may include such measures or others foreseen under its laws for which recognition has been notified by Spain.

**Article 111.** *Competent authorities in Spain to issue and execute a decision on alternative measures to provisional detention.*

1. The issuing authorities of a decision on alternative measures to provisional detention are the Judges or Courts that have handed down the probation decision for the sentenced person in criminal proceedings.

2. The competent authorities to recognise and execute a decision on alternative measures to provisional detention are the Investigating or Gender Violence Judges in the place where the accused is resident, with regard to offences for which they have jurisdiction.

## CHAPTER II

### FORWARDING OF A DECISION ON ALTERNATIVE MEASURES TO PROVISIONAL DETENTION

**Article 112.** *Requisites to forward a decision on alternative measures to provisional detention.*

1. The competent Judge or Court shall transmit the decision on alternative measures to provisional detention to the competent authority of the Member State in which any of the following circumstances concurs:

- a) that the accused has his lawful and ordinary residence in the executing State and consents to return to that State;
- b) that the accused request transfer to a State other than that of his residence and the competent authority of that State consents this.

2. The decision on alternative measures to provisional detention shall be transmitted to a sole executing State each time.

**Article 113.** *Consultation and exchange of information between competent authorities on a decision on alternative measures to provisional detention.*

The Spanish judge shall maintain the necessary communication with the competent authority of the other Member State of the European Union, through the appropriate consultation, both before transmitting the decision and the certificate, as well as during its execution, to facilitate adequate monitoring of the supervision measures. It shall also be consulted regarding the dangerousness of the accused and in the event of severe breach of any of the supervision measures imposed in the decision.

These consultations shall allow the competent authority of the executing State to verify the identity and place of residence of the person concerned and know all the information contained in his criminal record.

**Article 114.** *Procedure for forwarding of a decision on alternative measures to provisional detention.*

1. Handing down a decision on alternative measures to provisional detention must be agreed according to the procedure recorded in this Article, either *ex officio*, or at the request of the Public Prosecutor or the accused, without such requests being binding.

2. Prior to issuing a decision on alternative measures to provisional detention, the Judge or Court shall verify whether other decisions on alternative measures to provisional detention had already been issued in relation to the same accused and in different cases.

When various cases coincide in which alternative measures to provisional detention of the accused have been imposed, the formalities foreseen in this Article must be followed by each judicial authority who hears each one of them. These must also be followed by the judicial authority that issued the search and arrest warrant regarding the accused in order to order his provisional detention.

Should any of the Judges or Courts decide not to hand down a decision on alternative measures to provisional detention and to maintain the supervision measures agreed for execution in Spain or to maintain the measure of provisional detention requested, this shall be notified to the rest of the judicial authorities that are processing the issuing of a decision on alternative measures to provisional detention as soon as possible, in order for them to suspend the procedure or to cancel the decision already

issued, all without prejudice to such being recommenced or transmitted at a later moment.

**3.** Prior to transmitting the decision, the judicial authority shall ask the accused if he wishes to return or remain in his State of residence, granting him a maximum term of thirty days to that end.

Should the accused declare his wish to serve the measure in another State, the judicial authority shall apply to the competent authority thereof for consent to forward the decision.

If proceedings are being conducted before various judicial bodies, due to several having decreed provisional liberty, consent by the accused provided in a case shall be made extensive to all the others.

**4.** Should the proceedings be carried out after the arrest and handing over the arrested person, the notification to the Public Prosecutor and parties to the proceedings shall be made simultaneous to holding the hearing in the manner foreseen in the Criminal Procedure Act, where the consent of the accused shall be obtained to return to the executing State. The Judge or Court must decide on issue within the term foreseen to regularise the personal situation of the arrested person.

Provision of consent by the accused may take place simultaneous to any other session or hearing held during the proceedings.

**Article 115.** *Documentation of the decision on alternative measures to provisional detention.*

**1.** The decision on alternative measures to provisional detention forwarded to another Member State shall be accompanied by the certificate for which the form is provided in Annex VI.

**2.** If the executing authority so requests the original of the certificate and the original or certified copy of the decision shall be forwarded to it.

**Article 116.** *Monitoring term of the alternative measures to provisional detention in the executing State and the extension thereof.*

**1.** The decision on alternative measures to provisional detention shall specify the term during which the measures must be monitored, the maximum duration of which shall be determined by expiry of the offence

that gave rise to the probation decision pursuant to Spanish Law, and its renewal if possible.

**2.** If, on expiry of the term of monitoring the supervision measures, these continue to be necessary, the Spanish Judge or Court issuing shall again hear the Public Prosecutor, the accused and the parties to the proceedings within five days and shall then issue a reasoned order, handed down within the term of a further five days, if it is appropriate to apply to the executing authority to extend monitoring of the probation considering the specific circumstances of the case. The application must specifically record the maximum term of extension considered necessary.

**3.** If the executing authority were to demand periodic confirmation of the need to monitor the measures, the Judge or Court issuing shall proceed to inform it in that regard within the term of five days from receipt of the confirmation order.

**Article 117.** *Withdrawal of the decision on alternative measures to provisional detention.*

**1.** While execution of the decision on alternative measures to provisional detention in the executing State has not commenced, the Judge or Court issuing may withdraw the certificate according to the terms set forth in this Article.

**2.** The decision shall be made once the information provided by the executing authority is known, regarding the maximum term foreseen under its Law to monitor the measures, the need to adapt these and the impossibility to surrender the accused through a European arrest warrant if the supervision measure imposed in the probation decision is breached.

**3.** Once that information is received by the Judge or Court issuing, the Public Prosecutor shall be heard within the term of three days. The Judge or Court shall then issue an order within the term of a further three days, which may provide for withdrawal of the certificate, requesting the executing State not to adopt or supervise any measure whatsoever.

**4.** In any event, the order must be notified to the executing authority within the maximum term of ten days from receipt in Spain of the information on the maximum term of monitoring, on adaptation of the measures, or on it being impossible to resort to the European arrest warrant mechanism in the event of breach thereof.

**Article 118.** *Monitoring jurisdiction of the Spanish judicial authority issuing the decision on alternative measures to provisional detention.*

While the competent authority of the executing State has not notified recognition of the decision on alternative measures to provisional detention that has been forwarded to it, the Spanish issuing judicial authority shall retain jurisdiction to monitor the supervision measures imposed. Once that notification is received, the Judge or Court shall cease to have jurisdiction to monitor the supervision measures imposed.

**Article 119.** *Transfer back of the jurisdiction to monitor supervision measures.*

1. The jurisdiction to monitor supervision measures shall revert to the competent Judge or Court in cases in which:

- a) it withdraws the certificate and so notifies the competent authority of the executing State;
- b) the accused transfers his lawful and ordinary residence to a State other than the executing State;
- c) the Judge or Court has amended the supervision measures and the competent authority of the executing State has refused to monitor the measures;
- d) the maximum term set by the executing State to monitor the supervision measures has elapsed;
- e) the competent authority of the executing State decides to cease monitoring the supervision measures and notifies the competent Judge or Court so.

2. In any event, the Judge or Court shall be permanently in contact with the competent authority of the executing State in order to avoid any possible interruption in the monitoring of the supervision measures.

**Article 120.** *Jurisdiction of the Spanish judicial authority issuing to adopt subsequent decisions regarding the decision on alternative measures to provisional detention.*

1. The Spanish Judge or Court issuing shall have jurisdiction to adopt subsequent decisions in relation to the decision on alternative measures to provisional detention, ex officio or as a consequence of notification by the executing authority warning of any breach by the accused of a

supervision measure, or other information that might give rise to a decision subsequent to the probation being adopted.

In particular, the Judge or Court shall have jurisdiction to decide on:

- a) renewal, review and withdrawal of the decision on alternative measures to provisional detention;
- b) modification of the supervision measures ordered;
- c) issuing a European arrest warrant or any other enforceable judicial decision having the same effects.

2. The Spanish issuing judicial authority shall also immediately notify the executing authority of adoption of such subsequent decisions, as well as the fact that an appeal has been filed against the supervision measures agreed.

### CHAPTER III EXECUTION OF A DECISION ON ALTERNATIVE MEASURES TO PROVISIONAL DETENTION

**Article 121.** *Execution in Spain of the decision on alternative measures to provisional detention.*

1. Recognition of decisions on alternative measures to provisional detention shall not be subject to double criminality verification when related to acts classified as any of the offences listed in Section 1 of Article 20, as long as these are punishable in the issuing State with a custodial sentence or a measure of deprivation of liberty with a maximum term of at least three years.

2. A decision on alternative measures to provisional detention forwarded to Spain may only be recognised when, fulfilling the purposes required for issue thereof, any of the following circumstances concurs:

- a) the accused has his lawful and ordinary residence in Spain, as long as he agrees to return, after having been informed of the measures concerned;
- b) the competent Spanish authorities consent transferral of the decision on alternative measures to provisional detention for execution in Spain when the accused has applied for such in the issuing State.

**Article 122.** *Procedure to make a decision on recognition of the decision on alternative measures to provisional detention.*

1. The competent Judge of Criminal Investigation or Gender Violence Judge shall decide and notify the authority of the issuing State as soon as possible if he recognises the decision and whether he accepts responsibility for monitoring of the supervision measures.

The maximum term to issue that decision shall be twenty working days from receipt of the decision, except if, exceptionally, the competent Investigating or Gender Violence Judge were to inform the authority of the issuing State that it is impossible to abide by that maximum term, notifying the reasons for the delay and the new term deemed necessary.

2. When an appeal is filed against the decision imposing supervision measures, the term to recognise the decision shall be extended for another twenty working days.

3. Once the decision by the issuing State is recognised, the Investigating or Gender Violence Judge shall proceed to monitor the supervision measures from the moment when the accused is in Spain.

**Article 123.** *Adaptation of a decision on alternative measures to provisional detention.*

When the supervision measures imposed are incompatible with Spanish Law, the Investigating or Gender Violence Judge shall adapt them, after hearing the Public Prosecutor, to those applicable pursuant to provisions of the Criminal Procedure Act, or other procedural provisions on criminal matters that are applicable for equivalent offences, corresponding to those handed down by the issuing State as far as possible.

Under no event may the supervision measure adopted be more severe than that originally imposed.

**Article 124.** *Refusal of recognition and execution of a decision on alternative measures to provisional detention.*

1. The Investigating or Gender Violence Judge shall refuse recognition and execution of decisions imposing alternative measures to provisional detention, in addition to the cases of Sections 1 and 2 of Article 32, in the following cases:

- a) when by virtue of his age, the accused cannot be considered criminally responsible for the acts on which the decision is based, pursuant to Spanish Criminal Law;
- b) when the conditions are not fulfilled for transmission of a decision on alternative measures to provisional detention;
- c) when, in the case of breach of the supervision measures, the Investigating or Gender Violence Judge would have to refuse to surrender the accused person pursuant to the terms set forth in this Act on the European arrest warrant and surrender.

**2.** In the event of any of the grounds for refusal of recognition and execution foreseen in Letters a) and d) of Section 1 of Article 32, or Letter b) of the preceding Section concurring, before refusing recognition and execution of the decision, the Judge of Criminal Investigation shall approach the authority of the issuing State to clarify the situation and, where appropriate, to correct the defect incurred.

**3.** When the Investigating or Gender Violence Judge considers application of the ground for refusal considered in Letter c) Section 1 of this Article, but is nevertheless willing to recognise the decision and to monitor the supervision measures, he shall inform the competent authority of the issuing State of this, requesting that it withdraw the certificate or accept that recognition, with the warning that the accused might not be surrendered by virtue of a European arrest warrant.

**Article 125.** *Jurisdiction to adopt subsequent decisions related to a decision on alternative measures to provisional detention.*

**1.** In the event of the competent authority of the issuing State deciding to renew, review or withdraw the decision or issue a European arrest and surrender warrant, the competent Investigating or Gender Violence Judge shall recognise those subsequent measures in order to apply them in Spain. In the case of issue of a European arrest and surrender warrant, the competent Judge shall notify Central Judge of Criminal Investigation at the National High Court of the measures he is executing.

**2.** Should the competent authority of the issuing State amend the supervision measures, the Investigating or Gender Violence Judge may:

- a) adapt the amended measures when they are incompatible with Spanish Law;

b) refuse to monitor the amended supervision measures if these are not among the measures that Spain has undertaken to monitor.

**Article 126.** *Extension of the monitoring of the supervision measures.*

When the competent authority of the issuing State requests extension of the maximum term of monitoring the supervision measures previously established, the Investigating or Gender Violence Judge shall decide according to the circumstances of the case and the terms set forth under Spanish Law, setting out a new maximum term for supervision where appropriate.

**Article 127.** *Obligations of the Investigating or Gender Violence Judge during monitoring of the supervision measures.*

1. The Investigating or Gender Violence Judge shall notify the competent authority of the issuing State, by means of the certificate provided in Annex VII, of any breach of a supervision measure and any other information that might give rise to adoption of a subsequent decision.

2. In the event of the authority of the issuing State withdrawing the certificate, the Investigating or Gender Violence Judge shall put an end to the monitoring of the supervision measures as soon as he receives the relevant notification.

3. The competent Investigating or Gender Violence Judge shall inform the competent authority of the issuing State without delay of any change of residence of the accused or if it is impossible to execute the measures due to not having found him in Spain.

It shall also report the maximum period during which it may monitor the supervision measures according to the terms foreseen under Spanish Law, and of any decision to adopt the supervision measures imposed.

4. During the monitoring of the supervision measures, the Investigating or Gender Violence Judge may apply to the competent authority of the executing State to provide information as to whether the monitoring of the measures is still needed in the circumstances of the particular case at hand.

**Article 128.** *Surrender of the person subject to supervision measures.*

In the event of the competent authority of the issuing State having issued a European arrest and surrender warrant, the accused shall be delivered according to the terms foreseen in Title II.

**Article 129.** *Unanswered notices.*

1. Where the competent Investigating or Gender Violence Judge has transmitted several notices in respect of the same person to the competent authority in the issuing State that require adoption of a subsequent decision, and this has not been adopted, it shall demand that the authority take a decision within a maximum term of sixty days.

Should the authority of the issuing State not adopt any decision within the term stated, the Investigating or Gender Violence Judge may decide to cease to monitor the supervision measures, transferring back the jurisdiction thereon.

## TITLE VI

### EUROPEAN PROTECTION ORDER

#### CHAPTER I

#### GENERAL PROVISIONS

**Article 130.** *European Protection Order.*

1. The European Protection Order is a decision in criminal matters handed down by a judicial authority or equivalent of a Member State in relation to a protection measure that enables the competent authority of another Member State to adopt the appropriate measures in favour of victims or possible victims of offences that might endanger their life, physical or psychological integrity, dignity, personal liberty or sexual integrity, when they are in its territory.

2. A protection order may be issued both in relation to injunctive measures imposed in criminal proceedings as well as regarding custodial sentences, as long as they consist of:

- a) a prohibition from entering or approaching certain localities, places or defined areas where the protected person resides or visits;

b) a prohibition or regulation of contact, in any form, with the protected person, including by phone contact, electronic or ordinary mail, by fax or any other means;

c) a prohibition or regulation on approaching the protected person closer than a prescribed distance.

**Article 131.** *Competent authorities in Spain to issue and receive a European Protection Order.*

1. The competent authorities to issue and transmit a European Protection Order are the Judges or Courts that hear the criminal proceedings in which the decision adopting protection measure is made.

2. The competent authorities to recognise and execute the European Protection Order are the Investigating or Gender Violence Judges of the place where the victim resides or intends to reside, without prejudice to the terms set forth in the following Article.

Notwithstanding this, when probation decisions or alternative measures to provisional detention have been issued, the competent authority to recognise and execute the European Protection Order shall be the same Judge or Court that has already recognised and executed such decisions.

**Article 132.** *Relation between the European Protection Order and other mutual recognition decisions.*

When a decision on alternative measures to provisional detention or probation of those foreseen in this Act has already been transmitted to another Member State, or is subsequently transmitted, the protection measures for the victim or possible victim shall be adopted according to the provisions that regulate such decisions and by the competent authority to adopt such decisions, without prejudice to it being possible to transmit such a European Protection Order to another Member State.

CHAPTER II  
ISSUING AND TRANSMITTING A EUROPEAN  
PROTECTION ORDER

**Article 133.** *Requisites to issue and transmit a European Protection Order.*

The competent Spanish Judge or Court may adopt a European Protection Order taking into account, among other criteria, the term of the period or

periods when the protected person intends to remain in the executing State, as well as the importance of the need for protection, when the following requisites concur:

- a) that a judicial measure have been handed down adopting the protection measure both in the case of injunctive measures imposed as well as penalties of deprivation of rights that, due to their analogous content, pursue the same purpose of protecting the victim;
- b) that the victim resides, remains or intends to do so in another Member State of the European Union;
- c) that the victim requests adoption of the protection order, personally or through a guardian or legal representative.

**Article 134.** *Procedure to issue a European Protection Order.*

1. The Spanish judicial authority that adopts any of the protection measures foreseen in this Chapter shall inform the protected person or legal representative of the possibility of applying for a European Protection Order to be handed down in the event of having to travel to another Member State, as well as the basic conditions to submit such an application. The authority shall advise the protected person to submit the application before leaving the territory of the issuing State.

2. The victim may lodge his application in the executing State.

3. Before issuing a European Protection Order, the person causing the danger shall be heard, without notifying the address or other contact data of the protected person in any case, unless this is necessary to execute the measure adopted.

Should the accused or sentenced person not have been heard in the prior proceedings in relation to adopting the decision that decreed the protection measures, he shall be summoned, with legal counsel, with the Public Prosecutor and other parties to the proceedings, to a hearing that must be held within the term of 72 hours from receipt of the application. The Judge or Court shall resolve by reasoned order.

**Article 135.** *Documentation of a European Protection Order.*

The European Protection Order shall be documented in the certificate foreseen in Annex VIII and shall state whether a decision has been transmitted to another State other than that of execution on alternative

measures to provisional detention or probation, stating the authority of that State to which the respective certificates were sent.

**Article 136.** *Transmission of a European Protection Order to various executing States.*

The European Protection Order may be transmitted simultaneously to various executing States if the victim declares his intention to remain in several of these.

**Article 137.** *Jurisdiction of the Spanish Judge or Court after transmission of a European Protection Order.*

**1.** The Spanish judicial authority that has issued the European Protection Order shall have exclusive competence to take decisions, pursuant to Spanish Law, relating to:

- a) the renewal, review, modification, revocation and withdrawal of the protection measure and the European Protection Order;
- b) the imposition of a custodial measure as a consequence of revocation of the protection measure, provided that the protection measure has been taken due to a decision to adopt provisional release or probation measures pursuant to this Act.

**2.** The Spanish judicial authority shall inform the competent authority of the executing State without delay of any decision to amend the European Protection Order. It shall also respond to any application for information that the executing State may make as to the need to maintain the protection granted under the European Protection Order under the circumstances of each specific case.

**3.** When the protection measure is included in a sentence or probation decision and it is amended, the issuing authority shall proceed without delay to renew, review, modify, revoke or cancel in consequence the European Protection Order, informing the competent authority for execution thereof.

CHAPTER III  
EXECUTION OF A EUROPEAN PROTECTION ORDER

**Article 138.** *Execution of a European Protection Order.*

1. The competent Judge or Court that receives a European Protection Order for execution, after hearing the Public Prosecutor within the term of three days, shall recognise it without delay and shall issue a ruling imposing any of the measures foreseen under Spanish Law for a similar case in order to guarantee protection of the protected person.

A European Protection Order shall be recognised as having the same priority as these measures have under Spanish Law, taking the particular circumstances of the case into account, including its urgency, the foreseen date of arrival of the protected person in the territory of the executing State and, as far as possible, the severity of the risk to the protected person.

2. The protection measure adopted by the Judge or Court as competent authority for execution, as well as that subsequently adopted in the event of breach, shall be adjusted to the greatest possible extent to the protection measure ordered by the issuing State.

3. The Judge or Court shall inform the person causing the danger, the competent authority of the issuing State and the protected person regarding the measures that have been taken and of the legal consequences of breach of such measures, pursuant to the terms set forth in Spanish Law and this Chapter. The person causing the danger shall not be given the address or other contact details of the protected person, unless this is necessary to execute the measure adopted.

4. The order resolving the recognition shall provide the appropriate instructions to the State Security Forces and Corps to ensure compliance with the measures recorded in the protection order, as well as to enter these on the relevant registers.

5. Should the Judge or Court executing deem the information transmitted with the European Protection Order to be incomplete, it shall notify the competent authority of the issuing State without delay, setting a reasonable term for the issuing authority to provide the missing information.

6. When the victim requests adoption of execution measures before the competent Judge or Court for recognition and execution in Spain, these

shall transmit that application to the competent authority of the issuing State without delay.

**Article 139.** *Breach of a protection measure.*

1. In the event of breach of any of the protection measures adopted, the Spanish judicial authority shall have jurisdiction to:

- a) impose criminal penalties and to take any other measure as a consequence of breach of that measure, if such a breach constitutes a criminal offence under Spanish Law;
- b) take any other decisions related to such breach;
- c) take urgent provisional measures in order to put an end to the breach, while awaiting, if appropriate, a subsequent decision by the issuing State.

2. The Spanish judicial authority shall notify the competent authority of the issuing State of any breach of the measures adopted by virtue of the European Protection Order. The notification shall be made using the certificate provided in Annex IX.

**Article 140.** *Refusal of recognition and execution of the European Protection Order.*

1. The Spanish judicial authority shall refuse recognition of a European Protection Order when any of the following grounds concurs in addition to any of the reasons foreseen in Article 32:

- a) when the decision does not refer to any of the measures foreseen under this Title.
- b) when the protection measure relates to an act that does not constitute a criminal offence in Spain.
- c) when the protection derives from execution of a penalty or measure that, pursuant to Spanish Law, is covered by a pardon and relates to an act or conduct which falls within the competence of Spain;
- d) when, pursuant to Spanish Law, the person causing the danger cannot because of that person's age, be held criminally responsible for the act or the conduct in relation to which the protection order has been adopted.

2. The Spanish judicial authority that refuses recognition of a European Protection Order shall notify its decision and the reasons thereof, to the competent authority of the issuing State as well as to the protected person, informing the latter, where appropriate, of the possibility of applying for adoption of a protection measure pursuant to his national law and of the existing means to appeal.

**Article 141.** *Modification of a European Protection Order.*

When the competent authority of the issuing State amends a European Protection Order, the Spanish judicial authority, after hearing of the Public Prosecutor, shall amend the measures adopted, except in cases where such modification does not comply with the types of prohibitions or restrictions foreseen in this Chapter, or in the event of the information transmitted with the European Protection Order being incomplete and not having been completed within the term set.

**Article 142.** *Discontinuation of the measures adopted by virtue of a European Protection Order.*

1. The Spanish judicial authority, after hearing of the Public Prosecutor, may discontinue the measures taken in execution of a European Protection Order:

- a) in the event of the competent authority of the issuing State having revoked or annulled the European Protection Order, as soon as the relevant notification is received;
- b) when there is clear indication that the protected person does not reside or stay in Spain, or has definitively left Spanish territory.
- c) on expiry, pursuant to Spanish Law, of the maximum term the measures adopted are to remain in force;
- d) in the event of the protection measure not being amended for the causes foreseen in the previous Article;
- e) when, following recognition of the European Protection Order, the executing State has been notified of a decision on alternative measures to provisional detention or probation.

2. The Spanish judicial authority shall immediately report that decision to the competent authority of the issuing State, as well as to the protected person as soon as possible.

3. Before discontinuing the protection measures, the Spanish judicial authority may apply to the competent authority of the issuing State to report on the need to maintain the protection granted under the European Protection Order in the circumstances of the specific case concerned, to which end the latter shall be granted the maximum term of one month.

## TITLE VII

### ORDER FREEZING PROPERTY OR EVIDENCE

#### CHAPTER I

#### GENERAL PROVISIONS

##### **Article 143.** *Order to freeze property or evidence*

1. Orders whose regime of recognition and execution is regulated by this Title are those aimed at provisionally preventing destruction, transformation, displacement, conveyance or disposal of property that might be subject to confiscation or be used as means of evidence.

2. Freezing orders may be adopted in relation to property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents evidencing title to or an interest in property, which the judicial authority of the issuing State considers constitute the proceeds of an offence, or the instrumentalities or objects thereof.

3. Orders to assure evidence may be adopted in relation to objects, documents or data that may subsequently be produced as evidence in criminal proceedings.

##### **Article 144.** *Competent judicial authorities in Spain to issue and execute an order freezing property or evidence.*

1. The issuing authorities of an order freezing property or evidence are the Judges or Courts that hear the proceedings in which the measure must be adopted, as well as the Public Prosecutors carrying out the investigation proceedings in which a measure must be adopted to secure evidence that does not limit fundamental rights.

2. The competent authorities in Spain to execute an order freezing property or evidence are the Judges of Criminal Investigation of the place where the property or documents to be frozen, or the evidence to be secured are

located, as well as the Public Prosecutors for execution of the evidence assurance measures that may be applied within their powers without adopting measures that limit fundamental rights.

The change arising in location of the object of the order to freeze property and assure evidence shall not involve the Judge of Criminal Investigation or Public Prosecutor who ordered recognition and execution of the decision transmitted to Spain losing the jurisdiction.

If the certificate has been issued in relation to several properties located in different jurisdictions, the Judge of Criminal Investigation that receives it first and within whose jurisdiction there is at least one of those properties, shall have jurisdiction to process the freezing or assurance of all the others.

If a same order were to call for freezing or preventive assurance of a property whose freezing or assurance is the competence of the Judge of Criminal Investigation and of another party such as the Public Prosecutor, the former shall deal with the complete ruling, without breaking it down into two different rulings.

## CHAPTER II ISSUE AND TRANSMISSION OF AN ORDER FREEZING PROPERTY OR EVIDENCE

**Article 145.** *Transmission of an order to freeze properties or evidence.*

1. When a Spanish judicial authority considers a measure to freeze properties or evidence that are located in the territory of another Member State of the European Union necessary, it shall send its decision to the competent judicial authority in order for it to proceed to execution thereof.

2. The requisites to issue an order to freeze properties or evidence are:

- a) for it to have been handed down in criminal proceedings by the Judge or Court in order to proceed to subsequent confiscation of the properties, or for it to take effect as an element of evidence, or for the Public Prosecutor to have adopted a measure to assure evidence that does not limit fundamental rights in investigation proceedings;
- b) that there is *prima facie* evidence in the criminal proceedings or in the investigation proceedings, that the property to be frozen or assured is located in another Member State.

3. The decision shall clearly state whether the judicial cooperation required consists of transfer to the Spanish judicial authority of the elements of evidence or the property to be frozen, or if it is accompanied by confiscation application, or if they are required to remain in that State while awaiting adoption of any of the above measures.

**Article 146.** *Procedure to issue an order to freeze property or evidence.*

1. Prior to issuing an order to freeze property or evidence, sufficient information may be gathered from the competent authority of the executing State to ascertain whether the property required for assurance is effectively in that State. That same information may be requested through the computer records or bodies it is considered may provide it.

2. The order to freeze property or evidence may be handed down at the court's own motion or at the request of a party.

3. If, during the criminal proceedings, the parties call for the decision to be issued, they shall be requested to provide documentary proof or other kind of reliable prima facie evidence indicating that the property exists and that it is in the territory of the executing State.

**Article 147.** *Documentation related to the order to freeze property and assure evidence.*

1. The order to freeze property and assure evidence shall be documented in the certificate provided in Annex X and shall be sent along with the judicial decision that resolves the injunctive measure.

2. When it is necessary to guarantee the validity of the means of evidence, a record shall be given that execution of the measures agreed must be performed in compliance with the formalities and procedures foreseen under Spanish Law that are specifically indicated in the certificate.

**Article 148.** *Transmission to several executing States of an order to freeze property or evidence.*

An order to freeze property or evidence may be transmitted simultaneously to more than one executing State when the competent Spanish judicial authority has reasons to believe that the different properties forming the object of decision are in different executing States.

**Article 149.** *Jurisdiction of the Spanish issuing authority after transmission of an order to freeze property or evidence.*

1. Once the order to freeze property and assure evidence is transmitted, if the executing authority has limited the duration of the assurance and gathers allegations on raising the measure due to the time elapsed, the Judge or Court shall hear the Public Prosecutor and other parties to the proceedings within the term of five days. The Judge or Court shall then notify the executing authority, explaining the reasons to maintain the measure, or whether it has ceased to be necessary.

That same notice shall be served on the Public Prosecutor who, within the investigation proceedings, had received notification for the allegations requested by the executing authority.

2. If the executing authority were to call for allegations by the Spanish issuing authority during processing of an appeal lodged against a decision that has been handed down in the executing State, the Judge or Court, having heard the parties to the proceedings and the Public Prosecutor, shall issue such allegations within the term of ten days from the transfer having been performed.

These allegations shall be sent by the Public Prosecutor when transmission of the decision within the investigation proceedings has been made by him.

3. When the order freezing property or evidence transmitted has recorded that the judicial cooperation required is for these to remain in the executing State whilst awaiting a confiscation order of the property or transfer of the elements of evidence to Spain, the Spanish authority issuing may send the executing State the application for confiscation or transfer.

CHAPTER III  
EXECUTION OF AN ORDER FREEZING PROPERTY  
OR EVIDENCE

**Article 150.** *Absence of double criminality verification.*

When the order freezing property or securing evidence has been issued for an offence in one of the categories of offences listed in Section 1 of Article 20 and if that offence is punishable in the issuing State with a custodial sentence with a maximum duration of at least three years, the

competent Spanish judicial authority shall resolve to implement the measure without a double criminality verification of the facts.

**Article 151.** *Procedure to recognise an order freezing property or evidence.*

1. The decision to execute an order must be issued immediately and notified without delay to the issuing judicial authority and the Public Prosecutor, by any means capable of producing a written record. The Spanish judicial authorities shall resolve as appropriate and notify this within the 24 hours following receipt of the decision.

2. The competent authority that receives the order freezing property and securing evidence shall adopt the necessary measures within the term of five days from receipt to ascertain the location of the property subject to freezing.

Notice may also be served on the judicial authority issuing for it to provide further information on any relevant circumstance to execute the assurance measure.

**Article 152.** *Measures to execute an order freezing property or evidence.*

1. The decision ordering recognition and execution of an order freezing property or evidence shall determine what specific injunctive measure must be adopted to carry out execution thereof. The measure may consist of deposit of the property, its freezing or that of bank accounts, deposits, securities or other tradable titles or financial property, as well as prohibition to dispose of the property, or any other injunctive measure that might be resolved in the criminal proceedings, and it must always be performed pursuant to the provisions of Spanish Law.

2. The competent authority shall immediately inform the issuing authority of the specific content of the measures adopted to perform the assurance.

3. Three months prior to the measure adopted reaching the duration determined in the order, the competent authority of the issuing State shall be notified so it may allege whether it is appropriate to maintain or cease it.

4. Both if the object of assurance is an element of evidence, as well as if it is a product, instrumentality or item obtained from the criminal activity, the competent Judge of Criminal Investigation or Public Prosecutor shall observe the formalities and procedures expressly indicated by the issuing

authority, provided these are not contrary to the fundamental principles of Spanish Law.

**Article 153.** *Duration of the measure freezing property or evidence.*

1. The measure shall be maintained until a final resolution is adopted on the application for transfer or confiscation made by the issuing judicial authority, without prejudice to the complementary coercion measures that might be adopted.

2. However, having consulted the issuing authority, the competent Spanish authority, pursuant to the national procedural rules, may impose conditions in the light of the circumstances of the case, to limit the duration or amend the measure concerned, including destruction and early sale of the judicial effects. If, according to such conditions, it were to be proposed to leave the measure without effect or to amend it, it shall immediately notify the issuing authority in order for it to declare whatever it deems appropriate.

3. When the issuing authority notifies that the measure it requested has been left without effect, it shall be raised without delay.

**Article 154.** *Refusal of recognition and execution of an order freezing property or evidence.*

The competent Spanish authority shall refuse to recognise an order freezing property or evidence when any of the grounds foreseen in Article 32 concurs.

**Article 155.** *Impossibility to execute an order freezing property or evidence.*

The issuing authority shall immediately be notified of practical impossibility to execute the measure due to the property or evidence having disappeared, having been destroyed, not having been found in the place stated in the certificate, or not having indicated precisely enough where the property or element of evidence are located, even after consulting the issuing authority.

**Article 156.** *Postponement of execution of an order freezing property or evidence.*

1. Execution of an order freezing property or evidence transmitted by the judicial authority of another Member State of the European Union may be postponed in the following cases:

a) where the execution might damage an ongoing criminal investigation in Spain, during the necessary time;

b) where the property or evidence concerned have already been subjected to an order made in the course of judicial or administrative proceedings, until such order is lifted, as long as such order has priority over subsequent freezing decisions on property and instrumentalities handed down in criminal proceedings pursuant to national law.

**2.** The competent Spanish authority shall notify the issuing authority of any other restrictive measures that may have befallen the property concerned.

## TITLE VIII

### CONFISCATION ORDERS

#### CHAPTER I

#### GENERAL PROVISIONS

**Article 157.** *Confiscation orders.*

**1.** Orders whose regime of recognition and execution is regulated by this Title are those by which a jurisdictional body imposes a final penalty or measure based on proceedings related to one or several criminal offences, which results in the definitive confiscation of property.

**2.** Confiscation orders may be adopted in relation to property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents evidencing title to or an interest in property, with regard to which the jurisdictional body of the issuing State has decided:

a) that they constitute the product of a criminal offence or are fully or partially equivalent to the value of that product;

b) that they constitute the instrumentalities of that offence;

c) that they may be confiscated through application in the issuing State of any of the cases of extended powers to confiscate specified under Article 3, Sections 1 and 2 of Council Framework Decision 2005/212/JHA, of 24 February 2005, on confiscation of crime-related proceeds, instrumentalities and property.

d) or that may be confiscated pursuant to any of the other provisions related to an extended power of confiscation pursuant to the Law of the issuing State.

**Article 158.** *Competent judicial authorities in Spain to transmit and execute a confiscation order.*

1. The authorities issuing a confiscation order are the Judges or Courts of criminal matters hearing the execution of the sentence imposing confiscation of a property as an accessory consequence.

2. The competent authority to recognise and execute the confiscation order is the Judge of Criminal Matters of the place where the property subject to confiscation is located.

A change in the location of the property shall not imply loss of the jurisdiction of the Judge of Criminal Matters who ordered recognition and execution of the confiscation order transmitted to Spain.

Should the certificate be issued in relation to several properties located in different districts, the Judge of Criminal Matters who receives it first and in whose jurisdiction there is at least one of such properties, shall have jurisdiction to order confiscation of all the others.

Should the issuing authority not know the location of the property to be confiscated and if the certificate states the place of residence or registered seat of the person against whom the decision was handed down, the Judge of Criminal Matters of that district shall have jurisdiction, even when it is subsequently ascertained that the property is located in another jurisdiction, or that the person has relocated.

Should the same certificate have been issued in relation to several persons, who are resident in several different places in the Spanish territory, the Judge of Criminal Matters who receives it first and in whose jurisdiction there is at least one of those domiciles shall have jurisdiction to order the confiscation decreed against the rest of the persons mentioned in the certificate.

## CHAPTER II TRANSMISSION OF A CONFISCATION ORDER

**Article 159.** *Transmission of a confiscation order.*

1. A confiscation order shall be transmitted to the competent authority of the Member State of the European Union in which there are reasonable grounds to believe the property subject to confiscation is located.

**2.** In the event of a prior order freezing property or evidence having been issued in criminal proceedings in relation to that property, the Judge of Criminal Matters shall gather the records from the Judge of Criminal Investigation in order to continue the processing.

**3.** In the case of a confiscation order concerning an amount of money, this shall be transmitted to the competent authority of the Member State of the European Union in which he has due grounds to believe that the natural or legal person against which the order has been handed down has property or revenue.

**4.** Should the Spanish criminal judicial authority not have reasonable grounds to allow it to determine the State to which the confiscation order may be issued, it shall transmit it to the competent authority of the Member State where the natural or legal person against whom the order has been handed down is normally resident or has its registered seat, respectively.

**Article 160.** *Documentation of the confiscation order.*

The confiscation order shall be documented in the certificate provided in Annex XI and shall be sent jointly with the judicial decision that orders final confiscation of the property.

The certificate shall specifically state that a custodial sentence may not be imposed, nor may the person concerned be deprived of other rights as an alternative to the confiscation order.

Likewise, in the event that the property to which the confiscation order refers is already subject to an order freezing property or evidence, this shall be specifically recorded.

**Article 161.** *Procedure to transmit a confiscation order.*

**1.** Prior to issuing a confiscation order information may be obtained from the competent authority of the executing State or the bodies that may provide such information, on the property or revenue affected by the measure, as well as the normal residence or registered seat of the person affected by the confiscation.

**2.** A confiscation order may be issued by the court *ex officio* or at the request of a party. In the latter case, the party shall be asked to provide documentary justification of or reasonable grounds to believe in the existence of the specific property and that it is in the territory of the

executing State, of the existence of revenue in that State, or that the person against whom the order is issued has his normal residence or registered seat there.

3. During such proceedings, orders may be issued on freezing property or evidence, or other kinds of requests for conventional judicial assistance to guarantee execution of the confiscation once issued.

**Article 162.** *Transmission of a confiscation order to more than one Member State.*

1. A confiscation order related to specific properties may be transmitted simultaneously to more than one executing State when any of the following cases concurs:

- a) that the competent Spanish judicial authority has reasonable grounds to believe that the different items of property covered by the confiscation order are located in different executing States;
- b) that confiscation of a specific item of property covered by the confiscation order involves action in more than one executing State;
- c) that the competent Spanish judicial authority has reasonable grounds to believe that a specific item of property covered by the confiscation order is located in one of the two or more specified executing States.

2. A confiscation order concerning an amount of money may be transmitted to more than one executing States at the same time when the competent Spanish judicial authority deems there is a specific need to do so. Among other cases, such reasons are considered to concur:

- a) when a freezing order has not been decreed pursuant to this Act;
- b) when the value of the property that may be confiscated in the issuing State and in any executing State is not likely to be sufficient for the execution of the full amount covered by the confiscation order.

3. As long as the total amount of the confiscation order has not been executed, it shall be submitted successively to the States in which properties of the sentenced person are presumed to exist.

**Article 163.** *Consequences of transmission of a confiscation order.*

1. Transmission of a confiscation order shall not prevent the Spanish criminal judicial authority from proceeding to its enforcement.

**2.** In the case of transmission of a confiscation order covering an amount of money to one or more executing States, the Spanish judicial authority shall ensure that the total value arising from enforcement of the order does not exceed the maximum amount specified therein.

**3.** The Spanish criminal judicial authority shall immediately inform the competent authority of all executing States affected, by any means capable of producing a written record, in the following cases:

a) when there is considered to be a risk of the execution exceeding the maximum amount specified. It shall also report when the risk referred to has ceased to exist;

b) when all or part of the confiscation order has been executed in Spain or in another executing State. In that case, the notice shall specify the amount for which the confiscation order has not yet been enforced;

c) if, after transmission of a confiscation order, a Spanish authority has received an amount of money paid voluntarily by the sentenced person in fulfilment of the confiscation order, in that case it shall state whether part of the order for enforcement remains and its amount.

**Article 164.** *Transformation of the confiscation.*

**1.** When a confiscation order affects a specific property and, due to any circumstance, it is not possible to confiscate it, the Spanish judicial authority shall apply to the competent authority of the executing State for the confiscation to take the form of obligation to pay a monetary equivalent amount to the value of the property concerned.

**2.** For such transformation, once the news of impossibility to perform confiscation of the specific property concerned is received, it shall be resolved within the term of five days that a judicial appraisal of the property be performed. Within five days, the Public Prosecutor and all the parties to the proceedings shall be informed of its result, in order for them to contest the appraisal or state whatever is in their legal interest. The incident shall end with the order handed down by the Judge or Court determining the amount of the obligation to pay that, once final, shall be notified to the executing authority.

**Article 165.** *Agreement between the authorities regarding disposal of the property confiscated.*

1. The competent Judge or Court that has issued the confiscation order may reach an agreement in relation to disposal of the confiscated property when so requested by the executing authority. In that case, enforcement of the confiscation shall be subject to what is agreed in that regard.

2. The Spanish judicial authority that is served a notice from the authority of the executing State on special expenses arising from enforcement of the confiscation order, shall notify the Ministry of Justice for the purposes of a possible agreement on sharing the costs with the executing State.

### CHAPTER III EXECUTION OF A CONFISCATION ORDER

**Article 166.** *Recognition of a confiscation order.*

1. The competent Judge of Criminal Matters shall recognise and enforce a confiscation order when the property concerned or the address, or the registered seat of the person affected, is in Spain.

2. When a confiscation order has been issued for an offence belonging to one of the categories of offences listed in Section 1 of Article 20 and when such an offence is punishable in the issuing State with a custodial sentence with a maximum duration of at least three years, the Judge of Criminal Matters shall order enforcement of the measure without a double criminality verification of the acts.

3. A confiscation order imposed by the issuing State on a legal person for a breach for which its responsibility is not foreseen under Spanish Law shall also be enforced.

**Article 167.** *Procedure on recognition of a confiscation order.*

1. The Judge of Criminal Matters who receives the confiscation order shall proceed to ascertain the location of the property subject to confiscation.

**Likewise**, the Judge of Criminal Matters may serve a notice on the judicial authority issuing in order for it to provide additional information on any relevant circumstance for execution of the confiscation.

2. The Judge of Criminal Matters, after hearing the Public Prosecutor and the other parties to the proceedings, within the term of five days, shall resolve by order to dispatch execution of the duly transmitted confiscation order within a maximum term of ten days from its receipt. Adoption of the confiscation order concerned shall take place, where appropriate, following the measures on the same properties that have been resolved in application of a preventive freezing of property.

**Article 168.** *Execution of a confiscation order.*

1. In the case of a confiscation application affecting a specific item of property and if due to any circumstance it were not possible to confiscate it, the competent Judge of Criminal Matters shall order that the confiscation be adopted in the form of the obligation to pay a sum of money corresponding to the value of the property concerned.

2. In the event of a confiscation order concerning a sum of money, the competent Judge of Criminal Matters, if payment is not obtained, shall execute the confiscation order on any item of property available for that purpose.

3. In the event of a confiscation order referring to a sum of money, where necessary, the competent Judge of Criminal Matters shall convert the amount that must be confiscated to the currency of the executing State, applying the exchange rate in force at the moment of handing down the confiscation order.

4. In all the cases foreseen in this Article, the Public Prosecutor and other parties to the proceedings shall be heard within the term of five days.

**Article 169.** *Execution of multiple confiscation orders.*

1. When the competent Judge of Criminal Matters is transmitting two or more confiscation orders concerning an amount of money issued against the same natural or legal person who does not have sufficient means in Spain to enforce all of these, or when they refer to the same property, he shall decide which one or number of those orders shall be enforced, after due consideration of all those circumstances. In order to adopt that decision, the Judge shall mainly consider and in this order the existence of a freezing order, the relative severity and place where the offence was committed, the dates of the respective orders and the dates of their transmission. The competent Judge of Criminal Matters shall notify his

decision without delay to the competent authorities of the issuing State or States.

2. Should the sentenced person be able to provide evidence of total or partial confiscation performed in another State, the competent Judge of Criminal Matters shall consult the competent authority of the issuing State. In the case of confiscation of the proceeds of a criminal offence, all portions of the value of the properties affected that are recovered by virtue of the confiscation order in another State shall be fully deducted from the value of the properties that are to be confiscated in Spain.

**Article 170.** *Refusal of recognition and execution of a confiscation order.*

1. The competent Judge of Criminal Matters shall refuse recognition and execution of confiscation orders, in addition to the cases of Articles 32 and 33, in the following cases:

- a) when the rights of interested parties, including bona fide third parties pursuant to Spanish Law, prevent enforcement of the confiscation order;
- b) when the Judge considers the decision adopted in application of the provisions on extended power of confiscation referred to in Letter d) of Section 2 of Article 157 to be incompatible with the fundamental rights and liberties recognised in the Spanish Constitution;
- c) when the decision refers to acts that have not been committed outside the State issuing and Spanish Law does not allow prosecution of such offences when they have been committed outside Spanish territory.

2. In the event of any of the reasons to refuse recognition and execution foreseen in Letters a), c) and d) of Section 1 of Article 32, in Section 1 of Article 33 or in Letters b) and c) of the preceding Section arising, before partially or totally refusing recognition and execution of the decision, the Judge of Criminal Matters shall consult the competent authority of the issuing State in order for it to clarify the situation and, where appropriate, to correct the defect incurred. That provision shall also be applicable in the case of Letter a) of the preceding Section, when filing an appeal in Spain has not been reported.

**Article 171.** *Postponement of execution of a confiscation order.*

**1.** The competent Judge of Criminal Matters may suspend execution of a confiscation order transmitted in the following cases:

a) when, in the case of a confiscation order concerning a sum of money, he considers there is a risk of the total value derived from its execution may exceed the amount specified in the order because of simultaneous execution thereof in more than one Member State;

b) when execution of the confiscation order might damage an ongoing criminal investigation or proceedings, until such time as he deems reasonable;

c) when it is considered necessary to have the confiscation order or parts thereof translated, without repercussion of the cost on the issuing State, for the time necessary to obtain its translation;

d) when the property is already subject to confiscation proceedings in Spain.

**2.** During the suspension period, the competent Judge of Criminal Matters shall adopt the necessary measures to assure execution of the confiscation order.

**3.** In the case of suspension pursuant to Letter a) of Section 1 of this Article, the competent Judge of Criminal Matters shall report this without delay to the competent authority of the issuing State, by any means capable of producing a written record.

**4.** In the cases considered in Letters b), c) and d) of Section 1 of this Article, the Judge of Criminal Matters shall notify suspension of execution of the confiscation order, his reasons and, if possible, the duration foreseen, without delay, to the competent authority of the issuing State, by any means capable of producing a written record.

**5.** As soon as the reasons for suspension have ceased to exist, the competent Judge of Criminal Matters shall immediately take the appropriate measures to enforce the confiscation order and shall report this to the competent authority of the issuing State by any means capable of producing a written record.

**Article 172. *Disposal of the confiscated property.***

**1.** The competent Judge of Criminal Matters shall dispose of the money obtained from enforcement of the confiscation order according to the following rules:

a) If the amount obtained from enforcement of the confiscation order is lower than 10,000 euros or the equivalent to that amount, it shall be deposited in the judicial deposits and consignments account.

b) In all other cases, the issuing State shall be transferred 50 per cent of the amount obtained from execution of the confiscation order. The remaining 50 per cent shall be deposited in the judicial deposits and consignments account.

The sums that, in application of the terms set forth above, are due to Spain, shall be transferred by the Court Clerk to the Public Treasury with application, where appropriate, of the terms established in the special rules and, particularly, in the provisions contained in Article 374 of the Criminal Code and Act 17/2003, of 29 May, on the fund for confiscated property from illicit drug trafficking and other related offences, and its implementing regulations.

**2.** The competent Judge of Criminal Matters shall decide that the properties that are not money or other bearer payment instruments obtained in the execution of a confiscation order shall be disposed of and applied in the manner set forth in the preceding Section.

Disposal of the properties shall be performed pursuant to Spanish Law, observing, where appropriate, the terms set forth in Organic Act 12/1995, of 12 December, on repression of smuggling and its implementing regulations.

**3.** When enforcement of the confiscation order affects properties forming part of the Spanish historic heritage, the Judge of Criminal Matters shall under no circumstances proceed to dispose of or restore them to the issuing State. In such a case, he shall notify the competent Spanish authorities and the provisions of Act 16/1985, of 25 June, on Spanish Historic Heritage, and the implementing regulations thereof, shall apply.

**4.** The Spanish State shall not claim against the issuing State the reimbursement of expenses arising from execution of the confiscation order. Notwithstanding this, if enforcement of the decision has involved expenses that are considered substantial or exceptional, the Judge of

Criminal Matters shall notify the Ministry of Justice for it to reach an agreement with the competent authorities of the issuing State regarding distribution of the costs.

## TITLE IX

### DECISIONS IMPOSING FINANCIAL PENALTIES

#### CHAPTER I

#### GENERAL PROVISIONS

**Article 173.** *Financial penalties.*

1. A financial penalty shall be understood as the amount of money demanded due to a final decision according to a fine imposed as a consequence of a natural or legal person committing a criminal or administrative offence, as long as, in relation to the latter, the administrative penalties may be appealed before a criminal jurisdictional body.

2. For the purposes of this Act, financial penalties shall also include the sums recorded in the relevant resolutions and that refer to the following items:

- a) the sum of money imposed in respect of the costs of court or administrative expenses arising in the proceedings;
- b) compensation for victims, whenever the victim cannot be a civil party to the proceedings and the jurisdictional body acts to exercise its criminal jurisdiction;
- c) a sum assigned to a public fund or victim support organisation.

3. A monetary penalty, for the purposes of this Act may not include confiscation orders of instrumentalities or proceeds of crime, to which the rules foreseen in Chapter III of this Title shall apply.

Nor may the financial penalty include restoration resolutions, nor reparation of damage or compensation for material and moral damage determined in criminal proceedings, without prejudice to the terms set forth in Letter b) of the previous Section.

When a judgement handed down in Spain includes sentencing to repair damage or to compensate material and moral damage in favour of the victims or parties damaged, the Spanish judicial authority shall order its

enforcement through the mechanisms foreseen in the rules of civil judicial cooperation in the European Union.

**Article 174.** *Competent judicial authorities in Spain to transmit and execute a decision that demands payment of a financial penalty.*

1. The competent authority to transmit a decision demanding payment of a monetary penalty imposed on a natural or legal person who holds properties or obtains revenue in another Member State of the European Union is the competent criminal jurisdictional body for enforcement thereof in Spain.

2. The competent authority to recognise and execute the decision that demands payment of a financial penalty is:

a) primarily, the Judge of Criminal Matters of the place of residence of the sentenced person or where it has its corporate seat if a legal person;

b) under subsidiary terms, the Judge of Criminal Matters of the place where any of the real estate owned by the natural or legal person condemned to pay the fine are located;

c) in the last instance, the Judge of Criminal Matters of the place where any of the sources of income of the sentenced person in Spain are located.

A change in any of these circumstances due to the sentenced person moving residence or corporate seat, selling a building or changing his source of income shall not imply loss of jurisdiction arising with regard to the Judge of Criminal Matters who has ordered recognition and execution of the decision demanding payment of a financial penalty transmitted to Spain.

In the event of a same certificate referring to several persons and if one of them fulfils any of the requisites established in this Section, the competent Judge of Criminal Matters may undertake the enforcement in relation to all the persons sentenced, without dividing a sole decision that demands payment of a financial penalty into several.

**Article 175.** *Accrual of monies obtained.*

1. Monies obtained from execution of a decision in Spain shall be deposited in the judicial deposit and consignment account, unless otherwise agreed

with the issuing State regarding the sums that constitute a compensation to benefit the victims referred to in Letter b) of Section 2 of Article 173.

In this case, if the issuing State were to request these monies, the Judge of Criminal Matters shall secure the Public Prosecutor's opinion, granting him a term of ten days, and shall resolve as appropriate on the assignment of the sums of compensation for the victims and parties damaged. The Court Clerk shall transfer the sums according to the literal terms thereof.

2. Beyond the case of compensation to benefit victims, no other agreement shall be admitted that might vary the rule stated in the preceding Section.

## CHAPTER II TRANSMISSION OF A DECISION REQUIRING A FINANCIAL PENALTY TO BE PAID

**Article 176.** *Transmission of a decision requiring a financial penalty to be paid.*

1. The decision demanding payment of a financial penalty shall be transmitted to the competent authority of the Member State of the European Union, in which the natural or legal person concerned has properties, obtains income or has his normal residence or corporate seat, in order for it to proceed to execution thereof.

2. The Spanish criminal judicial authority shall transmit the order to a sole executing State each time.

**Article 177.** *Documentation of a decision requiring a financial penalty to be paid.*

1. The order demanding payment of a financial penalty shall be documented in the certificate provided in Annex XII, and it shall be sent with the final sentence or decision imposing the fine.

2. Where appropriate, the certificate shall set the liquid amount for payment by virtue of the day-fine system foreseen in the Criminal Code.

3. The certificate shall contain the provision that a fine may be turned into a custodial sentence or community service in the case of non- payment, pursuant to the terms foreseen in the Criminal Code, the duration of which must be specified.

**Article 178.** *Procedure for transmission of a decision requiring a financial penalty to be paid.*

1. The Judge or Court shall hear the Public Prosecutor within a term of five days and shall resolve by reasoned order handed down within the following five days.

2. Prior to the issuing, sufficient information may be gathered from the competent authority of the executing State or the bodies that may provide such, as to whether the sentenced person effectively has properties or revenue in that State, or whether he is resident there.

**Article 179.** *Consequences of transmission of a decision requiring a financial penalty to be paid.*

1. Once the decision is transmitted, the Spanish criminal authority may not proceed to its execution, except in cases in which it is returned.

Such a suspension shall only cover pronouncements regarding fines and costs imposed.

2. If, after transmitting an order, the financial penalty is voluntarily paid by the sentenced person, or has been enforced as a result of prior judicial actions, the Spanish criminal judicial authority shall apply the payment received in the manner legally foreseen and shall immediately inform the competent authority of the executing State, stating the reduction performed in the amount and the items included in the financial penalty subject to execution.

### CHAPTER III EXECUTION OF A DECISION REQUIRING A FINANCIAL PENALTY TO BE PAID

**Article 180.** *Recognition and execution in Spain of a decision requiring a financial penalty to be paid.*

1. The competent Judge of Criminal Matters shall be bound to recognise and execute a decision requiring a financial penalty to be paid that it has been sent by the competent authority of another Member State, without being subject to double criminality verification when related to any of the offences listed in Sections 1 and 2 of Article 20.

2. A financial penalty shall also be executed when imposed in the issuing State on a legal person for a criminal offence for which its responsibility is not foreseen under Spanish Law.

**Article 181.** *Procedure to recognise and execute a decision requiring a financial penalty to be paid.*

1. The Judge of Criminal Matters receiving the order shall proceed to ascertain the following particulars:

- a) whether the sentenced person has his residence or corporate seat in Spain;
- b) only if there is no record of an address or corporate seat of the sentenced person in Spain, if he has his name registered on any property at the Land Registry;
- c) if none of the above two circumstances concur, if the sentenced person has record of any source of revenue in Spain.

2. The Judge of Criminal Matters, with a prior report by Public Prosecutor issued within the term of five days, shall dispatch execution of the order on financial penalties duly transmitted by order, within the maximum term of five days from receipt.

3. When the amount of the penalty is stated in the certificate in a foreign currency, the Court Clerk shall convert the amount to euros, applying the exchange rate in force at the moment of the penalty being imposed.

**Article 182.** *Refusal of recognition and execution of a decision requiring a financial penalty to be paid.*

1. The competent Judge of Criminal Matters shall refuse recognition and execution of decisions requiring a financial penalty to be paid, in addition to the cases of Articles 32 and 33, in the following cases:

- a) when the decision has been imposed on a natural person who, due to his age, could not yet have been held considered criminally liable pursuant to Spanish Law;
- b) when, according to the certificate, in the case of written proceedings, he has not been informed of his right to contest the decision and of the terms to file such an appeal;

c) when, according to the certificate, the accused has not been informed personally, or through his representative, of his right to contest the case, and of the time limits of such a legal remedy;

d) when the financial penalty is below seventy euros or, in the case of another currency, the equivalent amount;

e) when, from the certificate and decision notified for its enforcement, it is proven that there has been a breach of fundamental rights and fundamental legal principles consecrated in Article 6 of the Treaty of the European Union and enshrined in the Charter of Fundamental Rights of the European Union;

f) when the decision concerns acts committed outside the State issuing and Spanish Law does not allow prosecution of such offences when committed outside Spanish territory.

**2.** In the event of any of the reasons for refusal of recognition and execution arising as foreseen in Letter d) of Section 1 or Section 3 of Article 32, in Section 1 of Article 33, or in Letters b) and c) of the previous Section, prior to refusal of partial or total recognition and execution of the decision, the Judge of Criminal Matters shall consult the competent authority of the issuing State to clarify the situation and, where appropriate, to correct the defect incurred.

**Article 183.** *Review of the amount of the penalty.*

**1.** Should the person fined provide evidence of total or partial payment in any State, the Judge of Criminal Matters must consult the competent authority of the issuing State and deduct the part of the fine that has effectively been collected in another State from the sum subject to enforcement in Spain.

**2.** When it is proven that the decision refers to acts that were not committed within the territory of the issuing State and over which the Spanish criminal judicial authorities have jurisdiction, the Judge of Criminal Matters may decide to reduce the amount of the fine enforced to the maximum amount foreseen for acts of the same kind as provided under Spanish Law.

**3.** In such cases, the competent Judge of Criminal Matters shall report on the partial nature of enforcement of the decision to the competent authority of the issuing State, by any means capable of producing a written record.

4. In such cases where the penalty has been imposed in a State with a different currency, the Judge of Criminal Matters shall convert the amount of the penalty to euros, applying the exchange rate in force at the time it was imposed.

**Article 184.** *Alternative penalties in the event of non- payment of the financial penalty.*

1. When it is not possible to enforce a decision, either totally or in part, the competent Judge of Criminal Matters may apply alternative sanctions, including custodial sanctions, pursuant to the terms foreseen under Spanish Law, in cases in which the issuing State has agreed to apply such alternative sanctions in the certificate transmitted and, in all cases, without exceeding the maximum level of the penalty foreseen therein.

Under no circumstance shall a custodial sentence be applied as an alternative penalty when the monetary penalty whose enforcement is requested has been imposed for committing an administrative offence, even when this has been appealed before the criminal jurisdictional body of the issuing State.

2. The competent Judge of Criminal Matters shall immediately report application of an alternative penalty pursuant to the terms set forth in the preceding Section.

**Article 185.** *Suspension of execution of a decision requiring payment of a financial penalty.*

The Judge of Criminal Matters shall be bound to suspend enforcement of a decision as soon as the competent authority of the issuing State informs him of adoption of any decision or measure that has the effect of suspending or leaving the decision without effect for any other reason, including granting an amnesty or pardon.

In any of these cases, the Judge of Criminal Matters shall return the decision to the competent authority of the issuing State.

TITLE X  
EUROPEAN EVIDENCE WARRANT (EEW)

CHAPTER I  
GENERAL PROVISIONS

**Article 186.** *European evidence warrant (EEW).*

1. A European evidence warrant (EEW) is a judicial decision issued by the competent authority of a Member State in order to gather objects, documents and data from another Member State for use in criminal proceedings.

2. A European evidence warrant (EEW) may refer to proceedings inchoated by the competent authorities of other Member States of the European Union due to commission of acts classified as administrative offences under their laws, when the decision may give rise to proceedings before a criminal jurisdictional body.

**Article 187.** *Scope of a European evidence warrant (EEW).*

1. A European evidence warrant (EEW) may be issued to gather duly identified objects, documents or data in the executing State, that are required for criminal proceedings in Spain.

The warrant may include objects, documents or data that are already in the possession of the enforcing authority, as well as any other object, document or data that executing authority discovers during enforcement thereof when, without other complementary investigations taking place, it considers them relevant for the proceedings for which it was issued and it declares such.

2. Except in cases in which the request is possible, by virtue of the terms set forth in the preceding Section, because the object, document or data is already in the possession of the executing authority prior to issue, the European evidence warrant (EEW) may not be issued to request the executing authority:

- a) to conduct interviews, take statements or initiate other types of hearing involving suspects, witnesses, experts or any other person. Notwithstanding this, the Spanish judicial authority may request that

statements be taken, pursuant to the Law of the executing State, from persons who are present during enforcement of the warrant and who are directly related to the matter concerned;

b) to carry out bodily examinations or obtain bodily material or biometric data directly from the body of any person, including DNA samples or fingerprints;

c) to obtain information in real time as through the interception of communications, covert surveillance or monitoring of bank accounts;

d) to conduct analysis of existing objects, documents or data;

e) to obtain data from communications retained by providers of a publicly available electronic communication service or a public communications network.

**3.** Criminal records shall have a specific transmission regime, falling outside the scope of European evidence warrants.

**Article 188.** *Competent authorities in Spain to issue and execute a European evidence warrant (EEW).*

**1.** In Spain, the competent authorities to issue a European evidence warrant (EEW) are the Judges or Courts that hear the proceedings in which it is necessary to obtain the document, object or data, as well as the Public Prosecutors who direct the investigation proceedings in which the warrant must be adopted.

**2.** The Public Prosecutor is the competent authority to recognise and execute a European evidence warrant (EEW) as long as securing the objects, documents or data may be done without taking measures to limit fundamental rights.

Otherwise, as well as when the Public Prosecutor understands that one must refuse recognition or execution of the warrant, the competent authority shall be the Judge of Criminal Investigation of the place where any of the objects, documents or data it is intended to obtain by means of the warrant are located.

A change arising in the location of the objects, documents or data shall not imply that loss of jurisdiction of the Public Prosecutor or the Judge of Criminal Investigation who has ordered recognition and execution of a European evidence warrant (EEW) transmitted to Spain shall arise.

If the certificate has been issued in relation to various objects, documents or data located in different jurisdictions, the Public Prosecutor or, where appropriate, the Judge of Criminal Investigation who first receives it and within whose jurisdiction at least one of such objects, documents or data is located, shall have jurisdiction to proceed to obtain all the others.

## CHAPTER II ISSUING AND TRANSMITTING A EUROPEAN EVIDENCE WARRANT (EEW)

**Article 189.** *Issuing and transmitting a European evidence warrant (EEW).*

1. The competent Spanish judicial authority shall issue a warrant only when the following conditions are fulfilled:

- a) that the objects, documents or data are sufficiently identified;
- b) that is record of signs in the criminal proceedings or the investigation proceedings that the object, document or data it is intended to obtain are located in another Member State or, in the case of electronic data, are directly accessible from it pursuant to its laws;
- c) that the objects, documents or data are necessary for the proceedings;
- d) that it is proportional to gather such objects, documents or data for the proceedings;
- e) that pursuant to Spanish Law, in an equivalent national case, the Judge, Court or, if appropriate the Public Prosecutor, if issuing the warrant, could order securing the object, document or data if available in Spain.

2. When the conditions foreseen in the preceding Section are fulfilled and the competent Spanish judicial authority has reasonable grounds to believe that the objects, documents or data are in another Member State of the European Union, or in the case of electronic data, are accessible directly according to the laws of the latter, it shall transmit the warrant to its competent authority without delay.

3. Evidence obtained through a warrant performed pursuant to the procedural regulations of the executing State and, where appropriate, pursuant to the proceedings specifically indicated by the Spanish authority, shall take full effect and shall not be liable to an appeal aimed at controlling

the guarantees of impartiality observed when obtaining them, nor the validity of the acts duly performed.

**Article 190.** *Documentation of a European evidence warrant (EEW).*

A European evidence warrant (EEW) shall be documented in the certificate provided in Annex XIII, that being the sole document that must be sent to the executing authority.

The certificate shall specifically record whether the warrant completes another previous one or whether it is follow-up to an order freezing property or evidence.

Likewise, if the procedural deadlines or other particularly urgent circumstances were to require execution of the warrant within a shorter term than legally foreseen as the maximum, this shall be indicated in the certificate.

**Article 191.** *Procedure to transmit a European evidence warrant (EEW).*

**1.** A European evidence warrant (EEW) may be handed down by the court ex officio or at the request of a party.

If, during the criminal proceedings, it is the party that calls for the issue, it shall be required to provide documentary evidence or any other kinds of signs of the existence of the object, document or data and that they are in the territory of the executing State.

**2.** Prior to issuing, sufficient information may be gathered from the competent authority of the executing State or the bodies that may provide it, as to whether the object, document or data are effectively in that State.

**3.** If, for validity of the object, document or data as a source of evidence, any formality or specific procedure for securing thereof is required in Spain, this shall be recorded in the certificate issued by the issuing authority. It shall only have to state the specific formalities or procedures whose breach would affect the essential guarantees of the proceedings due to these affecting fundamental rights.

**4.** The Spanish authority may also request the executing authority to obtain any other object, document or data that the executing authority consider relevant for the Spanish process, as long as this does not require any complementary investigation whatsoever.

**Article 192.** *Transmission of a European evidence warrant (EEW).*

1. A European evidence warrant (EEW) may be transmitted simultaneously to all States in whose territories in which there are reasonable grounds to believe that the object, document or data sought are to be found.

2. When the competent Spanish authority participates in execution of a warrant in the Member State of execution, it may issue a warrant directly to the executing authority completing the prior one while it is in that State.

**Article 193.** *Appeals in the executing State.*

Should the executing authority require allegations by the Spanish issuing judicial authority in an appeal against the decision that may have been handed down by the executing State, the Spanish authority, after hearing the parties to the proceedings for the term of five days, shall issue these within the term of five days from when the notice was served.

**Article 194.** *Use in Spain of personal data obtained in execution of the warrant in another Member State.*

1. Personal data obtained in execution of a warrant may only be used in the proceedings for which the decision may be issued, for others directly related to it, or exceptionally to prevent an immediate, serious threat to public safety.

To use the personal data obtained for other purposes, the competent Spanish judicial authority must obtain consent from the competent authority of the executing State, or directly from the data subject.

2. When, in a specific case, this is required by the competent authority of the executing State, the competent Spanish judicial authority shall inform it of the use it makes of the personal data sent through the warrant, except for that obtained during its enforcement in Spain.

CHAPTER III  
EXECUTION OF A EUROPEAN EVIDENCE WARRANT  
(EEW)

**Article 195.** *Execution of a European evidence warrant (EEW) in Spain.*

1. Recognition and execution of a European evidence warrant (EEW) shall not be subject to double criminality verification, unless pursuant to Spanish

Law it is necessary to proceed to a search or seizure to obtain such objects, documents or data that are considered necessary within the setting of criminal proceedings.

**2.** When it is necessary to proceed to a search or seizure to execute the warrant, double criminality verifications shall not be performed for the offences listed in Section 1 of Article 20, as long as these are punishable in the issuing State with a custodial sentence with a maximum term of at least three years.

**3.** Should it be possible to execute the warrant by various means, the least restrictive for individual liberty shall be chosen.

**Article 196.** *Procedure for recognition and execution of a European evidence warrant (EEW).*

**1.** The Public Prosecutor or the Judge of Criminal Investigation who receives a European evidence warrant (EEW) shall order, within the term of five days from receipt, that the location of the object, document or data sought be ascertained.

He may also issue a communication to the judicial authority issuing for it to provide further information of any relevant circumstance to duly secure, such as more specific details of the location or characteristics thereof.

**2.** The Public Prosecutor or the Judge of Criminal Investigation charged with processing the European evidence warrant (EEW) proceedings shall issue a decree or order, respectively, recognising whether all the legally established requisites are met and whether he does not appreciate any ground whatsoever for refusal. The decree or order must be handed down within the maximum term of ten days from receipt of the order in Spain and shall contain the necessary instructions for the State Security Forces and Corps, for other administrative bodies or authorities or private persons, in order for them to gather the objects, documents or data.

**3.** In the course of execution of the warrant, the Public Prosecutor or the Judge of Criminal Investigation may assess the possibility of undertaking new investigation measures not requested when they deem this may be appropriate.

When the issuing State participates in the enforcement in Spain, the Public Prosecutor or the Judge of Criminal Investigation shall receive the warrant

that may be transmitted to it directly by the issuing authority while it is in Spain and that completes the previous one.

**4.** In the event of the issuing authority not being a Public Prosecutor, Judge or Court and if the warrant has not been validated by any such authorities of the issuing State, the Public Prosecutor or the competent Judge of Criminal Investigation shall carry out the necessary search and seizure measures, except if Spain presents a declaration before the Secretariat General of the Council of the European Union in which it demands such validation for the purposes of enforcing the warrant.

**5.** If, once the certificate is received, the Public Prosecutor appreciates the existence of any grounds that might give rise to refusal of recognition or execution of a European evidence warrant (EEW), or if it is necessary to adopt measures limiting fundamental rights to execute it, within the maximum term of ten days from receipt in Spain, it may proceed to send the certificate, along with a reasoned report on the ground arising, to the competent Judge of Criminal Investigation of the place where the object, document or data are located, according to the criteria stated above in the event of there being several.

The Judge shall hand down a reasoned order recognising or refusing execution of the warrant within the term of five days.

The decision to recognise and execute the European warrant or to refuse it must be taken as soon as possible, and at the latest within the term of thirty days from the warrant being received in Spain.

**Article 197.** *Obtaining and transferring objects, documents or data obtained pursuant to a European evidence warrant (EEW).*

**1.** The competent executing authority shall take possession of the objects, documents or data requested in the warrant within a maximum term of sixty days from the day of receipt thereof, except if any of the grounds for suspension concurs. When the issuing authority, for reasons of urgency, requests enforcement within a shorter term, the executing authority shall proceed to fulfil such without delay.

When this is not possible, the competent authority of the issuing State shall be informed of the reasons for the delay and of the new term foreseen to obtain the property subject to the warrant.

2. Except in cases in which an appeal has been filed against recognition and execution of the warrant, or when any justified reason for postponement exists, the objects, documents or data obtained shall immediately be transferred pursuant to the warrant and if it is requested that these be returned to Spain as soon as they cease to be needed by the competent authority of the issuing State this shall be indicated.

**Article 198.** *Refusal of recognition and execution of a European evidence warrant (EEW).*

1. The competent Judge of Criminal Investigation shall refuse recognition and execution of the warrant, in addition to the cases of Section 1 of Article 32, in the following cases:

- a) when it is not possible to execute it by means of any of the measures foreseen in the national law;
- b) when the case foreseen in Section 4 of Article 196 concurs and the warrant has not been validated by the competent judicial authority;
- c) when its execution would harm essential national security interests, jeopardise the source of the information or involve the use of classified information relating to specific intelligence activities;
- d) when the decision refers to acts that were committed outside the State issuing and Spanish Law does not allow prosecution of such offences when committed outside Spanish territory.

2. The competent Judge of Criminal Investigation shall refuse recognition and execution of the warrant when, in addition to it concerning an offence other than those foreseen in Section 1 of Article 20, it is necessary to perform a search or seizure for its enforcement.

3. The decision to refuse recognition and execution of the warrant shall be handed down by the Judge of Criminal Investigation within the term of thirty calendar days from its receipt. When it is not possible to fulfil that term, the Judge of Criminal Investigation shall inform the competent authority of the issuing State of the reasons for the delay and the new term established for action.

4. When the Judge of Criminal Investigation considers the possibility of refusing recognition and execution of a warrant due to it concerning offences that Spanish Law considers to be committed fully or partially in Spanish territory, Eurojust shall be consulted before taking a decision, taking into account in the specific case whether part of the offence took

place in the issuing State, if those acts do not constitute an offence under Spanish Law and, if necessary, carry out a search and seizure operation to execute the warrant. In the case of disagreement with Eurojust, the Judge of Criminal Investigation shall state his reasons for this.

5. Should any of the reasons of refusal of recognition and execution foreseen in Letters a) and c) of Section 1 of Article 32 concur, before partially or fully refusing recognition and execution of the warrant, the Judge of Criminal Investigation shall consult the competent authority of the issuing State for it to provide the necessary complementary information without delay and, where appropriate, to correct the defect incurred.

**Article 199.** *Specific information on the course of execution of the warrant.*

The Public Prosecutor or the Judge of Criminal Investigation in charge of enforcement shall immediately inform the issuing authority in the following cases:

- a) if he considers, in the course of execution of the warrant and without having performed other investigations, that investigation measures may be adopted that are not foreseen in the warrant, or that could not have been known when it was issued, in order for the issuing authority to resolve as appropriate;
- b) if the warrant has not been executed pursuant to Spanish Law, explaining the reasons and what the infringement consists of;
- c) if the warrant cannot be executed pursuant to the formalities and procedures specifically indicated by the issuing authority;
- d) if the warrant has not been executed due to disappearance or destruction of the objects, documents or data, to it being impossible to find them in the place indicated, or due to lack of sufficient precision concerning their location, in spite of having consulted the issuing authority.

**Article 200.** *Postponement of execution of a warrant.*

1. The Public Prosecutor or the Judge of Criminal Investigation shall suspend execution of a European evidence warrant (EEW) when:

- a) the certificate foreseen in the annex is incomplete, or is manifestly incorrect, until such time it is completed or corrected;
- b) in the case foreseen in Section 4 of Article 196, the warrant has not been validated, until such a validation has been given;

c) its execution might prejudice an ongoing criminal investigation or prosecution, until such time it is deemed reasonable;

d) the objects, documents or data concerned are already being used in other proceedings, until such time they are no longer required for this purpose.

**2.** As soon as the ground for postponement has ceased to exist, the Public Prosecutor or the Judge of Criminal Investigation shall take the necessary measures to execute the warrant, informing forthwith the judicial authority of the issuing State.

**Additional Provision One.** *Transmission and execution of European arrest and surrender warrants from or addressed to Gibraltar.*

European arrest and surrender warrants from or addressed to the British Colony of Gibraltar shall be governed by the terms set forth in the “Agreed arrangements on the Gibraltar authorities in the context of instruments of the European Union and the European Community and Related Treaties”, contained in the document by the Council 7998/00 JHA 45 MI 73, of 19 April 2000.

**Additional Provision Two.** *Transmission of measures freezing property and evidence and on financial penalties with the United Kingdom and Republic of Ireland.*

Transmission of measures freezing property or evidence and on financial penalties in the United Kingdom and the Republic of Ireland, shall be performed according to the terms set forth in this Act, unless those States declare by declaration deposited at the Secretariat General of the Council of the European Union and having notified the Commission, that they opt for transmission of their decisions and the relevant certificate through a central authority, or the authorities specified in the declaration.

**Additional Provision Three.** *Information on declarations made before the Secretariat General of the Council of the European Union.*

The Ministry of Justice, the General Council on the Judiciary and the Public Prosecutor General shall coordinate themselves so that, through their web sites, the declarations that Spain and the other Member States have made before the Secretariat General of the Council of the European Union, renouncing demanding their consent for certain actions related to

recognition and execution of mutual recognition instruments can be ascertained.

**Transitional Provision One.** *Transitional regime.*

1. This Act shall be applicable to decisions transmitted by the Spanish competent authorities or those received by such authorities after it comes into force, regardless of whether they were handed down before it, or refer to acts prior to it.

2. Decisions whose application for recognition and execution had been transmitted by the Spanish judicial authorities, or that had been received by those authorities at the time of this Act coming into force, shall continue to be processed until conclusion according to the regulations in force at that moment.

3. For the sole purposes set forth in Article 83.1 of this Act, when applications for recognition and execution that might have been submitted as of 5 December 2011 and prior to this Act coming into force are concerned, the laws in force at the time of application shall apply, if more favourable for the sentenced person.

**Transitional Provision Two.** *Submission and execution of condemnatory decisions in Poland.*

The terms set forth in Letter a) of Section 2 of Article 67 shall not be applicable to Poland, both if it is the issuing State as well as if it is the executing State, in cases in which the condemnatory decision has been handed down before a period of five years from 5 December 2011, except if it renounces recourse to this exception by notice to the Secretariat General of the Council of the European Union.

**Transitional Provision Three.** *Equivalence of the description in the Schengen Information System.*

Provisionally, until such time as when the Schengen Information System has the capacity to transmit all the information recorded in Article 36, a description shall be equivalent to a European arrest and surrender warrant until the executing judicial authority receives the original in a proper and due manner.

**Sole Repealing Provision.** *Statutory repeal.*

Act 3/2003, of 14 March, on the European arrest and surrender warrant; Act 18/2006, of 5 June, on enforcement in the European Union of decisions on freezing of property and evidence in criminal proceedings; Act 1/2008, of 4 December, on execution in the European Union of decisions imposing financial penalties and Act 4/2010, of 10 March, on enforcement in the European Union of judicial decisions on confiscation, are hereby repealed.

**Final Provision One.** *Updating addenda.*

The Council of Ministers is hereby authorised, at the initiative of the Minister of Justice, to update the certificate forms recorded in the addenda to this Act when they have been amended by European Union regulations.

**Final Provision Two.** *Title of powers.*

This Act is passed under the terms set forth in Article 149.1.6. of the Spanish Constitution, that attributes the State competence in matters of procedural legislation.

**Final Provision Three.** *Transposition of European Union Law.*

The following are transposed into Spanish Law by means of this Act:

- a) Framework Decision 2002/584/JHA, of 13 June 2002, on the European Arrest Warrant and the surrender procedures between Member States;
- b) Framework Decision 2003/577/JHA, of 22 July 2003, on execution in the European Union of orders on freezing property or evidence;
- c) Framework Decision 2005/214/JHA, of 24 February 2005, on application of the principle of mutual recognition to financial penalties;
- d) Framework Decision 2006/783/JHA, of 6 October 2006, on application of the principle of mutual recognition to confiscation orders;
- e) Framework Decision 2008/909/JHA, of 27 November 2008, on application of the principle of mutual recognition of judgements in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union;

- f) Framework Decision 2008/947/JHA, of 27 November 2008, on application of the principle of mutual recognition to judgements and probation decisions with a view to the supervision of probation measures and alternative sanctions;
- g) Framework Decision 2008/978/JHA, of 18 December 2008, on the European evidence warrant (EEW) for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters;
- h) Framework Decision 2009/299/JHA, of 26 February 2009, amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial;
- i) Framework Decision 2009/829/JHA, of 23 October 2009, on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention;
- j) And Directive 2011/99/EU, of 13 December 2011, of the European Parliament and the Council, on the European protection order.

**Final Provision Four.** *Entry into force.*

This Act shall come into force twenty days after it is published in the "Official State Gazette".

Thus,

I order all Spaniards, both individuals and authorities, to abide by and enforce this Act.

Madrid, 20 November 2014.

PHILLIP REX

The President of the Government,  
MARIANO RAJOY BREY

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

This warrant has been issued by a competent judicial authority. I request that the person mentioned below be arrested and surrendered for the purposes of conducting a criminal prosecution, sentencing following conviction, or executing a custodial sentence or detention order.

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

<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(s): .....</p> <p>.....</p> <p>Reference: .....</p> <p>.....</p>
---

---

<sup>1</sup> This certificate must be written in, or translated into, one of the official languages of the executing Member State, if that State is known, or into any other language accepted by that State.

(c) Indications on the length of the sentence:

1. Maximum length of the custodial sentence or detention order which may be imposed for the offence(s): .....
  2. Length of the custodial sentence or detention order imposed: .....
- Remaining sentence to be served: .....

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

1.  Yes, the person appeared in person at the trial resulting in the decision.
2.  No, the person did not appear in person at the trial resulting in the decision.
3. If you have ticked the box under point 2, please confirm the existence of one of the following:
  - 3.1a. the person was summoned in person on ..... (day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for the trial;OR
  - 3.1b. the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the decision, in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial;OR
  - 3.2. being aware of the scheduled trial, the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;OR
  - 3.3. the person was served with the decision on ..... (day/month/year) and was expressly informed about the right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and
    - the person expressly stated that he or she does not contest this decision;
    - the person did not request a retrial or appeal within the applicable timeframe;OR
  - 3.4. the person was not personally served with the decision, but:
    - the person will be personally served with this decision without delay after the surrender; and
    - when served with the decision, the person will be expressly informed of his or her right to a retrial or appeal, in which he or she has the right to participate

and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed; and

– the person will be informed of the timeframe within which he or she has to request a retrial or appeal, which will be ..... days.

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

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

(e) Offence(s):

This warrant relates to in total: ..... offences.

Description of the circumstances in which the offence(s) was (were) committed, including the time, place and degree of participation in the offence(s) by the requested person:

.....  
.....

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

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

I. If applicable, cross one or more of the following offences punishable in the issuing Member State by a custodial sentence or detention order of a maximum of at least 3 years as defined by the Laws of the issuing Member State:

- participation in a criminal organisation;
- terrorism;
- trafficking in human beings;
- sexual exploitation of children and child pornography;
- illicit trafficking in narcotic drugs and psychotropic substances;
- illicit trafficking in weapons, munitions and explosives;
- corruption;
- fraud including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of European Communities' financial interests;
- laundering of the proceeds of crime;
- counterfeiting of currency, including the euro;
- computer-related crime;
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
- facilitation of unauthorised entry and residence;
- murder, grievous bodily injury;
- illicit trade in human organs and tissue;
- kidnapping, illegal restraint and hostage-taking;
- racism and xenophobia;
- organised or armed robbery;
- illicit trafficking in cultural goods, including antiques and works of art;
- swindling;
- racketeering and extortion;
- counterfeiting and piracy of products;
- forgery of administrative documents and trafficking therein;
- forgery of means of payment;
- illicit trafficking in hormonal substances and other growth promoters;
- illicit trafficking in nuclear or radioactive materials;
- trafficking in stolen vehicles;
- rape;
- arson;
- crimes within the jurisdiction of the International Criminal Court;
- unlawful seizure of aircraft/ships;
- sabotage.

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

.....  
.....

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

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

.....  
.....

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

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

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

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

(h) The following offences on the basis of which this warrant has been issued are punishable by 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.

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

(i) The judicial authority which issued the warrant:

Official name: .....

Name of its representative<sup>1</sup>: .....

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

File reference: .....

Address: .....

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

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

E-mail: .....

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

<sup>1</sup> The different linguistic versions will include a reference to the “-incumbent-” of the judicial authority.

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

Name of the central authority: .....

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

Address: .....

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

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

E-mail: .....

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

.....

Name: .....

Surname: .....

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

Date: .....

Official stamp (if available)

**ANNEX II**

**CERTIFICATE FOR ENFORCEMENT OF DECISIONS  
IMPOSING CUSTODIAL SENTENCES OR MEASURES  
INVOLVING DEPRIVATION OF LIBERTY IN ANOTHER  
MEMBER STATE OF THE EUROPEAN UNION<sup>1</sup>**

referred to in Article 5 of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.

(a) \* Issuing State: .....  
\* Executing State: .....

(b) The court which delivered the judgment imposing the sentence that became final:  
Official name: .....  
The judgment was delivered on (dd-mm-yyyy): .....  
The judgment became final on (dd-mm-yyyy): .....  
Reference number of the judgment (if available): .....

(c) Information related to the authority that may be contacted for any question related to the certificate:

1. Type of authority: Please tick the relevant box:  
 Central authority .....  
 Court .....  
 Other authority .....

2. Contact details of the authority indicated under point (c) 1:  
Official name .....  
Address: .....  
.....  
Tel.: (country code) (area/city code) .....  
Fax: (country code) (area/city code) .....  
E-mail address (if available): .....

3. Languages in which it is possible to communicate with the authority:

4. Contact details of person(s) to be contacted to obtain additional information for the purposes of enforcement of the judgment or agreement on the transfer procedures (name, title/grade, telephone No, fax, e-mail address), if different from 2:  
.....  
.....

<sup>1</sup>This certificate must be written in, or translated into, one of the official languages of the executing Member State or any other language accepted by that State.

(d) Information regarding the person on whom the sentence has been imposed:

Name: .....  
Forename(s): .....  
Maiden name, where applicable: .....  
Aliases, where applicable: .....  
Sex: .....  
Nationality: .....  
Identity number or social security number (if available): .....  
Date of birth: .....  
Place of birth: .....  
Last known addresses/residences: .....  
Language(s) which the person understands (if known): .....  
.....

The sentenced person is:

- in the issuing State and is to be transferred to the executing State.
- in the executing State and enforcement is to take place in that State.

Additional information to be provided, if available and if appropriate:

1. Photo and fingerprints of the person, and/or contact details of the person to be contacted in order to obtain such information:  
.....
2. Type and reference number of the sentenced person's identity card or passport:  
.....
3. Type and reference number of the sentenced person's residence permit:  
.....
4. Other relevant information about the sentenced person's family, social or professional ties to the executing State:  
.....  
.....

(e) Request for provisional arrest by the issuing State (where the sentenced person is in the executing State):

- The issuing State requests the executing State to arrest the sentenced person, or to take any other measure to ensure that the sentenced person remains in its territory, pending a decision to recognise and enforce the sentence.
- The issuing State has already requested the executing State to arrest the sentenced person, or to take any other measure to ensure that the sentenced person remains in its territory, pending a decision to recognise and enforce the sentence. Please provide the name of the authority in the executing State that has taken the decision on the request to arrest the person (if applicable and available):  
.....  
.....

(f) Relation to any earlier European Arrest Warrant (EAW):

- An EAW has been issued for the purpose of the execution of a custodial sentence or detention order and the executing Member State undertakes to execute the sentence or detention order (Article 4(6) of the EAW Framework Decision).

Date of issue of the EAW and, if available, reference number:

.....

Name of the authority that issued the EAW: .....

Date of decision to undertake execution and, if available, reference number:

.....

Name of the authority that issued the decision to undertake execution of the sentence: .....

.....

- An EAW has been issued for the purpose of prosecution of a person who is a national or resident of the executing State and the executing State has surrendered the person under the condition that the person is to be returned to the executing State in order to serve there the custodial sentence or detention order passed against him or her in the issuing Member State (Article 5(3) of the EAW Framework Decision).

Date of the decision to surrender the person:.....

Name of the authority that issued the decision to surrender: .....

Reference number of the decision, if available: .....

Date of the surrender of the person, if available: .....

(g) Reasons for forwarding the judgment and the certificate (if you have filled in Box (f), there is no need to fill in this box):

The judgment and the certificate are forwarded to the executing State because the issuing authority is satisfied that the enforcement of the sentence by the executing State would serve the purpose of facilitating the social rehabilitation of the sentenced person and:

- (a) The executing State is the State of nationality of the sentenced person in which he or she lives.
- (b) The executing State is the State of nationality of the sentenced person, to which the sentenced person will be deported, once he or she is released from the enforcement of the sentence on the basis of an expulsion or deportation order included in the judgment or in a judicial or administrative decision or any other measure taken consequential to the judgment. If the expulsion or deportation order is not included in the judgment, please provide the name of the authority that issued the order, the date of issue, and, if available, the reference number:
- (c) The executing State is a State, other than a State referred to in (a) or (b), the competent authority of which consents to the forwarding of the judgment and the certificate to that State.
- (d) The executing State has given a notification under Article 4(7) of the Framework Decision, and:

- It is confirmed that, to the knowledge of the competent authority of the issuing State, the sentenced person lives and has been legally residing continuously for at least five years in the executing State and will retain a permanent right of residence in that state, or
- It is confirmed that the sentenced person is a national of the executing State.

(h) Judgment imposing the sentence:

1. The judgment covers ..... offences in total.

Summary of facts and a description of the circumstances in which the offence(s) was (were) committed, including time and place; and the nature of the involvement of the sentenced person:

.....

Nature and legal classification of the offence(s) and the applicable statutory provisions on the basis of which the judgment was made:

.....

2. To the extent that the offence(s) identified under point (h) 1 constitute(s) one or more of the following offences, as defined in the Law of the issuing State, which are punishable in the issuing State by a custodial sentence or detention order of a maximum of at least three years, please confirm by ticking the relevant box(es):

- participation in a criminal organisation;
- terrorism;
- trafficking in human beings;
- sexual exploitation of children and child pornography;
- illicit trafficking in narcotic drugs and psychotropic substances;
- illicit trafficking in weapons, munitions and explosives;
- corruption;
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests;
- laundering of the proceeds of crime;
- counterfeiting currency, including of the euro;
- computer-related crime;
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
- facilitation of unauthorised entry and residence;
- murder, grievous bodily injury;
- illicit trade in human organs and tissue;
- kidnapping, illegal restraint and hostage-taking;
- racism and xenophobia;
- organised or armed robbery;
- illicit trafficking in cultural goods, including antiques and works of art;
- swindling;
- racketeering and extortion;
- counterfeiting and piracy of products;
- forgery of administrative documents and trafficking therein;
- forgery of means of payment;
- illicit trafficking in hormonal substances and other growth promoters;
- illicit trafficking in nuclear or radioactive materials;

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

3. To the extent that the offence(s) identified under point 1 is (are) not covered by point 2 or if the judgment and the certificate is forwarded to the Member State, which has declared that it will verify the double criminality (Article 7(4) of the Framework Decision), please give a full description of the offence(s) concerned:

.....

(i) Status of the judgment imposing the sentence:

1. Indicate if the judgement was rendered in absentia:

- No, it was not.
- Yes, it was; it is confirmed that:
  - the person was informed in person, or via a representative competent according to the national law of the issuing State, of the time and place of the proceedings which led to the judgment in absentia, or
  - the person has indicated to a competent authority that he/she does not contest the decision.

2. Details of the length of the sentence:

2.1. Total length of the sentence (in days):

2.2. The full period of deprivation of liberty already served in connection with the sentence in respect of which the judgment was issued (in days):

..... as per (...) (give date on which calculation was made: dd-mm-yyyy):

.....

2.3. Number of days to be deducted from total length of the sentence for reasons other than the one referred to under 2.2 (e.g. amnesties, pardons or clemencies, etc. already granted with respect to the sentence):.....as per (give date on which calculation was made: dd-mm-yyyy):

.....

2.4. Sentence expiry date in the issuing State:

- Not applicable, because the person is currently not in custody
  - The person is currently in custody and the sentence, under the Law of the issuing State, would be fully served by (give date: dd-mm-yyyy)<sup>1</sup> :
- .....

3. Type of sentence:

- custodial sentence
  - measure involving deprivation of liberty (please specify):
- .....

<sup>1</sup> Please insert here the date by which date the sentence would be fully served (not taking into account the possibilities of any form of early and/or conditional release) if the person were to stay in the issuing State.

(j) Information related to early or conditional release:

1. Under the Law of the issuing State the sentenced person is entitled to early or conditional release, having served:
  - half the sentence
  - two-thirds of the sentence
  - another portion of the sentence (please indicate):
2. The competent authority of the issuing State requests to be informed of:
  - The applicable provisions of the Law of the executing State on early or conditional release of the sentenced person;
  - The beginning and the end of the period of early or conditional release.

(k) Opinion of the sentenced person:

1. Indicate if the person appeared in person at the trial resulting in the order:
  1.  Yes, the person appeared in person at the trial resulting in the confiscation order.
  2.  No, the person did not appear in person at the trial resulting in the confiscation order.
  3.  If you have ticked the box under point 2, please confirm the existence of one of the following:
    - 3.1a the person was summoned in person on ..... (day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the confiscation order and was informed that a decision may be handed down if he or she does not appear for the trial;  
OR
    - 3.1b the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the confiscation order, in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial;  
OR
    - 3.2. being aware of the scheduled trial, the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;  
OR
    - 3.3. the person was served with the confiscation order on ..... (day/month/year) and was expressly informed about the right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and
      - the person expressly stated that he or she does not contest the decision;  
OR
      - the person did not request a retrial or appeal within the applicable time

4. If you have ticked the box under points 3.1b, 3.2, 3.3 or 3.4 above, please provide information about how the relevant condition has been met:

.....  
.....

2.  The sentenced person is in the issuing State and:

- a.  has requested the forwarding of the judgment and the certificate  
 consented to the forwarding of the judgment and the certificate  
 did not consent to the forwarding of the judgment and the certificate.....(state reasons given by the sentenced person):

.....  
.....

- b.  Opinion of the sentenced person is attached.  
 Opinion of the sentenced person was forwarded to the executing State on (give date: dd-mm-yyyy):

.....

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

.....  
.....

(m) Final information:

The text of the judgment(s) is (are) attached to the certificate<sup>1</sup>.

Signature of the authority issuing the certificate and/or its representative certifying the content of the certificate as accurate

.....

Name: .....

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

Date: .....

Official stamp (if available): .....

---

<sup>1</sup>The competent authority of the issuing State must attach all judgments related to the case which are necessary to have all the information on the final sentence to be enforced. Any available translation of the judgments may also be attached.

**ANNEX III**

**CERTIFICATE OF NOTIFICATION OF THE SENTENCED  
PERSON OF FORWARDING TO ANOTHER MEMBER  
STATE OF THE EUROPEAN UNION OF THE DECISION  
IMPOSING A CUSTODIAL SENTENCE OR OTHER  
MEASURES OF DEPRIVATION OF LIBERTY**

You are hereby notified of the decision of (competent authority of the issuing State) to forward the judgment of ..... (competent court of the issuing State) dated ..... (date of judgment) ..... (reference number; if available) to ..... (executing State) for the purpose of its recognition and enforcement of the sentence imposed therein in accordance with the national law implementing Council Framework Decision 2008/909/JHA of 27 November 2008, on the application of the principle of mutual recognition of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.

The enforcement of the sentence will be governed by the Law of ..... (executing State). The authorities of that State will be competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for early or conditional release.

The competent authority of ..... (executing State) has to deduct the full period of deprivation of liberty already served in connection with the sentence from the total duration of deprivation of liberty to be served. An adaptation of the sentence by the competent authority of ..... (executing State) may take place only if it is incompatible with the Law of that State in terms of its duration or nature. The adapted sentence must not aggravate the sentence passed in ..... (issuing State) by its nature or duration.

## ANNEX IV

### CERTIFICATE FOR ENFORCEMENT OF JUDGMENTS AND DECISIONS ON PROBATION MEASURES IN ANOTHER MEMBER STATE OF THE EUROPEAN UNION

Referred to in Article 6 of Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions<sup>1</sup>

(a) Issuing State:  
Executing State:

(b) Court which issued the judgment imposing a suspended sentence, conditional sentence or alternative sanction

Official name:

Please indicate whether any additional information concerning the judgment is to be obtained from:

- the court specified above
- the central authority; if you ticked this box, please provide the official name of this central authority:
- another competent authority; if you ticked this box, please provide the official name of this authority:

Contact details of the court/central authority/other competent authority

Address:

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

Fax (country code) (area/city code)

Details of the person(s) to be contacted Surname:

Forename(s):

Position (title/grade):

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

Fax (country code) (area/city code)

E-mail (if any):

Languages that may be used for communication:

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<sup>1</sup> This certificate must be written in, or translated into, the official language or one of the official languages of the executing Member State, or any other official language of the institutions of the European Union that is accepted by that State.

(c) Authority which issued the probation decision (where applicable)

Official name:

Please indicate whether any additional information concerning the probation decision is to be obtained from:

- the authority specified above
- the central authority; if you ticked this box, please provide the official name of this central authority if this information has not yet been provided under point (b):
- another competent authority; if you ticked this box, please provide the official name of this authority:

Contact details of the authority, the central authority or other competent authority, if this information has not yet been provided under point (b)

Address:

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

Fax (country code) (area/city code)

Details of the person(s) to be contacted Surname:

Forename(s):

Position (title/grade):

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

Fax (country code) (area/city code)

E-mail (if any):

Languages that may be used for communication

(d) Competent authority for supervision of the probation measures or alternative sanctions  
Authority which has competence in the issuing State for supervising the probation measures or alternative sanctions:

- the court/authority referred to in point (b)
- the authority referred to in point (c)
- another authority (please provide its official name):

Please indicate which authority is to be contacted if any additional information is to be obtained for the purposes of supervising the probation measures or alternative sanctions:

- the authority specified above
- the central authority; if you ticked this box, please provide the official name of this central authority if this information has not yet been provided under point (b) or (c):

Contact details of the authority, or of the central authority if this information has not yet been provided under point (b) or (c)

Address:

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

Fax (country code) (area/city code)

Details of the person(s) to be contacted

Surname:

Forename(s):

Position (title/grade):

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

Fax (country code) (area/city code)

E-mail (if any):

Languages that may be used for communication:

(e) Information regarding the natural person in respect of whom the judgment and, where applicable, the probation decision has been issued

Surname:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Last known addresses/residences (if any):

- in the issuing State:
- in the executing State:
- elsewhere:

Language(s) understood (if known):

If available, please provide the following information:

- Type and number of the identity document(s) of the sentenced person (ID card, passport):
- Type and number of the residence permit of the sentenced person in the executing State:

(f) Information regarding the Member State to which the judgment and, where applicable, the probation decision, together with the certificate are being forwarded

The judgment and, where applicable, the probation decision, together with the certificate are being forwarded to the executing State indicated in point (a) for the following reason:

- the sentenced person has his/her lawful and ordinary residence in the executing State and has returned or wants to return to that State
- the sentenced person has moved or intends to move to the executing State for the following reason(s) (please tick the relevant box):
  - the sentenced person has been granted an employment contract in the executing State;
  - the sentenced person is a family member of a lawful and ordinary resident person of the executing State;
  - the sentenced person intends to follow a study or training in the executing State;
  - other reason (please specify):

(g) Indications regarding the judgment and, where applicable, the probation decision

The judgment was issued on (dd-mm-yyyy):

Where applicable, the probation decision was issued on (dd-mm-yyyy):

The judgment became final on (dd-mm-yyyy):

Where applicable, the probation decision became final on (dd-mm-yyyy):

The execution of the judgment started on (if different from the date on which the judgment became final) (dd-mm-yyyy):

Where applicable, the execution of the probation decision started on (if different from the date on which the probation decision became final) (dd-mm-yyyy):

File reference of the judgment (if available):

Where applicable, file reference of the probation decision (if available):

1. The judgment covers in total: ..... offences.

Summary of the facts and description of the circumstances in which the offence(s) was (were) committed, including the time and place, and the nature of the involvement of the sentenced person:

Nature and legal classification of the offence(s) and applicable statutory provisions on the basis of which the judgment was issued:

2. If the offence(s) referred to in point 1 constitute(s) one or more of the following offences, as defined in the Law of the issuing State which are punishable in the issuing State by a custodial sentence or measure involving deprivation of liberty of a maximum of at least three years, please confirm by ticking the relevant box(es):

- participation in a criminal organisation
- terrorism
- trafficking in human beings
- sexual exploitation of children and child pornography
- illicit trafficking in narcotic drugs and psychotropic substances
- illicit trafficking in weapons, munitions and explosives
- corruption
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests
- laundering of the proceeds of crime
- counterfeiting of currency, including of the euro
- computer-related crime
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties
- facilitation of unauthorised entry and residence
- murder, grievous bodily injury
- illicit trade in human organs and tissue
- kidnapping, illegal restraint and hostage-taking
- racism and xenophobia
- organised or armed robbery
- illicit trafficking in cultural goods, including antiques and works of art
- swindling
- racketeering and extortion
- counterfeiting and piracy of products
- forgery of administrative documents and trafficking therein
- forgery of means of payment

- illicit trafficking in hormonal substances and other growth promoters
- illicit trafficking in nuclear or radioactive materials
- trafficking in stolen vehicles
- rape
- arson
- crimes within the jurisdiction of the International Criminal Court
- unlawful seizure of aircraft/ships
- sabotage

3. To the extent that the offence(s) identified under point 1 is (are) not covered by point 2 or if the judgment and, where applicable, the probation decision, as well as the certificate are forwarded to a Member State, which has declared that it will verify the double criminality (Article 8(4) of the Framework Decision), please give a full description of the offence(s) concerned:

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

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

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

OR

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

OR

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

OR

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

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

OR

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

4. If you have ticked the box under points 3.1b, 3.2, 3.3 or 3.4 above, please provide information about how the relevant condition has been met:

.....

(i) Indications regarding the nature of the sentence imposed by the judgment or, where applicable, the probation decision

1. This certificate is related to a:

- suspended sentence (= custodial sentence or measure involving deprivation of liberty, the execution of which is conditionally suspended, wholly or in part, when the sentence is passed)
- conditional sentence:
  - the imposition of a sentence has been conditionally deferred by imposing one or more probation measures
  - one or more probation measures have been imposed instead of a custodial sentence or measure involving deprivation of liberty
- alternative sanction:
  - the judgment contains a custodial sentence or measure involving deprivation of liberty to be enforced in case of non-compliance with the obligation(s) or instruction(s) concerned
  - the judgment does not contain a custodial sentence or measure involving deprivation of liberty to be enforced in case of non-compliance with the obligation(s) or instruction(s) concerned
- conditional release (= early release of a sentenced person after part of the custodial sentence or measure involving deprivation of liberty has been served)

2. Additional information:

2.1. The sentenced person was in pre-trial detention during the following period:

2.2. The person was serving a custodial sentence or measure involving deprivation of liberty during the following period (to be filled in only in case of conditional release):

2.3. In case of a suspended sentence

- duration of the custodial period imposed that was conditionally suspended:
- duration of the period of suspension:

2.4. If known, length of deprivation of liberty to be served upon

- revocation of suspension of the execution of the judgment;
- revocation of the decision on conditional release; or
- breach of the alternative sanction (if the judgment contains a custodial sentence or measure involving deprivation of liberty to be enforced in case of such a breach):

(j) Indications regarding the duration and nature of the probation measure(s) or alternative sanction(s)

1. Total duration of the supervision of the probation measure(s) or alternative sanction(s):

2. Where applicable, duration of each individual obligation imposed as part of the probation measure(s) or alternative sanction(s):

3. Duration of the total probation period (if different from the duration indicated under point 1):

4. Nature of the probation measure(s) or alternative sanction(s) (it is possible to tick multiple boxes):

- an obligation for the sentenced person to inform a specific authority of any change of residence or working place
- an obligation not to enter certain localities, places or defined areas in the issuing or executing State
- an obligation containing limitations on leaving the territory of the executing State
- instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity
- an obligation to report at specified times to a specific authority
- an obligation to avoid contact with specific persons
- an obligation to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence
- an obligation to compensate financially for the prejudice caused by the offence and/or an obligation to provide proof of compliance with such an obligation
- an obligation to carry out community service
- an obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons
- an obligation to undergo therapeutic treatment or treatment for addiction
- other measures that the executing State is prepared to supervise in accordance with a notification under Article 4(2) of the Framework Decision

5. Please provide a detailed description of the probation measure(s) or alternative sanction(s) indicated under 4:

6. Please tick the following box if relevant probation reports are available:

- If you ticked this box, please indicate in which language(s) these reports are drawn up <sup>1</sup>:

(k) Other circumstances relevant to the case, including relevant information on previous convictions or specific reasons for the imposition of the probation measure(s) or alternative sanction(s) (optional information):

The text of the judgment and, where applicable, the probation decision is attached to the certificate.

Signature of the authority issuing the certificate and/or of its representative to confirm the accuracy of the content of the certificate:

Name:

Position (title/grade):

Date:

File reference (if any):

(Where appropriate) Official stamp:

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<sup>1</sup> The issuing State is not obliged to provide translations of these reports.

## ANNEX V

### FORM REGARDING A BREACH OF A PROBATION MEASURE OR AN ALTERNATIVE SANCTION

Referred to in Article 17 of Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions

#### REPORT OF A BREACH OF A PROBATION MEASURE OR ALTERNATIVE SANCTION, OR OF ANY OTHER FINDINGS

(a) Details of the identity of the person subject to supervision

Surname:  
Forename(s):  
Maiden name, where applicable:  
Aliases, where applicable:  
Sex:  
Nationality:  
Identity number or social security number (if any):  
Date of birth:  
Place of birth:  
Address:  
Language(s) understood (if known):

(b) Details of the judgment and, where applicable, the probation decision concerning the suspended sentence, conditional sentence, alternative sanction or conditional release:

Judgment issued on:  
File reference (if any):  
Where applicable, probation decision issued on:  
File reference (if any):  
Court which issued the judgment or, if applicable, the probation decision  
Official name:  
Address:  
Certificate issued on:  
Where applicable, authority which issued the probation decision (if different from the court which handed down the judgment or, if applicable, the probation decision)  
File reference (if any):

(c) Details of the authority responsible for supervising the probation measure(s) or alternative sanction(s): Official name of the authority:

Name of the person to be contacted:  
Position (title/grade):  
Address:  
Tel. (country code) (area code)  
Fax (country code) (area code)  
E-mail:

(d) Probation measure(s) or alternative sanction(s):

The person referred to in (a) is in breach of the following obligation(s) or instruction(s):

- an obligation for the sentenced person to inform a specific authority of any change of residence or working place
- an obligation not to enter certain localities, places or defined areas in the issuing or executing State
- an obligation containing limitations on leaving the territory of the executing State
- instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity
- an obligation to report at specified times to a specific authority
- an obligation to avoid contact with specific persons
- an obligation to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence
- an obligation to compensate financially for the prejudice caused by the offence and/or an obligation to provide proof of compliance with such an obligation
- an obligation to carry out community service
- an obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons
- an obligation to undergo therapeutic treatment or treatment for addiction
- other measures:

(e) Description of the breach(es) (place, date and specific circumstances):

(f) Other findings (if any)

Description of the findings:

(g) Details of the person to be contacted if additional information is to be obtained concerning the breach:

Surname:

Forename(s):

Address:

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

Fax (country code) (area/city code)

E-mail (if any):

Signature of the authority issuing the form and/or its representative, to confirm that the contents of the form are correct:

Name and surname:

Position (title/grade):

Date:

Official stamp (where applicable):

## ANNEX VI

### CERTIFICATE FOR ENFORCEMENT OF DECISIONS IMPOSING ALTERNATIVE MEASURES TO PROVISIONAL DETENTION IN ANOTHER MEMBER STATE OF THE EUROPEAN UNION

Referred to in Article 10 of Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention<sup>1</sup>

(a) Issuing State:

Executing State:

(b) Authority which issued the decision on supervision measures:

Official name:

Please indicate whether any additional information concerning the decision on supervision measures is to be obtained from:

- the authority specified above
- the central authority; if you ticked this box, please provide the official name of this central authority:
- another competent authority; if you ticked this box, please provide the official name of this authority:

Contact details of the issuing authority/central authority/other competent authority  
Address:

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

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

Details of the person(s) to be contacted

Surname:

Forename(s):

Position (title/grade):

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

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

E-mail (if any):

Languages that may be used for communication:

(c) Please indicate which authority is to be contacted if any additional information is to be obtained for the purposes of monitoring the supervision measures:

- the authority referred to in point (b)
- another authority; if you ticked this box, please provide the official name of this authority:

<sup>1</sup> This certificate must be written in, or translated into, the official language or one of the official languages of the executing Member State, or any other official language of the Institutions of the European Union that is accepted by that State.

Contact details of the authority, if this information has not yet been provided under point (b)

Address:

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

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

Details of the person(s) to be contacted

Surname:

Forename(s):

Position (title/grade):

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

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

E-mail (if any):

Languages that may be used for communication:

(d) Information regarding the natural person in respect of whom the decision on supervision measures has been issued:

Surname:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Addresses/residences:

- in the issuing State:

- in the executing State:

- elsewhere:

Language(s) understood (if known):

If available, please provide the following information:

- Type and number of the identity document(s) of the person (ID card, passport):

- Type and number of the residence permit of the person in the executing State:

(e) Information regarding the Member State to which the decision on supervision measures, together with the certificate are being forwarded

The decision on supervision measures, together with the certificate are being forwarded to the executing State indicated in point (a) for the following reason:

the person concerned has his/her lawful and ordinary residence in the executing State and, having been informed about the measures concerned, consents to return to that State

the person concerned has requested to forward the decision on supervision measures to the Member State other than that in which the person is lawfully and ordinarily residing, for the following reason(s):

(f) Indications regarding the decision on supervision measures:

The decision was issued on (DD-MM-YYYY):

The decision became enforceable on (DD-MM-YYYY):

If, at the time of transmission of this certificate, a legal remedy has been introduced against the decision on supervision measures, please tick this box

.....

File reference of the decision (if available):

The person concerned was in provisional detention during the following period (where applicable):

1. The decision covers in total: ..... alleged offences.

Summary of the facts and description of the circumstances in which the alleged offence(s) was (were) committed, including the time and place, and the nature of the involvement of the person concerned:

Nature and legal classification of the alleged offence(s) and applicable statutory provisions on the basis of which the decision was issued:

2. If the alleged offence(s) referred to in point 1 constitute(s) one or more of the following offences, as defined in the Law of the issuing State which are punishable in the issuing State by a custodial sentence or measure involving deprivation of liberty of a maximum of at least three years, please confirm by ticking the relevant box(es):

- participation in a criminal organisation
- terrorism
- trafficking in human beings
- sexual exploitation of children and child pornography
- illicit trafficking in narcotic drugs and psychotropic substances
- illicit trafficking in weapons, munitions and explosives
- corruption
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests
- laundering of the proceeds of crime
- counterfeiting 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

3. To the extent that the alleged offence(s) identified under point 1 is (are) not covered by point 2 or if the decision, as well as the certificate are forwarded to a Member State, which has declared that it will verify the double criminality (Article 14(4) of the Framework Decision), please give a full description of the alleged offence(s) concerned:

(g) Indications regarding the duration and nature of the supervision measure(s)

1. Length of time to which the decision on supervision measures applies and whether a renewal of this decision is possible (where applicable):
2. Provisional length of time for which the monitoring of the supervision measures is likely to be needed, taking into account all the circumstances of the case that are known when the decision on supervision measures is forwarded (indicative information):
3. Nature of the supervision measure(s) (it is possible to tick multiple boxes):
  - an obligation for the person to inform the competent authority in the executing State of any change of residence, in particular for the purpose of receiving a summons to attend a hearing or a trial in the course of criminal proceedings;
  - an obligation not to enter certain localities, places or defined areas in the issuing or executing State;
  - an obligation to remain at a specified place, where applicable during specified times;
  - an obligation containing limitations on leaving the territory of the executing State;
  - an obligation to report at specified times to a specific authority;
  - an obligation to avoid contact with specific persons in relation with the offence(s) allegedly committed;
  - other measures that the executing State is prepared to supervise in accordance with a notification under Article 8(2) of the Framework Decision:

If you ticked the box regarding 'other measures', please specify which measure is concerned by ticking the appropriate box(es):

- an obligation not to engage in specified activities in relation with the offence(s) allegedly committed, which may include involvement in a specified profession or field of employment;
- an obligation not to drive a vehicle;
- an obligation to deposit a certain sum of money or to give another type of guarantee, which may either be provided through a specified number of instalments or entirely at once;
- an obligation to undergo therapeutic treatment or treatment for addiction;
- an obligation to avoid contact with specific objects in relation with the offence(s) allegedly committed;
- other measure (please specify):

4. Please provide a detailed description of the supervision measure(s) indicated under 3:

(h) Other circumstances relevant to the case, including specific reasons for the imposition of the supervision measure(s) (optional information):

The text of the decision is attached to the certificate.

Signature of the authority issuing the certificate and/or of its representative to confirm the accuracy of the content of the certificate:

Name and surname:

Position (title/grade):

Date:

File reference (if any):

(Where appropriate) Official stamp:

## ANNEX VII

### CERTIFICATE ON BEACH OF A SUPERVISION MEASURE AS AN ALTERNATIVE TO PROVISIONAL DETENTION.

Referred to in Article 19 of Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention

### REPORT OF A BREACH OF A SUPERVISION MEASURE AND/OR ANY OTHER FINDINGS WHICH COULD RESULT IN TAKING ANY SUBSEQUENT DECISION

a) Details of the identity of the person subject to supervision:

Surname:  
Forename(s):  
Maiden name, where applicable:  
Aliases, where applicable:  
Sex:  
Nationality:  
Identity number or social security number (if any):  
Date of birth:  
Place of birth:  
Address:  
Language(s) understood (if known):

b) Details of the decision on supervision measure(s):

Decision issued on:  
File reference (if any):  
Authority which issued the decision:  
Official name:  
Address:  
Certificate issued on:  
Authority which issued the certificate:  
File reference (if any):

c) Details of the authority responsible for monitoring the supervision measure(s):

Official name of the authority:  
Name of the person to be contacted:  
Position (title/grade):

Address:

Tel. (country code) (area code)

Fax (country code) (area code)

E-mail:

Languages that may be used for communication:

d) Breach of supervision measure(s) and/or other findings which could result in taking any subsequent decision:

The person referred to in (a) is in breach of the following supervision measure(s):

- an obligation for the person to inform the competent authority in the executing State of any change of residence, in particular for the purpose of receiving a summons to attend a hearing or a trial in the course of criminal proceedings;
- an obligation not to enter certain localities, places or defined areas in the issuing or executing State;
- an obligation to remain at a specified place, where applicable during specified times;
- an obligation containing limitations on leaving the territory of the executing State;
- an obligation to report at specified times to a specific authority;
- an obligation to avoid contact with specific persons in relation with the offence(s) allegedly committed.
- other measures (please specify):

Description of the breach(es) (place, date and specific circumstances):

— other findings which could result in taking any subsequent decision

Description of the findings:

e) Details of the person to be contacted if additional information is to be obtained concerning the breach:

Surname:

Forename(s):

Address:

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

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

E-mail:

Languages that may be used for communication:

Signature of the authority issuing the form and/or its representative, to confirm that the contents of the form are correct:

Name:

Position (title/grade):

Date:

Official stamp (where applicable):

## ANNEX VIII

### EUROPEAN PROTECTION ORDER

Referred to in Article 7 of Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European Protection Order

The information contained in this form is to be treated with appropriate confidentiality

Issuing State: Executing State:
(a) Information regarding the protected person:  Surname: Forename(s): Maiden or previous name, where applicable: Sex: Nationality: Identity number or social security number (if any): Date of birth: Place of birth: Address/residences: - in the issuing State: - in the executing State: - elsewhere: Languages(s) understood (if known):
Has the protected person been granted free legal aid in the issuing State (if information is available without further enquiry): <input type="checkbox"/> Yes. <input type="checkbox"/> No. <input type="checkbox"/> Unknown. Where the protected person is a minor or is legally incapacitated, information regarding the person's guardian or representative: Surname: Forename(s): Maiden name or previous name, where applicable: Sex: Nationality: Office/Address:

<p>(b) The protected person has decided to reside or already resides in the executing State, or has decided to stay or already stays in the executing State:</p> <p>Date from which the protected person intends to reside or stay in the executing State (if known):</p> <p>Period(s) of stay (if known):</p>
<p>(c) Have any technical devices been provided to the protected person or to the person causing danger to enforce the protection measure?:</p> <p><input type="checkbox"/> Yes; please give a short summary of the devices used:</p> <p><input type="checkbox"/> No.</p>
<p>(d) Competent authority which issued the European protection order:</p> <p>Official name:</p> <p>Full address:</p> <p>Tel. No. (country code) (area/city code) (number):</p> <p>Fax No. (country code) (area/city code) (number):</p> <p>Details of the person(s) to be contacted</p> <p>Surname:</p> <p>Forename(s):</p> <p>Position (title/grade):</p> <p>Tel. No. (country code) (area/city code) (number):</p> <p>Fax No. (country code) (area/city code) (number):</p> <p>E-mail (if any):</p> <p>Languages that may be used for communication:</p>
<p>(e) Identification of the protection measure on the basis of which the European protection order has been issued:</p> <p>The protection measure was adopted on (date: DD-MM-YYYY):</p> <p>The protection measure became enforceable on (date: DD-MM-YYYY):</p> <p>File reference of the protection measure (if available):</p> <p>Authority that adopted the protection measure:</p>
<p>(f) Summary of the facts and description of the circumstances, including, where applicable, the classification of the offence, which have led to the imposition of the protection measure mentioned under (e) above:</p>
<p>(g) Indications regarding the prohibition(s) or restriction(s) that have been imposed by the protection measure on the person causing danger:</p> <p>– Nature of the prohibition(s) or restriction(s): (more than one box may be ticked):</p> <p><input type="checkbox"/> a prohibition from entering certain localities, places or defined areas where the protected person resides or visits;</p> <p>– if you ticked this box, please indicate precisely which localities, places or defined areas the person causing danger is prohibited from entering:</p>

- a prohibition or regulation of contact, in any form, with the protected person, including by phone, electronic or ordinary mail, fax or any other means:
- if you ticked this box, please provide any relevant details:
  - a prohibition or regulation on approaching the protected person closer than a prescribed distance;
  - if you ticked this box, please indicate precisely the distance which the person causing danger has to observe in respect of the protected person:
  - Please indicate the length of time during which the abovementioned prohibition(s) or restriction(s) are imposed on the person causing danger:
  - Indication of the penalty (if any) in the event of the breach of the prohibition or restriction:

(h) Information regarding the person causing danger on whom the prohibition(s) or restriction(s) mentioned under (g) have been imposed:

Surname:

Forename(s):

Maiden or previous name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Address/residences:

– in the issuing State:

-- in the executing State:

– elsewhere:

Languages(s) understood (if known):

If available please provide the following information:

– Type and number of the identity document(s) of the person (ID card, passport):

Has the person causing danger been granted free legal aid in the issuing State? (if information is available without further enquiry):

Yes.

No.

Unknown.

**ANNEX IX**

**CERTIFICATE ON BREACH OF A MEASURE  
TAKEN ON THE BASIS OF A NEW EUROPEAN  
PROTECTION ORDER**

Referred to in Article 12 of Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European Protection Order

**NOTIFICATION OF A BREACH OF A MEASURE  
TAKEN ON THE BASIS OF THE EUROPEAN  
PROTECTION ORDER**

The information contained in this form is to be treated with appropriate confidentiality.

(a) Details of the identity of the person causing danger:

Surname:  
Forename(s):  
Maiden or previous name, where applicable:  
Aliases, where applicable:  
Sex:  
Nationality:  
Identity number or social security number (if any):  
Date of birth:  
Place of birth:  
Address:  
Languages(s) understood (if known):

(b) Details of the identity of the protected person:

Surname:  
Forename(s):  
Aliases, where applicable:  
Sex:  
Nationality:  
Date of birth:  
Place of birth:  
Address:  
Languages(s) understood (if known):

(c) Details of the European protection order:

Order issued on:

File reference (if any):  
Authority which issued the order:  
Official name:  
Address:

(d) Details of the authority responsible for the execution of the protection measure, if any, which was taken in the executing State in line with the European protection order:

Official name of the authority:  
Position (title/grade):  
Address:  
Tel. No. (country code) (area/city code) (number):  
Fax No. (country code) (area/city code) (number):  
E-mail (if any):  
Languages that may be used for communication:

(e) Breach of the prohibition(s) or restriction(s) imposed by the competent authorities of the executing State following recognition of the European protection order and/or other findings which could result in taking any subsequent decision:

The breach concerns the following prohibition(s) or restriction(s) (more than one box may be ticked):

- a prohibition from entering certain localities, places or defined areas where the protected person resides or visits;
- a prohibition or regulation of contact, in any form, with the protected person, including by phone, electronic or ordinary mail, fax or any other means;
- a prohibition or regulation on approaching the protected person closer than a prescribed distance;
- any other measure, corresponding to the protection measure at the basis of the European protection order, taken by the competent authorities of the executing State following recognition of the European protection order.

Description of the breach(es) (place, date and specific circumstances):

In accordance with Article 11(2):

- measures taken in the executing State as a consequence of the breach:
- possible legal consequence of the breach in the executing State:

Other findings which could result in taking any subsequent decision

Description of the findings:

(f) Details of the person to be contacted if additional information is to be obtained concerning the breach:

Surname:

Forename(s):

Address:

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

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

E-mail (if any):

Languages that may be used for communication:

Signature of the authority issuing the form and/or its representative, to confirm that the contents of the form are correct:

Name:

Position (title/grade):

Date:

Official Stamp (where applicable):

**ANNEX X**

**CERTIFICATE FOR ENFORCEMENT OF AN ORDER  
FREEZING PROPERTY OR EVIDENCE IN ANOTHER  
MEMBER STATE OF THE EUROPEAN UNION**

Certificate foreseen in Article 9 of Framework Decision 2003/577/JHA by the Council, of 22 July 2003, on enforcement in the European Union of orders freezing property or evidence.

(a) The judicial authority which issued the freezing order:

Official name: .....  
.....  
Name of its representative: .....  
.....  
Post held (title/grade): .....  
.....  
File reference: .....  
Address: .....  
Tel: (country code) (area/city code) (...) .....  
Fax: (country code) (area/city code) (...) .....  
E-mail: .....  
Languages in which it is possible to communicate with the issuing judicial authority .....  
Contact details (including languages in which it is possible to communicate with the person(s)) of the person(s) to contact if additional information on the execution of the order is necessary or to make necessary practical arrangements for the transfer of evidence (if applicable): .....  
.....  
.....

(b) The authority competent for the enforcement of the freezing order in the issuing State (if the authority is other than the authority indicated in Letter a):

Official name: .....  
.....  
Name of its representative: .....  
.....  
Post held (title/grade): .....  
.....  
File reference: .....  
.....  
Address: .....  
.....  
Tel: (country code) (area/city code) (...) .....  
Fax: (country code) (area/city code) (...) .....  
E-mail: .....  
Languages in which it is possible to communicate with the authority competent for the enforcement .....  
.....  
.....

Contact details (including languages in which it is possible to communicate with the person(s)) of the person(s) to contact if additional information on the execution of the order is necessary or to make necessary practical arrangements for the transfer of evidence (if applicable): .....

(c) In the case where points (a) and (b) have been filled, this point must be filled in order to indicate which/or both of these two authorities must be contacted:

- Authority mentioned under point (a)
- Authority mentioned under point (b)

(d) Where a central authority has been made responsible for the transmission and administrative reception of freezing orders (only applicable for Ireland and the United Kingdom): .....

Name of the central authority: .....

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

Address: .....

File reference .....

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

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

E-mail: .....

(e) The freezing order:

1. Date and if applicable reference number
2. State the purpose of the order
  - 2.1. Subsequent confiscation
  - 2.2. Securing evidence
3. Description of formalities and procedures to be observed when executing a freezing order concerning evidence (if applicable)

(f) Information regarding the property or evidence in the executing State covered by the freezing order:

- Description of the property or evidence and location:
1. (a) Precise description of the property and, where applicable, the maximum amount for which recovery is sought (if such maximum amount is indicated in the order concerning the value of proceeds)
  - (b) Precise description of the evidence

2. Exact location of the property or evidence (if not known, the last known location)
3. Party having custody of the property or evidence or known beneficial owner of the property or evidence, if different from the person suspected of the offence or convicted (if applicable under the national law of the issuing State)

(g) Information regarding the identity of the (1) natural or (2) legal person(s), suspected of the offence or convicted (if applicable under the national law of the issuing State) or/and the person(s) to whom the freezing order relates (if available):

1. Natural persons

Name: .....

Forename(s): .....

Maiden name, where applicable: .....

Aliases, where applicable: .....

Sex: .....

Nationality: .....

Date of birth: .....

Place of birth: .....

Residence and/or known address; if not known state the last known address:

.....

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

.....

2. Legal persons

Name: .....

Form of legal person: .....

Registration number: .....

Registered seat: .....

.....

(h) Action to be taken by the executing State after executing the freezing order:

Confiscation

1.1. The property is to be kept in the executing State for the purpose of subsequent confiscation of the property

1.1.1. Find enclosed request regarding enforcement of a confiscation order issued in the issuing State on ..... (date)

1.1.2. Find enclosed request regarding confiscation in the executing State and subsequent enforcement of that order

1.1.3. Estimated date for submission of a request referred to in 1.1.1 or 1.1.2

.....

or

Securing of evidence

2.1. The property is to be transferred to the issuing State to serve as evidence

2.1.1. Find enclosed a request for the transfer

or

2.2. The property is to be kept in the executing State for the purpose of subsequent use as evidence in the issuing State

2.2.2. Estimated date for submission of a request referred to in 2.1.1.:

i) Offences:

Description of the relevant grounds for the freezing order and a summary of facts as known to the judicial authority issuing the freezing order and certificate:

.....  
.....

Nature and legal classification of the offence(s) and the applicable statutory provision/code on basis of which the freezing order was made:

.....  
.....

1. If applicable, tick one or more of the following offences to which the offence(s) identified above relate(s), if the offence(s) are punishable in the issuing State by a custodial sentence of a maximum of at least three years:

- participation in a criminal organisation;
- terrorism;
- trafficking in human beings;
- sexual exploitation of children and child pornography;
- illicit trafficking in narcotic drugs and psychotropic substances;
- illicit trafficking in weapons, munitions and explosives;
- corruption;
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the Protection of the European Communities' Financial Interests;
- laundering of the proceeds of crime;
- counterfeiting currency, including of the euro;
- computer-related crime;
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
- facilitation of unauthorised entry and residence;
- murder, grievous bodily injury;
- illicit trade in human organs and tissue;
- kidnapping, illegal restraint and hostage-taking;
- racism and xenophobia;
- organised or armed robbery;
- illicit trafficking in cultural goods, including antiques and works of art;
- swindling;
- racketeering and extortion;
- counterfeiting and piracy of products;
- forgery of administrative documents and trafficking therein;
- forgery of means of payment;
- illicit trafficking in hormonal substances and other growth promoters;
- illicit trafficking in nuclear or radioactive materials;
- trafficking in stolen vehicles;
- rape;

- arson;
- crimes within the jurisdiction of the International Criminal Court;
- unlawful seizure of aircraft/ships;
- sabotage.

2. Full descriptions of offence(s) not covered by Section 1 above:

.....  
.....

(j) Legal remedies against the freezing order for interested parties, including bona fide third parties, available in the issuing State:

.....  
Description of the legal remedies available including necessary steps to take:

.....  
Court before which the action may be taken: .....

Information as to those for whom the action is available: .....

.....  
Time limit for submission of the action: .....

Authority in the issuing State who can supply further information on procedures for submitting appeals in the issuing State and on whether legal assistance and translation is available:

Name: .....

Contact person (if applicable): .....

Address: .....

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

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

E-mail: .....

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

.....  
.....

(l) The text of the freezing order is attached to the certificate:

Signature of the issuing judicial authority and/or its representative certifying the content of the certificate as accurate: .....

Name: .....

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

Date: .....

Official stamp (if available)

**ANNEX XI**

**CERTIFICATE FOR ENFORCEMENT OF  
CONFISCATION ORDERS IN ANOTHER MEMBER  
STATE OF THE EUROPEAN UNION**

Referred to in Article 4 of Council Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders.

(a) Issuing and executing States

Issuing State: .....  
Executing State: .....

(b) Court which issued the confiscation order:

Official name: .....  
Address: .....  
.....  
File reference: .....  
Tel. (country code) (area/city code) .....  
Fax (country code) (area/city code) .....  
E-mail (when available) .....  
Languages in which it is possible to communicate with the Court .....

Contact details for person(s) to contact in order to obtain additional information for the purpose of the execution of the confiscation order, or, where applicable, for the purpose of coordination of the execution of a confiscation order transmitted to two or more executing States, or for the purpose of the transfer to the issuing State of monies or properties obtained from the execution (name, title/grade, tel., fax, and, when available, email): .....  
.....  
.....

(c) Authority competent for the execution of the confiscation order in the issuing State (if the authority is different from the Court under point (b)):

.....  
Official name: .....  
.....  
Address: .....  
.....  
Tel. (country code) (area/city code) .....  
Fax (country code) (area/city code) .....  
E-mail (when available) .....  
Languages in which it is possible to communicate with the authority competent for the execution: .....  
.....

Contact details for person(s) to contact in order to obtain additional information for the purpose of the execution of the confiscation order or, where applicable, for the purpose of coordination of the execution of a confiscation order transmitted to two or more executing States, or for the purpose of the transfer to the issuing State of monies or properties obtained from the execution, (name, title/grade, tel., fax, and, when available, email): .....

(d) Where a central authority has been made responsible for the administrative transmission and reception of confiscation orders in the issuing State:

Name of the central authority: .....

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

Address: .....

File reference: .....

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

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

E-mail (when available) .....

(e) Authority or authorities which may be contacted (if point (c) and/or (d) has (have) been completed:

- Authority mentioned under point (b)  
Can be contacted for questions concerning: .....
- Authority mentioned under point (c)  
Can be contacted for questions concerning: .....
- Authority mentioned under point (d)  
Can be contacted for questions concerning: .....

(f) Where the confiscation order is a follow-up to a freezing order transmitted to the executing State pursuant to Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence<sup>1</sup>, provide relevant information to identify the freezing order (the dates of issue and transmission of the freezing order, the authority to which it was transmitted, reference number, if available):

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

<sup>1</sup> OJ L 196, of 2.8.2003, p. 45.

(g) Where the confiscation order has been transmitted to more than one executing State, provide the following information:

1. The confiscation order has been transmitted to the following other executing State(s) (country and authority):  
.....  
.....
2. The confiscation order has been transmitted to more than one executing State for the following reason (tick the relevant box):
  - 2.1. Where the confiscation order concerns one or more specific items of property:
    - Different specific items of property covered by the confiscation order are believed to be located in different executing States.
    - The confiscation of a specific item of property involves action in more than one executing State.
    - A specific item of property covered by the confiscation order is believed to be located in one of two or more specified executing States.
  - 2.2. Where the confiscation order concerns an amount of money:
    - The property concerned has not been frozen under Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence.
    - The value of the property which may be confiscated in the issuing State and anyone executing State is not likely to be sufficient for the execution of the full amount covered by the confiscation order.
    - Other reason(s) (to be specified):  
.....  
.....

(h) Information regarding the natural or legal person against whom the confiscation order has been issued:

1. In the case of a natural person:

Name: .....

Forename(s): .....

Maiden name, (where applicable): .....

Aliases, (where applicable): .....

Sex: .....

Nationality: .....

A legally valid identification document number or social security number (when possible): .....

Date of birth: .....

Place of birth: .....

Last known address: .....

.....

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

.....

.....

1.1. If the confiscation order concerns an amount of money:

The confiscation order is transmitted to the executing State because (tick the relevant box):

- (a) the issuing State has reasonable grounds to believe that the person against whom the confiscation order has been issued has property or income in the executing State. Add the following information:

Grounds for believing that the person has property / income:

.....

Description of the property of the person / source of income:

.....

Location of the property of the person/source of income (if not known, the last known location):

.....

- (b) there are no reasonable grounds, as referred to under (a), which would allow the issuing State to determine the Member State to which the confiscation order may be sent, but the person against whom the confiscation order has been issued is normally resident in the executing State. Add the following information:

Normal residence in the executing State:

.....

1.2. If the confiscation order concerns specific item(s) of property:

The confiscation order is transmitted to the executing State because (tick the relevant box):

- (a) the specific item(s) of property is(are) located in the executing State (See point (i))

- (b) the issuing State has reasonable grounds to believe that all or part of the specific item(s) of property covered by the confiscation order is (are) located in the executing State. Add the following information:

Grounds for believing that the specific item(s) of property is located in the executing State:

.....

- (c) there are no reasonable grounds, as referred to in (b), which would allow the issuing State to determine the Member State to which the confiscation order may be transmitted, but the person against whom the confiscation order has been issued is normally resident in the executing State. Add the following information:

Normal residence in the executing State:

.....

2. In the case of a legal person:

Name: .....

Form of legal person: .....

Registration number (if available)<sup>1</sup> : .....

Registered seat (if available)<sup>1</sup>: .....

<sup>1</sup> Where a confiscation order is transmitted to the executing State because the legal person against whom the confiscation order has been issued has its registered seat in that State, Registration number and Registered seat must be completed.

Address of the legal person: .....

2.1. If the confiscation order concerns an amount of money:

The confiscation order is transmitted to the executing State because (tick the relevant box):

(a) the issuing State has reasonable grounds to believe that the legal person against whom the confiscation order has been issued has property or income in the executing State. Add the following information:

Grounds for believing that the person has property / income:

Description of the property of the person / source of income:

.....

Location of the property of the person/source of income (if not known, the last known location):

.....

.....

(b) there are no reasonable grounds, as referred to in (a), which would allow the issuing State to determine the Member State to which the confiscation order may be sent but the legal person against whom the confiscation order has been issued has its registered seat in the executing State. Add the following information:

Registered Seat in the executing State:

.....

2.2. If the confiscation order concerns specific item(s) of property:

The confiscation order is transmitted to the executing State because (tick the relevant box):

(a) the specific item(s) of property is (are) located in the executing State (See point i).

(b) the issuing State has reasonable grounds to believe that all or part of the specific item(s) of property covered by the confiscation order is (are) located in the executing State. Add the following information:

Grounds for believing that the specific item(s) of property is (are) located in the executing State:

.....

.....

(c) there are no reasonable grounds, as referred to in (b), which would allow the issuing State to determine the Member State to which the confiscation order may be transmitted but the legal person against whom the confiscation order has been issued has its registered seat in the executing State. Add the following information:

Registered seat in the executing State:

.....

.....

(i) The confiscation order

The confiscation order was issued on (date): .....

The confiscation order became final on (date): .....

Reference number of the confiscation order (if available): .....

1. Information on the nature of the confiscation order

1.1. Indicate (by ticking in the relevant box(es)) if the confiscation order concerns:

an amount of money

The amount for execution in the executing State with indication of currency (in figures and words):

.....  
The total amount covered by the confiscation order with indication of currency (in figures and words):

specific item(s) of property:

Description of the specific item(s) of property:

.....  
Location of the specific item(s) of property (if not known, the last known location):

.....  
Where the confiscation of the specific item(s) of property involves action in more than one executing State, description of the action to be taken:

1.2. The Court has decided that the property (tick the relevant box(es)):

(i) is the proceeds of an offence, or is equivalent to either the full value or part of the value of such proceeds,

(ii) constitutes the instrumentalities of such an offence,

(iii) is liable to confiscation resulting from the application in the issuing State of extended powers of confiscation as specified in (a), (b) and (c). The basis for the decision is that the Court, based on specific facts, is fully convinced that the property in question has been derived from:

(a) criminal activities of the convicted person during a period prior to conviction for the offence concerned which is deemed to be reasonable by the Court in the circumstances of the particular case,

(b) similar criminal activities of the convicted person during a period prior to conviction for the offence concerned which is deemed to be reasonable by the Court in the circumstances of the particular case, or

(c) the criminal activity of the convicted person, and it has been established that the value of the property is disproportionate to the lawful income of that person

(iv) is liable to confiscation under any other provision relating to extended powers of confiscation under the Law of the issuing State.

If two or more categories of confiscation are involved, provide details on which property is confiscated in relation to which category:

2. Information on the offence(s) resulting in the confiscation order

2.1. A summary of facts and a description of the circumstances in which the offence(s) resulting in the confiscation order has(have) been committed, including time and place:

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

2.2. Nature and legal classification of the offence(s) resulting in the confiscation order and the applicable statutory provision/code on basis of which the decision was made:

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

2.3. If applicable, indicate one or more of the following offences to which the offence(s) identified under point 2.2 relate(s), if the offence(s) are punishable in the issuing State by a custodial sentence of a maximum of at least 3 years (tick the relevant box(es)):

- participation in a criminal organisation;
- terrorism;
- trafficking in human beings;
- sexual exploitation of children and child pornography;
- illicit trafficking in narcotic drugs and psychotropic substances;
- illicit trafficking in weapons, munitions and explosives;
- corruption;
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests;
- laundering of the proceeds of crime;
- counterfeiting currency, including of the euro;
- computer related crime;
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
- facilitation of unauthorised entry and residence;
- murder, grievous bodily injury;
- illicit trade in human organs and tissue;
- kidnapping, illegal restraint and hostage taking;
- racism and xenophobia;
- organised or armed robbery;
- illicit trafficking in cultural goods, including antiques and works of art;
- swindling;
- racketeering and extortion;

- counterfeiting and piracy of products;
- forgery of administrative documents and trafficking therein;
- forgery of means of payment;
- illicit trafficking in hormonal substances and other growth promoters;
- illicit trafficking in nuclear or radioactive materials;
- trafficking in stolen vehicles;
- rape;
- arson;
- crimes within the jurisdiction of the International Criminal Court;
- unlawful seizure of aircraft/ships;
- sabotage.

2.4. To the extent that the offence(s) resulting in the confiscation order identified under point 2.2 is (are) not covered by point 2.3, give a full description of the offence(s) concerned (this should cover the actual criminal activity involved as opposed for instance to legal classifications):

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

(j) Proceedings resulting in the confiscation order. Indicate if the person appeared in person at the trial resulting in the confiscation order:

1.  Yes, the person appeared in person at the trial resulting in the confiscation order.
2.  No, the person did not appear in person at the trial resulting in the confiscation order.
3.  If you have ticked the box under point 2, please confirm the existence of one of the following:
  - 3.1a the person was summoned in person on ..... (day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the confiscation order and was informed that a decision may be handed down if he or she does not appear for the trial;OR
  - 3.1b the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the confiscation order, in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial;OR
  - 3.2. being aware of the scheduled trial, the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

OR

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

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

Or

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

4. If you have ticked the box under points 3.1b, 3.2, 3.3 or 3.4 above, please provide information about how the relevant condition has been met: .....

.....  
.....

(k) Conversion and transfer of property

1. If the confiscation order concerns a specific item of property, state whether the issuing State allows for the confiscation in the executing State to take the form of a requirement to pay a sum of money corresponding to the value of the property.

Yes

No

2. If the confiscation order concerns an amount of money, state whether property, other than money obtained from the execution of the confiscation order, may be transferred to the issuing State:

Yes

No

(l) Alternative measures, including custodial sanctions

1. State whether the issuing State allows for the application by the executing State of alternative measures where it is not possible to execute the confiscation order, either totally or in part:

Yes

No

2. If yes, state which sanctions may be applied (nature and maximum level of the sanctions):

Custody (maximum period):

.....

Community service (or equivalent) (maximum period):

.....

Other sanctions (description):

.....

.....

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

.....  
.....

(n) The confiscation order is attached to the certificate.

Signature of the authority issuing the certificate and/or its representative certifying  
the content of the certificate as accurate: .....

.....  
.....

Name: .....

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

Date: .....

Official stamp (if available)

**ANNEX XII**

**CERTIFICATE FOR EXECUTION OF DECISIONS  
REQUIRING PAYMENT OF FINANCIAL PENALTIES IN  
ANOTHER MEMBER STATE OF THE EUROPEAN UNION**

Referred to in Article 4 of Council Framework Decision 2005/214/JHA, on the application of the principle of mutual recognition to financial penalties

(a)

\* Issuing State: .....

\* Executing State: .....

(b)The authority which issued the decision imposing the financial penalty:

Official name: .....

Address: .....

.....

File reference (...) .....

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

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

E-mail (when available) .....

Languages in which it is possible to communicate with the issuing authority .

.....

Contact details for person(s) to contact to obtain additional information for the purpose of the enforcement of the decision or, where applicable, for the purpose of the transfer to the issuing State of monies obtained from the enforcement (name, title/grade, tel. No., fax No., and, when available, E-mail) .....

.....

.....

(c)The authority competent for the enforcement of the decision imposing the financial penalty in the issuing State (if the authority is different from the authority under point (b)):

Official name: .....

.....

Address: .....

.....

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

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

E-mail (when available) .....

Languages in which it is possible to communicate with the authority competent for the enforcement .....

.....

.....

Contact details for person(s) to contact to obtain additional information for the purpose of the enforcement of the decision or, where applicable, for the purpose of the transfer to the issuing State of monies obtained from the enforcement (name, title/grade, tel. No., fax No., and, when available, E-mail): .....

(d) Where a central authority has been made responsible for the administrative transmission of decisions imposing financial penalties in the issuing State:

Name of the central authority: .....

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

Address: .....

File reference: .....

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

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

E-mail (when available): .....

(e) The authority or authorities which may be contacted (in the case where point (c) and/or (d) has been filled):

- Authority mentioned under point (b)  
Can be contacted for questions concerning: .....
- Authority mentioned under point (c)  
Can be contacted for questions concerning: .....
- Authority mentioned under point (d)  
Can be contacted for questions concerning: .....

(f) Information regarding the natural or legal person on which the financial penalty has been imposed:

1. In case of a natural person

Name: .....

Forename(s): .....

Maiden name, where applicable: .....

Aliases, where applicable: .....

Sex: .....

Nationality: .....

Identity number or social security number (when available): .....

Date of birth: .....

Place of birth: .....

Last known address: .....

.....

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

.....

(a) If the decision is transmitted to the executing State because the person against whom the decision has been passed is normally resident, add the following information:

Normal residence in the executing State: .....

.....

.....

(b) If the decision is transmitted to the executing State because the person against whom the decision has been passed has property in the executing State, add the following information:

Description of the property of the person: .....

Location of the property of the person: .....

(c) If the decision is transmitted to the executing State because the person against whom the decision has been passed has income in the executing State, add the following information:

Description of the source(s) of income of the person: .....

Location of the source(s) of income of the person: .....

2. In case of a legal person:

Name: .....

Form of legal person: .....

Registration number (if available)<sup>1</sup>: .....

Registered seat (if available)<sup>1</sup>: .....

Address of the legal person: .....

(a) If the decision is transmitted to the executing State because the legal person against whom the decision has been passed has property in the executing State, add the following information:

Description of the property of the legal person: .....

Location of the property of the legal person: .....

(b) If the decision is transmitted to the executing State because the legal person against whom the decision has been passed has income in the executing State, add the following information:

Description of the source(s) of income of the legal person: .....

Location of the source(s) of income of the legal person: .....

.....

(g) The decision imposing a financial penalty:

1. The nature of the decision imposing the financial penalty (tick the relevant box):

- (i) Decision of a court of the issuing State in respect of a criminal offence under the Law of the issuing State
- (ii) Decision of an authority of the issuing State other than a court in respect of a criminal offence under the Law of the issuing State. It is confirmed that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters.
- (iii) Decision of an authority of the issuing State other than a court in respect of acts which are punishable under the law of the issuing State by virtue of being an infringement of the rule of law. It is confirmed that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters.
- (iv) Decision of a court having jurisdiction in particular in criminal matters regarding a decision as referred to in point iii.

The decision was made on (date): .....

The decision became final on (date): .....

Reference number of the decision (if available): .....

The financial penalty constitutes an obligation to pay (tick the relevant box(es) and indicate the amount(s) with indication of currency):

- (i) A sum of money on conviction of an offence imposed in a decision.  
Amount: .....
- (ii) Compensation imposed in the same decision for the benefit of victims, where the victim may not be a civil party to the proceedings and the court is acting in its exercise of its criminal jurisdiction.  
Amount: .....
- (iii) A sum of money in respect of the costs of court or administrative proceedings leading to the decision.  
Amount: .....
- (iv) A sum of money to a public fund or a victim support organisation, imposed in the same decision.  
Amount: .....

The total amount of the financial penalty with indication of currency: .....

2. A summary of facts and a description of the circumstances in which the offence(s) has(have) been committed, including time and place: .....

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

Nature and legal classification of the offence(s) and the applicable statutory provision/code on basis of which the decision was made: .....

.....  
.....

<sup>2</sup> Where a decision is transmitted to the executing State because the legal person against whom the decision has been passed has its registered seat in that State, Registration number and Registered seat must be completed..

3. To the extent that the offence(s) identified under point 2 above constitute(s) one or more of the following offences, confirm that by ticking the relevant box(es):
- participation in a criminal organisation;
  - terrorism;
  - trafficking in human beings;
  - sexual exploitation of children and child pornography;
  - illicit trafficking in narcotic drugs and psychotropic substances;
  - illicit trafficking in weapons, munitions and explosives;
  - corruption;
  - fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests;
  - laundering of the proceeds of crime;
  - counterfeiting currency, including of the euro;
  - computer-related crime;
  - environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
  - facilitation of unauthorised entry and residence;
  - murder, grievous bodily injury;
  - illicit trade in human organs and tissue;
  - kidnapping, illegal restraint and hostage-taking;
  - racism and xenophobia;
  - organised or armed robbery;
  - illicit trafficking in cultural goods, including antiques and works of art;
  - swindling;
  - racketeering and extortion;
  - counterfeiting and piracy of products;
  - forgery of administrative documents and trafficking therein;
  - forgery of means of payment;
  - illicit trafficking in hormonal substances and other growth promoters;
  - illicit trafficking in nuclear or radioactive materials;
  - trafficking in stolen vehicles;
  - rape;
  - arson;
  - crimes within the jurisdiction of the International Criminal Court;
  - unlawful seizure of aircraft/ships;
  - sabotage;
  - conduct which infringes road traffic regulations, including breaches of regulations pertaining to driving hours and rest periods and regulations on hazardous goods;

- smuggling of goods;
- infringements of intellectual property rights;
- threats and acts of violence against persons, including violence during sport events;
- criminal damage;
- theft;
- offences established by the issuing State and serving the purpose of implementing obligations arising from instruments adopted under the EC Treaty or under Title VI of the EU Treaty.

If this box is ticked, indicate the exact provisions of the instrument adopted on the basis of the EC Treaty or the EU Treaty that the offence relates to:

.....  
.....

4. To the extent that the offence(s) identified under point 2 above are not covered by point 3, give a full description of the offence(s) concerned: .....

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

(h) Status of the decision imposing the financial penalty

1. Confirm that (tick the boxes):

- (a) the decision is a final decision
- (b) to the knowledge of the authority issuing the Certificate, a decision against the same person in respect of the same acts has not been delivered in the executing State and that no such decision delivered in any State other than the issuing State or the executing State has been executed.

2. Indicate if the case been subject to a written procedure:

- (a) No, it has not.
- (b) Yes, it has. It is confirmed that the person concerned was, in accordance with the Law of the issuing State, informed personally or via a representative competent according to national law of his right to contest the case and of time limits of such a legal remedy

3. Indicate if the person concerned appeared personally in the proceedings:

1.  Yes, the person appeared in person at the trial resulting in the order.
2.  No, the person did not appear in person at the trial resulting in the order.
3.  If you have ticked the box under point 2, please confirm the existence of one of the following:
  - 3.1a the person was summoned in person on ..... (day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the order and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

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

OR

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

OR

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

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

OR

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

3.4. the person, having been expressly informed about the proceedings and the possibility to appear in person in a trial, expressly waived his or her right to an oral hearing and has expressly indicated that he or she does not contest the case

4. If you have ticked the box under points 3.1b, 3.2, 3.3 or 3.4 above, please provide information about how the relevant condition has been met: .....

.....  
.....

5. Partial payment of the penalty

If any part of the penalty has already been paid to the issuing State, or, to the knowledge of the authority issuing the Certificate, to any other State, indicate the amount which has been paid:

(i) Alternative sanctions, including custodial sanctions

1. State whether the issuing State allows for the application by the executing State of alternative sanctions in case it is not possible to enforce the decision imposing a penalty, either totally or in part:

- Yes
- No

2. If yes, state which sanctions may be applied (nature of the sanctions, maximum level of the sanctions):

- Custody. Maximum period: .....
- Community service (or equivalent). Maximum period: .....
- Other sanctions. Description: .....  
.....

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

.....  
.....

(k) The text of the decision imposing the financial penalty is attached to the certificate.

Signature of the authority issuing the certificate and/or its representative certifying the content of the certificate as accurate:

.....

Name: .....

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

Date: .....

Official stamp (if available)

### ANNEX XIII

## CERTIFICATE FOR EXECUTION OF A EUROPEAN EVIDENCE WARRANT (EEW) TO OBTAIN EVIDENCE<sup>1</sup>

This warrant has been issued by a competent judicial authority. I request that the objects, documents or data specified below be obtained and transferred.

A)

Issuing State: .....

Executing State: .....

B)

The judicial authority is satisfied that:

i)  obtaining the objects, documents or data sought by this EEW is necessary and proportionate for the purpose of the proceedings specified below;

ii)  it would be possible to obtain these objects, documents or data under the Law of the issuing State in a comparable domestic case if they were available on the territory of the issuing State, even though different procedural measures might be used.

C) THE JUDICIAL AUTHORITY WHICH ISSUED THE EEW

Official name:  
.....

Name of its representative:  
.....

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

Tick the type of judicial authority which issued the warrant:

- (a) judge or court
- (b) investigating magistrate
- (c) public prosecutor
- (d) any other judicial authority as defined by the issuing State and, in the specific case, acting in their capacity as an investigating authority in criminal proceedings with competence to order the obtaining of evidence in cross-border cases in accordance with national law.
- This EEW has been validated by a judge or court, investigating magistrate or a public prosecutor (see Sections D and O).

<sup>1</sup> This EEW must be written in, or translated into, one of the official languages of the executing State or any other language accepted by that State

File reference:  
.....  
Address:  
.....  
Tel. No: (country code) (area/city code)  
.....  
Fax No: (country code) (area/city code)  
.....  
E-mail:  
.....  
Languages in which it is possible to communicate with the issuing authority:  
  
Contact details of the person(s) to contact if additional information on the execution of this EEW is necessary or to make necessary practical arrangements for the transfer of objects, documents or data (if applicable):  
.....

**D) THE JUDICIAL AUTHORITY VALIDATING THE EEW (WHERE APPLICABLE)**

If point (d) in Section C has been ticked and this EEW is validated, tick the type of judicial authority which has validated this EEW:

- (a) judge or court
- (b) investigating magistrate
- (c) public prosecutor

Official name of the validating authority:  
.....

Name of its representative:  
.....

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

File reference:  
.....

Address:  
.....

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

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

E-mail:  
.....

E) WHERE A CENTRAL AUTHORITY HAS BEEN MADE RESPONSIBLE FOR THE ADMINISTRATIVE TRANSMISSION AND RECEPTION OF EEWs AND, IF APPLICABLE, FOR OTHER OFFICIAL CORRESPONDENCE RELATING THERETO

Name of the central authority:  
.....

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

Address:  
.....

File reference: .....

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

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

E-mail: .....

F) THE AUTHORITY OR AUTHORITIES WHICH MAY BE CONTACTED (IN THE CASE WHERE SECTION D AND/ OR E HAVE BEEN COMPLETED)

Authority under Section C  
Can be contacted for questions concerning .....

Authority under Section D  
Can be contacted for questions concerning .....

Authority under Section E  
Can be contacted for questions concerning .....

G) RELATION TO POSSIBLE EARLIER EEW OR FREEZING ORDER

If applicable, indicate if this EEW supplements an earlier EEW or is a follow-up to a freezing order and, if so, provide information relevant to identify the earlier EEW or freezing order (the date of issue of such EEW or order, the authority to which it was transmitted and, if available, the date of transmission of the EEW or order and reference numbers given by the issuing and executing authorities).

.....

.....

.....

.....

H) TYPE OF PROCEEDINGS FOR WHICH THE EEW WAS ISSUED

Tick the type of proceedings for which the EEW was issued:

(a) with respect to criminal proceedings brought by, or to be brought before, a judicial authority in respect of a criminal offence under the National Law of the issuing State; or

(b) proceedings brought by administrative authorities in respect of acts which are punishable under the national law of the issuing State by virtue of being an infringement of the rule of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters; or

(c) proceedings brought by judicial authorities in respect of acts which are punishable under the national law of the issuing State by virtue of being an infringement of the rule of law, and where the decision may give rise to further proceedings before a court having jurisdiction in particular in criminal matters.

I) REASON FOR ISSUING THE EEW

1. Summary of facts and description of circumstances in which the offence(s) underlying the EEW has (have) been committed, including time and place, as known to the issuing authority:

.....  
.....

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

.....  
.....

2. If applicable, tick one or more of the following offences punishable in the issuing State by a custodial sentence or a detention order of a maximum of at least three years as defined by the laws of the issuing State:

- participation in a criminal organisation;
- terrorism<sup>1</sup>;
- trafficking in human beings;
- sexual exploitation of children and child pornography;
- illicit trafficking in narcotic drugs and psychotropic substances;
- illicit trafficking in weapons, munitions and explosives;
- corruption;
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities;
- laundering of the proceeds of crime;
- counterfeiting currency, including of the euro;
- computer-related crime<sup>1</sup>;
- 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<sup>1</sup>;
- organised or armed robbery;
- illicit trafficking in cultural goods, including antiques and works of art;
- swindling<sup>1</sup>;
- racketeering and extortion<sup>1</sup>;
- 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<sup>1</sup>;

3. Full descriptions of the offence(s) not covered by point 2 for which the EEW was issued:

.....

.....

.....

.....

**J) IDENTITY OF THE PERSONS CONCERNED**

Information regarding the identity of the (i) natural or (ii) legal person(s) against whom the proceedings are/may be taking place:

(i) In the case of natural person(s)

Name: .....

Forename(s): .....

Maiden name, if applicable: .....

Aliases, if applicable: .....

Sex: .....

Nationality: .....

Identity number or social security number (when possible): .....

Date of birth: .....

Place of birth: .....

Residence and/or known address; if address not known, state the last known address: .....

.....

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

(ii) In the case of legal person(s)

Name: .....

Form of legal person: .....

Shortened name, commonly used name or trading name, if applicable: .....

.....

Registered seat (if available): .....

Registration number (if available): .....

Address of the legal person: .....

.....

<sup>1</sup> Where the EEW is addressed to Germany, and according to the declaration made by Germany in accordance with Article 23(4) of the Council Framework Decision 2008/978/JHA, of 18 December 2008, on the European Evidence Warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters, the issuing authority may additionally complete Box No 1 to confirm that the offence(s) fall(s) within the scope of criteria indicated by Germany for this type of offence.

K) OBJECTS, DOCUMENTS OR DATA SOUGHT BY THE EEW

1. Description of what is sought by the EEW (tick and complete the appropriate boxes):

Objects (specify them):

.....  
.....

Documents (specify them):

.....  
.....

Data (specify them):

.....  
.....

2. Location of objects, documents or data (if not known, the last known location):

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

3. If other than the person referred to in Section J (i) or (ii), information regarding the identity of the (i) natural or (ii) legal person(s) believed to hold the objects, documents or data:

i) In the case of natural person(s):

Surname: .....

Forename(s): .....

Maiden name, if applicable: .....

Aliases, if applicable: .....

Sex: .....

Nationality: .....

Identity number or social security number (when possible): .....

Date of birth: .....

Residence and/or known address; if address not known, state the last known address: .....

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

(ii) In the case of legal person(s):

Name: .....

Form of legal person: .....

Shortened name, commonly used name or trading name, if applicable:

Registered seat (if available): .....

Registration number (if available): .....

Address of the legal person: .....

Other address(es) where business is conducted: .....

.....  
.....

L) EXECUTION OF THE EEW

1. Deadlines for execution of the EEW are laid down in Council Framework Decision 2008/978/JHA<sup>1</sup>. However, if the request is particularly urgent, please indicate any earlier deadline and the reason for this by ticking the relevant box:

Earliest deadline: .....(dd/mm/yyyy)

Reasons:

- procedural deadlines
- other particularly urgent circumstances (please specify): .....

2. Tick and complete, if applicable

- It is requested that the executing authority comply with the following formalities and procedures<sup>2</sup>

.....  
.....

- The EEW also covers any object, document or data which the executing authority discovers during the execution of this EEW and without further enquiries considers to be relevant to the proceedings for the purpose of which this EEW was issued.
- It is requested that the executing authority take statements from persons present during the execution of this EEW and directly related to the subject of this EEW.

M) LEGAL REMEDIES

1. Description of the legal remedies for interested parties, including bona fide third parties, available in the issuing State, including necessary steps to take:

.....  
.....

2. Court before which the action may be taken:

.....  
.....

3. Information as to those for whom the action is available:

.....  
.....

4. Time limit for submission of the action:

.....  
.....

5. Authority in the issuing State which can supply further information on procedures for seeking legal remedies in the issuing State and on whether legal assistance and interpretation and translation is available:

Name: .....

Contact person (if applicable): .....

Address: .....

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

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

E-mail: .....

<sup>1</sup> OJ L350, 30.12.2008, p. 72.

<sup>2</sup> It is assumed that the executing authority will comply with the formalities and procedures indicated by the issuing authority unless they are contrary to the fundamental principles of the Law of the executing State. However, this does not create any obligation to take coercive measures.

N) FINAL PROVISIONS AND SIGNATURE

1. Optional information to be given only in relation to Germany:

- It is declared that the offence(s) concerned under the Law of the issuing State fall(s) within the scope of criteria indicated by Germany in the declaration<sup>1</sup> made in accordance with Article 23(4) of Framework Decision 2008/978/JHA.

2. Other information relevant to the case, if any:

.....  
.....

3. Requested means of transfer of the objects, documents or data:

- by e-mail
- by fax
- sending the original by post
- by other means (please specify):

.....

4. Signature of the issuing authority and/or its representative certifying the content of the EEW as accurate:

.....

Name: .....

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

Date: .....

Official stamp (if available)

O) IF SECTION (D) IS COMPLETED, SIGNATURE AND DETAILS OF THE VALIDATING AUTHORITY

.....

Name and surnames: .....

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

.....

Date: .....

.....

Official stamp (if available):

---

<sup>1</sup> OJ L 350, 30.12.2008, p. 72.

MAQUETACIÓN

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Subdirección General de Documentación y Publicaciones  
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DE ESPAÑA

MINISTERIO  
DE JUSTICIA