

## **2. BACKGROUND to the Current Regulations**

- The clearest background to the system of surrender without extradition is found in the Acts creating the Ad-hoc International Criminal Courts for the crimes committed in the former Yugoslavia and Rwanda, and in the Statute of the International Criminal Court of 17 July 1998. But in these cases no complex procedures or grounds for refusal are established.
- The treaties on surrender, signed in the year 2000 between Spain and Italy and Spain and Great Britain.
- The system of Inter-State Rendition between the different States of the USA.
- The “Endorsement of Warrants” system that the United Kingdom and Northern Ireland have with the Republic of Ireland. In this case the origin of the procedure – very simplified – is found in a judicial resolution. The surrender is made by virtue of a judicial authorisation (or revision) and the purpose of the procedure continues to be that of placing the criminal at the disposition of the addressing judicial authority. (The 1965 Backing of Warrants (Republic of Ireland) Act and Ireland’s law on passive extradition, Part III.)

## **3. Law 3/2003 of 14 March. Rules and Comments**

1. The warrant must be issued by the competent EU judicial authority.
  - a) Issuing Judicial Authority – Article 1.
  - b) Executing Judicial Authority – Article 1.

## 2. Object:

- a) Arrest and surrender of the requested person for investigation (exercise of penal actions) (Article 1).
- b) Execution of a sentence or security measure for the deprivation of liberty (Article 1).

Above, I mentioned the specific situation of Spain which has a centralising system regarding extradition, in accordance with Article 65.4 of the Organic Law on the Judiciary. The Central Criminal Courts of the National High Court are the sole executing judicial authorities. Thus the criteria and “case law” governing compliance with Warrants for arrest and surrender are unified, as is now the case with passive extradition (Article 2) through the National High Court’s Chamber for Criminal Matters. Herein lies the error: if we wanted an efficient system with no remaining windows of distrust, then the procedure (without prejudice to the possibility of appeal) would have to be concluded at the Central Criminal Courts, in the case of both acceptance and refusal of the EAW.

- c) The Central Authority shall be the Ministry of Justice (Article 2.3).

## 3. Grounds for Surrender

What is the material scope of application? (Article 9)

**The offence shall be defined** according to the laws of the State issuing the warrant and must be included in one of the categories listed in Article 9.

Unlike the system governing extradition, **what is assessed is not so much the minimum sentence but rather the material definition or classification of the offence. The maximum sentence would be important for configuring the types of surrender and, in less serious cases, for covering the possibility of the principle of dual criminality (Article 9.2).**

Thus: 1) Offences defined according to the laws of the Issuing State and whose surrender shall be decided WITHOUT CONTROLLING DOUBLE CLASSIFICATION OF OFFENCES:

- Membership in a terrorist organisation. (In Spain, are we to understand that this also includes the offence of collaboration with armed groups?)
- Terrorism. (Perhaps this point covers the lack of mention of collaboration with armed groups, if it includes all of the offences listed in Articles 571 to 579 of the chapter on terrorist offences.)
- Trafficking of human beings.
- Sexual exploitation of children and child pornography.
- Drug trafficking.
- Illegal trafficking of arms, ammunition and explosives.
- Corruption. (Perhaps there is a need to specify what is covered by this term, given that Spanish Criminal Law does not include the offence of corruption, and this could affect many areas and spheres.)
- Fraud, including that which is brought against the EU.

- Money-laundering.
- Forgery.
- High technology crime.
- Crimes against the environment.
- Cooperation with illegal immigration.
- Homicide (murder) etc. (Article 9).

This is a catalogue of offences that includes all of those found in the Spanish Criminal Code, which are considered **serious crimes** (more than three years in prison). It is worth noting that neither tax fraud nor corporate crimes are included.

In these cases, and due to their serious nature (sentences of more than three years) or their political-criminal importance (maximum sentences of three years) and, without counting the minimum sentence, except for the minimum of the offence, the arrest warrant will be fulfilled without the need for any considerations other than the guarantees (Article 11) that must be met by any warrant and the grounds for refusal (Article 12) required for all cases.

For offences that do not appear in the above list, paragraph 2 covers **dual criminality**, provided that it is a case of offences punished in the issuing country with a maximum sentence of at least 12 months or a sentence or security measure of no fewer than 4 months.

## **CONTENTS OF THE EAW (Article 3)**

### 1. FORM.

a) Language: The EAW shall be drawn up in one of the **official languages of the Executing State** (thus, this includes the Spanish, Galician, Basque and Catalan languages. However, it appears that since execution is centralised at the Central Criminal Courts, the language should be Spanish) or any other language accepted by same (does this mean that it can be drawn up in French, Italian, English, etc.?).

b) Content:

- Identity and nationality of the requested person.

Name, address, telephone and fax numbers and e-mail address of the **Issuing Judicial Authority**.

(DNA data are not included. Perhaps it would have been interesting in order to guarantee identification.)

Naturally, this information is not mandatory, and the warrant can be made without it. If these data are not available, then we have to use classic identification procedures such as fingerprints, photographs, etc. to obtain sufficient identification.

c) Indication of the firm sentence, arrest warrant or executive judicial resolution with the same effect as that which is stipulated in the scope of application of Articles 5 and 9 of this Law.

d) Nature and classification of the offence.

- e) Description of the facts of the offence. Time, place and level of participation of the requested person.
- f) The sentence handed down (if there is a firm sentence) or the sentencing scale envisaged for this type of offence.
- g) Other consequences of the offence. E.g.: the current phase of the proceedings, the number of victims, the civil consequences, etc.

## **OBJECT (Article 5)**

### **1. When can an EAW be issued?**

- a) To take penal actions for offences with sentences or security measures with a maximum of at least 12 months of deprivation of liberty.
  - 1) For a sentence or security measure of no fewer than 4 months of deprivation of liberty.
  - 2) In the case of offences with sentences or security measures for the deprivation of liberty whose maximum is at least 3 years and which can be included in Article 9.1, this will be indicated by the Judicial Authority (for which purposes the non-effectiveness of the principle of dual criminality is taken into account).

### **2. What can be requested? (Article 5)**

- Arrest and surrender.
- Delivery of the means of proof or the effects of the offence.

**3. Are the expenses arising from the police custody of the requested person paid? (Article 5.4)**

When the requested person arrives in Spain, the Issuing Judge must pay the expenses for the period of deprivation of liberty arising from the execution of the warrant.

**TRANSMISSION OF THE EAW (ARTICLE 6)**

- a) If the whereabouts of the requested person are known, the EAW will be addressed directly to the competent Judge for the execution of the Warrant.
- b) If the whereabouts of the requested person are not known, then a description will be entered into the Schengen Information System (SIS).
- c) The Spanish judicial authority issuing the Warrant may, in any case, include a description of the requested person in the SIS.
- d) The descriptions will be made according to Article 95 of the Convention Implementing the Schengen Agreement and must also include the description of Article 3 of this Law. For all intents and purposes, such a description will be equivalent to an EAW until the original is received in good and due form (First Temporary Provision).
- e) **As a secondary option**, if it is not possible to address the SIS, then the Judge will address INTERPOL.

**TRANSMISSION PROCEDURE (Article 7)**

- **Any method or procedure demonstrating authenticity for the executing body** (registered letter, e-mail, fax, burofax [facsimile produced on paper by public postal fax

equipment, forwarded through the telecommunications network, and delivered as a telegram], physical delivery). Should a problem arise, then there must be communication between the judicial authorities involved (the issuing authority and the executing authority).

- *A posteriori*, the SUPPLEMENTARY INFORMATION to be used in the execution shall be sent:
  - A copy shall be sent to the Minister of Justice (Central Authority) for the records (Article 9).
  - The copies received for execution shall also be sent to the Central Criminal Courts (Article 10.3).

Here, a potentially important problem arises:

Given that the **EAW** can be addressed directly to the Executing Judge, there will be cases where no cooperation is requested of SIS or INTERPOL and thus the Ministry of Home Affairs will not be aware of the existence of an international arrest warrant. Another possible scenario is that the requested person may not be in the EU, and the EAW is not applicable outside the EU. Thus, an international arrest warrant would have to be made for the extradition of a criminal who is outside the EU, and another internal arrest warrant would have to be made if the criminal is inside the EU.

(Question: How can we unify the three? Using the EAW requirements for the three cases, in order to be as wide-ranging and exhaustive as possible.)

## **TEMPORARY SURRENDER (Article 8)**

### **Must the receiving judicial authority issue an arrest warrant, or can temporary surrender be granted without it?**

According to Article 8, when the EAW is issued to execute penal action in cases of sentences or security measures with deprivation of liberty for at least a maximum of 12 months, temporary surrender or transfer to the place of execution can be requested in order to take the detainee's statement (today it is done this way, although there are countries – I am thinking of the Pinochet case – that refuse to allow the statement to pertain to the same object of extradition) or for the detainee to attend an oral criminal trial or inquiries, so that the Executing Judge may decide that the detainee must first meet his responsibilities in the country where he was found.

I understand that in application of Article 11 of the 1959 Convention on Mutual Assistance in Criminal Matters (see the Clemente Marcet case), temporary surrender could be granted with the guarantees of Article 12.2 of the same Convention, for investigating a person who is deprived of liberty in Spain or who is requested, even though an arrest warrant has not yet been issued by the country requesting his surrender. There are also the grounds for temporary surrender by France to Spain, for periods of 5 months, for the holding of trials for cases on which extradition is granted through the existence of a sentence to be served in France (Article 11.3 of the 1959 Convention).

## **PROCEDURE AND DEVELOPMENT**

1. Initial actions (Article 10)
  - Executing Judicial Authority in Spain: the Central Criminal Court of the National High Court.
  - Verification that the EAW is translated into “Spanish” (What does this mean? Spanish, Basque, Catalan,

Galician, or all four?). According to Article 3 it must be “in one of the official languages of the executing Member State” (the language of issuance).

If the warrant is not translated, the Executing Judge (Central Criminal Court) shall report this to the Issuing Judge, for the latter to have it translated. The proceedings will be suspended until the translation is received. The process would move more quickly if it were translated here.

## **PROBLEM**

What happens to the requested person? Is he allowed to escape? How do we retain him while the documents are being translated, if he has already been arrested by the police and he has no other responsibility in Spain? Or if the responsibility that he did have has lapsed? According to this article, **he cannot be arrested** until the translation arrives. This seems absurd to me, given the risk of escape involved.

This case will not arise if the order comes from the SIS (since, in this case, the Executing Judge will **automatically** proceed to have the warrant translated without suspending the procedure).

Thus, for security reasons the SIS should always be used, because in direct application or application through Interpol, this risk will not appear. There are still countries that do not apply the SIS.

## **GUARANTEES OF THE ISSUING STATE**

1. Cases of offences punished in the Issuing State with a life sentence.

Fulfilment of the EAW by Spain (Central Criminal Court) will be subject to the condition that the Issuing Member State must have a mechanism for the review of the sentence or for the application of clemency measures allowing for the reduction of sentences.

If the person to be surrendered is a Spanish national, then after the hearing the Issuing State must agree that the sentence will be served in Spain.

This compensates for the lack of correspondence between the sentences in the two systems.

## **THE REQUESTED PERSON**

1. **THE ARREST:** This is done with the form, requirements and guarantees stipulated in the Law of Criminal Procedure (Article 13) – i.e., in accordance with the provisions of Article 489 *et seq.* and Articles 503 and 504, 504 bis and 539 of the Law of Criminal Procedure.
2. The detainee is brought before the Judge of the Central Criminal Court; the deadline is unified at 72 hours, as in the other cases. Compliance with this standard must be enforced, and consequently the security forces will not be able to bring the detainees before another authority. Judicial bodies, including the Central Criminal Court, must enforce compliance with this standard.

Nevertheless, in exceptional cases (illness or *force majeure*) the requested person may be brought before the Judge of the place where he was arrested.

## **IMMEDIATE ACTIONS (Articles 13, 3 and 4; Articles 14 and 15)**

1. **The Judge will inform the detainee of the following:**
  - The existence of the EAW.
  - The contents of the EAW.

- The possibility of irrevocably consenting to his surrender to the Issuing State.
- His rights (118 and 520 of the Law of Criminal Procedure).
- His right to the assistance of an interpreter.

## 2. The detainee's hearing: (Article 14)

- a) The hearing will be held in the Central Criminal Court within a maximum of 72 hours after the requested person is brought before the Judge. This means that we have 72 hours to bring him before the Judge and another 72 hours to commence the hearing.

If the requested person is brought before a Judge other than that of the Central Criminal Court, then this Judge must immediately send him to appear before the Judge of the Central Criminal Court within 72 hours.

- b) The hearing shall be attended by a Lawyer and if necessary, an interpreter. All of the regulations contained in the Law of Criminal Procedure (rights, offences of which he is accused, etc.) shall be respected. Again, here there is more protection than in a normal case in Spain. For letters rogatory, there is no need for a lawyer to be present to order a transfer; however, the lawyer is required to appear before the issuing body. This guarantee must not be used as an obstacle to processing the EAW.
- c) Contents of the Hearing:
  1. The requested person will be asked if he **irrevocably accepts** the surrender. If he accepts, there will be no possibility for appeal or later

statements. Even if the answer is negative, he may give his consent at any time.

2. If the requested person accepts the surrender, then he will be asked to make a statement on **whether he waives the principle of speciality**. If he chooses to waive this principle, this choice will be placed on record; if he does not, then there will be no need to place it on record. Despite this, if there are conflicting grounds for refusal (Article 12), I understand that it is a matter of public policy and thus the Judge must decide.

## **PRINCIPLE OF SPECIALITY (Article 24)**

There is a **presumption in favour of waiving the principle of speciality** (consent) when the Executing State has communicated this to the General Secretariat of the Council of the EU, except in the case of statements to the contrary by the Executing Judge.

In this case, this may only proceed if the Spanish Issuing Judge submits a request to the Executing Judge.

The same applies vice-versa, between Spain and the Executing State.

The Central Criminal Court will have 30 days to make its decision.

**The Principle of Speciality (Article 24.4) will not be applicable in the following cases:**

- a) When it has been **expressly waived** before the Judge of the Central Criminal Court.
- b) When it has been **expressly waived** before the competent Judicial Authority of the Issuing State,

which will draw up a report that includes the same requirements as for the surrender.

- c) When the requested person, having the opportunity, allows 45 days to pass after having been released in the Issuing State, or has returned to the territory of the Issuing State.
  - d) When the sentence or punishment is not deprivation of liberty.
  - e) When the proceedings do not conclude with this type of measure.
  - f) When the requested person is subject to sentences or measures that do not include deprivation of liberty.
3. **Acceptance must be signed by the interested party**, his lawyer, the Judge, a representative of the Public Prosecutor's Office (whose presence is therefore required) and the Court Clerk.
4. The Judge will ensure that the requested person has **understood the scope** of the irrevocable consent to the surrender and the waiver of the principle of speciality.
5. If he does not consent:
- a) The parties will inform the Judge of the possible conflict of grounds for **refusal or conditioning** of the surrender.
  - b) The Public Prosecutor's Office will be heard (**immediately**) on the appropriateness or conditioning of the surrender.
6. At the **hearing**, the parties may **propose means of proof** which must be examined immediately or through the course

of the proceedings within the period established by the Judge, respecting the maximum deadlines for surrender provided by Law.

This is a new development as compared to the previous procedure. It involves opening a period that did not exist before, except the hearing before the National High Court's Chamber for Criminal Matters. The Central Criminal Court is (almost) awarded investigative powers.

(The reasons behind this evidentiary period are not explained, since it is a semi-automatic surrender, unless it refers to the grounds for refusal).

## **GROUND FOR REFUSAL (Article 12)**

### **A) AUTOMATIC**

1. If there is *res judicata* in a Member State other than the requesting Member State, provided that the proceedings have been carried out, they are in progress, or they can no longer be carried out according to the law of the sentencing Member State.
2. If the requested person is under 18 years of age.
3. If the requested person was pardoned in Spain for the same offences, and those offences are actionable here.

### **B) OPTIONAL**

1. When Article 9.2 applies: cases with sentences of more than one year, but which are not listed in Article 9.1; cases with sentences or security measures involving fewer than 4 months of deprivation of liberty; or cases in which the offence does not constitute a crime in Spain. Of course, in these cases the requested person

would not be surrendered, when the offence is not considered a crime in Spain.

Nevertheless, regarding customs and exchange **Levies and Taxes**, the surrender cannot be refused on the grounds that no identical regulations exist in Spain.

2. When the requested person is under investigation for the same offence in Spain. This will depend on the State in which the investigation is carried out, as well as the place where the proof and elements or traces are found. Rather than this being a unilateral decision, the two judicial authorities must come to an agreement to decide on custody.
3. If it has been declared that there is no need to proceed to judgement. In this case, the motivation – the grounds for the declaration that no decision need be made – must be verified.
4. When a definitive decision has been made on the requested person in another EU State, making surrender impossible. Logically, the *ne bis in idem* principle would not allow this option.
5. When there has been definitive trial in a third, non-member State for the same offence, provided that there has been a sentence and this sentence has been executed or is being executed, or can no longer be executed by virtue of the laws of the sentencing State.
6. If the requested person is a Spanish national and is being requested to serve a sentence or security measure involving deprivation of liberty in Spain, unless he consents. If he does not consent, the sentence or security measure will be served in Spain.

Evidently, from this point on, the regulations governing the serving of sentences would be those of the Spanish legal system.

7. If the offences were committed, in whole or in part, on Spanish territory. According to the Spanish legal system, problems can emerge relative to the conflict of jurisdictions with the existence of regular arrest warrants that would be in force in all the other countries if the interested party were arrested outside Spain. This matter should have been foreseen, obligating the issuer to recognise a Spanish decision refusing its arrest warrant.
8. If the offences were committed outside the territory of the Issuing State and the Spanish legal system does not consent to the prosecution of these offences, as they were committed outside Spanish territory. The exceptions are the cases mentioned in Article 23.4 of the Organic Law on the Judiciary, on the application of the principle of Universal Criminal Justice.
9. In the case of lapse provided that, according to Spanish law, the offences could have been prosecuted in Spain.

These hypothetical cases are *numerus clausus*; however, I think that a number of others should have been introduced, such as the lack of respect for Human Rights in the concrete and/or general case in the Issuing Country.

### **ADDITIONAL INFORMATION (Article 15)**

In some cases the EAW could be lacking certain requirements. In such a case, when the requirements of Article 3 (translation into Spanish, personal and biographical details) are not met, then the Central Criminal Court will request the missing information from the Issuing Judicial Authority or the supplementary information

on the possible grounds for refusal or conditioning of the surrender (e.g. information regarding lapse).

All this must be done within the period established by the Central Criminal Court, taking into account the maximum deadlines stipulated in Article 19. Thus, there has been a *de facto* extension of the deadlines established by the Law on Passive Extradition (40+40) for the submission of documentation and supplementary information.

If this information is not submitted, **refusal is not imposed by Law. Thus the Central Criminal Court may decide according to its own criteria.**

In this case, as in the case of examination of evidence (Article 14.4) no appeals are envisaged. Thus, this regulation is special as compared to the Law of Criminal Procedure, since no reference to this regulation exists in this case.

### **TEMPORARY TRANSFER. Taking Statements (Article 16)**

At the request of the Issuing Judge, a statement by the requested person may be taken or his temporary transfer to the Issuing State may be agreed.

#### **STATEMENT:**

**The statement will be taken by the issuing judicial authority in Spain**, with the assistance of the individual designated by the laws of the Issuing State.

Statement requirements:

- Statements must be made in accordance with Spain's Law of Criminal Procedure.
- Statements must be made in the conditions agreed with the issuing judicial authority.

- The presence of legal counsel will be required.
- The requested person has the right to refrain from making statements that could be used against him.
- The requested person has the right not to confess guilt.
- The requested person has the right to be assisted by an interpreter.
- The Central Criminal Court **may instruct** the statement to be made in its presence or in the presence of the Court Clerk to provide records of compliance with the agreed conditions and the conditions stipulated in this article.

This is an important new development, since it specifically allows the statement not to be judicial (Spanish) but rather in the presence of the police and with no other assistance, since the reading of rights can take the form of a document signed by a Court Clerk or in the presence of a Court Clerk, who until now did not have this jurisdictional capacity.

**Temporary surrender** is also established if:

- The parties have agreed on the transfer.
- A deadline is established.
- The requested person appears at the oral hearings concerning him in the process of surrender in Spain.

Temporary surrender can also be agreed if it is requested by the Issuing Authority when the requested person has to serve a sentence in Spain or other proceedings concerning him are open until the oral trial. In this case a memorandum of binding conditions will be extended to the authorities of the Issuing State (Article 21.2).

## **HEARING FOR THE ADOPTION OF CAUTIONARY MEASURES (Article 17)**

At the first hearing, after questioning on the acceptance of the surrender to the issuing country, **the hearing will be held immediately** to decide on the prison or liberty measure for the requested person.

All necessary measures will be taken, and especially those of the Law of Criminal Procedure, to ensure the full availability of the interested party.

The Judge makes the decision based on the circumstances of the case and the objective of the EAW.

The processes required for the deprivation of liberty will be those found in Articles 503, 504, 504 bis 2, as well as Articles 528 and 531 of the Law of Criminal Procedure, regarding liberty.

The situation of the interested parties may change at any time after the hearing with the Public Prosecutor's Office and the adoption of the necessary replacement cautionary measures. This is an extremely important new feature, which limits the Judge's power to modify the situation. Currently, in extradition as well as in ordinary cases subject to the Law of Criminal Procedure, it is necessary (accusatory principle) for the plaintiff (in this case the Public Prosecutor's Office or other accusations) to request prison, and neither this procedure nor that of a non-binding hearing is envisaged to decrease the measure.

There is a possibility of appeal without need for reform.

This is a more express regulation than that which existed up to now with the Law on Passive Extradition. However, it does not mention maximum deadlines: thus, the governing deadlines shall be the processing deadlines, and if applicable, the deadlines of Article 504 of the Law of Criminal Procedure (1 year + 1 year; 2

years + 2 years, according to whether they are less serious offences or serious offences).

## **DECISION ON THE SURRENDER OF THE REQUESTED PERSON (Article 18)**

### **1. If the interested party accepts or consents to the surrender:**

- The Judge issues an ORDER surrendering the requested person. This must be reported by the Public Prosecutor's Office, with no binding effect.
- DEADLINE: 10 days from the date of the hearing. No appeals are possible.

### **2. If the interested party does not accept:** The case is submitted to the National High Court's Chamber for Criminal Matters. As I mentioned at the beginning, an error, as it is a *de facto* reproduction of the format of the Law on Passive Extradition. This could have been resolved with a simple appeal with suspensive effect.

The Chamber will limit itself to holding the hearing. There is no possibility of appeal, and as I understand it, no possibility of presenting evidence, since the evidence has already been examined before the Central Criminal Court (Article 14.4).

## **DEADLINES (Article 19)**

- 1) All actions pertaining to the EAW are considered **urgent**, and thus there are no non-working days (Sundays and holidays).
- 2) Deadline for surrender - If accepted: maximum of **10 days**.
  - If not accepted: **60 days after arrest**. Therefore, during this time, any evidence must be

presented, the hearing itself must be held, and the Chamber's decision must be made.

If there are justifiable grounds that make the surrender impossible (e.g. *force majeure*), the deadlines may be extended for another **30 days**.

- The conditions necessary for the surrender will be maintained.
- **In exceptional cases**, if the deadlines for surrender cannot be met, the Central Criminal Court **or the National High Court's Chamber for Criminal Matters will notify Eurojust**, specifying the reasons for the delay.

Here, there could be a possibility of submitting an appeal for protection before the Constitutional Court, as currently occurs with extradition decisions. However, I think that this would denaturalise the purpose of the EAW, which is taken in an almost executive manner and based on the idea of a European space for justice, freedom and security. If it expressly states that there are no more appeals, then not even the Constitutional appeal would be possible.

### **How is the detainee surrendered?**

- Through agents of the Spanish authority **within the 10 days following the judicial decision** of surrender.
- If surrender cannot be made for reasons beyond the control of the States involved, the Judicial Authorities will make contact to establish a new date within the ten days following the initial established date.

**In exceptional cases** the surrender (to the Judge) may be suspended on serious humanitarian grounds. However, once the situation is resolved, the surrender will be made.

The surrender will be made within 10 days of the date established by the Judge after recovery. There is a gap in the regulations here, which could give way to arbitrary actions and interpretations of the term “humanitarian grounds”.

**If all of the maximum deadlines for surrender have passed** and the requested person has not yet been received by the Issuing State, **he will be released**. Nevertheless the request may be repeated and require fulfilment again.

The issuing authority must in any case be notified of the “liquidation” of the days during which the requested person has been deprived of liberty, in order for the expenses to be paid.

Here we must bear in mind the effective prison time, but we will not count the time pertaining to another conflicting case. In other words, if there are conflicting proceedings, the expenses will be paid only once, for only one of the proceedings, be it EAW or processing according to the Law of Criminal Procedure (summary procedure, preliminary inquiries, etc.).

The **surrender may be suspended** when the requested person has **pending proceedings in Spain** until the trial is held or the sentence is served (Article 21.1). This will not prevent the acceptance of temporary surrender.

The surrender of **objects** is stipulated in Article 22. Occupation and intervention may be automatic or at the request of the issuing authority. The procedure followed for the adoption of these measures will be the Spanish one, although we must bear in mind that the actions must have effect in the issuing country. Thus, as established by the 2000 European Convention on Mutual Assistance in Criminal Matters, we must respect its regulations and seek compatibility as much as possible.

Surrender will be made even in cases of escape or death.

If there is seizure in Spain, it is preferred and the surrender is conditioned on this guarantee. All this is without prejudice to International Criminal Court cases.

### **CONFLICTING REQUESTS (Article 23)**

- 1) Two States issue EAWs against the same person.

The decision is made by the Executing Judge.  
(Circumstances, dates, facts, if for the exercise of a criminal action, serving of sentence or security measure.)

The Judge may request a report by EUROJUST.

- 2) EAW and extradition to a third State, with respect to the same person.

Executing Judge-----suspends the proceedings-----Remits to the Central Authority (Ministry of Justice)-----who submits it to the Council of Ministers. The proceedings are governed by the Law on Passive Extradition.

The decision in favour of extradition is reported to the Central Criminal Court, which reports it to the judicial authority that issued the EAW.

If the decision is in favour of the EAW-----this will be reported to the Central Criminal Court for continuation of the proceedings.

Obligations with the International Criminal Court are reserved.

### **TRANSIT (Article 25)**

### **SUBSEQUENT SURRENDER (Article 26) TO AN EXTRADITION (Article 27)**

### **SUBSEQUENT EXTRADITION (Article 28)**

### **IMMUNITIES AND PRIVILEGES (Article 29)**

If the person sought by the European Arrest Warrant enjoys IMMUNITY in Spain, then the Central Criminal Court (Executing Judge) will immediately request the competent authority to remove this privilege.

If this pertains to another State or an International Organisation, then this must be done by the Issuing Judge; where affected, the Executing Judge will be notified.

While the request for the removal of immunity is being resolved, the Executing Judge must take the necessary cautionary measures to guarantee an effective surrender after the privilege is removed.

**The question that is not answered here is whether these measures extend to deprivation of liberty, or just to the less serious cautionary measures and real measures.**

After the removal of immunity is reported, the deadlines will begin to be counted.

## **OTHER PROVISIONS**

All of the EAW processes are understood as being without prejudice to the existence of other, faster processes based on bilateral or multilateral agreements (First Additional Provision).

The European Judicial Network could be used to process the EAW (Second Additional Provision).

The Schengen system of description will have the same value as an EAW until the executing judicial authority receives the original in good and due form (First Temporary Provision).

Law 3/03 of 14 March will only apply to EAWs issued on or after 18.3.03 (the day following publication) and only in the conditions of the Second Temporary Provision of Organic Law 2/04 of 14.03.

***INTERVENCIÓN EN JUSTICIA***  
**LONDON**