QUESTIONNAIRE

Improving Mutual Recognition of European Arrest Warrants for the purpose of executing in absentia judgments

Response by Mr Justice John Edwards

Court of Appeal, Dublin, Ireland.

30 September 2018

Part 1: preliminary matters

1. Please indicate who completed the questionnaire in which capacity and how much years of experience you have had in dealing with EAW cases, in particular whether you have experience as issuing and/or executing judicial authority.

The questionnaire has primarily been completed by Mr Justice John Edwards, a judge of the Court of Appeal of Ireland, with the assistance of Mr Eogan Hickey BCL and Mr Liam Dempsey, BCL, LL.M., both Judicial assistants to Mr Justice Edwards.

Mr Justice Edwards has been a judge of the Court of Appeal since December 2014. Prior to that he was a judge of the High Court from June 2007 until December 2014.

In Ireland the High Court is both the issuing judicial authority and the executing judicial authority for the purposes of the European Arrest Warrant. For operational purposes the President of the High Court has created a European Arrest Warrant list which is administered in a designated courtroom by a single High Court judge who is in charge of that list. It is a full time assignment, and from time to time a second judge may be assigned to assist with the workload of the permanently assigned judge.

Mr Justice Edwards was the High Court judge in charge of the European Arrest Warrant list from 2011 to 2014, and was the issuing judicial authority, or executing judicial authority, as the case might be, in the overwhelming majority of EAW cases that came before the Irish courts during that period.

There is no automatic right of appeal against an order of surrender or the refusal of an order for surrender under the Irish European Arrest Warrant Acts 2003 -2012, which transpose the Framework Decision. However, an appeal is possible to the Court of Appeal (and prior to 2014 when the Court of Appeal was first established, to the Supreme Court) if, and only if, the High Court certifies that the order or decision involves a point of law of exceptional public importance and that it is in the public interest that an appeal should be taken to the Court of Appeal (or previously, the Supreme Court).

Since his appointment to the Court of Appeal Mr Justice Edwards is one of ten members of that court, which sits as a bench of three judges, who may be assigned to hear appeals in EAW cases which have been appropriately certified by the High Court, and regularly does so.

Part 2: national legislation

2.1. National rules on service of summons, *in absentia* proceedings and possible recourses against *in absentia* judgments of conviction

Service of summons

2.
a) Describe the ways in which according to the national law of your Member State the summons for the trial may be served on the defendant.

In Ireland all criminal proceedings, whether the offences are minor offences or non-minor offences, begin in the District Court, with the sole exception of a small number of cases that must begin in the Special Criminal Court which deals with terrorist crimes and crimes considered unsuitable to be dealt with in the ordinary courts (usually due to concerns about possible juror intimidation).

While all cases (subject to the exception mentioned) begin in the District Court, the District Court may not necessarily try the case. Cases begun in the District Court may in certain circumstances be sent forward to other courts for trial on indictment. The District Court only has jurisdiction to try minor offences (understood in Irish constitutional law as being offences that attract a maximum penalty of twelve months imprisonment or less), or non-minor offences triable summarily (where statute law expressly provides for that) providing that parties who are entitled to do so do not object and the court is willing to accept jurisdiction. Accordingly cases will be sent forward to other courts where the offence is clearly a non-minor offence and it is not triable summarily; or in the case of non-minor offences triable summarily where an accused has a right to trial by jury and chooses to exercise it, alternatively the District Judge declines jurisdiction.

Where a person is brought before a judge of the District Court on foot of a criminal charge, whether for trial or as a precursor to being sent forward to another court, he/she may be dealt with in one of a number of ways depending on the particular circumstances of the case. On the first occasion he/she will normally be remanded to a sitting of the court at some date in the future. Indeed, there may be a whole series of such remand appearances before the accused is either tried or sent forward for trial or sentence to another court. See (Prof) Dermot Walsh on **Criminal Procedure, 2nd Ed** (2016) (Round Hall, Dublin) ("Walsh (2016)") at para 14.02. Where a person is sent forward for trial or sentence to another court, e.g., the Circuit Criminal Court (which is the Circuit Court sitting to hear indictable crime) or the Central Criminal Court (which is the High Court sitting to hear indictable crime) the court

order sending the accused forward (known as the Return for Trial Order) is invariably made in the presence of the accused who is informed in court at the time of the fact that he/she has been sent forward for trial, the date of the commencement of the sittings at which he will be tried and the place where those sittings will be held. A formal written record of the Return for Trial Order is subsequently made up by the court's registrar and it is then served by the prosecutor on the accused either personally, or where the accused has instructed a solicitor who is on record for him/her, on the solicitor. There is no possibility of an accused being sent forward for trial to a higher court in absentia. If he/she is not present in person, the court will instead issue a bench warrant for their arrest and adjourn the proceedings until the warrant has been executed and the accused has been brought before the court.

Before the District Court can validly enter upon the hearing of a criminal charge, whether with a view to conducting a summary trial itself or sending the matter forward to another court, its jurisdiction must be triggered in the appropriate manner. Basically, there are three procedures through which this can be done. The first and traditional method is by making a complaint or laying an information before a District Court judge for the issue of process. The issue of process in this context refers to the issue of a summons or an arrest warrant to secure the attendance before the court of the person against whom the information is made. It is a judicial procedure. The second method involves the issue of a summons through an administrative process introduced by the Courts (No.3) Act 1986. The third possibility arises where a suspect has been arrested without warrant by the police and taken in custody to be charged before a District Court judge, or charged in police custody and then released on bail to appear before the District Court. See Walsh (2016) *op cit* at para 14.20.

The rules governing the service of a summons to initiate criminal proceedings, and the rules governing the service of notices or documents in criminal proceedings which have already been commenced, are in general the same, although in the second case a court may in its discretion, and for good reason, direct or authorise some alternative form of service.

The position in Irish law with respect to the service of summonses in criminal proceedings is succinctly stated by (Prof) Thomas O'Malley in **The Criminal Process** (2009) (Round Hall, Dublin) ("O'Malley(2009)")at paras 15.37 and 15.38:

> "15.37 It is an elementary principle of natural justice that a person against whom a complaint or allegation is made should be put on due notice of it, and given the opportunity to come forward

and defend himself. Effective systems for the service of summonses are therefore essential to the fair operation of criminal justice system. The most relevant statutory provisions in relation to the service of summonses are s.12 of the Petty Sessions (Ireland) Act 1851 and s.22 of the Courts Act 1991. The Act of 1851 essentially provides that a summons should be served on the defendant personally or, if he cannot be conveniently met with, the summons may be left at his last or most usual place of residence or at his workplace. It may also be served on an inmate "of the house" (presumably meaning the defendant's residence) provided that inmate is at least 16 years of age. Incidentally, the section requires that the inmate have reached that age, not that he or she appears to have done so. Section 12 is in the form of a general rule and is not intended to encroach on any specific provision requiring personal service. The permissible modes of service were expanded considerably by s.22 of the Courts Act 1991, which allows for a summons to be served by prepaid registered post or by other system of recorded delivery specified in the Rules of Court, or delivery by hand. In any case it must be in an addressed envelope and addressed to the defendant at his last known or most usual place of abode or his place of business in the State. Upon proof that the summons was served in one of these ways, service shall be deemed good unless it is proved that the person did not receive the summons or notice of the hearing to which it relates. … ."

"15.38 The operation of s.22 of the Act of 1991 was considered in some detail by the [Irish] Supreme Court in ***Brennan* v *Windle* [2003] I.R. 494**, where the applicant had been convicted and sentenced to four months' imprisonment for a road traffic offence despite having been unaware of the charge of which he was convicted. The court, per Geoghegan J., explained the rationale behind s.22 as follows [at 508]:

> "When read in conjunction with the 1851 Act it would seem that the scheme of this section is to make it easier to serve summonses but to ensure at the same time that no injustice is caused if it emerges that the respondent to a summons knew nothing about the summons or the case. The section would appear to have been very carefully drafted in this regard presumably having regard to the concern there might be as to the constitutionality of such a section if systems of service were such that there was a grave danger of persons being convicted and sentenced to prison effectively behind their backs."

The relevant rules of court are the District Court Rules 1997 – Orders 10 15, 22 and 41 inclusive. If proceedings are already underway there are

analogous rules governing the Circuit Court, i.e., the Circuit Court Rules 2001, and the Central Criminal Court i.e., the Rules of the Superior Courts 1986, which may apply.

There is provision in Irish Law for substituted service where the court is satisfied upon ex parte application that, for good cause shown, service of a summons etc. cannot be effected in the manner otherwise prescribed by the Rules. Equally, the court may, if it sees fit, deem the service of any summons etc. to be effected, even though it was not effected in the manner otherwise prescribed by the Rules. See Walsh *op cit* at para 14.64.

b) Do any of the ways of serving a summons for the trial correspond to:

- 'personal service' – *i.e.* service as a result of which the defendant 'has himself received the summons' (*Dworzecki*, par. 45) – or

- service 'by other means' as a result of which the defendant has 'actually received official information of the scheduled date and place of that trial in such a manner that it is unequivocally established that he or she is aware of the scheduled trial' (see Art. 4a(1)(a) FD 2002/584/JHA)?

Article 5(1) of Framework Decision 2002/584 was transposed into Irish law by s. 45 of the European Arrest Warrant Act 2003 (the Act of 2003) and was in the following terms:

> "A person shall not be surrendered under this Act if—
>
> (a) he or she was not present when he or she was tried for and convicted of the offence specified in the European arrest warrant, and
>
> (b) (i) he or she was not notified of the time when, and place at which, he or she would be tried for the offence, or
>
> (ii) he or she was not permitted to attend the trial in respect of the offence concerned, unless the issuing judicial authority gives an undertaking in writing that the person will, upon being surrendered—
>
> (i) be retried for that offence or be given the opportunity of a retrial in respect of that offence,
>
> (ii) be notified of the time when, and place at which any retrial in respect of the offence concerned will take place, and
>
> (iii) be permitted to be present when any such retrial takes place."

S.45 of the Act of 2003 was in turn amended by s.23 of the European Arrest Warrant (Application To Third Countries and Amendment) and

Extradition (Amendment) Act 2012, (the Act of 2012) to further transpose the amendments effected to Framework Decision 2002/584 by Framework Decision 2009/299, and in particular to give effect to the new Article 4a of Framework Decision 2002/584 as amended.

S.45 of the Act of 2003 as amended by s.23 of the Act now provides:

> "A person shall not be surrendered under this Act if he or she did not appear in person at the proceedings resulting in the sentence or detention order in respect of which the European arrest warrant was issued, unless the European arrest warrant indicates the matters required by points 2, 3 and 4 of point (d) of the form of warrant in the Annex to the Framework Decision as amended by Council Framework Decision 2009/299/JHA, as set out in the table to this section.
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> TABLE
>
> (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,
OR
❒ the person did not request a retrial or appeal within the applicable time frame;
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 time frame within which he or she has to request a retrial or appeal, which will be . . . days.
4. If you have ticked the box under points 3.1b, 3.2 or 3.3 above, please provide information about how the relevant condition has been met:
.....
.....".

It is clear that the Irish parliamentary draftsman has adopted the expedient approach of cutting and pasting within the new s.45, the new form of point (d) as it now appears in the annex to Framework Decision 2002/584 as amended by Framework Decision 2009/299.

S.45 of the Act of 2003, in its original form, was considered by the Irish Supreme Court in the case of ***Minister for Justice, Equality and Law Reform v Sliczynski* [2008] IESC 73**.
http://www.courts.ie/Judgments.nsf/0/94E4F5037A1BA64880257524004A0E96
http://www.courts.ie/Judgments.nsf/0/16AE0BD4560C0FA380257524003B1F03
In particular the court considered the meaning of s.45(b)(i) which prohibited the surrender of a respondent who had been tried in absentia if "*he or she was not notified of the time when, and place at*

which, he or she would be tried for the offence" The Supreme Court did not approach the matter on the basis that the wording of Article 5(1) of Framework Decision 2002/584 bore an autonomous meaning in EU law. On the contrary the court concluded that it had to be interpreted in accordance with the rules of statutory interpretation applicable to Irish statutes. However, the interpretation the Supreme Court arrived at accorded exactly with that subsequently afforded by the CJEU to Article 4a1 of Framework Decision 2002/584 in Dworzecki – Case 108/16PPU.

The facts of the ***Sliczynski*** case were ….

In his judgment in that case Murray CJ said:

> As regards the appellant being notified of the trial the learned Trial Judge noted that one of the letters, that dated 21st September, received from the Polish Judicial Authority stated '*In all cases, the correspondence sent to the respondent was not received by him and it was returned to the court with a note that the addressee was not at home.*' It added, in none of the cases did Mr. Sliczynski provide an address for documents and his place of residence was unknown. As appears from the information received by the High Court from the Polish Judicial authorities one of the grounds which the Polish Court considered relevant to the lifting of the suspension of the former sentences was the failure of the appellant to notify the Probation Officer of his place of residence because he was no longer living at home. This points to the fact that he was never notified himself of the trial.
>
> That is not it seems of great consequence in Polish law and the learned Trial Judge went on to point out that according to the information which he received from the Polish Judicial Authority, Article 132 of the Polish Code of Criminal Procedure provides that communication of a trial could be served on an addressee personally and that paragraph 2 of Article 132 provides '*In the event of the temporary absence of the addressee at his or her place of residence, the communication will be served to an adult resident and in case of his or her absence the house administrator …*'.
>
> The learned Trial Judge went on to conclude, and I have no reason to doubt that conclusion, that the appellant was notified in accordance with Polish law of the trial which enabled the trial to proceed in absentia. He stated '*The Polish Authority indicates that as far as they are concerned he was notified by*

communication through his mother. This Court is not in a position to decide that matter of fact.'

For the purpose of Polish law that no doubt was sufficient notification which enabled the Polish Court to proceed with the trial, conviction and sentence of the appellant in his absence.

However, s. 45(b)(i) must be interpreted and applied as a matter of Irish law.

That specifies that the issuing Judicial Authority give an undertaking that the person will at least have an opportunity of being retried, if surrendered, if he was not present for the trial, which is undisputedly the case here, or he was not notified of the '*time when, and place at which, he or she would be tried for the offence,'*.

The ordinary meaning of that language is that it is the person to be tried who must be notified. It must be actual notification and not any other notification. I cannot read into s. 45 a meaning that envisaged notification to a person's mother or other person being presumed sufficient, especially when there is no evidence that the person concerned received any notification. If it was intended that any other form of notification or some form of constructive notification, particularly where trial for a criminal offence is concerned, the Oireachtas would have expressly said so.

Under Polish law it may be sufficient, for the purpose of trying somebody in Poland in their absence, to give them notification by delivering it to some person at their place of residence and even that does not seem to have been done in this case but that is not the kind of notice to which s. 45 refers. It would, as I say, require some express provision in our Act, along the lines of that expressly stated in the Polish Article 132, to deem that kind of notice sufficient for the purpose of s. 45.

On the facts and information as provided in the European Arrest Warrant and by the Polish Judicial Authority one can only conclude that the appellant was not actually notified of the time and place of trial. All we know is that his mother was notified and at an address at which the Polish Authorities acknowledge he no longer resided. There is no information tending to establish that the appellant was himself notified. In his affidavit of 17 July 2007 he avers that he was not informed and was unaware of the prosecution and trial concerning the fourth offence. That evidence is consistent with the information provided by the

> requesting Judicial Authority. For that reason alone, absent the Undertaking requested by s. 45, it seems to me that he cannot be surrendered to serve a sentence in respect of that particular offence as specified in the warrant.
>
> I would add, that although the Act falls to be interpreted in the light of the Framework Decision, there is nothing in the provisions of the latter which could lead to any other interpretation of the plain meaning of s. 45. On the contrary, if one were to resort to Article 5.1 of the Framework Decision it provides '*…and if that person concerned has not been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered in absentia ….*' That also seems to suggest that the person concerned, if not summoned in person, must nonetheless be otherwise personally informed of the date and place of the hearing. In any case the meaning of s. 45 is clear."

c) Does the national law of your Member State provide for a 'presumption' of serving a summons on the defendant? *E.g.*, is service of a summons deemed effective if the summons was sent to the address indicated by the defendant during the pre-trial stage of the proceedings (*e.g.* during police investigations) even when there is no confirmation that the defendant actually received the summons?

No, there is no such presumption in Irish law

***In absentia* proceedings**

3. Does the national law of your Member State provide for *in absentia* proceedings and, if so,

- what does the expression '*in absentia* proceedings' mean according to the national law of your Member State? Does this meaning vary from the autonomous EU meaning of this expression and, if so, in what way?
- under what conditions are '*in absentia* proceedings' possible?

Irish law does not in general permit trials in absentia save in the case of very minor offences, prosecutable summarily, where a prison sentence would almost certainly not be imposed. Examples would be minor traffic offences, non-payment of a television licence, dropping litter on the street, and such matters. In Ireland there is no express constitutional or statutory prohibition on trials in absentia. Indeed, the possibility of proceeding in the absence of the defendant is acknowledged in both s.22(4) of the Courts Act 1991, and Order 10, Rule 4 of the District Court Rules 1997, but it is universally understood that in any case where a prison sentence is reasonably possible an accused who fails to appear should not be tried in absentia. The generally accepted view is that the right to a trial in due course of law guaranteed in Article 38 of the Irish

Constitution includes the right to be present in person if one's liberty is at stake. The practice of the Irish courts, where an accused fails to appear, is to issue a bench warrant for the arrest of the accused in the absence of a reasonable excuse, and adjourn the trial pending execution of that warrant.

In the case of ***Brennan v Windle***, cited in the earlier quotation from O'Malley (2009), A District Judge convicted an accused in his absence of various road traffic offences, including driving without insurance, and sentenced him to four months imprisonment. It was not contested that the applicant did not have actual notice of summonses which required his appearance in court to answer the charges. The accused sought an order of certiorari by way of judicial review in the High Court seeking to have the conviction and sentence quashed on the basis that his conviction in absentia breached various of his constitutional rights, including his to a trial in due course of law. He was unsuccessful in the High Court but appealed to the Supreme Court where he succeeded. In his judgment in the Supreme Court, Geoghegan J concluded (as did Hardiman J.) that the manner in which the District Court judge proceeded amounted to a denial of due process and natural justice. Geoghegan J. said that once the judge had it in mind to impose a prison sentence, especially one as long as four months, for an offence for which a custodial sentence would not invariably be appropriate, he failed to honour the constitutional rights of the accused by proceeding in his absence.

While the general position is as has been stated, Irish law does allow for trials of even serious matters to be conducted, in whole or in part, in the absence of an accused where an accused engages in un-cooperative behaviour e.g an accused in custody refusing to emerge from his/her cell; or behaviour designed to obstruct and disrupt his/her trial, with a view to frustrating the process, giving rise to his/her removal from court by direction of the trial judge for the protection of the court's process. However, while the point has never arisen, and therefore has never been tested, it could be argued that it is desirable, given the availability of video link technology, that were such a situation to arise today, an accused removed from, or not permitted to be in, or absent of malice from, the courtroom where his trial is taking place should be afforded the facility of remotely viewing and listening to the proceedings occurring in his absence.

As trial in absentia is not in general permitted in Ireland the phrase "in absentia proceedings" has no meaning in Irish law other than its natural and ordinary meaning of proceedings conducted in the

absence of the accused (i.e., where the accused is neither present in person nor legally represented). In strict theory an accused is always supposed to be present in person, but in the case of minor traffic offences, and such like, a court may be prepared to hear a case in the absence of the accused's presence in person if he is legally represented. In all other cases, an accused is required to be present in person.

4. If the defendant was not present at the trial itself but was present at the hearing at which the court pronounced judgment, are the proceedings considered to be *in absentia* proceedings (as this expression is defined by your national law)?

This situation has never arisen in the Irish courts to this respondent's knowledge. Theoretically it might arise in the exceptionally rare instance where an accused has had to be removed from court for being disruptive. It would be speculative to offer a view as to how such a hypothetical situation might be regarded. One possibility, however, is that if, having been returned for trial, the accused had turned up at all in the court of trial (and he would have to have done so in order to behave in the uncooperative or disruptive manner leading to his absence/removal from the courtroom) a court could take the view that he should not be regarded as having been tried in absentia. In essence, it could be argued that by his behaviour he had waived his right to be present in person. However, one could not foreclose on the possibility that persuasive counter arguments might be advanced. Any court faced with such an issue would obviously have to hear argument from both sides before taking a position.

In the case of very minor offences tried summarily and with no likelihood or even reasonable possibility of a custodial sentence judgment is invariably pronounced immediately at the end of the hearing, and the situation postulated in the question would not arise.

5. If in course of the trial several hearings are held and the defendant is present at some but not all of these hearings, which criteria determine whether the proceedings are deemed to be *in absentia* or not (as this expression is defined by your national law)? *E.g.*, does it matter what transpired at the hearings at which the defendant was present or is the mere presence of the defendant at one of the hearings enough to preclude the applicability of (the national rules transposing) Art. 4a? Can the defendant be present via telecommunication?

This situation has rarely arisen in Ireland. The situations in which it could theoretically arise are where an accused is removed from court for being disruptive, or where an accused on bail absconds while the trial is underway. It is hard to conceive of how it might otherwise arise. This respondent recalls that during one rape trial that he presided over the

accused absconded at the end of the prosecution case, and following an unsuccessful application by his counsel to withdraw the case from the jury on the basis of alleged insufficiency of evidence and/or infirmities in the prosecution's case. When the ruling went against him, he availed of the next break in the case (a luncheon break) to abscond. This respondent decided to issue a bench warrant for his arrest but to nevertheless continue with the trial in his absence given the advanced stage at which the trial was at, and the fact that the prosecution's case was closed. The jury convicted him in his absence by a majority verdict of 11:1. Sentencing was then adjourned pending execution of the bench warrant. He was subsequently apprehended and brought before the court which then sentenced him to seven years' imprisonment. Accordingly, the scenario postulated in the question does occasionally happen, but it must be emphasised that it is rare. I know of no case where it has been necessary for an Irish court to issue an EAW for a person who has absconded mid-trial, but theoretically such a situation could arise.

Once again, to repeat in part the last answer, it would be speculative to offer a view as to whether, in such a hypothetical situation where the need to issue an EAW might arise, the Irish High Court as an issuing judicial authority would be prepared to treat the accused as having been tried in absentia, and would certify that to have been the case. It would depend very much on the circumstances of the case, but it could be anticipated that , if, having been returned for trial, the accused had turned up at all in the court of trial, the Irish Central Authority would seek to make the case that he should not be regarded as having been tried in absentia. In essence, it could be argued that by his behaviour he had waived his right to be present in person. However, one could not foreclose on the possibility that persuasive counter arguments might be advanced. A difficulty in that regard, however, is that the scenario postulated the application for the issuance of an EAW would be made ex parte and without a *legitimus contradictor* Any court faced with such an issue would have to identify and consider for itself possible counter arguments, and weigh both the arguments in favour of certifying the accused as having been tried in absentia against the perceived possible counter arguments to doing so, before arriving at a decision.

The general rule is that an accused is required, and indeed has a right, to be present in person. However, while the situation has thus far not arisen, it could be argued that it is desirable, given the availability of video link technology, that an accused removed from, or not permitted to be in, the courtroom where his trial is taking place due to his disruptive behaviour, should be afforded the facility of remotely viewing and listening to the proceedings occurring in his absence.

At the present time pre-trial remand hearings are sometimes conducted by video link, without the accused being present in court, with the accused having the facility of remotely viewing and listening to the proceedings occurring in his absence, and of participating in those proceedings via the video link.

Defence by a legal counsellor in the absence of the defendant

6. Does the national law of your Member State allow for a defence by a legal counsellor in the absence of the defendant? If so:

- does the defendant have to have any knowledge of the proceedings against him or the scheduled trial;
- what are the conditions under which a trial may take place without the defendant being there?
- does the defendant have to have instructed his legal counsellor to defend him in his absence, either expressly or implicitly?
- can the situation in which counsel is present and the accused absent be considered as "the defendant is present"?
- does a legal counsellor have the right to appeal or to ask for a retrial independently or does he need the consent of the defendant?

In general, the answer is No. There are, however, some possible exceptions.

One possibility, already alluded to, is that in the case of minor traffic offences, and such like, where there is no realistic prospect of a custodial penalty being imposed, a court may be prepared to hear a case without the accused being present in person if he is legally represented.

The second possibility arises in a situation where an accused has been removed from court for being disruptive. In principle, the proceedings can continue in his absence with participation on his behalf by a duly instructed legal representative. In practice, however, the legal representative is likely either to have his/her instructions to act terminated expressly by the disruptive defendant, or he/she may take the view that his/her instructions have been implicitly terminated and apply for leave to withdraw.

A third possibility is where an accused in custody, who is legally represented, refuses mid trial and for no apparent good reason (e.g., illness) to leave his/her cell. The trial can continue in that event in

circumstances where the accused continues to be represented providing the legal representative's instructions have not been terminated, and he/she is willing to continue to act.

There is simply no possibility in Ireland of an accused being tried for any offence where he/she is in peril of receiving a custodial sentence if convicted, without having knowledge of the proceedings against him or the scheduled trial. In such a case, if the accused does not turn up there will be a bench warrant and the proceedings will be adjourned pending execution of that warrant. There is a theoretical possibility of such happening in very minor cases, involving summary trial in the District Court with no reasonable risk of a custodial sentence. However, a conviction in those circumstances would be capable of being overturned on an appeal to the Circuit Court, or if the conviction had been manifestly recorded in excess of jurisdiction it could be set aside in the High Court on judicial review (as was attempted in ***Brennan v Windle*** cited earlier). In most cases the most appropriate remedy would be an appeal to the Circuit Court.

Under Irish law, a legal representative, whether a barrister or solicitor, must have current (i.e., still subsisting) instructions to act for a client in order to represent him/her in court.

In those rare cases where a trial proceeds or continues in the absence of a disruptive or uncooperative accused, in circumstances where the accused is represented in his/her absence by a legal representative, his vicarious participation will be recognised and full account will be taken of it, but he will not be regarded in any fictional sense as having been present in person. Irish law does not provide an accused with an entitlement to an automatic re-trial purely on account of the fact that he/she, was not present in person throughout his/her trial, regardless of whether or not they were represented in their absence by a lawyer. He/she would have his/her ordinary right of appeal to the Court of Appeal on a point of law with a view to having the conviction quashed and in order to succeed would be required to show that his trial was unsatisfactory (in the sense of being unfair or lacking in due process) and his conviction unsafe in consequence of it, on account of the fact that he or she was not present in person. It is fair to say that such an appeal would be difficult to succeed in if the accused himself/herself had created the situation which led to them not being present in person. It would be an even more difficult appeal to succeed in if the accused's interests had been represented by a duly instructed lawyer during his absence.

A legal representative does not have an entitlement to lodge an appeal on behalf of his client without instructions. The consent and express instructions of the accused are required.

7. If the national law of your Member State allows for a defence by a 'mandated' legal counsellor in the absence of the defendant, what does the concept 'mandate' mean and what powers does the legal counsellor have under such an 'mandate'?

In general, the national law of Ireland does not allow for a defendant to be tried in absentia in circumstances where he/she is represented by a mandated legal counsellor. If liberty is at stake the accused must be present or the trial will not start. As an exception to the general rule, a court may as a matter of discretion not insist on the accused's presence, in circumstances where he/she is legally represented, in the case of very minor offences prosecuted summarily in the District Court, eg speeding, littering, no television licence etc. However, the District Judge must be agreeable to dealing with such a case in the defendant's absence but in circumstances where he/she is represented by a lawyer. Certainly in any case where a prison sentence is possible, it is not permissible.

If, however, a trial involving a risk of imprisonment (in the event of a conviction) is commenced in the presence of the accused, and the continuation of that trial is frustrated either by the non-co-operation of the accused e.g., by his refusal to come out from his cell, or by disruptive behaviour on the part of the accused, or if he/she is on bail and absconds mid trial, a trial judge may, in the exercise of his/her discretion continue in the absence of the accused and permit the accused's interests to be represented by a lawyer who has been representing the accused up to that point. However, an accused who is determined to frustrate the proceedings is likely to either have terminated, or to terminate at that point, his lawyers instructions, or else the lawyers in question may regard their instructions as having been implicitly terminated.

In Ireland no lawyer can appear for a defendant without express instructions from the client to do so. Accordingly, it is not possible for a court or anybody else to instruct a lawyer to represent a defendant. In those circumstances a "mandated" legal counsellor would mean solicitor, or a solicitor and barrister(s) expressly instructed by the defendant to represent him/her.

The situation after a judgment of conviction has been rendered

8.

a) Describe the ways in which according to your national law an *in absentia* judgment of conviction (as this expression is defined by your national law) may be served on the defendant and whether and how the defendant is notified of the possible recourses against that judgment (such as appeal or opposition).

While theoretically possible, in practice it rarely arises in the Irish legal system that a conviction is recorded in absentia. In thirty five years of practicing as a criminal lawyer and as judge this respondent has only once personally seen a criminal judgment rendered in absentia in the Irish courts. This was in the rape case mentioned in the response to Q.5. In recent months the Irish media has reported on a further such case

https://www.irishtimes.com/news/crime-and-law/courts/criminal-court/man-who-went-on-run-during-sex-abuse-trial-sentenced-in-absence-1.3719712

However, they are exceedingly rare.

Theoretically, however, the position would be as follows. Following the announcement of the verdict in court, whether by a judge sitting alone in the case of a summary trial in the District Court, or by the foreman of the jury in the case of a trial on indictment in either the Circuit Criminal Court or the Central Criminal Court, the matter would proceed to a sentencing either immediately or following an adjournment. The proceedings are only concluded once sentence is imposed and it is only at that point that an Order of Conviction and a Committal Warrant is drawn up by the court's registrar.

In a situation where a trial has had to proceed or continue without the accused being present in person, due to his/her non-cooperation or disruptive behaviour, it is a virtual certainty that the accused would be in custody at this stage. If he had been on bail at the time of creating disruption the trial judge would have ordered his arrest and revoked his bail. If the convicted person was not legally represented at that point, the trial judge would likely direct the prosecution to bespeak the Order of Conviction and Committal Warrant from the registrar and serve it personally on the accused in custody. Moreover, although there is no express provision of Irish law requiring it, a prudent trial judge would further direct that the convicted person be informed either by the prosecutor, or by the prison authorities on his/her reception into custody to serve the sentence on foot of the relevant Committal Warrant, concerning his/her right of appeal against conviction and/or sentence.

If the accused had absconded mid trial in breach of his/her bail, and the proceedings had continued in his/her absence to the point at which a jury had returned a verdict of conviction then there would be two possibilities. Sentencing could be adjourned pending execution of on arrest warrant, as occurred in the rape case described in the response to Q.5. Alternatively, sentence could be passed in the absence of the accused, as occurred in the more recent case. proceed to a jury verdict. If in the first scenario the accused is

apprehended and brought before the court for sentencing he will be informed in court of the fact of his conviction by the jury, and following his sentencing he will be served with the Order of Conviction and Committal Warrant in the normal way. However, if he has been sentenced in his absence two possibilities arise. If he was in custody at the time of sentencing, but not present in the courtroom either by choice or on account of bad behaviour, he will be again served with the Order of Conviction and Committal Warrant in the normal way. However, if the convicted person is still at large then his notification must await his location either at home or abroad. When he/she has been located then personal service in the Dworzecki /Sliczynski is likely to be required. However, I do not believe the latter situation has ever arisen.

b) Do the same rules of summoning apply as before the trial starts?

For all practical intents and purposes, any such notification would necessitate personal service.

c) Describe the possible recourses against an *in absentia* judgment of conviction (as this expression is defined by your national law).

Irish law does not provide a bespoke remedy in the case of an *in absentia* judgment of conviction, because in general there is no trial *in absentia* in Ireland.

An aggrieved convicted person has his ordinary right of appeal (which in the case of a conviction on indictment comprises a review of the legality of the conviction but no possibility of re-opening issues of fact). If, on appeal, the trial is found to have been unsatisfactory and the conviction unsafe due to an error of law then the conviction may be quashed, in which case the possibility arises of a full re-trial at which all issues both of law and of fact can be ventilated. An alternative is the possibility of quashing the conviction by certiorari on judicial review. In most cases, however, the most appropriate potential remedy would be an appeal.

If it is thought that the conviction, and subsequent incarceration, was the result of a flagrant denial of justice going to jurisdiction, then another possibility open to the convicted person is to seek an inquiry into the lawfulness of his detention under Article 40.4 of the Constitution of Ireland. This procedure equates to seeking an order of habeas corpus.

d) What are the formalities for contesting the judgment rendered after proceedings *in absentia* (as this expression is defined by your national law)? How is it established

that the person concerned 'expressly stated' that he does not contest the judgment (compare Art. 4a(1)(c)(i) FD 2002/584/JHA)?

The formalities to be fulfilled are not specific to contesting a judgment rendered after proceedings *in absentia.*

If a convicted person desires to appeal he/she must file a Notice of Appeal in the form specified in the Rules of Court with the Court of Appeal office, or other relevant court office, and do so within the time specified in the relevant Rules of Court. Where the intended applicant does not appeal in time it may be possible to obtain an extension of time, where good and substantial reasons exist as to why the appeal was not lodged in time, but an application for such an extension must be made to the appeal court concerned.

If it is intended to seek judicial review, he/she must apply *ex parte* in the first instance to the High Court for leave to do so. The application must be grounded upon an affidavit, and it must be made as soon as may be after the decision complained of, but at any rate within the time specified in Order 84 of the Rules of the Superior Courts. If leave is granted, the matter then requires to be progressed in accordance with the detailed provisions of the said Order 84.

An application for an inquiry under Article 40.4 of the Constitution of Ireland is a constitutional remedy and is *sui generis*. It may not be regulated by any statute or rules of court. The intended applicant or his representative may apply to any judge of the High Court to open such an inquiry. In practice, the High Court determines its own procedure and it is usual that such an application would be grounded on an affidavit setting out the facts and circumstances complained of, and the basis for suggesting that the detention concerned is unlawful.

Your respondent is unaware of any procedure or protocol for determining that the person concerned 'expressly stated' that he does not contest the judgment. It arises from time to time, other than in the *in absentia* context, that where an intended appellant has not appealed in time and is seeking an extension of time within which to appeal, that the prosecution will contend, and put forward as a relevant circumstance as to why the extension should not be granted, that the person concerned had at an earlier point acknowledged in some fashion the correctness of his/her conviction and said, either orally or in writing, that they did not intend to appeal. Such an assertion would require to be based on the evidence of a witness who heard the intended appellant make an oral statement to that effect (which would be admissible as an exception to the rule against hearsay on the basis that it represents a declaration against interest), alternatively on the basis of placing before the court some document to that effect

which it can be proven by means of admissible evidence was executed by the intended appellant. There is no reason in principle why evidence relevant to an Article 4a(1)(c)(i) issue could not be received in the same way.

Possible recourses against an *in absentia* judgment of conviction

9.

a) Does your national law provide for a retrial or an appeal in case of an *in absentia* judgment of conviction (as this expression is defined by your national law)? If so, please describe:

- factually what a retrial or an appeal is under your system;
- whether the retrial or the appeal is a *full* retrial or a *full* appeal (*i.e.* a retrial or an appeal entailing a fresh determination of the merits of the charge, in respect of both law and fact);
- under what conditions and within what time frame the retrial or appeal is provided for.

Not specifically, because in general there is no trial in absentia in Ireland save in the very rare circumstances discussed above. There is only the general right of appeal that applies in the case of all criminal convictions whether summary or on indictment.

The general right of appeal in summary cases is a right to a full re-hearing of all issues of fact and law before the appellate court (the Circuit Court exercising its appellate jurisdiction in respect of decisions of the District Court).

The general right of appeal in indictable cases is confined to a review of the legality of the trial, namely issues relating to the admissibility of evidence, the fairness of the trial procedure, the adequacy and correctness of legal instructions given to the jury, and issues of substantive criminal law relating to the definition of the offence charged and the application/interpretation of relevant statutory provisions or common law rules. The reliefs that may be granted are those set out in s.3(1) of the Criminal Procedure Act 1993, namely:

> "On the hearing of an appeal against conviction of an offence the Court may—
>
> (a) affirm the conviction (and may do so, notwithstanding that it is of opinion that a point raised in the appeal might be decided in favour of the appellant, if it considers that no miscarriage of justice has actually occurred), or

(b) quash the conviction and make no further order, or

(c) quash the conviction and order the applicant to be re-tried for the offence, or

(d) quash the conviction and, if it appears to the Court that the appellant could have been found guilty of some other offence and that the jury must have been satisfied of facts which proved him guilty of the other offence—

(i) substitute for the verdict a verdict of guilty of the other offence, and

(ii) impose such sentence in substitution for the sentence imposed at the trial as may be authorised by law for the other offence, not being a sentence of greater severity."

b) If your national law does provide for the right to a *full* retrial or a *full* appeal, does this right depend on any of the following factors:

- the way the summons for the trial was served on the defendant;

No

- the fact that the defendant was defended by his mandated legal counsellor in his absence

No

and/or

- the way the *in absentia* judgment of conviction (as this expression is defined by your national law) was served on the person concerned?

No

c) If your national law does provide for the right to a *full* retrial or a *full* appeal, is the time frame within which this right may be exercised dependent on any of the following factors:

- the way the summons for the trial was served on the defendant;

No

- the fact that the defendant was defended by his mandated legal counsellor in his absence

No

and/or

- the way the *in absentia* judgment of conviction (as this expression is defined by your national law) was served on the person concerned?

No

To elaborate further, it is reiterated that there is no specific right to an appeal or re-trial in the rare circumstances of a conviction in Ireland in absentia. The applicable time limit is that relating to the general right of appeal, namely, 14 days from the date of the determination appealed against in the case of an appeal from the District Court to the Circuit Court, and 28 days from the date of the determination appealed against in the case of an appeal from either the Circuit Criminal Court or the Central Criminal Court to the Court of Appeal.

10. Does the national law of your Member State provide for a *final instance* appeal on points of law (*cassation*)?

Yes, in the case of indictable offences. These will be tried at first instance by a judge sitting with a jury in either the Circuit Criminal Court or the Central Criminal Court, unless they are terrorist or gangland type offences, in which case they will be tried at first instance by three judges sitting without a jury in the Special Criminal Court. In all of these cases the right of appeal is to the Court of Appeal and it is an appeal on points of law only.

If so:

- does the defendant have a right to be present at the hearing of the *cassation* court?

Yes

- after having quashed the judgment of the court below on a point of law, does the *cassation* court have the power to make a fresh determination of the merits of the charge, in respect of both law and fact, and/or to impose a fresh sentence?

The answer is "No", in the case of the quashing of a conviction. However, in that event the Court of Appeal has the power to remit the case to the first instance court for a re-trial. On any such re-trial there will be a fresh determination of the merits of the charge in respect of both law and fact.

The answer is "Yes", in the case of the quashing of a sentence. In that event the Court of Appeal will impose a fresh sentence.

- if so, please answer questions 2, 4, 5, 6, 7, and 8 with regard to these proceedings
-

Q. 2 Does not arise. A summons is never used to secure the attendance of the convicted person in that situation. If a sentence is quashed by the Court of Appeal the convicted person will either be in custody in which case he will have been brought to the appeal hearing by the prison authorities, or have been bailed to the specific hearing date about which he would have been informed at the time when bail was granted or when last in court.

Q. 4 The appeal would not proceed in the absence of the convicted person, but would be adjourned pending the execution of a bench warrant if he/she was on bail and had failed to appear. An exception to this might arise in the case of a prosecution appeal based on undue leniency in circumstances where the convicted person had either not received a custodial sentence to be actually served at first instance, e.g., had received a wholly suspended sentence, or alternatively where the sentence imposed at first instance had been fully served before the appeal had come on for hearing. In that event, there is no obligation on the convicted person to be present. He/she would not be summoned but the prosecutor would be required to notify him/her in person of the date, time and place of the appeal hearing, and of his/her entitlement to be present in person and to participate if desired. If the appellant was not present at the appeal hearing in circumstances where he/she was not required to be present, and if the Court of Appeal concluded at the end of the hearing that the sentence imposed at first instance was in fact unduly lenient, then the court would quash the sentence imposed at first instance and schedule a re-sentencing. The court would direct that a convicted person be notified in person, or through his/her lawyer, of the the date, time and place of the proposed re-sentencing hearing. If he/she then failed to turn up on that date, a bench warrant would issue for their arrest and the matter would be adjourned pending execution of that warrant. In no circumstances would the re-sentencing proceed in the convicted person's absence.

Q.5 Rarely arises. Re-sentencing hearings almost invariably are held on a single date. It is rare that there are several hearings, unless a required report is not yet to hand. If the appeal was by the accused and they have been successful in having the sentence at first instance quashed on the grounds that it was excessive, it is in their interest to be present for the re-sentencing on all dates in order to receive a more lenient sentence. If they are in custody they will be brought to court. If they are on bail and they fail to turn up on a date that the matter is listed for re-sentencing, a bench warrant would issue for their arrest and the matter would be adjourned pending execution of that warrant. There is no possibility of being sentenced via an audio or video link.

Q.6 The accused is expected to be present in person for any re-sentencing by the Court of Appeal in Ireland, and unless excused by the Court at his/her own request (unlikely but theoretically possible), he/she cannot absent themselves on the basis that they will be represented by a lawyer. Irish law does not expressly prohibit defence by a legal counsellor in the absence of a defendant at re-sentencing hearings but the Court is very unlikely to allow it, save in exceptional circumstances (such as non-cooperation or disruptive behaviour by the convicted person).

Q 7. In Ireland no lawyer can appear for a defendant without express instructions from the client to do so. Accordingly, it is not possible for a

court or anybody else to instruct a lawyer to represent a defendant (who is an adult and of sound mind), whether at a re-sentencing or at any other type of hearing. In those circumstances a "mandated" legal counsellor would mean solicitor, or a solicitor and barrister(s) expressly instructed by the defendant (or in the case of a child or a person or unsound mind his/her "next friend") to represent him/her.
Q.8. See the answers to Q 4 & 5 in this section of the questionnaire.

Transposition of Directive 2016/343

11. Has your Member State transposed Directive 2016/343? If not, why not?

No. Ireland has an entitlement under Protocol 21 to the Lisbon Treaty to decline to opt in to such a measure, and has exercised that entitlement and has not opted in.

Ireland's reason for not opting in is that the provisions relating to the right to silence posed serious difficulties for the investigation and prosecution of serious crime in the Irish system. As those issues were peculiar to the common law system it was considered unlikely that any attempt to amend the Commission proposal in negotiations to provide for it would succeed.

The Irish Constitution already places a very high value on the presumption of innocence both as an aspect of the right to a trial in due course of law guaranteed in Article 38 thereof, and as an aspect of the personal right to one's good name guaranteed in Article 40.3.2 thereof where it is provided that the State *"shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name and property rights of every citizen."*

12. If your Member State has transposed Directive 2016/343, what changes, if any, has this transposition effected?

Not applicable

National legislation

13. Please provide:

- the relevant national legislation concerning service of summons, *in absentia* proceedings and possible recourses against *in absentia* judgments of conviction in the official language of your Member State and

- an English translation thereof.

Annexed in Appendix 1 is S.12 of the Petty Sessions (Ireland) Act 1851 (to the extent not already repealed), s 1 of the Courts (No 3) Act 1986 s. 22 of the Courts Act 1991; and the District Court Rules – Orders 10, 15, 22 and 41.

2.2. Transposition of the FD's

A. General questions

14. Did your Member State transpose Art. 5 par. 1 FD 2002/584/JHA (the provision which was deleted by Art. 2 FD 2009/299/JHA)?

Yes, this was transposed by s.45 of the European Arrest Warrant Act 2003 as originally enacted. It was in the terms:

> "A person shall not be surrendered under this Act if—
>
> (a) he or she was not present when he or she was tried for and convicted of the offence specified in the European arrest warrant, and
>
> (b) (i) he or she was not notified of the time when, and place at which, he or she would be tried for the offence, or
>
> (ii) he or she was not permitted to attend the trial in respect of the offence concerned, unless the issuing judicial authority gives an undertaking in writing that the person will, upon being surrendered—
>
> (i) be retried for that offence or be given the opportunity of a retrial in respect of that offence,
>
> (ii) be notified of the time when, and place at which any retrial in respect of the offence concerned will take place, and
>
> (iii) be permitted to be present when any such retrial takes place."

15. When did the national legislation transposing Art. 2 FD 2009/299/JHA enter into force?

The European Arrest Warrant (Application To Third Countries and Amendment) and Extradition (Amendment) Act 2012, (the Act of 2012) was intended to transpose Art. 2 FD 2009/299/JHA. It commenced on the date of its enactment, which was the 24th of July 2012.

16. Has your Member State implemented Art. 2 FD 2009/299/JHA fully, taking into account the case law of the Court of Justice (see footnote 2)? If not, please describe in which way the national legislation deviates from FD 2009/299 JHA.

For the most part it has.

S.45 of the Act of 2003 was amended by s.23 of the Act of 2012 to transpose the amendments effected to Framework Decision 2002/584 by Framework Decision 2009/299, and in particular to give effect to the new Article 4a of Framework Decision 2002/584 as amended.

S.45 of the Act of 2003 as amended by s.23 of the Act now provides:

> "A person shall not be surrendered under this Act if he or she did not appear in person at the proceedings resulting in the sentence or detention order in respect of which the European arrest warrant was issued, unless the European arrest warrant indicates the matters required by points 2, 3 and 4 of point (d) of the form of warrant in the Annex to the Framework Decision as amended by Council Framework Decision 2009/299/JHA, as set out in the table to this section.
>
> TABLE
>
> (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,
OR
❒ the person did not request a retrial or appeal within the applicable time frame;
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 time frame within which he or she has to request a retrial or appeal, which will be . . . days.
4. If you have ticked the box under points 3.1b, 3.2 or 3.3 above, please provide information about how the relevant condition has been met:
.....
.....".

It is clear that the Irish parliamentary draftsman has adopted the expedient approach of cutting, and pasting within the new s.45, the new form of point (d) on the European Arrest Warrant template as it now appears in the annex to Framework Decision 2002/584 as amended by Framework Decision 2009/299, and obviously the use a verbatim reproduction of the language of point (d) is helpful in ensuing minimum unintended errors in transposition.

The one reservation I have concerns the use of the word "shall" in the first line of s.45 as amended. It might be argued that it represents the

transposition of Article 4a as a mandatory ground for refusal, and thereby excluding the possibility of an executing judicial authority having residual discretion such as that suggested by the Court of Justice (in *Dworzecki* at paragraphs 50 and 51, and reiterated in *Tupikas* at paragraph 96) to surrender, notwithstanding that the cases described in paragraph 1(a) to(d) of Article 4a do not cover the situation of the person who is the subject of the European Arrest Warrant, if it can be satisfied, by taking into account other circumstances, that the surrender of the person concerned would not entail a breach of his/her rights.

Arguably, it would represent a satisfactory transposition if the work "shall" could be read as "may", which is the word actually used in Article 4a of the amended Framework Decision, by giving the current version of s. 45 of the Act of 2003 as amended a conforming interpretation (applying Case C-105/03 *Pupino* and Case C579/15 *Popławski*). However, although the point would require to be fully argued and ruled upon by the Irish High Court, and there has been no such ruling to date, a case could be advanced to the effect that such a conforming interpretation would not be possible having regard to the decision of the Irish Court of Appeal in ***Minister for Justice and Equality* v *Palonka* [2015] IECA 69**
http://www.courts.ie/Judgments.nsf/0/C69FB916D816FEBB80257E51003D3114 and
http://www.courts.ie/Judgments.nsf/0/D360C96A54732F9280257E51003B8A78
The Court of Appeal in *Palonka* allowed an appeal against a decision of the High Court (I was in fact the High Court judge concerned) which had ordered the surrender of a person in circumstances where the issuing judicial authority had certified, by ticking the box corresponding to 3.2 in the Table, but had failed to provide any amplifying information in response to the request to do so at point 4 in the Table. See *Minister for Justice and Equality* v *Palonka* [2014] IEHC 515
http://www.courts.ie/Judgments.nsf/0/C07ED9DF4F700FE680257D9500593FF6
The Court of Appeal took the view that to interpret s.45 as amended in the manner that the High Court had done, went beyond the limits of a conforming interpretation, and that it was in fact *contra legem*. Amongst the factors that influenced the Court of Appeal was the fact that s.16 of the Act of 2003, which as originally enacted provided that ""*where a judicial authority in an issuing state issues a European arrest warrant in respect of a person …… that person shall, subject to and in accordance with the provisions of this Act and the Framework Decision, be arrested and surrendered to the issuing state*" (emphasis added), had been amended to remove the words "and the Framework Decision". Accordingly surrender now has to be solely in accordance with the provisions of the domestic transposing legislation,

the literal interpretation of which is clear and unambiguous. The Act requires that "a person shall not be surrendered" unless the warrant "indicates the matters required by points 2, 3 and 4 of point (d)" The Court of Appeal held that, based on a correct statutory interpretation of the transposing legislation, the failure to complete point 4 was fatal to any possibility of lawful surrender.

The decision of the Irish Court of Appeal in *Palonka* represents a binding precedent in Irish law. However, it leaves open the possibility that in a future case it might be argued that s.45 in its present form represents an ineffectual or inadequate transposition of FD 2002/584/JHA as amended by FD 2009/299/JHA.

Two points require to be appreciated.

First, The Court of Appeal decision in *Palonka* pre-dates both the *Dworzecki* and *Tupikas* decisions, and the effectiveness of the transposition of Article 4a is arguably questionable in the light of those decisions. Admittedly, *Dworzecki* and *Tupikas* were not concerned with a failure to provide amplifying information, but what they do establish is that surrender can be effected providing the executing judicial authority is satisfied that the rights of the accused were not breached in the in absentia procedure, and that it is not necessarily dependent on, or constrained, by, what is contained in the Table in Part (d).

The approach of the High Court had been that the information certified in point 3.2 was sufficient in the circumstances of the case (although there might well be other cases where that would not be true) absent any challenge by the requested person to the correctness or accuracy of what was certified, or any ostensible contradiction of what was certified either in the warrant itself or in accompanying information. In that event, the presence or absence of amplifying information in point 4 might be of significance, and have the potential to tip the scales one way or the other, but not otherwise.

Secondly, the Irish High Court (and on appeal the Court of Appeal and the Supreme Court, respectively) only acquired the right to seek a preliminary reference in an EAW matter with effect from the 1st of December 2014. Accordingly a preliminary reference would not have been possible at first instance in *Palonka,* as my judgment at first instance was delivered on the 4th of November, 2014. While it was a possibility open to the Court of Appeal, it is not apparent if it gave consideration to seeking the opinion of the CJEU as to whether all points, and in particular point 4, in the Article 4a Table must of necessity be completed before the surrender of a person tried in absentia would ever be possible. The Court of Appeal appear to have been of the view that s.45 of the Act of 2003 (as amended) was *acte clair*.

I predict the issue will arise again

17. Was Article 4a FD 2002/584/JHA transposed as a mandatory or as an optional ground for refusal? Was there any debate on this when transposing Art. 2 FD 2009/299/JHA? If so, what were the motives for the final choice made?

On one view of it, Art. 2 FD 2009/299/JHA has ostensibly been transposed as a mandatory ground for refusal. I am unaware of any public discourse prior to the enactment of the Act of 2012 concerning whether it required to be transposed as a mandatory or optional ground of refusal. I have checked and can find nothing of relevance in our parliamentary debates from the time. It is possible that there may have been some internal governmental debate between the parliamentary draftsman's office and the Attorney General and/or the Ministry of Justice, but if so I am unaware of it.

18. Given that Article 4a FD 2002/584/JHA is an optional ground for refusal, do the Member States have to transpose this ground for refusal?

Not everyone would necessarily accept the premise in this question. It is very easy in this context to conflate the notion of opting in to including Article 4a as a potential ground for refusal of surrender, and the notion of "optionally" not surrendering on Article 4a grounds. The first is an issue for the member state concerned. The second is an issue for an executing judicial authority.

If a member state decides to opt in to including Article 4a as a potential ground for refusal of surrender then it must faithfully transpose Article 4a into its domestic law. However, it might be argued that any transposition of Article 4a must preserve the right of an executing judicial authority to exercise discretion on whether or not to surrender, where it is appropriate to do, as suggested in *Dworzecki* (at paragraphs 50 and 51), and reiterated in *Tupikas* (at paragraph 96).

19. If your Member State has transposed Article 4a FD 2002/584/JHA as an *mandatory* ground for refusal, will the executing judicial authorities of your Member State apply this optional ground for refusal *proprio motu* or not?

It is certainly possible. The decision of the Court of Appeal in *Palonka* predates the decisions of the CJEU in *Dworzecki* and *Tupikas*, and if the issue comes up before an Irish court again, the judgments in *Dworzecki* and *Tupikas* are likely to be very influential, and such court would have to carefully examine whether a means exists to apply them.

20. If your Member State has transposed Article 4a FD 2002/584/JHA as an *optional* ground for refusal, will the executing judicial authorities of your Member State apply this optional ground for refusal *proprio motu* or not?

Does not arise

14. Which authority is/which authorities are responsible in your Member State for issuing and executing EAW's?

The High Court is the judicial authority responsible for the issuing and executing of European Arrest Warrants. The High Court is a court of full original jurisdiction, unlike the Circuit Court and District Court below it which are courts of local and limited jurisdiction. It is the highest level court of first instance in Ireland. The policy decision to reserve the jurisdiction to issue and execute EAWS solely to the High Court reflects the circumstance that extradition and rendition have always been politically sensitive issues in Ireland, particularly renditions between Ireland and the United Kingdom arising in the context of the Northern Ireland troubles. In practice an individual High Court judge is designated as the judge in charge of the Extradition and EAW lists and is assigned full time to such work. From time to time a second judge may be seconded to assist the designated judge, depending on her workload. The High Court is assisted in its work as the issuing and executing authority for European Arrest Warrants by a Central Authority (nominally the Minister for Justice but de facto a senior official in the Ministry) whose role is facilitative only.

B. Your Member State as issuing Member State

22.

a) Who exactly fills out EAW's within the issuing judicial authority?

A solicitor in the Chief State Solicitor's office, acting in liaison with Central Authority, initially completes the EAW form which at this point represents only a draft EAW. The solicitor then attends ex parte before the designated High Court judge and outlines the circumstances of the case, presents the draft warrant, and briefs the judge concerning potential or anticipated problems. The judge then scrutinises the draft warrant and satisfies herself that it is an appropriate case in which to issue an EAW, and that the form of the draft warrant presented to the court is appropriate. If so satisfied, the High Court judge will sign the warrant in her capacity as the issuing judicial authority.

b) What are the formalities for issuing an EAW? Does your Member State have form sheets for that?

The formalities for the issuing of a European Arrest warrant are set forth in Chapter 2 of the European Arrest Warrant Act 2003 (as amended by the (Criminal Justice (Terrorist Offences) Act, 2005; the Criminal Justice (Miscellaneous Provisions) Act, 2009; and the European Arrest Warrant

(Application to Third Countries and Amendment) and Extradition (Amendment) Act 2012), and in particular in sections 31 to 34 inclusive thereof, which provide:

> "*Chapter 2*
> Issue of European Arrest Warrant by State
> **31.—**In this Chapter—
>
> ''domestic warrant'' means a warrant (other than a European arrest warrant) issued, for the arrest of a person, by a court in the State;
>
> ''European arrest warrant'' means a warrant to which the Framework Decision applies issued by a court, in accordance with this Chapter and for the purposes of—
>
> (a) the arrest, in a Member State, of that person, and
>
> (b) the surrender of that person to the State by the Member State concerned.
>
> **32.—**(1) For the purposes of paragraph 2 of Article 2 of the Framework Decision, the Minister may, by order, specify the offences under the law of the State to which that paragraph applies.
>
> (2) The Minister may, by order, amend or revoke an order under this section (including an order under this subsection).
>
> (3) This section shall not operate to require that an order under this section be in force before a court may issue a European arrest warrant under section 33.
>
> **33.—** (1) A court may, upon an application made by or on behalf of the Director of Public Prosecutions, issue a European arrest warrant in respect of a person where it is satisfied that—
> (*a*) a domestic warrant has been issued for the arrest of that person but has not been
> executed, and
> (*b*) a term of imprisonment or detention of not less than 4 months has been imposed on the person in respect of the offence concerned and the person is required to serve all or part of that term of imprisonment or detention, or, as the case may be, the person would, if convicted of the offence concerned, be liable to a term of imprisonment or detention of 12 months or more than 12 months.,

(1A) Where a court issues a European arrest warrant in respect of a person under this section, such issue shall be deemed to constitute a request by the court for entry of an alert and of a copy of the European arrest warrant in respect of that person.

(2) A European arrest warrant shall, in so far as is practicable, be in the form set out in the Annex to the Framework Decision as amended by Council Framework Decision 2009/299/JHA and shall specify—

(a) the name and the nationality of the person to whom it relates,

(b) the name, address, fax number and e-mail address of—

(i) the District Court Office for the district in which the District Court was sitting when it issued the European arrest warrant,

(ii) the Circuit Court Office of the county in which the Circuit Criminal Court was sitting when it issued the European arrest warrant,

(iii) the Central Office of the High Court, or

(iv) the Registrar of the Special Criminal Court,

as may be appropriate,

(c) the offence to which the European arrest warrant relates including a description thereof,

(d) that a conviction, sentence or detention order is immediately enforceable against the person, or that a domestic warrant for his or her arrest has been issued in respect of that offence,

(e) the circumstances in which the offence was committed or is alleged to have been committed, including the time and place of its commission or alleged commission, and the degree of involvement or alleged degree of involvement of the person in the commission of the offence, and

(f) (i) the penalties to which the person named in the European arrest warrant would, if convicted of the offence to which the European arrest warrant relates, be liable,

(ii) where the person named in the European arrest warrant has been convicted of the offence specified therein and a sentence

has been imposed in respect thereof, the penalties of which that sentence consists, and

(iii) where the person named in the European arrest warrant has been convicted of the offence specified therein but has not yet been sentenced, the penalties to which he or she is liable in respect of the offence.

(3) Where it is not practicable for the European arrest warrant to be in the form set out in the Annex to the Framework Decision, the European arrest warrant shall, in addition to containing the information specified in subsection (2), include such other information as would be required to be provided were it in that form.

(4) For the avoidance of doubt, a European arrest warrant may be issued in respect of one or more than one offence.

(5) In this section ''court'' means—

(a) the court that issued the domestic warrant to which to which subsection(1)(*a*) applies, or

(b) the High Court.

34.—A European arrest warrant issued under section 33 may be transmitted to a Member State by the Central Authority in the State.

Ireland does not have form sheets for issuing an EAW. Guidance is drawn from Commission Notice C(2017) 6389 final of 28.09.2017 entitled HANDBOOK ON HOW TO ISSUE AND EXECUTE A EUROPEAN ARREST WARRANT.

c) How does the issuing judicial authority usually fill in part (d) of the EAW-form in case none of the options under 3. apply?

It simply does not arise. Because we do not routinely try persons *in absentia*, Question 1 in Part (d) is invariably answered in the affirmative. I can confidently say that in the fifteen years that the European Arrest Warrant system has been in operation in Ireland there has no case in which Question 1 has not been answered in the affirmative. In the theoretical instances that I have described earlier involving an accused who has refused to emerge from his/her cell, or who is put out of court because he/she is disruptive so that the trial continues in his/her absence, or who absconds mid trial in circumstances where he/she was on bail, it might be necessary to answer Question 1 in the

negative and Question 3 in the affirmative, but to date there has been no such case. In any event, were such a case to arise, I cannot at the moment conceive of how it could occur in the context of how the Irish criminal justice operates that none of the options under 3 could apply.

d) Which information does the issuing judicial authority usually provide under 4 in section (d) of the EAW-form?

Once again, because we do not routinely try people *in absentia*, and because the experience to date has involved Question 1 being invariably answered in the affirmative, it has not ever been necessary to provide amplifying information in response to Question 4.

23. How does the competent authority of your Member State inform the surrendered person about his/her rights according to Article 4a(1)(d)(i and ii) FD 2002/584/JHA?

Again, this is a hypothetical because no such case has arisen to date in the Irish legal system. However, I would re-iterate what I said earlier in response to query no 8(a) above:

> "Theoretically, the position would be as follows. Following the announcement of the verdict in court, whether by a judge sitting alone in the case of a summary trial in the District Court, or by the foreman of the jury in the case of a trial on indictment in either the Circuit Criminal Court or the Central Criminal Court, the matter would proceed to a sentencing either immediately or following an adjournment. The proceedings are only concluded once sentence is imposed and it is only at that point that an Order of Conviction and Committal Warrant is drawn up by the court's registrar.
>
> In a situation where a trial has had to proceed or continue without the accused being present in person, due to his/her non-cooperation or disruptive behaviour, it is a virtual certainty that the accused would be in custody at this stage. If he had been on bail at the time of creating disruption the trial judge would have ordered his arrest and revoked his bail. If the convicted person was not legally represented at that point, the trial judge would likely direct the prosecution to bespeak the Order of Conviction and Committal Warrant from the registrar and serve it personally on the accused in custody. Moreover, although there is no express provision of Irish law requiring it, a prudent trial judge would further direct that the convicted person be informed either by the prosecutor, or by the prison authorities on his/her reception into custody to serve the sentence on foot of the relevant Committal Warrant, concerning his/her right of appeal against conviction and/or sentence.

> If the accused had absconded mid trial in breach of his/her bail, and the proceedings had continued in his/her absence to the point at which a jury had returned a verdict of conviction then there would be two possibilities. Sentencing could be adjourned pending execution of on arrest warrant, as occurred in the rape case described in the response to Q.5. Alternatively, sentence could be passed in the absence of the accused, as occurred in the more recent case. proceed to a jury verdict. If in the first scenario the accused is apprehended and brought before the court for sentencing he will be informed in court of the fact of his conviction by the jury, and following his sentencing he will be served with the Order of Conviction and Committal Warrant in the normal way. However, if he has been sentenced in his absence two possibilities arise. If he was in custody at the time of sentencing, but not present in the courtroom either by choice or on account of bad behaviour, he will be again served with the Order of Conviction and Committal Warrant in the normal way. However, if the convicted person is still at large then his notification must await his location either at home or abroad. When he/she has been located then personal service in the Dworzecki /Sliczynski is likely to be required. However, I do not believe the latter situation has ever arisen."

In the event of the person concerned somehow absconding, and leaving the jurisdiction, thereby necessitating the issuance of a European arrest warrant, I would expect that the issuing judicial authority would direct the Irish Central Authority , at the time of judicially certifying the matters specified in Part (d) 3.4 of the EAW, to serve the respondent personally with the Order of Conviction and Committal Warrant immediately following his surrender, together with a document detailing his rights in respect of an appeal, the time limits involved, the documentation required, and specifying where and to whom appeal the relevant documentation should be sent; and to suggest that on an *ex abundante cautela* basis this must be done regardless of whether or not it is believed that the respondent has previously received this information.

24. How does the competent authority of your Member State ensure regular review of the custodial measures in accordance with the law of your Member State while the surrendered person is awaiting his/her retrial/appeal (Article 4a(3) FD 2002/584/JHA)?

The right to personal liberty is guaranteed in Article 40 of the Irish Constitution. It is not, however, an unqualified right and so personal liberty may be denied "in accordance with law". However, there is an effective presumption in favour of bail and so while our law provides for

pre-trial detention where there is a risk of flight, a risk of interference with witnesses or jurors, or in certain cases where there are grounds for believing that the suspect may commit further serious offences if allowed to remain at liberty, any proposed pre-trial detention must be proportionate to the risk. It is not enough for the prosecuting authorities to simply assert a risk. There must be concrete and cogent evidence suggesting that the risk is a real one. Moreover, before bail will be denied the court must be satisfied that no regime of conditional release would suffice to meet the perceived risk.

Bail hearings in Ireland tend to be rigorous and probing, and they are in no way perfunctory. The likely time that an accused will be waiting to receive a trial (or re-trial) is a relevant consideration that the court must take into account in considering whether or not to grant bail, and if so on what conditions. Other relevant considerations would include the nature of the charge and the strength of the evidence against the accused, as well as any evidence tending to establish or to dispel the existence of any risk contended by the prosecution, e.g., previous flight necessitating the issuance of an EAW would be one, being found in possession of forged documentation such as a passport or driving licence would be another. The accused's financial resources, his/her ties to the jurisdiction such as owning property, or having family resident in the jurisdiction, or having a job in the jurisdiction, and other such matters would all be taken into account.

If bail is denied, there is always a right of appeal to an appellate court. Moreover, quite apart from any right of appeal an accused can return to the court of first instance at any time seeking to have the decision reviewed and altered, if he/she can demonstrate a material change in the circumstances on foot of which the original decision was made. In addition, a person whose re-trial or appeal had not commenced "within due time after the surrender" would have the right to seek an inquiry into the lawfulness of his/her continued detention under Article 40.4 of the Constitution of Ireland (in substance, the right to seek an order of *habeas corpus*).

C. Your Member State as executing Member State

25. How does your Member State ensure being able to "immediately" provide the accused with a copy of the judgment when s/he requests so, in cases where s/he had not been informed about the existence of criminal proceedings against him (Article 4a(2) FD 2002/584/JHA)?

There is no realistic possibility in Irish law of criminal proceedings being taken against a person without their knowledge for a matter which could be the subject of a European arrest warrant. Such a case has never arisen, and I believe could not arise.

In the theoretical case of an accused who had been convicted on indictment in his absence in circumstances where he had absconded, and who was still abroad, requesting a copy of the "judgment" of the court which had convicted him, he would be immediately supplied by the relevant court office with a copy of the Order of Conviction and Committal Warrant. Moreover, he would be advised as to his rights with respect to an appeal. However, he will not be supplied with a full transcript of the proceedings at first instance unless and until he has lodged an actual Notice of Appeal. This rule applies to all potential appellants, and not just appellants who are not present for their conviction.

D. EAW-form

26. Does your national law oblige the issuing judicial authorities of your Member State to use the EAW-form as amended by Art. 2 FD 2009/299/JHA?

Yes.

27. If the issuing judicial authority of another Member State uses the 'old' EAW-form, what, if any, consequences should this have for the decision on the execution of the EAW from the perspective of the executing authorities of your Member State?

It is of significance, although it is not necessarily fatal providing the Central Authority, or if it has not already been done by the time the case comes on for hearing, then the executing Judicial Authority, i.e., the designated High Court judge, reverts to the issuing judicial authority requesting them to provide answers by way of additional information to questions that mirror exactly those in Part (d) on the new EAW-form.

The issue is of significance for several reasons.

Firstly, amongst the amendments effected to our European Arrest Warrant Act 2003 in order to transpose Framework Decision 2009/299/JHA, was an amendment to s.16 thereof, as a result of which it now reads:

> **16.—**(1) Where a person does not consent to his or her surrender to the issuing state the High Court may, upon such date as is fixed under section 13, make an order directing that the person be surrendered to such other person as is duly authorised by the issuing state to receive him or her, provided that—
>
> (*a*) [not relevant]
>
> (*b*) [not relevant]

(c) the European arrest warrant states, where appropriate, the matters required by section 45 (inserted by *section 23* of the *European Arrest Warrant (Application to Third Countries and Amendment) and Extradition (Amendment) Act 2012*),

(*d*) [not relevant], and

(*e*) [not relevant].

S. 45 in turn provides:

"**45. —** A person shall not be surrendered under this Act if he or she did not appear in person at the proceedings resulting in the sentence or detention order in respect of which the European arrest warrant was issued, unless the European arrest warrant indicates the matters required by points 2, 3 and 4 of point (d) of the form of warrant in the Annex to the Framework Decision as amended by Council Framework Decision 2009/299/JHA, as set out in the table to this section.

TABLE

(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,
OR
❒ the person did not request a retrial or appeal within the applicable time frame;
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 time frame within which he or she has to request a retrial or appeal, which will be . . . days.
4. If you have ticked the box under points 3.1b, 3.2 or 3.3 above, please provide information about how the relevant condition has been met:
.....
.....".

The combined effect of s.16 and s.45 is that surrender is not permissible unless states the warrant states the matters required to be stated by section 45, i.e., that it provides the information required by Part(d) of the new EAW-form. The Irish Court of Appeal in ***Minister for Justice and Equality v Palonka*** (previously referred to) stressed that the domestic Act requires that "a person shall not be surrendered" unless the warrant "indicates the matters required by points 2, 3 and 4 of point (d)" The Court of Appeal held that, based on a correct statutory interpretation of the transposing legislation, the failure to indicate any of the required matters would be fatal to any possibility of lawful surrender.

Secondly, it is significant because in ***Minister for Justice and Equality v Surma*** [2013] IECA 618 http://www.courts.ie/Judgments.nsf/0/D912817B774D313480257C630034F514 the Irish High Court, following Melloni v Ministerio Fiscal [2013] 2 CMLR 43, found that the amendments effected to our European Arrest Warrant Act 2003 by the Act of 2012 in order to transpose Framework Decision 2009/299/JHA, were procedural in nature rather than substantive. Accordingly, they were retrospective in effect and applied in the case of EAWs already in the system when the Act of 2012 was commenced, i.e old form EAWs that had been received in the State and endorsed for execution before the Act of 2012 was commenced, and on foot of which a surrender hearing was still pending. The High Court went on to say

> "The retrospective nature of the recent amendments to ss. 11, 16(1) and 45 respectively of the Act of 2003, will not create an insurmountable problem for the applicant in most cases. In practice, warrants not already endorsed are not being presented for endorsement until additional information in the form now required by the Table in s. 45 as amended has been obtained, and both the warrant and the additional information are presented to the Court at the time of endorsement and are read as one document. As regards the small number of cases where warrants not in the correct form had already been endorsed and in which proceedings were already underway on the 24 July 2012, the position can be remedied ex post facto the endorsement by the seeking of additional information in the required form, which again can be read by the Court with the warrant as though the material was all in one document. If necessary, the Court can seek this information of its own motion invoking its powers under s. 20(1) of the Act of 2003.
> In the present case, the Court has been furnished with additional information dated the 2nd August 2013 consisting of a letter from the issuing judicial authority enclosing completed section (d) of the form of the warrant in the new (i.e., amended) form. That document certifies, per paragraph 3.1a, that Pawel Surma "*was summoned in person on 13/09/2004 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*." Reading that document with the original warrant the Court can in fact be satisfied in the circumstances of this case that the precondition set out in s.16(1)(c) of the Act of 2003 as amended by the Act of 2012 has been met. In the circumstances this Court considers

> that it is at liberty to surrender the respondent, and will do so in circumstances where it is satisfied that all of the other requirements of the Act of 2003 as amended, and of s. 16(1) of the Act of 2003 in particular, have been met."

In the subsequent case of ***Minister for Justice and Equality v A.P.L*** **[2015 IEHC 458**
http://www.courts.ie/Judgments.nsf/0/7DAD53F0590D4A2880257E8A0052C81B
(i.e., Arkadiusz Piotr Lipinski - the ***Lipinski*** case) there was, *inter alia*, an issue concerning the form of the warrant. While this case is best known for the substantive issue raised concerning whether the *in absentia* provisions of the Framework Decision apply to hearings to lift the suspension of a sentence, and there are subsequent judgments of both the Court of Appeal and the Supreme Court engaging with that issue, the High Court was in addition required to determine the following issue:

> **"Form of Warrant**
> 93. Counsel submitted that the warrant is not in the correct form. She argued that *Surma* suggested that if the appropriate matters were not certified in the EAW, the position can be remedied by seeking additional information. However, this would have to confirm the matters set out in the Table.
> 94. I have considered the issue of the form of the warrant in this case. No section (d) in the new form is filled in. I note that in *Surma* and in *Obst*, a further section (d) was sent by way of additional information. The import of all the documentation in this case is that the Polish authorities were of the view that the issue in section (d) of the EAW was a matter that "does not concern" as he was present for his trial. I note also that information was sought in this case and it confirms unequivocally that the respondent was present at the hearing and the original sentencing as set out in detail above. The respondent has never contested that by evidence or in submission – he preferred not to address it at all in his affidavit. He is not required to do so as the onus is on the court to be satisfied that the conditions set out in s. 45 have been met. It has long been established in the case law that the court should take the statements set out in an EAW and additional documentation at face value.
> 95. In this case, it is abundantly clear that he was present at his trial (even giving that phrase a wide meaning to include the original sentence hearing). I have no hesitation in finding that the EAW and additional documentation give the clearest possible indication that the respondent "appeared in person at the trial resulting in the decision". Is this finding to be set aside by a failure to conform with the new rules applicable to part (d) of the EAW

form, *i.e*. by the failure to complete the new form as required under section 45?
96. Section 45 (c) requires consideration and it provides as follows:
"For the avoidance of doubt, an application for surrender under section 16 shall not be refused if the Court is satisfied that no injustice would be caused to the person even if—
(a) there is a defect in, or an omission of, a non-substantial detail in the European arrest warrant or any accompanying document grounding the application,
(b) there is a variance between any such document and the evidence adduced on the part of the applicant at the hearing of the application, so long as the Court is satisfied that the variance is explained by the evidence, or
(c) there has been a technical failure to comply with a provision of this Act, so long as the Court is satisfied that the failure does not impinge on the merits of the application."
97. In *Palonka*, the Court of Appeal held that the failure to provide the information at para. (d) 4 was not a breach that could be excused under this section of the Act of 2003. That was in circumstances where the information was vital to an understanding of the certification under (d) 3 given by the issuing judicial authority where it was already certified that the requested person had not appeared at the trial. The information at para. (d) 4 only has to be given where the box has been ticked that the requested person was not present at the trial. No such information is required where the issuing judicial authority has indicated that the person appeared at the trial.
98. In my view, the lack of the new form section (d) in the EAW is clearly a technical failure to comply with a provision of the Act. I am satisfied that its failure does not impinge on the merits of the application. The new s. 45 would not require any further information than that which has already been given in this case. I am also satisfied that no injustice has been caused by this technical failure to comply with the provisions of the Act. Therefore, I am satisfied that the technical failure to comply with the form requirements under s. 45 is not a bar to surrender where all the information required by s. 45 has been provided to this Court."

E. Language regime

28. Has your Member State made a declaration as provided for in Art. 8(2) FD 2002/584/JHA?

No.

Because English is an official language in Ireland, non English speaking member states invariably supply an English translation of the warrant. However, the Irish High Court shares the experience of the Amsterdam District Court that in some cases the English translation provided represents an *ad hoc* translation that may deviate from the official English language version of the EAW –form. The practice of the Irish High Court is to construe the translation provided in conjunction with the official original language version of the EAW-form and the official English language version of the EAW –form. Usually any differences encountered can be easily resolved, eg where instead of the word "murder" used in the official translation of the Article 2(2) list in Part (e) of the warrant, the *ad hoc* translation refers to "killing", or "homicide". In the case of irreconcilable difficulty the Central Authority, which scrutinises all incoming EAWs on a preliminary basis before presenting them to the High Court for endorsement for execution in the Irish jurisdiction, would revert to the issuing judicial authority seeking clarification concerning exactly what meaning was intended before presenting the warrant to the High Court for endorsement.

If so,

- what does this declaration entail?

Not applicable.

- where was it published? Please provide a copy in English.

Not applicable

29. If the translation of the EAW deviates from the official EAW-form in the language of the executing Member State – or from the official EAW-form in the designated language –, what, if any, consequences should this have for the decision on the execution of the EAW from the perspective of the executing authorities of your Member State?

The Irish High Court will not endorse a warrant for execution that is unclear or ambiguous. If a lack of clarity or ostensible ambiguity resulting from a deviation from the official EAW form (either in terms of the designated language, or the English translation provided), can be resolved in the manner suggested in the answer to 28 above, then the consequences will not be fatal.

However, if they cannot be satisfactorily resolved, the High Court will refuse to endorse the warrant for execution.

F. Multiple decisions

30. If section (b) of the EAW-form lists multiple decisions with regard to the same proceedings but section (d) of the EAW-form does not state which decision(s) it refers to, what, if any, consequences should this have for the decision on the execution of the EAW from the perspective of the executing authorities of your Member State?

The position routinely taken by the Irish High Court is that clarity is required where section (b) lists multiple decisions. If the Court is faced with a lack of clarity in that regard it will request additional information from the issuing judicial authority. This, however, has the inevitable consequence of delaying any possible surrender. Sometimes the reply received may only partly clarify the position, necessitating a further supplementary request for additional information. In practice, the Irish Central Authority in its role as facilitator will have scrutinised the warrant in advance of any surrender hearing and may have anticipated that the executing judicial authority is likely to need additional information. In that event, the Central Authority is likely to have sought the necessary information itself on a contingent basis through its opposite number in the issuing state. This information may therefore already be available by the time the surrender hearing occurs, or may be awaited. In either circumstance the intervention of the Central Authority will have served to either eliminate, or at least reduce, any potential for delay associated with obtaining the necessary clarification.

G. The component parts of Article 4a FD 2002/584/JHA

G.1 Meaning of 'the trial resulting in the decision': confirmation of a deal between the defendant and the public prosecutor as to the penalty to be imposed (and other special proceedings)?

31. Does a judicial decision confirming a deal between the defendant and the public prosecutor as to the penalty to be imposed come within the ambit of Art. 4a?

In Ireland any kind of plea bargaining is strictly prohibited. The prosecutor is not permitted to do a deal on penalty, or even to recommend a penalty to the court, in any circumstances.

32. Does a judicial decision which imposes a penalty without having held a trial or a decision by an authority other than a judge or a court imposing a penalty come within the ambit of Art. 4a?

The notion of a trial in Irish law embraces both the determination of criminal liability and the imposition of penalty consequent on that. It is regarded as being of a unitary nature. Accordingly there can be no imposition of a criminal penalty without there having been a trial. Of course, an accused can plead guilty and his/her admission of guilt may shorten the trial, and in that event apart from the accused's

arraignment the entire trial will be taken up with his/her sentencing. It is still a trial in Irish law however.

Under the Irish Constitution only judges appointed under, or in accordance with, the Constitution can administer justice. The imposition of anything in the nature of a penalty other than a purely administrative penalty (eg a fine for the late filing of a tax return) is considered to be the administration of justice, and it can only be imposed by a judge or court. A custodial sentence, whether suspended or to be served, can only be imposed by a judge or court following a trial in the sense understood in Irish law. Administrative penalties do not come with Article 4a.

33. Does the national law of your Member State provide for:

- the imposition of a penalty without having held a trial;

No, save in the case of purely administrative financial penalties to which the EAW system does not apply.

- the imposition of a penalty by an authority other than a judge or a court? If so, how are the rights of the defence guaranteed in such proceedings?

No, save in the case of purely administrative financial penalties to which the EAW system does not apply.

G.2 Meaning of 'the trial resulting in the decision': the trial itself or the pronouncement of the judgment?

34. What is the meaning of the words 'the trial resulting in the decision' in Art. 4a?

In Irish law the two things are inseparable. Even if there are adjournments so that different stages of the trial take place on different dates the trial is considered to be a unitary procedure. The trial is not over until the verdict on liability and (in the event of a guilty verdict) the decision or judgment as to sentence has been pronounced, and this is true even if a judgment is reserved for some time (eg following an appeal). Moreover, the Irish Constitution requires justice to be administered in public. Accordingly, all verdicts/decisions/ judgments must be pronounced during a public sitting of the court. If it is a jury trial the verdict as to liability will be announced by the jury foreman while the court is sitting in public session. If it is a sentencing decision the judge will similarly deliver his/her ruling while the court is in public session. It is not possible to deliver a verdict, decision or judgment solely by means of some form of private publication to the parties, e.g., on the basis that they must collect it at the court office, or that it will be posted out to them, or e-mailed to them, or uploaded to a web-site.

There must be a public court sitting which the accused is both entitled to, and expected to, attend, and during which the relevant verdict, decision or judgment will be pronounced.

In terms of how the Irish Courts approach the concept of "the trial resulting in the decision" for the purposes of Article 4a, it is considered that it covers any substantive (as opposed to purely procedural) hearing culminating in a verdict on the liability issue (in cases where the accused has pleaded not guilty and has contested his criminal liability) and / or that culminating in a decision/judgment on the imposition of a sentence, where the accused has either been found guilty or has pleaded guilty.

G.3 Trial consisting of several hearings

35.

a) If the trial resulting in the *in absentia* judgment of conviction consisted of several hearings and the defendant was present at one or more but not all of these hearings, has the condition that 'the person did not appear in person at the trial resulting in the decision' been met?

Once again, it must be re-iterated that Ireland does not routinely try people *in absentia*, although it is theoretically possible in the exceptional circumstances previously outlined. It has never happened to my knowledge since the introduction of the European Arrest Warrant Act 2003. If an Irish Court were required to consider the issue it is likely that it would pay close regard to the jurisprudence of the European Court of Human Rights concerning the circumstances in which a breach of the right to be present in person might be found to exist. Whether the condition was met would depend on the reasons for the accused's absence during part of the trial eg., whether it was due to him/her absconding, or deliberately absenting him/herself, or causing him/herself to be removed from court by disruption, or due to illness, or accident, or some other circumstance involving *force majeure*. The focus of the enquiry would most likely be on whether the accused should be regarded by his/her conduct as having waived the right to be present in person throughout the trial. If so, the condition would most likely be considered not to have been met. If not, the condition would most likely be considered to have been met.

b) Does it matter what transpired at the hearing(s) at which the defendant was present or is the mere presence of the defendant at one of the hearings enough to preclude the applicability of Art. 4a?

The issue has never arisen. However, to answer on a hypothetical basis, it might be cogently argued that mere presence on one occasion would automatically preclude the applicability of Article 4a.,

particularly if that occasion involved a purely procedural hearing in the preliminary stages of the criminal procedure, eg., involving an application to vary a bail condition, or the seeking of a witness summons.

c) If it does matter what transpired at the hearing(s) at which the defendant was present, on the basis of which criteria do you establish whether the defendant was present 'at the trial resulting in the decision'?

This is in effect an invitation to speculate on what criteria might be applied by an Irish Court in circumstances where the situation has never arisen in Ireland. It, like many of the questions on this questionnaire, are slightly uncomfortable for me because if I express a view, and it is published in any attributable way, it carries the risk for me of being accused of pre-judgment on such an issue, were it to arise in fact. Moreover, each judge is independent and I cannot purport to speak for colleagues. However, conscious of these considerations and for what it is worth, my personal and necessarily highly provisional view, in circumstances where the issue has never been argued before me, is that it might be cogently argued that non presence in person at any time once the court has embarked on a consideration of any substantive issues, including the hearing of evidence, relating to the guilt or otherwise of the accused; or, in the event that he/she has been found guilty or has pleaded guilty, relating to what sentence might be imposed on him/her; would be enough to at least engage Article 4a, and require a consideration of whether the accused's rights were in fact respected in the course of the procedure.

G.4 Personal summons

36. What is meant by the expression 'in due time'?

The Irish Courts have never considered this issue. However, a reasonable approach would likely entail, in the absence of a statutory time limit within which notification must take place, interpreting it on the basis that the defendant should be afforded sufficient time to make such reasonable arrangements as are required to enable him/her to attend in person e.g., sufficient time to make travel arrangements and to actually travel to the venue, sufficient time to book necessary time off work, sufficient time to make necessary child care arrangements, and so on. The standard of objective reasonableness is likely to be applied and each case would obviously depend on its particular circumstances.

37.

a. What kind of evidence indicated by the issuing judicial authority would support the conclusion that the requested person has actually received the information about the

date and the place of the trial? Would, *e.g.*, the fact that the third party who received the summons states that he passed the information on to the person concerned suffice? If so, what if the requested person denies having received the information?

The Court would most likely examine the evidence for cogency, with particular focus on each witness's credibility and reliability. If it was down to the word of one against the other, a relevant consideration would be whether each witness under consideration was disinterested or interested in the outcome. Clearly the defendant would be interested in the outcome, and would possibly have a self-serving interest to lie. However, the court would also have to be concerned with whether the third party was related to or connected to the defendant, and perhaps might have some animus against him/her, or be otherwise motivated to lie. However, an ordinary Postman unconnected with the defendant who was just doing his job would be unlikely to be lying. The circumstances in which the third party's statement was made would also be relevant. It would be important to know if it was a hearsay account contained in a statement made by a policeman unverified by the third party himself; or if the third party had made, and signed, a sworn statement concerning, or had otherwise solemnly affirmed, the truth of what was being attributed to him/her.

b. What kind of 'other evidence, including circumstances of which it became aware when hearing the person concerned' would support the conclusion that the requested person has actually received the information about the date and the place of the trial? Would, *e.g.*, the fact that the requested person has declared that he actually received the information suffice?

The type of other evidence that would be influential would be the production of a copy of some document or record signed by the requested person in which he/she acknowledges receiving the notification or otherwise having become aware of the date and place of the trial; alternatively evidence of some other declaration, whether oral or in writing, by the requested person confirming that he received the information.

G.5 Defence by a legal counsellor

38. What does the expression 'being aware of the scheduled trial' mean? Must the defendant have had actual knowledge of the date and the place of the trial (compare Art. 4a(1)(a)(i)) or is it enough that the defendant knew or must reasonably have expected that a trial would be held?

The Irish Courts take the view that defendant must have had actual knowledge of the date and place of the trial. See *Minister for Justice, Equality and Law Reform v Sliczynski* previously cited. While this decision pre-dates the coming into force of Article 4a, there is no reason to believe that any different view would be taken today on the narrow

issue of whether actual knowledge as opposed to constructive knowledge would suffice. I am confident that actual knowledge would still be insisted upon, particularly in the light of the CJEU's decision in *Dworzecki*

39. What does the expression 'the person had given a mandate to a legal counsellor' mean?

This has never been expressly considered by the Irish Courts. However, it is likely that the Irish Courts would interpret it as meaning a situation in which the defendant had either personally instructed the lawyer, or at the very least had ratified instructions given to him/her by a third party e.g., a family member, to act on his/her behalf. A state appointed lawyer, or a court appointed lawyer, instructed to represent the defendant but without the defendant's knowledge and/or consent would be unlikely to qualify.

40. In cases in which a legal counsellor was not appointed by the defendant but was appointed *ex officio*, do the words 'the person had given a mandate to a legal counsellor' imply that the defendant must have had actual knowledge of the appointment of the legal counsellor and must have had actual contact with the legal counsellor?

In my personal view, Yes.

41. If the issuing judicial authority has failed to fill in section (d)(4) of the EAW-form or has filled in section (d)(4) incompletely, what, if any, consequences should this have for the decision on the execution of the EAW from the perspective of the executing authorities of your Member State?

The Irish Court of Appeal has taken the view in ***Minister for Justice and Equality v Palonka,*** already referred to, that a failure to complete section (d)(4) is fatal to any possibility of surrender having regard to the manner in which Ireland has transposed Article 4a. However, as I have pointed out, *Palonka* predates the CJEU's judgments in *Dworzecki* and *Tupiskas*, and were the issue to arise again, it is possible, although it cannot be guaranteed, that in the light of that jurisprudence *Palonka* would be distinguished or departed from.

G.6 The decision has been served

42. What do the expressions 'After being served with the decision' and 'being expressly informed about the right to a retrial, or an appeal' mean?

Once again, this question is hypothetical in circumstances where Ireland does not routinely try people *in absentia*, and there has been no case to date since the coming in to effect of the EAW system in

which a person in Ireland has been tried *in absentia* and has received a prison sentence, whether to be served in full or suspended in whole or in part. However, while there is no statutory procedure nor rules of court relating to the service of decisions or the provision of information to absent defendants concerning a re-trial or an appeal, were the situation to arise the trial judge would almost certainly issue a bench warrant for the arrest of the absent defendant, and direct that upon its execution, alternatively the ascertainment of the whereabouts of the defendant, the prosecution should arrange to serve a copy of the Court's conviction order, and the committal warrant reflecting any custodial sentence imposed, upon the defendant personally, together with a letter advising him of his entitlement to appeal and the procedure involved.

In terms of in-coming EAWs an executing judicial authority in Ireland would require to be satisfied that the requested person had actually received a copy of the decision, and that he had actually been told about his right to a re-trial or to an appeal.

43. If the issuing judicial authority has failed to fill in section (d)(4) of the EAW-form or has filled in section (d)(4) incompletely, what, if any, consequences should this have for the decision on the execution of the EAW from the perspective of the executing authorities of your Member State?

Already answered at 41 above

44. If the issuing judicial authority has ticked point 3.3 of section (d) of the EAW-form, but has deleted words which form an integral part of the standard text of point 3.3, what, if any, consequences should this have for the decision on the execution of the EAW from the perspective of the executing authorities of your Member State?

I would be concerned, having regard to the decision in *Palonka*, that in light of how Ireland has transposed Article 4a the deletion of portion of the text from point 3.3 would be regarded by an Irish Court as fatal to any possibility of surrender. However, it might also be argued in light of the CJEU's decisions in Dworzecki and Tupiskas, which post date *Palonka*, that a court could still surrender the defendant if amplifying information was provided at point 4., that was sufficient to dispel any concerns arising from the deletions at point 3.3 about possible breach of the defendant's Article 6 rights.

G.7 The decision will be served after surrender

45. What does the expression 'right to a retrial, or an appeal' mean? May Member States make an actual retrial or an actual appeal dependent on any other condition than that the requested person was not personally served with the decision and that the request for a retrial or an appeal is lodged within the applicable time frame and in the

manner as prescribed by national law (*e.g.* the condition that the requested person did not have effective knowledge of the proceedings and/or the *in absentia* judgment of conviction or the condition that the requested person was not present at the proceedings due to circumstances beyond his control)?

It could be strongly argued that they cannot. While recognising that issues such as lack of effective knowledge of the proceedings, or absence due to force majeure, may be undoubtedly be relevant to the issue of whether the defendant waived his/her right to be present in person, the whole point of FD 2009/299/JHA was to provide clear and common grounds for non-recognition of decisions rendered following a trial at which the person concerned did not appear in person. The instrument aims to refine the definition of such common grounds allowing the executing authority to execute the decision despite the absence of the person at the trial, while fully respecting the person's right of defence. See recital 4 in particular. While FD 2009/299/JHA was not designed to regulate the forms and methods, including procedural requirements, that are used to achieve the results specified within it, which are acknowledged to be a matter for the national laws of the Member States, the suggested conditions arguably go beyond mere forms and methods.

46. If the issuing judicial authority has failed to fill in the number of days within which the requested person may request a retrial or an appeal, what, if any, consequences should this have for the decision on the execution of the EAW from the perspective of the executing authorities of your Member State?

The certifications at point 3.4 amount to assurances from one judicial authority to another, which are intended to be taken at face value in reliance on the principle of mutual recognition. Precision is therefore essential. The time limit needs to be specified. However, if the number of days is not specified and there is no apparent reason for it, such that the omission might well have been due to mere oversight, I see no reason why additional information could not be sought from the issuing judicial authority to remedy the deficiency. If, however, the omission appears to have been deliberate, or there is a refusal to provide this detail when additional information is sought, then in my view the deficiency would be fatal to any possibility of surrender based on certifications at point 3.4 . It does not seem to be the kind of problem that amplifying supplementary information provided at point 4 could overcome.

47. If the issuing judicial authority has deleted words which form an integral part of the standard text of point 3.4, what, if any, consequences should this have for the decision on the execution of the EAW from the perspective of the executing authorities of your Member State?

Again, I would be concerned about the implications of *Palonka*. However, mindful of the *Dworzecki* and *Tupiskas* jurisprudence from the CJEU, it could be argued that were an explanation for the deletions to have been volunteered at point (d)4, it is possible, depending on the nature of the explanation, that any concerns arising from those deletions might be allayed to such an extent as to allow the executing judicial authority to effect a surrender on the basis of being satisfied that adequate respect would be afforded to the defendant's Article 6 rights in that event. However, if no adequately re-assuring explanation had been volunteered at point (d)4, I think that an Irish Court would almost certainly write to the issuing judicial authority pointing out that the certifications proffered did not conform with the wording of point 3.4 of Article 4a, and seeking confirmation that guarantees in the prescribed form were in fact being offered, alternatively explanations for the deletions and assurances with respect to how the defendant's Article 6 rights could and would be respected. On receipt of the additional information the court would then have to weigh it and judge whether the defendant could be lawfully surrendered.

48. If the issuing judicial authority has provided information *proprio motu* which seems to contradict that the requested person has a right to a retrial, what, if any, consequences should this have for the decision on the execution of the EAW from the perspective of the executing authorities of your Member State?

If the ostensibly contradictory information is clear and unambiguous, then I believe the executing judicial authority would have no option but to refuse surrender. If, however, the information is vague or nebulous, or only potentially contradictory on one view or interpretation of it and another interpretation is reasonably open, or there is the possibility that there has been a mis-translation, then it would be appropriate in my view for the executing judicial authority to revert to the issuing judicial authority seeking clarification as to the true position.

G.8 Proceedings which have taken place at several instances

49. If the issuing judicial authority has not mentioned that the proceedings have taken place at several instances and have given rise to successive decisions, although it is apparent that proceedings have indeed taken place at several instances (*e.g.* on the basis of statements of the requested person), what, if any, consequences should this have for the decision on the execution of the EAW from the perspective of the executing authorities of your Member State?

The starting point for the executing judicial authority must be to examine what exactly has been judicially certified at points (d) 1 or (d) 2 (and if (d) 2 is ticked then also (d) 3 and/or (d) 4), respectively. Then the court should examine the basis of the requested person's objection to being surrendered in so far as it relates to *in absentia* grounds. The

executing judicial authority must engage with the issue of what stage or stages of the proceedings comprised "*the trial resulting in the decision*", applying the *Ardic* and *Zdziaszek* jurisprudence, and satisfy itself as to whether the point (d) certifications in fact relate to that trial, and the entirety of that trial, if necessary requesting additional information from the issuing judicial authority to clarify the position in that regard. If it is the requested person's contention that the trial resulting in the decision, either in whole or in part, is not the subject of the certifications provided by the issuing judicial authority, and that appears to be correct, or indeed that that appears to be the position in fact based on other reliable information, then surrender should be refused. If such a contention is made but is not borne out, and the point (d) certifications appear to be otherwise in order, then the requested person should be surrendered.

The issue has arisen before the Irish Courts in the context of requests for the surrender of a person who was the subject of a suspended sentence, the suspension of which was subsequently lifted at a hearing conducted in the absence of the requested person. See the previously referred to judgment of the High Court in ***Minister for Justice and Equality v APL*** (the *Lipinski* case), together with the later judgments of the Court of Appeal [2016] IECA 145 and Supreme Court [2017] IESC 26 and [2018] IESC 8 in the same matter.
http://www.courts.ie/Judgments.nsf/0/B913C4AAE041196E80257FB5002A9547
http://www.courts.ie/Judgments.nsf/0/BEC478C7B897A48A802581280036639F3
http://www.courts.ie/Judgments.nsf/0/7BA599C55EE1DC52802582350052BE17
The request for the preliminary reference forwarded to the CJEU by the Irish Supreme Court was subsequently withdrawn when the question asked was effectively answered by the judgment in the *Ardic* case.

50. If the issuing judicial authority has indicated that proceedings have taken place at several instances and have given rise to successive decisions, but has not given any information as to the nature and/or outcome of all of these proceedings, what, if any, consequences should this have for the decision on the execution of the EAW from the perspective of the executing authorities of your Member State?

Again, the critical issue for the executing judicial authority will be what stage or stages of the proceedings comprised "*the trial resulting in the decision*", bearing in mind the *Ardic* jurisprudence. Any certifications relied upon must be demonstrated to refer to that trial and the entirety of the trial as so understood. If they do not do so, then surrender should be refused.

51. If the issuing judicial authority has indicated that proceedings have taken place at several instances and have given rise to successive decisions, but has not made clear

to which of these decisions section (d) of the EAW applies, what, if any, consequences should this have for the decision on the execution of the EAW from the perspective of the executing authorities of your Member State?

See the answers to 50 and 51 above where this question has been effectively answered.

G.9 Later proceedings which result in modifying the nature or the quantum of the penalty originally imposed

52. If the issuing judicial authority has mentioned a later decision which modifies the nature or the *quantum* of the penalty originally imposed but has not provided information on the basis of which the executing judicial authority can verify whether the conditions set out in the *Zdziaszek* - and *Ardic*-judgments have been met (see the explanation above), what, if any, consequences should this have for the decision on the execution of the EAW from the perspective of the executing authorities of your Member State?

In my view it would be necessary for the executing judicial authority to request clarification as to the position by way of a request for additional information addressed to the issuing judicial authority. Absent such clarification it would not be possible to surrender the requested person.

53. If the issuing judicial authority has mentioned a later decision which does not meet the conditions set out in the *Zdziaszek*- and *Ardic*-judgments, but has not provided information on the basis of which the executing judicial authority can verify whether the fundamental rights of the requested person were observed, what, if any, consequences should this have for the decision on the execution of the EAW from the perspective of the executing authorities of your Member State?

The issuing judicial authority should be requested to clarify the position. If, notwithstanding having been provided with an opportunity to clarify the position, either clarification was not forthcoming, or the true position was revealed to be that the requested person's rights were not in fact respected, then in either event surrender ought to be refused.

54. If the issuing judicial authority has mentioned a later decision which does not meet the conditions set out in the *Zdziaszek*- and *Ardic*-judgments and has provided information about the proceedings leading to that decision, but the executing judicial authority concludes that the fundamental rights of the requested person were not observed, what, if any, consequences should this have for the decision on the execution of the EAW from the perspective of the executing authorities of your Member State?

Surrender ought to be refused.

G.10 Margin of discretion of the executing judicial authority

55. Does the national law of your Member State allow the executing judicial authorities of your Member State to take account of 'other circumstances that enable it to ensure that the surrender of the person concerned does not entail a breach of his rights of defence', after having found that the cases referred to in Article 4a(1)(a) to (d) FD 2002/584/JHA do not cover the situation of the requested person?

The decision of the Irish Court of Appeal in ***Minister for Justice and Equality v Palonka*** suggests not. However, to reiterate the point made several times already, *Palonka* was decided before the CJEU had expressed the views it did in the *Dworzecki* and T*upiskas* cases.

56. Taking into account the relevant case law of the ECtHR, what circumstances could support the conclusion that the surrender of the requested person would or would not entail a breach of his rights of defence? Would it, *e.g.*, suffice that the defendant was told during the police investigations that:

- in the event of a prosecution he would be summoned at the address given by him and

- he was obliged to notify the proper authorities of any change in residence? Or would it, *e.g.*, suffice that the defendant made a deal with the public prosecutor as to the penalty to be imposed?

None of these specific possibilities could arise in the context of the Irish Criminal Justice system. However, it is recognised that other systems may be different, and allow for such possibilities. The Irish Courts are conscious of the jurisprudence of the ECtHR in this context (see in that regard my own judgment in ***Minister for Justice and Equality v Surma***, cited earlier, which contains an extensive review of the jurisprudence of the Strasbourg Court concerning the right to be present in person) and in particular those cases establishing that the exercise of rights guaranteed by Article 6 ECHR can be waived, expressly or tacitly, although the waiver must be voluntary and unequivocal. Accordingly evidence of conduct on the part of the requested person tending to suggest such a waiver would be potentially relevant to supporting a conclusion that the requested person's rights would not be disrespected by a surrender.

H. National legislation

57. Please provide:

- the national legislation implementing Art. 2 FD 2009/299/JHA in the official language of your Member State and

- an English translation thereof.

Annexed in Appendix 2 is:

(a) The Consolidated European Arrest Warrant Acts 2003 – 2012, in which colour coding is used for each of tracking amendments, and (b) the European Arrest Warrant (Application to Third Countries and Amendment) and Extradition (Amendment) Act 2012.

Part 3: actual application of the national legislation implementing the FD's

3.1 General problems

Using the correct EAW-form

58. Have the executing judicial authorities of your Member State had any cases in which the issuing judicial authority used the old EAW-form after your Member State had transposed Art. 2 FD 2009/299/JHA? If so, please state the decision taken by the executing judicial authority.

Yes, there were numerous such cases in the early days after Ireland transposed FD 2009/299/JHA and in circumstances where in doing so we were somewhat ahead of certain other member states. Moreover, following *Melloni* the amendments effected by that instrument were treated by the Irish courts as being retrospectively effective and, therefore, as applying to all requests for surrender already in the system in respect of which a decision had not yet been made.

From the outset the Irish High Court adopted the pragmatic approach of writing to the issuing judicial authority in respect of any warrant containing the old form part (d) requesting it to either withdraw its warrant and substitute a new one with a part (d) that complied with FD 2009/299/JHA, or alternatively, if that could not be done due to legal obstacles in the issuing state, to furnish information by letter answering a series of questions corresponding with those in the new part (d). Where the latter expedient was adopted the High Court was then prepared to read the oriiginal warrant, and the letter containing the additional information, as one document. This meant that substance was prioritised over form. That approach was considered permissible in circumstances where the defect in form was considered to be no more than an artefact of the process whereby the member states concerned were not aligned in transitioning from the old system to the new system, and not therefore a defect that was substantial in nature, thereby allowing it to be overlooked under s.45C of our transposing Act of 2003 (as amended by s.24 of the subsequent Act of 2012), which provides:

> **45C.—** For the avoidance of doubt, an application for surrender under section 16 shall not be refused if the Court is satisfied that no injustice would be caused to the person even if—

(*a*) there is a defect in, or an omission of, a non-substantial detail in the European arrest warrant or any accompanying document grounding the application,

(*b*) there is a variance between any such document and the evidence adduced on the part of the applicant at the hearing of the application, so long as the Court is satisfied that the variance is explained by the evidence, or

(c) there has been a technical failure to comply with a provision of this Act, so long as the Court is satisfied that the failure does not impinge on the merits of the application.

59. Have the issuing judicial authorities of your Member State reported any difficulties with the executing judicial authority regarding the version of the EAW-form? If so, please describe the difficulties and state the decision taken by the executing judicial authority.

No. The Irish Courts have had cause to issue a single European Arrest Warrant for a person tried here *in absentia* (which, as has been pointed out repeatedly, is an extremely rare and exceptional occurrence) since the European Arrest Warrant system came into operation in 2003.

Language Problems

60. Have the executing judicial authorities of your Member State had any problems with translations of the EAW into the official language(s) of your Member State? If so, please describe the problems and state the decision taken by the executing judicial authority.

Yes, translation issues arise reasonably frequently where an the issuing state has not utilised the official English translation of the EAW warrant form, and an ad hoc translation of the entire document, involving both the standard text and the case specific information provided, is provided. An example of the type of issue that frequently arises is contained in the judgment in ***Minister for Justice and Equality v Skwierczynski*** [2016] IEHC 802.

http://www.courts.ie/Judgments.nsf/0/A0688CE8336E4AA68025814F004426BE

The relevant portion of the judgment is from paras 39 to 43 inclusive.:

"***Form of the EAW***

39. The first point made by the respondent is that the form set out in the EAW at issue in these proceedings does not conform with the form set out in the Annex to the 2009 Framework Decision. Counsel submitted that the form of words set out in s. 45 of the Act of 2003 corresponds directly with the form of the wording set out in the Annex of the 2009 Framework Decision. This EAW, it was submitted, conforms to neither.

40. Counsel for the minister has placed before the Court the original Polish version of the 2009 Framework Decision. Counsel refers to point (d) therein which now is included in the standard form Annex under the 2002 Framework Decision. Apart from some very minor reordering of words, the Polish version of this EAW and the official form set out in the Annex are identical.

41. While the High Court is obliged to have regard to the English translation, nonetheless it is appropriate for the Court to take this into account in identifying that clearly what is in question is the translation of the original Polish EAW into the English version, upon which this Court proceeds. The original Polish language form (d) clearly corresponds with the form of Polish language version of the EAW set out in the Annex to the 2009 Framework Decision. Undoubtedly, great care was taken at European Union level to ensure that the Polish version of the form is a proper translation of the English version (or vice versa as the case may be).

42. It is a matter of constant amazement to this Court that, despite the standard parts of original language EAWs being identical to the official version of the form recognised under EU law in that language, those standard parts nonetheless are constantly translated into various different English language versions. It should not be beyond the bounds of possibility that translators of EAWs would familiarise themselves with the original English language version of the EAW and use that as the basis for their translation of the standard form sections of the European arrest warrant. Of course, if there are words or phrases which, in their professional view, do not in fact accord with the official translation, they are free to change that translation. That is not what appears to be happening, however. The translators simply seek to reinvent the wheel on every occasion and naturally come up with versions that do not match in every respect the official version.

> 43. For the purpose of this case, I have had regard to the English language translation. However, having carefully considered it, I am quite satisfied that any difference in the language being used in the form is merely a matter of form rather than of substance. For example, it is stated that the person was served the judgment on 24th August, 2007, whereas the English language version refers to service of the decision. There is clearly no difference between these two matters and I am of the view that throughout the particular sections at issue, there is no difference in substance between what is stated in the Annex and what is said in this European arrest warrant. For example, to have a case reconsidered is effectively a retrial in the English language. Therefore, insofar as there may be a technical failure to comply with the Act of 2003 in so far as the wording of these sections reads slightly different in English, there is no injustice in surrendering the person. Under the provisions of s. 45C of the Act of 2003, there is no reason to prohibit the respondent's surrender, merely on the ground of a difference in the wording as a result of the translation difference, where those differences do not affect the substance of what is being stated."

61. If your Member State has made a declaration as provided for in Art. 8(2) FD 2002/584/JHA, have the executing judicial authorities of your Member State had any problems with translations of the EAW in the designated official language(s)? If so, please describe the problems and state the decision taken by the executing judicial authority.

Ireland has not made a declaration under Art. 8 (2) FD 2002/584/JHA

62. Have the issuing judicial authorities of your Member State reported any difficulties with the executing judicial authority regarding the translation of the EAW? If so, please describe the difficulties and state the decision taken by the executing judicial authority.

No. I am unaware of any such issue having been raised with the Irish High Court in its role as an issuing judicial authority.

Just by way of elaboration, once a European Arrest Warrant is issued by the High Court as issuing judicial authority, the High Court has no further involvement in the majority of cases unless a request comes back which is specifically addressed to the issuing judicial authority requesting additional information. In practice, however, most requests for additional information or clarifications are of a routine nature and they are usually addressed to the Irish Central Authority who is invariably identified in Part (i) of the EAW as the representative of the issuing judicial authority and relevant contact point in the event of queries. In most cases the Central Authority is able to answer them, and

is authorised to do so, without further recourse to the court. If, however, the specific input of the issuing judicial authority is required the Central Authority then brings the matter to the court's attention.

If it is the case that there have been translation issues involving Irish EAWs of which I am unaware, then the likelihood is that any lack of clarity or ambiguity was capable of being addressed, and was addressed, by the Irish Central Authority in correspondence with the relevant authorities in the executing state, without any need to trouble the High Court again.

Multiple decisions

63. Have the executing judicial authorities of your Member State had any problems with EAW's which list multiple decisions with regard to the same proceedings in section (b)(2) of the EAW? If so, please state the decision taken by the executing judicial authority.

This type of issue has arisen, and has caused problems. A good example is the case of **Minister for Justice and Equality v Horvath** [2013] IEHC 534.

http://www.courts.ie/Judgments.nsf/0/AF93C89C2F5F32DF80257C470059FF46

This was a complicated case involving a respondent who, having been tried *in absentia* under the law of the issuing state (Hungary), was stated in the warrant to be the subject of what is described under the law of that state as a "*non-conclusive*" conviction and sentence by a court of first instance, which was not final, and which was the subject of a pending appeal (which it was contended would amount to a full re-hearing) to a court of second instance, but which appeal was not initiated by the respondent but rather by his state appointed defence lawyer without any instructions from the respondent, and which appeal the respondent had no intention of prosecuting unless forced to return to the issuing state.

It is important to state that the issue was considered in the context of the old s.45 of the Act of 2003 (i.e. before it was amended to reflect Article 4a of FD 2009/299/JHA.) This occurred in circumstances where the issue of whether the Act of 2012 was retrospectively effective had not yet been considered and ruled on by any court. No suggestion of retrospective effect was raised at first instance in Horvath. On the contrary, all of the parties were prepared to operate on the basis that

the presumption against retrospectivity applied, and no one sought to suggest otherwise. Subsequently in the later case of *Surma*, the issue of presumed non-retrospectivity was challenged, and the High Court felt compelled to follow the CJEU's view expressed in *Melloni* that the amendments effected by FD 2009/299/JHA were procedural rather than substantive, and held that the amendments did in fact have retrospective effect in so far as cases in the system but not yet processed were concerned.

However, returning to the substantive issue in ***Horvath***, this was resolved by the High Court, at the end of a lengthy judgment which can be accessed via the hyperlink provided, as follows:

> "I am satisfied that in Hungary the lodging of an appeal renders what would otherwise be the conclusive decision and judgment of the court of first instance 'non-conclusive.' That does not mean that the person is not convicted, or that the conviction is set aside by the lodging of an appeal. It simply means that the person concerned has a right to a full re-hearing before a court of second instance, with the benefit of the presumption of innocence (which means in our understanding that the prosecution still bears the burden of proving the case against the accused beyond reasonable doubt. The Court accepts that the analogy may not apply perfectly at an inquisitorial trial in a civil law system such a Hungary. Nevertheless, the accused has the benefit of the presumption of innocence as it operates in such a jurisdiction.). It is clear to this Court that the accused's task is to persuade the court of second instance, if he can, that his conviction was wrong. However, it is also clear to me that he does not come into Court as an unconvicted person. He remains convicted, albeit not conclusively, and it is simply the case that the decision of the court below is effectively stayed pending ratification or overruling, as the case may be, by the court of second instance.
>
> The status of conviction has important implications for him in terms of s. 45. That section is engaged where (*inter alia*) a person is the subject of a European arrest warrant and he 'was not present when he … was tried for ***and convicted of*** the offence specified in the European arrest warrant' (this Court's emphasis). Where that condition (contained in s. 45(a)) is fulfilled, and one of the further conditions demanded in s. 45(b)(i) or (ii) is also fulfilled, as appears to be the case here, surrender cannot take place without an undertaking in writing having been provided by

the issuing judicial authority stating that the person will upon being surrendered:

> '(I) be retried for that offence or be given the opportunity of a retrial in respect of that offence,
>
> (II) be notified of the time when, and place at which any retrial in respect of the offence concerned will take place, and
>
> (III) be permitted to be present when any such retrial takes place.'

In this case the Hungarian authorities have expressly stated that no such undertaking will be provided. In the circumstances the Court has no choice but to uphold the s. 45 objection and refuse to surrender the respondent."

The High Court's decision in Horvath to refuse surrender was appealed to the Supreme Court on the basis that it involved a point of law of exceptional public importance. The Supreme Court upheld the High Court and dismissed the appeal. See **Minister for Justice and Equality v Horvath [**2017] IESC 15.

http://www.courts.ie/Judgments.nsf/0/69ECAC5C4FCDF81D802580D7005465AC

Clearly the Supreme Court's decision on the substantive issue is what is primarily relevant. However, it will also be seen from the judgment of the Chief Justice that a late attempt by the appellant to raise the issue of presumed non-retrospectivity in the course of the appeal was firmly rejected, on the basis that the point had not be raised in the court below.

64. Have the issuing judicial authorities of your Member State reported any difficulties with the executing judicial authority regarding EAW's which list multiple decisions? If so, please describe the difficulties and state the decision taken by the executing judicial authority.

None that I am aware of, or have been able to ascertain by means of appropriate enquiries.

3.2. The component parts of Art. 4a(1) FD 2002/584/JHA

Meaning of 'the trial resulting in the decision': confirmation of a deal between the defendant and the public prosecutor as to the penalty to be imposed (and other special proceedings)?

65. Have the executing judicial authorities of your Member State had any cases in which the penalty was imposed by a judicial decision confirming a deal between the defendant and the public prosecutor as to the penalty to be imposed? If so, please state the decision taken by the executing judicial authority.

Yes the issue has arisen several times, but the definitive decision is that in ***Minister for Justice and Equality v Tokarski*** [2012] IEHC 148, upheld on appeal by the Supreme Court in ***Minister for Justice and Equality v Tokarski*** [2012] IESC 61.

http://www.courts.ie/Judgments.nsf/0/4F627F5C69F217D180257A060052AC2A

http://www.courts.ie/Judgments.nsf/0/C6D3E075C6FCCA4980257AD10051B899

The effect of both judgments is that if a conviction is recorded by a court in the absence of the defendant, then notwithstanding his earlier agreement with the police, or a prosecutor, that he would plead guilty, and the fact that the court acted on the basis of being told of that agreement, that was nonetheless a trial *in absentia* that engaged s.45 (at least in its old form, although there is no reason to believe that it would not also do so in its new form).

As to whether or not surrender is going to be possible in any particular case must obviously depend on how the issuing judicial authority has completed Part (d) and what exactly has been certified as being the position with respect to issues such as notification, representation, assurances and undertakings).

66. Have the executing judicial authorities of your Member State had any cases in which the penalty was imposed without having held a trial and/or by other authorities than a judge or a court? If so, please state the decision taken by the executing judicial authority.

No

67. Have the issuing judicial authorities of your Member State reported any difficulties with the executing judicial authority regarding EAW's relating to 'special proceedings' (e.g. confirmation of a deal with the public prosecutor, imposition of a penalty without having held trial and/or by another authority than a judge or a court)? If so, please describe the difficulties and state the decision taken by the executing judicial authority.

No. It could not arise in either instance. Plea bargaining is not permitted under Irish law in any circumstances. Moreover, under the Constitution of Ireland the administration of justice is reserved to judges appointed under, or in accordance with, the Constitution. Only a court can impose a penalty involving imprisonment or deprivation of liberty. It is not possible for "another authority" to do so.

Meaning of 'the trial resulting in the decision': the trial itself or the pronouncement of the judgment?

68. Have the executing judicial authorities of your Member State had any cases in which the issuing judicial authority seemed to interpret the words 'the trial resulting in the decision' as 'the court date at which the judgment was pronounced'? If so, please state the decision taken by the executing judicial authority.

No, we have not. However, if there was any reason to suspect that that might be the case, either from the terms of the warrant, or from information supplied by the requested person, an Irish court acting as executing authority would be likely to seek additional information from the issuing judicial authority to clarify the position. I think it is likely that the Irish High Court would not afford the words 'the trial resulting in the decision' such a narrow interpretation as that suggested. On the contrary, the likelihood is that the definition would be regarded as including all parts of the procedure, including the announcement of the decision or judgment, at which the substantive issue of the accused's guilt, or otherwise; and, if convicted, what penalty should be imposed upon him/her, as coming within the definition.

Trial consisting of several hearings

69. Have the executing judicial authorities of your Member State had any problems with cases in which the trial consisted of several hearings and the defendant was present at one or more but not all of these hearings? If so, please describe the problems and state the decision taken by the executing judicial authority.

Up until the decisions of the CJUE in *Tupiskas* and in *Zdziaszek*, the Irish High Court as an executing judicial authority had consistently taken the position that if the requested person was present at any time during the trial resulting in the decision then he/she was not tried *in absentia*, on the basis that if he/she was voluntarily absent for another part of, or indeed the remainder of, the trial they could regarded as having had notice of the proceedings, and/or that they were aware of them, and as having waived their right to be present in person throughout.

Accordingly, if in that situation an issuing judicial authority has certified at part (d) 1 that the person attended at the trial resulting in the decision then *prima facie* that was the end of the matter. Clearly, in the light of the decisions of the CJUE in *Tupiskas* and in *Zdziaszek*, a somewhat more nuanced approach may henceforth be required differentiating, where appropriate, between the trial of the issue of criminal liability, and the trial of the issue as to the appropriate sentence to be imposed. It is unclear how this might be achieved in circumstances where the questions in part (d) 1 and two respectively do not differentiate between different stages of what is regarded in Irish law as a unitary procedure.

It is an open question as to whether the court in its role as executing judicial authority could seek to go behind such a certification if it was in receipt of other cogent evidence tending to suggest while part of the trial only had been attended, that non-attendance at the remainder was due to *force majeure* or some other circumstances outside the control of the requested person, and where the said evidence tended to suggest that there had not in fact been a voluntary waiver of the right to be present in person. However, to date no such case has come before our High Court.

70. Have the issuing judicial authorities of your Member State reported any difficulties with the executing judicial authority regarding cases in which the trial consisted of several hearings and the defendant was present at one or more but not all of these hearings? If so, please describe the difficulties and state the decision taken by the executing judicial authority.

No. There has been no such case, to my knowledge. This is unsurprising in circumstances where we do not routinely try persons in absentia.

Personal summons

71. Have the executing judicial authorities of your Member State had any problems with EAW's in which point 3.1.a or point 3.1.b of section (d) was ticked? If so, please describe the problems and state the decision taken by the executing judicial authority.

There have been no real "problems" in any technical sense. However it does sometimes arise that issuing judicial authorities tick more than one box.

In one case that I personally recall an issuing judicial authority had ticked both 3.1a and 3.1b, which are of course mutually contradictory. The conflict was resolved when the executing judicial authority sought clarification by way of additional information and it transpired that box 3.1a had been ticked in error, and that the intended certification was that based on 3.1b, amplified by further information provided at 4. This was a case in which judgment was given *ex-tempore* and so there is no written judgment available.

A somewhat similar problem arose **in Minister for Justice and Equality v Ludwin** [2018] IEHC 220, a case involving multiple decisions in multiple proceedings, and in which in some instances both boxes 3.1 and 3.3 were ticked. Unlike the case where both 3.1a and 3.1b were the certifications were not necessarily mutually contradictory.

http://www.courts.ie/Judgments.nsf/0/0E6499D3D9FFAEDB8025827F00480ED3

However, it happens relatively frequently that a requested person will seek to dispute the fact of what has been certified at 3.1a, or 3.1b as amplified by further information provided at 4, as the case may be; and it is a respondent's legal entitlement to raise such an issue. The Irish High Court, as executing judicial authority approaches such disputes on the basis that, having regard to the principle of mutual recognition, it must accept without question that which is certified by the issuing judicial authority unless the respondent has adduced cogent evidence to the contrary, sufficient to put the executing judicial authority on enquiry. The court will refuse to embark on any such enquiry on the basis of a requested person's mere assertion that what is certified is incorrect. To trigger an enquiry the assertion must be backed up by evidence, and the evidence must reach a threshold level of cogency such that it raises a real concern in the mind of the executing judicial authority about the possibility of there having been some genuine error or mistake. In that regard, the requested person is said to bear an evidential burden.

72. Have the issuing judicial authorities of your Member State reported any difficulties with the executing judicial authority regarding EAW's in which point 3.1.a or point 3.1.b of section (d) was ticked? If so, please describe the difficulties and state the decision taken by the executing judicial authority.

No, not to my knowledge or in so far as I have been able to ascertain. Again, this is likely due to the fact that Ireland does not routinely try persons *in absentia*. I am not aware of any EAW having been issued at any time by Ireland seeking the rendition of a person tried *in absentia*.

Defence by a legal counsellor

73. Have the executing judicial authorities of your Member State had any problems with EAW's in which point 3.2 of section (d) was ticked? If so, please describe the problems and state the decision taken by the executing judicial authority.

Yes, see the decision in ***Minister for Justice and Equality v Fiszer*** [2015] IEHC 664

http://www.courts.ie/Judgments.nsf/0/9C94F8F75DF132CB80257EF900525ACA

The salient part of the judgment is from para 4 to para 34 inclusive:

> "4. Point (d) as forwarded by the issuing judicial authority indicates '[n]o, the person did not appear in person at the trial resulting in the decision.' Under point (d) 3, in answer to the question '[i]f you have ticked the answer "No", please confirm the existence of one of the following:', the issuing judicial authority indicates as follows:
>
> > 'c. 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;'
>
> 5. Somewhat confusingly, under part 3.3 of point (d), the issuing judicial authority crossed out virtually everything except one of the alternative explanations, namely that the person did not request a retrial or appeal within the applicable time frame. In other words, the condition precedent, namely that the person was served with the decision, which triggers the alternatives was not ticked.
>
> 6. The condition precedent within 3.3 having been crossed out, the remainder of that part has no standalone meaning. Without the condition precedent being ticked, I am satisfied that the issuing judicial authority did not intend to rely on point 3.3 to establish that the conditions under point (d) have been met as regards trial *in absentia*. I am satisfied that the reference to the lack of a request for a retrial or appeal is simply a statement of fact by the issuing judicial authority, *i.e.* it is making the point that the respondent did not request a retrial or an appeal.

7. At part 4 of point (d), the issuing judicial authority provided the following information:

> "The convicted person was advised during the proceedings on the duty to inform about any change of whereabouts. During the proceedings he was represented by a court-appointed counsel and knew who was his defence counsel. Damian Fiszer appeared for the trial on 20 March 2007 and gave his correspondence address. He also appeared for the trial on 14 April 2008 and was summoned in person on 16 June 2008, when he did not appear. When summoned for the next trial on 18 August 2008, the convicted person did not collect the summons, yet due to it being sent properly with an advice note, it was deemed properly served. He did not appear for that trial, yet his defence counsel did. The date of issuing the decision was adjourned then, of which he knew due to having been properly summoned for the trial and having a defence counsel. On 25 August 2008 the verdict was pronounced, against which neither the convicted person nor his defence counsel appealed."

8. The central authority engaged in further correspondence apparently with a view to gaining an understanding as to which dates were being indicated as trial dates. By the completion of the correspondence, the issuing judicial authority had confirmed that the court proceedings were commenced at a trial on 20th March, 2007 at which the indictment was read and the respondent was present. The next trial was held on 12th April, 2007 at which the respondent was present and provided a brief explanation in respect of certain matters. This included an admission to one of the offences but a denial of other acts, together with a refusal to provide any explanation. The issuing judicial authority confirmed that subsequent trials were held on 13th June, 2007, 22nd August, 2007, 5th September, 2007, 9th November, 2007, 14th January, 2008, 11th February, 2008, and 14th April, 2008, on each occasion at which the respondent was present. The issuing judicial authority then stated that the trials of 16th June, 2008 and 18th August, 2008 were held in the absence of the respondent who had, according to Polish law, been properly notified. The verdict was given on 25th August, 2008, and neither the respondent nor his counsel was present on that date as presence is not compulsory and notification of the trial

date had been sufficient. There is an express statement that the respondent's defence counsel was present at all trials between 20th March, 2007 up to and including 18th August, 2008.

9. On affidavit, the respondent stated that he left the Republic of Poland in May 2008 and initially spent a number of months in Belfast. He did not indicate when he headed south of the border, but it appears he has been living in this jurisdiction for some time. Of particular note is that at para. 4 of his affidavit, he stated: "I say that a lawyer was appointed by the Court to represent me in the proceedings the subject matter of the European Arrest Warrant. I say that once I left Poland I did not keep in touch with this lawyer who did not have any instructions to act after this date."

Submissions

10. Counsel for the minister relied upon the interpretation of s. 45 set out by this court in *Minister for Justice and Equality v. A.P.L.* [2015] IEHC 458. She submitted that under s. 45, a person has appeared in person at the proceedings resulting in the sentence or detention order in respect of which the EAW was issued, where he or she was present at the trial at which his or her guilt or innocence has been determined.

11. Counsel for the minister submitted that in line with the decision in *Minister for Justice and Equality v. Surma* [2013] IEHC 618, as applied in *A.P.L.*, the court was entitled to go behind the indication given by the issuing judicial authority that the respondent had not appeared at the trial. She referred in particular to para. 36 of Surma and the approval of that passage by the Court of Appeal in *Minister for Justice and Equality v. Palonka* [2015] IECA 69.

12. Counsel submitted there was cogent evidence to show that the issuing judicial authority was in error in saying that the respondent did not appear at the trial. Section 45 required presence at the proceedings at which guilt or innocence was to be determined. It was submitted that the entirety of the information showed that the trial had commenced at an early stage and that he had been present at those proceedings, except on the two dates specified. His presence on the dates indicated amounted to presence at his trial.

13. Counsel on behalf of the respondent submitted that, if counsel for the minister was correct and that there were manifest errors in the EAW, then the court could not rely upon the EAW at

all. He submitted that in those circumstances it was the equivalent to no point (d) having been filled in. He submitted that *Minister for Justice and Equality v. Palonka* established that there had to be a completed point (d) in the EAW.

14. Counsel further pointed to the query sent by the central authority to the issuing judicial authority. He submitted that despite requests, the issuing judicial authority had not confirmed on which days the issue of guilt or innocence was determined. He submitted that there were a number of trial dates but that of significance was the fact that his client left on 18th May, 2008 and that there were at least two trial dates after that date. He submitted that it had to be accepted that his client was not present at the trial. Further, he submitted that there was no notification of his client of the further trial dates. He submitted that after his client had left Poland, the lawyer had no instructions to act. Counsel relied upon the case of *Minister for Justice Equality and Law Reform v. Sliczynski* [2008] IESC 73 and to the *dicta* of Murray C.J. at para. 17 of that judgment to the effect that under the former s. 45, actual notification was required.

The Court's analysis and determination on the Section 45 issue

15. In accordance with the decision in *Palonka*, the Court has jurisdiction, and indeed an obligation, to review the assessment of the issuing judicial authority of the scenarios set out under 3.1b, 3.2 or 3.3 of point (d). In light of the particular facts of that case, the ratio of that decision does not purport to extend to review of the designation by the issuing judicial authority that the requested person did not appear in person at the trial resulting in the decision.

16. The High Court has held, in *Minister for Justice and Equality v. E.P.,* (6th October, 2015), that the designation by the issuing judicial authority of trial in the absence of the requested person does not engage s. 45 or s. 16 (in so far as it relates to s. 45), where the EAW was issued for the prosecution of offences and what was being referred to was pre-trial detention. The argument of the minister is entirely different here. Unlike the situation in *E.P.,* there has been a trial in this case, but the minister has submitted that the designation of trial *in absentia* is wrong based upon this jurisdiction's legislative provisions regarding what constitutes a trial.

17. Not every case where an accused is absent from a trial requires surrender to be prohibited. At the very least, if the actual

designation by the issuing judicial authority at point (d), together with any necessary explanation contained in the EAW, is sufficient to comply with the requirements of s. 45, then it is appropriate that this Court, as executing judicial authority, would act upon that designation. I propose, therefore, to consider at the outset, whether, on the basis of the Polish designation in relation to trial *in absentia*, the provisions of s. 45 have been complied with in these proceedings.

18. The Table at s. 45 is derived from, and required by, the 2009 Framework Decision. Section 45 provides that a person shall not be surrendered under the Act if he or she did not appear in person at the proceedings resulting in the sentence or detention order in respect of which the EAW was issued, unless the EAW indicates the matters required by points 2, 3 and 4 of point (d) of the form of the warrant in the Annex to the 2009 Framework Decision. In *Minister for Justice and Equality v. A.P.L.,* the court held that there was no literal interpretation that would bring total clarity to the words 'proceedings' and 'trial' contained within section 45. In accordance with the established jurisprudence, it is quite proper, therefore, for this Court to interpret these aspects of s. 45 as far as possible in the light of the wording and purpose of the Framework Decisions in order to attain the result which they pursue.

19. During the course of the s. 16 hearing, I raised with both parties the difference in wording in the Table at s. 45, between on the one hand points 3.1a and 3.1b, which refer to scheduled date and place of the trial, and the wording in point 3.2 which refers to scheduled trial. The recitals to the 2009 Framework Decision also reflect that difference in wording. It is appropriate and proper that the Recitals to the 2009 Framework Decision be considered in the interpretation of the Table set out at point (d) to section 45.

20. The first recital of the 2009 Framework Decision narrates that the rights of an accused person to appear in person at the trial is included in the right to a fair trial provided by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR") as interpreted by the European Court of Human Rights ("ECtHR"). The recital recounts that the ECtHR has also declared that the right of the accused person to appear in person at the trial is not absolute and that under certain conditions the accused person may, of his or her own free will, expressly or tacitly but unequivocally waive that right.

21. The seventh recital asserts that the recognition and execution of a decision rendered following a trial at which the person concerned did not appear in person should not be refused if, either he or she was summonsed in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or if he or she actually received by other means official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial. That language is reflected in point (d) 3.1a and point (d) 3.1b of section 45.

22. The eighth recital refers to the right of a person to appear in person at the trial and recounts that in order to exercise this right, the person concerned needs to be aware of the scheduled trial. It goes on to recite that under the 2009 Framework Decision, the person's awareness of the trial should be ensured by each Member State in accordance with its national law, it being understood that this must comply with the requirements of the ECHR. Thereafter, it is recited that, in accordance with the case law of the ECtHR, when considering whether the way in which the information is provided is sufficient to ensure the person's awareness of the trial, particular attention could, where appropriate, also be paid to the diligence exercised by the person concerned in order to receive information addressed to him or her. It is to be noted that the reference in the eighth recital is to awareness of the "scheduled trial".

23. Recital nine declares the scheduled date of a trial may for practical reasons initially be expressed as several possible dates within a short period of time. That is reference to a scheduled date of trial but even then the scheduled date can be a number of dates within a short period of time.

24. Recital ten is the recital to which the requirements of point (d) 3.2 most directly relate. This recital provides that the recognition and execution of a decision rendered following a trial at which the person concerned did not appear in person should not be refused where the person concerned, being aware of the scheduled trial, was defended at the trial by a legal counsellor to whom he or she had given a mandate to do so, ensuring that legal assistance is practical and effective. In this context, it should not matter whether the legal counsellor was chosen, appointed and paid by the person concerned or whether this legal counsellor was appointed and paid by the State, it being understood that the person concerned should deliberately have

chosen to be represented by a legal counsellor instead of appearing in person at the trial. The appointment of the legal counsellor and related issues are a matter of national law.

25. In the view of the Court, the 2009 Framework Decision makes a deliberate distinction between knowledge of the date and place of the scheduled trial on the one hand and "scheduled trial" on the other. Indeed, point (d) 3.2 would be otiose if the requirement is that a person must be made aware of the actual date and place of the trial by means of some official communication, be it by summons or otherwise. Provision for that requirement is already contained in 3.1a and 3.1b of point (d) of section 45.

26. Point (d) 3.2 makes provision for the situation where a person knows of their scheduled, or in other words, their planned trial and opts to give a mandate to a lawyer to represent him or her at that trial. In those circumstances, the person has waived his or her right to attend at the trial.

27. The importance of the distinction between "scheduled date and place of the trial" and "scheduled trial", is one that is perhaps more immediately apparent from the French version of the 2009 Framework Decision. In the French version under point (d) 3.1a and point (d) 3.1b, the requirement is that the person be informed "…de la date et du lieu fixés pour le procès…". In contrast, also in the French version, point (d) 3.2 commences "ayant eu connaissance du procès prévu…". Under point 3.1a and point 3.1b, the reference is to a fixed or set day thereby conveying a sense of permanence with respect to the date of the trial. Under point 3.2, the reference is to an anticipated or intended trial. In short, the emphasis in point 3.1a and point 3.1b is on the actual date for the trial, whereas under point 3.2 it is on the anticipation of the trial.

28. In ticking point (d) 3.2, the issuing judicial authority is relying upon the fact of the respondent's awareness of the scheduled trial and that he gave a mandate to a legal counsellor. In all of the information provided to this Court by the issuing judicial authority, which information is not contested by the respondent, it is demonstrated that the respondent was present throughout the trial proceedings from March 2007 up to and including 14th April, 2008. The information provided by the issuing judicial authority establishes that this was an ongoing trial. It is also clearly established that the respondent was represented by legal counsel throughout that period and that he knew this counsel. In

May 2008, he left the Polish Republic and came to the island of Ireland.

29. I have no doubt whatsoever on the basis of the information before me, provided by the issuing judicial authority and not contested by the respondent, that the respondent was aware that his trial was ongoing. The respondent was, therefore, aware that there was a scheduled trial – he was present at a trial that was being adjourned from time to time. He may not specifically have been specifically aware of the next date but he was aware that there was going to be a further trial date and was therefore aware of his scheduled trial.

30. The question then arises as to whether the respondent had given a mandate to a legal counsellor to defend him at the trial. From the provisions of the 2009 Framework Decision and s. 45, it is permissible for a legal counsellor to be appointed by the court. That had occurred during the respondent's trial. This legal counsellor had been appearing for the respondent for over a year during the course of the trial proceedings.

31. I am satisfied that the respondent had undoubtedly given a mandate at the outset of the trial to the lawyer who appeared for him. Nonetheless, the respondent submitted that this trial lawyer had no mandate to appear for him. He relied upon his averment that he did not keep in touch with the lawyer "…who did not have any instructions to act after this date." This averment is quite disingenuous in its careful obfuscation of the issue. It is not an indication that he withdrew his mandate to the lawyer. In fact, it is really stating the opposite, there was no positive withdrawal of the mandate, there was simply a failure on his part to keep in touch with his lawyer. The respondent's statement concerning lack of instructions is inextricably linked to his statement that he did not keep in touch with his lawyer. In those circumstances, the claim that the lawyer did not have any instructions to act after that date is an inadequate response to the statement in the EAW that the lawyer did have a mandate to act and did indeed act.

32. This Court must place, and does place, mutual trust and confidence in the statements in the EAW and accompanying documentation provided by the issuing judicial authority. These documents indicate that this respondent had given a mandate to the lawyer. Furthermore, the Court is entitled to take into account that a lawyer will, in the normal course, only act on instructions. The bare reference by the respondent to not

> keeping in touch with the lawyer leading to his implication that the lawyer had no longer any instructions to act, does not amount to a direct statement that the instructions were actually withdrawn.
>
> 33. The reality in this case is that the respondent was aware of the trial that was planned and that, on the information provided by the issuing judicial authority, was in being. He knew the trial was in being (he acknowledges in his own affidavit that he knew of the "proceedings") and he left Poland. In those circumstances, I find that he deliberately chose to flee from Poland during the course of his trial. He had given a mandate to the lawyer who was acting for him during the course of that trial and I am quite satisfied from the evidence before me that that mandate continued throughout the trial. In those circumstances, the provisions of s. 45 of the Act of 2003 have been complied with. There are no grounds for refusing to surrender him.
>
> 34. In the circumstances set out above, it is unnecessary to reach a conclusion on the minister's argument that, despite the designation by the issuing judicial authority, the points set out in the Table at s. 45 are not relevant as the respondent appeared in person at the proceedings resulting in the sentence or detention in respect of which the EAW was issued.

Another important judgment of the Irish High Court concerning the interpretation of Part D, point 3.2, is ***Minister for Justice & Equality v Tulis*** [2015] IEHC 806

http://www.courts.ie/Judgments.nsf/0/8DA24F641017B65180257F3000440F42

The issue in ***Tulis*** was concerned with whether defence by a State appointed lawyer in circumstances where the requested person had absconded satisfied point 3.2 so as to enable a surrender to be effected. Donnelly J stated (at paras 30 to 34 inclusive) that:

> 30. The phrase "mandate to a legal counsellor" can be readily understood as a commission by which a party entrusts to a lawyer the performance of a service. The lawyer to whom the commission is entrusted may be chosen by the person or indeed assigned by the court. While the appointment of the lawyer by the State, as referred to in point (d) 3.2, could refer to a situation where an indigent accused opts for legal representation and the State appoints a lawyer under legal aid, it is not necessarily confined to such legal aid appointments. Indeed, nothing in s. 45, or in the 2009 Framework Decision, indicates that such a

restriction was intended. It is a broad provision and in my view it includes, for example, the situation where the State provides for mandatory lawyers in certain cases such as may occur when a person does not appear at the trial.

31. When the appointment of a lawyer by the State is understood in that broad sense, it raises the possibility that a person can give a mandate to such a State appointed lawyer. If a person, with knowledge of a scheduled trial and of the fact that there will be a mandatory appointment of a lawyer, chooses to absent his or herself from the trial, he or she has deliberatively chosen to be represented by that State appointed lawyer. The important matter is that the mandate is only given where the absence from the trial by the accused is with knowledge of both the scheduled trial and of the resultant appointment of a lawyer to represent him should he fail to attend. It is that complete knowledge and chosen absence from trial that amounts to a deliberate choice to be represented by a lawyer at that trial.

32. However, the appointment of a lawyer to represent a person who does not appear at trial is insufficient *on its own* to comply with the conditions set out in the 2009 Framework Decision for an acceptable trial in absentia. Given that the phrase "deliberately chosen" is used in the recital to the 2009 Framework Decision, knowledge that a mandatory lawyer will be appointed is required before a person who flees could be said to have deliberately chosen a lawyer, and thereby given a mandate, within the terms of 3.2 of point (d) of the Table set out in s. 45 of the Act of 2003, as amended. There must be a deliberate choice to be represented by a lawyer. Such a choice can only take place when there is knowledge that such a lawyer will be appointed.

33. In this case, the issuing judicial authority, in explaining the background to the provision of the lawyer as required under the 2009 Framework Decision, have made, what appears to this Court to be, a deliberate distinction between the provision of a mandatory defence lawyer to a person who is in custody and the provision of a defence lawyer to a person who is out of custody. In the passage from the response of the issuing judicial authority relied upon by the minister, the provision of the mandatory lawyer is explained by reference to the fact that "the accused at that time had been serving his custodial sentence in another criminal case". At the later point in the same response, when referring to the appointment of the defence lawyer to

represent the respondent, there was no reference to this being a mandatory consequence of his failure to appear. Furthermore, there was no reference to whether he was told at the point he acknowledged the next day of the hearing that should he fail to appear, a lawyer would be appointed in his stead. This is in direct contrast to the information the respondent was given by virtue of being in custody that the court would appoint a lawyer should he fail to so appear at the trial.

34. There is simply no evidence of knowledge on the part of the respondent that a mandatory appointment of a lawyer could take place. Indeed, the evidence from the issuing judicial authority points to the contrary conclusion. The reference to the mandatory lawyer was immediately followed by a sub-clause explaining the particular circumstances in his case which called for the mandatory appointment of a defence attorney, namely that he was in custody on another matter. The only reasonable conclusion open to the Court on the evidence before it, is that the mandatory defence lawyer provisions in operation in Slovakia, applied to the respondent as a person who is being held in custody. There is no other reference to the respondent being expressly told that a mandatory lawyer would be provided in his absence from the scheduled trial. There is also no reference to any circumstances which might suggest that he had general knowledge or should have had general knowledge that such a mandatory lawyer would be appointed. Indeed, it is not clear if the decision of the court to appoint the lawyer was mandated by law or was a discretionary power. In those circumstances, I am not satisfied that the respondent knew that a mandatory lawyer would be appointed."

A further case of some importance is **Minister for Justice and Equality v Ahmed** [2016] IEHC 83 where point 3.2 was relied upon, but not amplifying information whatever was provided at point 4. The High Court refused surrender following the Court of Appeal's decision in *Palonka.*

http://www.courts.ie/Judgments.nsf/0/42C978961CFE414880257F5C00560FC5

74. Have the issuing judicial authorities of your Member State reported any difficulties with the executing judicial authority regarding EAW's in which point 3.2 of section (d) was ticked? If so, please describe the problems and state the decision taken by the executing judicial authority

No, In so far as I am aware Ireland has never issued an EAW seeking the rendition of a person tried in absentia.

The decision has been served

75. Have the executing judicial authorities of your Member State had any problems with EAW's in which point 3.3 of section (d) was ticked? If so, please describe the problems and state the decision taken by the executing judicial authority.

Yes, the case of ***Ludwin*** referred to at 71 above best illustrates this. The issues were complex and are described between paras 17 to 45 of the judgment, as follows:

> ***"Section 45***
> *17. Under the provisions of s. 45 of the Act of 2003:*
>
> > *"A person shall not be surrendered under this Act if he or she did not appear in person at the proceedings resulting in the sentence or detention order in respect of which the European arrest warrant was issued, unless the European arrest warrant indicates the matters required by points 2, 3 and 4 of point (d) of the form of warrant in the Annex to the Framework Decision as amended by Council Framework Decision 2009/299/JHA [("the 2009 Framework Decision")], as set out in the table to this section."*
>
> *The Table then sets out the new part D to the European Arrest Warrant which was inserted by the 2009 Framework Decision.*
>
> *18. The EAW before the Court refers to two separate judgments in the issuing state which incorporated three separate sentences in respect of the respondent. I will deal with these sequentially below. It is important to note at the outset that the Court of Justice of the European Union in the cases of Openbaar Ministerie v. Tadas Tupikas (Case C-270/17) and Openbaar Ministerie v. S³awomir Andrzej Zdziaszek (Case C-271/17) have confirmed that the rights of the defence are to be observed in respect of findings of guilt and final determination of sentences. This applies to decisions on appeal where final guilt is determined and also to subsequent proceedings which lead to cumulative sentences where the judicial authority which adopted the decision enjoyed discretion in that regard. The EAW in the*

present case was issued prior to those decisions of the Court of Justice. It is necessary for this Court to ensure that the rights of the defence have been satisfied in respect of each of the judgments for which surrender is sought.

19. The first custodial sentence is described in the EAW as follows:

> *"In the judgment of 29th April 2005 issued in case number XK 334/05, Peter Ludwin was sentenced to one years' imprisonment with a custodial suspension of the sentence for a three year period of probation. This judgment became final on 7 May 2005. In a ruling of 4 September 2009, the court decreed that the imposed penalty of imprisonment be carried out. On 27th September 2010, the court decreed that the convicted person be sought by an arrest warrant."*

At part D of the original EAW, there was no reference to case number X K 334/05 (although there was a reference to other case numbers).

20. Prior to the endorsement of the EAW in accordance with s. 13 of the Act of 2003 for execution in this jurisdiction, the central authority wrote to the issuing judicial authority seeking further information as regards trial in absentia. Either a fresh EAW, or another copy of part D was requested by way of additional information. The issuing judicial authority replied on 20th January 2014 enclosing a number of further part Ds in respect of various case file numbers that related to the sentences.

21. The part D contained the additional information referring to case X K 334/05 and stated that the respondent did not appear in person at the trial resulting in the decision. The issuing judicial authority then ticked box 3.1a as follows:

> *"The person was summonsed in person on 20.04.2005 and thereby informed of the scheduled date and place which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for that trial".*

The issuing judicial authority also ticked box 3.3 which stated:

> *"The person was served with the decision on 06.05.2005 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 did not request a retrial or appeal within the applicable timeframe".*

22. In the circumstances where the issuing judicial authority has indicated that he was personally served with notification of the hearing, there is compliance with the provisions of s. 45 of the Act of 2003. Moreover, the respondent has not contested that he was served with notice of these proceedings or that he was served with the decision. His surrender is not prohibited by the provisions of s. 45 of the Act of 2003 in respect of this sentence of one year.

23. The second judgment is a cumulative judgment of:

> *"11th October, 2012 in case number II K 812/11, the following individual judgments were united:*
>
> > *(a) judgement of the Regional Court in Rzeszow of 22nd February 2009 issued in case number II K 103/08*
> >
> > *(b) Judgment of the Regional Court in Rzeszow of 25 August 2008 issued in case number X K 658/08*
> >
> > *(c) Judgment of the Regional Court in Rzeszow of 30th September 2009 issued in case number X K 1260/09*
> >
> > *(d) Judgment of the Regional Court in Rzeszow of 13th October 2009, issued in case number II K 332/09."*

24. With reference to the cumulative judgment, the EAW states that instead of those individual penalties, the following penalties were imposed:

> *"Aggregate penalty of one year and four months imprisonment instead of the penalties imposed in judgments IIK 103/08 and XK 658/08, aggregate penalty of two years imprisonment instead of the penalties imposed in judgments X K 1260/09 and II K 332/09."*

25. The original EAW at part D stated regarding case X K 658/08: "yes the person appeared in person at the trial resulting in the decision." It then stated regarding case II K 812/11 that he did not appear in person at the trial resulting in the decision. It stated "despite the summons, Piotr Ludwin did not appear at the trial but he was represented by his counsellor." None of the boxes were ticked and there was no further information at part D regarding this trial in absentia.

26. In respect of each of the other case numbers, there was no indication given in the original EAW about his attendance at each of those trials.

27. Following on from the request of the central authority referred to above, the issuing judicial authority in their communication dated 20th January 2014 also sent a part D in respect of II K 812/11, which is the cumulative judgment. In that part D, it was indicated that "he did not appear in person at the trial resulting in the decision". The issuing judicial authority then ticked box 3.1b stating that the respondent:

> *"was not summonsed 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 he scheduled trial and was informed that a decision may be handed down if he or she does not appear for the trial".*

The box at 3.2 was also ticked by the issuing judicial authority and this states:

> *"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".*

There is no indication at point 3.4 of part D as to how either of those conditions has been met.

28. The central authority sent a further request to the issuing judicial authority seeking a part D in respect of the three other individual judgments that had been given in the case, namely II K 103/08, X K 1260/09 and II K 332/09. The issuing judicial authority

sent a reply which included three separate part Ds for each of those case numbers. The reply was sent on 11th April 2014.

29. In respect of case II K 103/08, it was stated that "yes the person concerned has been summonsed in person, which led to the decision." The problem with that statement is that the form, or at least the translation of the form of the EAW, is not in accordance with the form set out in the 2009 Framework Decision. The statement should either have been "yes, the person concerned appeared in person at the trial resulting in the decision" or "no, the person did not appear in person at the trial resulting in the decision".

30. Box 3.1b has however been bolded, and this indicates that the issuing judicial authority is seeking to rely on that fact. Box 3.1b refers to the situation where a person has not been summonsed in person but has received official information of the scheduled date and place of the trial in a manner which unequivocally establishes that they are aware of the scheduled trial and that they had been informed that a decision may be handed down if they do not appear for the trial. The issuing judicial authority did not however include in that part D a statement at 3.4 indicating how the relevant condition has been fulfilled. It appears that there also was a difference with the original version in Polish as box 3.1b had not been highlighted there.

31. The central authority wrote to the issuing judicial authority pointing out those problems with regard to the part D which had been sent. The issuing judicial authority replied with a separate part D in respect of II K 103/08. This contained a clear indication that the person concerned was present in person at the hearing which led to the decision.

32. On the basis of that statement in part D, and in the absence of any indication to the contrary, I am satisfied that the issuing judicial authority is clearly indicating that this respondent was present at the trial. In those circumstances, there is no issue with regard to s. 45 arising out of his trial in case number II K 103/08.

33. In relation to case no X K 1260/09, the central authority sent a request for a separately completed part D. The issuing judicial authority sent a part D by letter dated 11th April 2014 in which they stated "No, the person concerned had not been summoned in person at the hearing which led to the decision." Box 3.1A was also ticked and states as follows: "The person

concerned was summonsed in person on the day, 07.09.2009 and thus was informed of the date and place of the hearing which led to rendering this decision and was also informed that the decision might be rendered in absentia."

34. The part D also indicated at box 3.3 that:

> *"the person concerned was delivered the decision on the day 09.10.2009 and was clearly instructed about the right to have another judicial review or to file the appeal in which the said person has the right to participate and which allow for another hearing checked with regards to content and including new evidence as well as which can lead to reversal or a change of the primary decision".*

Box 3.3 continued that "the person concerned did not file a petition for judicial review and did not file the appeal within the statutory term". Under box 3.4, which is the requirement to set out how the relevant condition has been fulfilled, it is stated "the copy of the judgment with the instruction concerning the possibility of filing an appeal was sent by post. On 09.10.2009 Peter Ludwin in person signed for delivery of the mail."

35. Part D requires a statement that either the person appeared in person at the trial resulting in the decision or that the person did not appear in person at the trial resulting in the decision. The part D sent in respect of X K 1260/09 had wrongly certified that "No, the person concerned has not been summoned in person to the hearing, which led to the decision." The central authority therefore sought further information about this. The issuing judicial authority then sent a new part D which stated "no the person concerned was not present in person at the hearing which led to the decision". Thereafter the completed form was the same as before. In those circumstances, I am satisfied that s. 45 of the Act of 2003 does not prohibit surrender on the basis of the trial in respect of X K 1260/09.

36. Following request from the central authority, the issuing judicial authority by letter dated 11th April 2014, sent over a part D regarding case no. IIK 332/09. This also contained the incorrectly worded statement that "no the person concerned had not been summoned in person at the hearing which led to the decision". The part D also stated, in reliance on box 3.1a, that he was summonsed in person on 10th September 2009 and thus was informed of the date and place of the hearing which led to

rendering this decision and was also informed that the decision might be rendered in absentia. The part D also went on to say at box 3.2 that "knowing about the hearing, the person gave power to the defence attorney who was appointed by that person or the state to defend him/her during the hearing and the attorney defended him/her in reality at the hearing." At box 3.4 it was stated as follows: "The defence attorney of Peter Ludwin filed an appeal from the judgment. The appeal was not taken into account by the higher court".

37. Again the central authority queried that translation and by email dated 11th April 2004, the new part D stated that "no, the person concerned was not present in person at the hearing which led to the decision." The rest of the part D was the same as that which had been included earlier.

38. Counsel for the minister submitted that in respect of this matter, it appeared that there had been service of the summons and that it also appeared that he had been represented at this hearing. With respect to the appeal, counsel submitted that it appeared that the attorney filed the appeal himself. Counsel for the minister submitted that the Court should treat that as the defence attorney having had the mandate to appeal. If there was any query, counsel submitted that the Court could seek further information.

39. The point that concerns the Court at this stage is that other than the cumulative judgment of 11th October 2012, there is no reference to another appellate hearing in this case. That may not be of major significance if the Court was sure that the respondent's defence attorney had a mandate to appeal and had in fact attended at the appeal. If there was a full appeal in respect of this matter at which he was at risk of receiving a different sentence, it appears that the judgment of the CJEU in Tupikas applies. In that case, the CJEU stated at para 83:

> *"It is the judicial decision finally disposing of the case on the merits, in the sense that there are no further avenues of ordinary appeal available, which is decisive for the person concerned, since it directly affects his personal situation with regard to the finding of guilt and, where appropriate, the determination of the custodial sentence to be served." At paragraph 86 the CJEU stated "conversely, the executing judicial authority must carry out the checks provided for in that article*

when the person concerned was present at first instance, but not in the proceedings concerned with a fresh assessment of the merits of the case."

40. In this case, the issuing judicial authority are not seeking to enforce any new sentence given on any appeal, but rather the sentence given originally by the regional court which was subsequently aggregated in case no IIK 812/11. Yet it remains unclear as to whether there was an actual appeal heard and determined by another court which dealt with the merits of the case. It is possible that such an appellate court rejected the appeal and simply affirmed the decision of the lower court which, under Polish law, is the decision to be enforced. Such an appeal would appear to be a judicial decision disposing of the case in finality. The difficulty that this Court has is that there is no information with regard to the nature of the appeal itself or what transpired there.

41. Of further significant concern in this case is the cumulative judgment, II K 812/11. In the original EAW it was stated that "No, the person did not appear in person at the trial result in the decision. Despite the summons, Piotr Ludwin did not appear at the trial but he was represented by his counsellor." That statement was made on its own with no relevant box ticked.

42. The central authority sought a fully completed part D in respect of that cumulative sentence. The issuing judicial authority replied by email dated 20th January 2014. The part D stated that "No, the person did not appear in person at the trial resulting in the decision". Both boxes 3.1b and 3.2 are ticked. There is no further information as to how those conditions were complied with because the issuing judicial authority did not fill in box 3.4. as is required by Article 4A regarding the amended form of the EAW as set out in the 2009 Framework Decision.

43. As has been clear from the decision of the Court of Appeal in Minister for Justice and Equality v. Palonka [2015] IECA 69 it is necessary for that information to be included in the EAW so that the High Court can be satisfied that the conditions set out in s. 45, which incorporate the part D form of the EAW as inserted by the 2009 Framework Decision, have been satisfied. In the present circumstances, the Court simply does not have that information. As the decision in Palonka made clear, it is not necessary for the respondent to contest any matter with regard to the situation in s. 45 of the Act of 2003.

44. It is noted however that while the respondent does not expressly state he was not present at that hearing, it is clear from his affidavit that he left Poland for Ireland in or about the summer of 2009. That is well before the decision as regards the cumulative judgment in October 2012. It is also worth noting that at the time the respondent left Poland, he alleges that he was under serious pressure from people he terms "hooligans" and from whom he had borrowed money. He says that he was told that he would be in severe difficulty if he did not repay the money. He says that in or about 2008 he jumped out of the window of a building in Rzeszow with a view to ending his life. He suffered significant injuries and was taken to hospital where he stayed for two weeks. In my view, it is implicit within his affidavit that he did not return to Poland at any period of time. It is therefore unclear, even from his own affidavit, as to how he was officially notified of the cumulative judgment hearing and indeed how he could have notified the defence solicitor.

45. I am therefore not satisfied that the provisions of s. 45 have been complied with in respect of the cumulative judgment in II K 812/11 comprising the aggregate penalty of 1 year and 4 months and the aggregate penalty of 2 years imprisonment. The remaining issue therefore, is whether this Court should seek further information pursuant to s. 20 of the Act of 2003. The Court will deal with that issue after it has dealt with the next heading."

76. Have the issuing judicial authorities of your Member State reported any difficulties with the executing judicial authority regarding EAW's in which point 3.3 of section (d) was ticked? If so, please describe the difficulties and state the decision taken by the executing judicial authority.

No, Again this is because Ireland has never to my knowledge issued an EAW seeking the rendition of a person tried in absentia

The decision will be served after surrender

77. Have the executing judicial authorities of your Member State had any problems with EAW's in which point 3.4 of section (d) was ticked? If so, please describe the problems and state the decision taken by the executing judicial authority.

No

78. Have the issuing judicial authorities of your Member State reported any difficulties with the executing judicial authority regarding EAW's in which point 3.4 of section (d) was ticked? If so, please describe the difficulties and state the decision taken by the executing judicial authority.

No, because we do not routinely try people in absentia, Ireland has never issued an EAW seeking the rendition of a person tried in absentia

3.3. Proceedings at several instances

79. Have the executing judicial authorities of your Member State had any problems with EAW's relating to proceedings which had taken place at several instances and which had given rise to successive decisions? If so, please describe the problems and state the decision taken by the executing judicial authority.

None apart from those already adverted to in earlier answers, and they have been principally the issue in ***Minister for Justice and Equality v Horvath***, previously referred to, and ***Minister for Justice and Equality v APL (otherwise Lipinski)*** previously referred to. There were a number of additional cases awaiting a determination in *Lipinski*, as they involved the same or a very similar issue, but following the CJEU's decision in *Ardic* it was possible to dispose of these by means of ex tempore judgments.

80. Have the issuing judicial authorities of your Member State reported any difficulties with the executing judicial authority regarding EAW's relating to proceedings which had taken place at several instances and which had given rise to successive decisions? If so, please describe the difficulties and state the decision taken by the executing judicial authority.

No, again for the reason that Ireland has never issued an EAW for a person tried in absentia.

3.4. Later proceedings which result in modifying the nature or the *quantum* of the penalty originally imposed

81. Have the executing judicial authorities of your Member State had any problems with EAW's relating to *Zdziaszek*- or *Ardic*-decisions (see Part 2.2 (G.9)? If so, please describe the problems and state the decision taken by the executing judicial authority.

See the answer to Q.79 re ***Minister for Justice and Equality v APL (otherwise Lipinski***, and the answers to Q27 and Q49 in Part 2

82. Have the issuing judicial authorities of your Member State reported any difficulties with the executing judicial authority regarding EAW's relating to *Zdziaszek*- or *Ardic*-decisions? If so, please describe the difficulties and state the decision taken by the executing judicial authority.

No

3.5. Margin of discretion of the executing judicial authority

83. Have the executing judicial authorities of your Member State actually taken account of 'other circumstances that enable [them] to ensure that the surrender of the person concerned does not entail a breach of his rights of defence'? If so, please state the decision and describe the circumstances on the basis of which the executing judicial authority reached the conclusion that the surrender of the requested person would not entail a breach of his rights of defence.

No. The decision of the Court of Appeal in **Minister for Justice and Equality v Palonka** would seem to preclude it. However, it is now arguably the case, in the light of the CJEU's decisions in the cases of *Dworzecki* and *Tupiskas*, that the effect of the Court of Appeal's decision is to create doubt concerning whether s.45 of the Act of 2003, as amended, can be regarded as representing an effective transposition of Article 4a.

3.6. Requesting supplementary information

84. What kind of supplementary information (under Art. 15(2) FD 2002/584) do the executing judicial authorities of your Member State usually ask for in order to be able to validly decide on the surrender of the requested person and within what time frame?

Additional information is sought on a very wide range of issues. This is elaborated upon in more detail in the answer to Q 88 below. However, the need to do so is in large measure because of difficulties on the part of common law judges in understanding aspects of civil law procedure with which they are wholly unfamiliar and which may appear counterintuitive to them against their background of a lifetime of practice in an adversarial common law criminal justice system. While there is no standard time frame it is acknowledged that it does give rise to delays, and may mean that the 60 and 90 day aspirational time limits provided for in the Framework Decision cannot be achieved, and this issue has been considered by the Irish Court of Appeal in ***Minister for Justice and Equality v Sadiku*** [2016] IECA 65 relating to a surrender request received from Italy.

http://www.courts.ie/Judgments.nsf/0/43D9DBA6D6A0420880257F6B005E0364

In this case, which was an *in absentia* case, the issuing judicial authority had not completed the Part (d) questionnaire, initially at all and then, following a request for additional information, only in part. The executing judicial authority afforded the issuing judicial authority several opportunities to mend its hand by the furnishing of additional information, seemingly to no avail. Eventually the executing judicial authority decided that the issuing authority would be given "*one last chance*". However this was a step too far for the respondent who appealed the decision to make this further request for additional information, contending that the purpose of s. 20 of the Act of 2003 (which allows for the seeking of additional information) was not to facilitate the plugging of gaps in an otherwise deficient warrant so as to enable an order for surrender to be made. The appeal was untimately dismissed in the circumstances of the particular case but in a nuanced judgment the Court of Appeal expressed some sympathy with the notion that there may be limits to the extent to which it is appropriate to seek additional information, particularly in circumstances where it would cause significant consequential delays. The court expressed the view that allowing such to occur "*runs counter to the objectives and purpose of the EAW arrangements envisaged by the Framework Decision, and should be avoided*".

85. Have the executing judicial authorities of your Member State had any cases in which, after having requested supplementary information (under Art. 15(2) FD 2002/584) *once*, they still could not verify whether the rights of the defence were observed? If so, please state the decision taken by the executing judicial authority.

Quite frequently. See ***Minister for Justice and Equality v Sadiku*** already cited

86. When the issuing judicial authorities of your Member State are asked to provide supplementary information (under Art. 15(2) FD 2002/584) in order for the executing judicial authority to decide on the surrender of the requested person, what kind of information are they usually asked for?

In non in absentia cases, as we simply don't issue European arrest warrants seeking the surrender of persons tried in absentia, the circumstances in which supplementary information is sought are wide and varied, depending on the issue eg., problems with correspondence, extra territoriality, our unique s.21A of the Act of 2003 etc. In general, Irish warrants tend to err on the side of possibly containing more information than may be strictly necessary, and accordingly such requests, although they may vary widely in substance, are not all that frequent.

3.7. Time Limits

87. Have the executing judicial authorities of your Member State had any cases in which the time limits of 60 and/or 90 days could not be observed, because the information contained in the EAW was insufficient to decide on the execution of the EAW? If so, please state the decision taken by the executing judicial authority.

It is regrettably the case that in Ireland the aspirational time limits of 60 days and 90 days are frequently not adhered to. This is partly due to resource issues, partly due to systemic inefficiencies in how surrender applications are processed in the Irish courts, but for the most part is due to the fact that the majority of incoming EAWs come from civil law jurisdictions with whose criminal justice systems Irish lawyers and the judiciary have very little familiarity. In circumstances where there are radical differences in both criminal law and procedure relating to how cases are prosecuted and tried in civil law systems compared to how they are prosecuted and tried in our common law criminal justice system, coupled with language barriers that compound the difficulty in understanding, there are frequent requests from the Irish High Court as executing authority for clarifications and additional information. Sometimes these are dealt with efficiently and comprehensively by the issuing judicial authorities. At other times, they are met with hostility or bewilderment, and further information is only offered on a grudging basis or not at all. At times there may have to be several requests for further and better information to enable the executing authority to be satisfied that it is in a position to rule on an objection to surrender.

Two examples will serve to illustrate the type of difficulties encountered.

The first example involves a pair of related cases involving the Netherlands, the second is the case of ***Sadiku*** involving Italy already referred to at Q 84 above.

The Dutch cases in question were ***Minister for Justice & Equality v Brunell*** [2014] IEHC 131 & ***Minister for Justice & Equality v McArdle*** [2014] IEHC 132. These did not involve trials in absentia. However, they serve to vividly illustrate the point being made.

http://www.courts.ie/Judgments.nsf/0/D31EC5476819E58880257CA10038C618

http://www.courts.ie/Judgments.nsf/0/A147D18301532E0380257CA10039C005

The eventual decisions of the High Court (I happened to be the High Court judge) to surrender the requested persons, notwithstanding the difficulties experienced in trying to arrive at a sufficient understanding of what had occurred before the Dutch courts, was subsequently appealed to the Supreme Court. The appeals were dismissed and the High Court's judgments were upheld.

Certain remarks made in the High Court's judgment deprecating the difficulties that had been experienced were expressly endorsed by the Chief Justice in giving judgment for the Supreme Court.

http://www.courts.ie/Judgments.nsf/0/8E159AAA671192F980257E6F004EF567

At page 54 *et seq* of my judgment in those cases I had said:

> "This Court wishes to comment, hopefully in a measured way, that the indignant tone of the issuing judicial authority's reply dated the 11th October, 2013, and also that of the supporting affidavit of Professor Dr. Strijards sworn on the 14th October, 2013, is really most unfortunate. It is unfortunate in circumstances where there is required to be trust and confidence between member states, and also where both issuing and executing authorities are required by the Framework Decision to afford mutual recognition to each other's decisions and rulings. Ireland made a declaration during the intergovernmental negotiations leading to the adoption of the Framework Decision to the effect that Ireland would only execute an European arrest warrant for the purpose of bringing a person to trial or for the purpose of executing a custodial sentence or detention order. The declaration was intended to make clear Ireland's opposition to extradition or surrender for the purpose of investigative detention. Legislative effect was initially given to this declaration in s.11(3) of the Act of 2003 (repealed by s. 72(c) of the Criminal Justice (Terrorist Offences) Act, 2005 (hereinafter 'the Act of 2005')), and later by s.21A of the Act of 2003 (inserted by s.79 of the Act of 2005). Accordingly, a person opposing surrender on foot of a European arrest warrant before an executing judicial authority in Ireland is entitled to make the case that he is wanted for investigation purposes and not for the purposes of being tried. Where a person's surrender is sought on foot of a European arrest warrant there is a statutory presumption under Irish law that a

decision has been made to charge that person with, and try him or her in the issuing state for, the offence to which the warrant relates, unless the contrary is proved. However, where, as in the present proceedings, a case to the contrary is being made, the executing judicial authority is obliged, whether the issuing judicial authority likes it or not, to engage with that objection. If the Court considers that it has cogent evidence before it sufficient to rebut that which is presumed, it must then seek to ascertain whether, as a matter of fact, decisions had been made, before the issuing of the European arrest warrant, to charge the person with, and to try him or her in the issuing state for, the offence(s) to which the European arrest warrant relates, bearing in mind that the onus of proving that such decisions were not made rests on the objector. The timing of the decisions is important because Irish jurisprudence requires that they should have been made before the European arrest warrant was issued. Frequently, the answer to these questions is not readily apparent and requires to be inferred from an examination of the evidence concerning the procedural history of the particular case in the issuing state.

In order to be in a position to draw the correct inference(s) it is necessary for the executing judge to have at least a rudimentary understanding of how the criminal justice system in the issuing state works, and some general understanding of the rules of criminal procedure in the issuing state. It may sometimes be necessary to delve more deeply into some aspects of the procedural history of a case than into others, and it may sometimes be necessary to seek additional information on more than one occasion. It will always depend on the circumstances of the case.

Accordingly, when an executing judicial authority states that it needs additional information to enable it to perform its function it is entitled to expect that such a request will be received respectfully and acted upon, if it is possible to do so, in accordance with the issuing judicial authority's duty to afford mutual recognition to the executing judicial authority's decision in that regard. Mutual recognition is not a one-way system that only governs judicial decisions and communications emanating from the issuing state. It is a reciprocal obligation also governing judicial decisions and communications emanating from the executing state.

It is a matter of particular concern that in response to a straightforward request by this Court for additional information to

assist it in establishing the facts in regard to the procedural history of the case, and without the Court having expressed any view whatsoever on the merits or otherwise of the objection that it was considering, that the issuing judicial authority should conclude that, simply by virtue of such a request being made at all, the executing judicial authority had in some fashion pre-judged the substantive issues before it; and, moreover, that it proposed to engage in some form of extra-territorial judicial review of the actions of the Dutch courts and/or prosecuting authorities. That simply was not, and is not, the case, and this Court is at a loss to understand how on any interpretation of the applicant's correspondence on behalf of the executing judicial authority such a view could reasonably have been arrived at.

This Court is prepared to accept that there has been some level of genuine misunderstanding on the part of the issuing judicial authority, possibly due to the language barrier between us and lack of familiarity with each other's laws and procedures, particularly where on one side there is a civil law jurisdiction and on the other side a common law jurisdiction, and also on one side an inquisitorial system and on the other side an adversarial system.

Indeed, it now seems likely that at least part of the misunderstanding may be due to the fact that, if I understand Professor Dr. Strijards correctly, only prosecutors are competent before the Dutch courts to give the court guidance as to Dutch law. I have no reason to doubt that that is so. However, this Court was not seeking interpretation of the law, merely a description of it – a fine distinction, perhaps. A more significant point is that the explanation that this Court sought as to Dutch law was (a) requested from a Dutch prosecutor *i.e.*, the issuing judicial authority himself, and (b) it was never intended to be used before a Dutch Court, but rather before the Irish High Court where the Dutch rules of evidence and procedure do not apply. To the extent that the prosecutor's attention was drawn to the textbook in question, it was thought that that might be of possible assistance to him in circumstances where this Court's reasonable working assumption was that most academic commentary on the Dutch criminal justice system was likely to be in the Dutch language rather than in English. Moreover, it was expressly stated that no regard would be had to it unless both parties were agreeable, or at least one party had adduced satisfactory evidence in verification of its contents and confirming the accuracy thereof.

> If, as I am prepared to accept, there has indeed been a genuine misunderstanding, it only serves to emphasise the need for trust and confidence; such that, where a judicial authority on one side has indicated that it needs additional information, that request will be respected and acted upon by the judicial authority on the other side, even if that need is not readily apparent or understood by that other judicial authority. Moreover, this Court would venture to suggest that if the request is not understood, or, as in this case, is considered to be insufficiently specific, the appropriate response ought to be respectful engagement and a rejoinder requesting some explanation as to why the information is required, and/or a recasting of the request in more specific or closely focused terms, rather than expression of indignation.
>
> Be all of that as it may, the second affidavit of Professor Dr. Strijards was ultimately helpful, and it has provided some assistance to this court in understanding properly the role of the public prosecutor in criminal proceedings in the Netherlands, in particular that the public prosecutor is regarded as being a member of the judiciary.
>
> In addition, the Court has taken due note of the emphatic assertion of the issuing judicial authority that he has charged the respondent, and his co-accused Mr. Brunell, and that '[t]here have already been two hearings in the trial against the suspects at the District Court as court of first instance, which will decide on the question of guilt, namely on 28 March 2012 and on 30 August 2012."

In her judgment in the Supreme Court on the appeal the Chief Justice remarked (at para 52):

> "52. There is well established jurisprudence in this Court as to the principles of mutual respect and co-operation in operating the European arrest warrant scheme. In this regard it is important to state that the respect and co-operation required is indeed mutual. The learned trial judge records certain comments and observations made by the public prosecutor of the Netherlands which are neither the norm in these matters or helpful. The Court endorses everything said by the learned trial judge in this regard."

The other case that I rely on as illustrating the point being made is a decision of the Court of Appeal in **Minister for Justice and Equality v**

Sadiku [2016] IECA 65, previously referred to in the answer to Q.85 above.

3.8. Additional observations on the application of the national legislation implementing the FD's

88. Do you have any additional observations on the application of the national legislation implementing the FD's (*e.g.* have the issuing and/or executing judicial authorities of your Member State experienced other problems)? If so, please describe them here.

I am not sure of the parameters of this question. If it is confined to requests for the surrender of persons who have been tried *in absentia*, then the answer is "No". If the question is wider and involves any type of issue to do with European Arrest Warrants then the answer is "Yes", there are innumerable issues that have given rise to litigation before the Irish High Court but they are far too numerous and wide ranging to be summarised neatly. There is an extensive jurisprudence on Constitutional and Human Rights issues, on Ireland's Declaration entitling it to refuse to surrender person's in respect of whom there has not been a decision to charge and try them, on issues relating to the Rule of Specialty, on issues relating to correspondence where Article 2.2 has not been availed of, on issues relating to extra territoriality, on problems with frustration of surrender orders, on problems with interpretation of both the Framework Decision and the domestic transposing legislation, and on numerous other topics.

3.9. Methodology

89. On which type of research did you base your answers to the questions in Part 3?

It is based on a review of the reserved judgments of the Irish Superior Courts relating to European Arrest Warrants seeking the surrender of persons who were tried, or who were alleged to have been tried, *in absentia* and whose surrender was contested. It is also based on personal experience as the judge in charge of the European Arrest Warrant list in the Irish High Court from 2011 to 2014, personal experience as an appellate judge hearing appeals in European Arrest Warrant cases from 2014 to date, and on anecdotal evidence gleaned in discussions with the current judge in charge of the European Arrest Warrant list in the High Court, with her Registrar, and with the solicitor who regularly represents the Irish Central Authority.

Part 4: statistical data on the actual application of the national legislation transposing the FD's.

It is necessary before addressing the questions in this part of the questionnaire to provide some context, and explanation in advance, for why it has not been possible to provide all of the information sought.

The only party that collects statistics in Ireland concerning European Arrest warrant cases is the Irish Central Authority, i.e., the Minister of Justice and Equality. He does so because he is required by section 6(6) of the European Arrest Warrant Act 2003 to prepare an annual report to the Oireachtas (i.e., the Irish Parliament) on the operation of the Act in the preceding year.

These reports contain appendices documenting the numbers of EAWs received and issued in the State in the year in question, the identity of issuing authority's member state, or in the case of EAWS issued by Ireland the executing authority's member state.

In the case of warrants received, they document the number of persons surrendered, the number of warrants withdrawn, the number of files closed because the respondent was arrested elsewhere, and the number of respondents released, in the year in question. They also identify the nationalities of the person's sought, and the type of offences in respect of which they were sought.

In the case of warrants issued they document the number of persons surrendered to the Irish State in the year in question, by what member states they were surrendered, and for what offences they were surrendered.

The statistics also record the number of warrants received in the year in question that were endorsed for execution, and the number of persons actually arrested. They also record the numbers of cases in the year in question where the Central Authority has had to notify Eurojust that either or both the 60 day and 90 day time limits were not achieved.

They record the numbers of cases in which respondents sought an enquiry under Article 40.4 of the Constitution of Ireland (habeas corpus), and the number of cases appealed to an appellate court (Court of Appeal or Supreme Court).

Information is also provided on the number of cases still being processed at the calendar year end, both in the case of EAWs received and EAWs issued.

The problem in terms of the questionnaire is that no breakdown is provided concerning the numbers of warrants in question that were for prosecution, of the numbers that were for execution, and of the numbers that were a mix of both. Neither do they identify in any way on what grounds surrender may have been resisted, or even if it was resisted. The statistics do not isolate and identify the numbers of cases in which the respondent may have been tried in absentia, much less any numerical breakdown concerning what Part (d) certifications may have been relied upon in seeking a surrender. No statistics are kept concerning assurances given or undertakings given.

Moreover, it has not been possible to obtain the required information from other sources, save in a minority of cases. The High Court's own records merely record whether a person's surrender was ordered or refused. It does not specify why. In a minority of cases there may be a reserved written judgment and in that event detailed reasons for the surrender, or refusal of surrender, will be contained in the judgment. However, the High Court only reserves judgment in cases which are particularly complex or which raise a novel point of law not previously ruled on. In the majority of cases judgment is delivered ex-tempore and there is no written record of the court's reasons unless one of the parties afterwards requests the Court to authorise the Digital Audio Recording to be transcribed so as to facilitate an intended appeal. The Court will readily do so, notwithstanding that it is expensive, if the request is deemed reasonable. However, it is the exception rather than the rule that ex-tempore judgments are transcribed because there is no automatic right to appeal. An appeal is only available on a point of law of exceptional public importance. If the court has seen fit to deal with the case by means of an ex-tempore judgment then it is inherently unlikely that it involved an issue that is potentially of exceptional public importance. A pre-condition to any possible appeal is persuading the Court to issue a certificate that the case involved an issue of exceptional public importance and that it is desirable in the public interest that that issue be clarified on appeal.

The Irish Courts Service does not keep statistics on the European Arrest Warrant, although it maintains the individual court files. A review of individual case files held by the Courts Service might have had the potential to assist in part in as much as they would contain some raw, uncollated and unanalysed data. Although serious consideration was given to whether such a review could be conducted, it was not ultimately attempted for several reasons.

First, the number of cases concerned was simply too large for a single researcher to review in the time available.

Secondly, the files were not available to the general public. There is a thirty-year rule in Ireland before official records, not already in the public domain such as judgments, are made generally available to the public. While non publicly available court records are of course available to the judiciary in connection with the judging of an individual case, they are not usually otherwise available. Although it was pointed out that access was being sought for genuine research purposes, reservations were expressed by Court Staff both about data protection issues and the thirty-year rule.

Thirdly, even if access could be negotiated it was made clear that the files would not be available for consultation after hours, and as a full time appellate judge most of my work on this project has had to be conducted in the evenings during my own time. The files are not accessible electronically. Moreover, it is not permitted to remove them from the Court Registry. In addition, the majority of case files are in archive and are not readily accessible, save upon a case specific request.

Fourthly, quite apart from all of these logistical obstacles the additional information that might be gleaned from such a proposed review would in any event be very limited. While the files should contain a copy of the warrant in each case, copies of the Points of Objection raised, copies of any affidavits filed either in support of Points of Objection raised or resisting them, copies of any directions by the Court requiring the submission of additional information, copies of any additional information filed, and a Court Order recording whether surrender was ultimately granted or refused, they would not indicate whether points raised in pleading were ultimately relied on or pressed at the hearing. While in some cases counsel's written legal submissions might be on file, they are not invariably retained as they are not official documents. Moreover, there would be no note of the oral arguments. Critically, unless judgment had been reserved, the file would contain no record of what submissions might have been accepted or rejected by the Court, or of the reasons for either.

The files of the Central Authority, i.e., the Minister for Justice, are not available to the judiciary, or indeed members of the public, to review. Again, the thirty-year rule applies.

For the assistance of the research analysts I am attaching to the e-mail by means of which this response is being transmitted the Irish Central Authority's annual reports on the EAW for the years 2008 to 2016 inclusive. The 2017 report is not yet available.

81. Please provide the following data for each year in the period of 2008-2017 (preferably for your Member State as a whole, but if that is not possible, for your own court):

– a. the total number of EAW's decided by the executing judicial authorities of your Member State.

It is not clear what is meant by "decided". My working assumption is that it refers to finalisation of the case in some respect, whether that be by surrender, by refusal, by withdrawal of the warrant or by file closure in circumstances where the respondent has been arrested elsewhere.

Year	New EAW's Received	EAW's in Progress	Number Finalised	Surrendered	Refused	Withdrawn	Arrested Elsewhere
2008	198		41	26	1	8	6
Ongoing from prev yrs in 2008		193	89	47	6	23	13
2009	329		51	29	10	8	4
Ongoing from prev yrs in 2009		261	91	40	13	31	7
2010	373		91	47	17	17	10
Ongoing from prev yrs in 2010		445	173	114	25	25	9
2011	384		84	33	12	35	4
Ongoing from prev yrs in 2011		554	246	144	22	59	21
2012	313		84	25	2	43	3
Ongoing from prev yrs in 2012		589	253	125	18	87	2
2013	223		51	unavailable	unavailable	unavailable	unavailable
Ongoing from prev yrs in 2013		582	313	unavailable	unavailable	unavailable	unavailable
Undifferentiated				157			
2014	183		30	unavailable	unavailable	unavailable	unavailable
Ongoing from prev		442	173	unavailable	unavailable	unavailable	unavailable

yrs in 2014							
Undifferentiated				115			
2015	176		36	unavailable	unavailable	unavailable	unavailable
Ongoing from prev yrs in 2015		423	161	unavailable	unavailable	unavailable	Unavailable
Undifferentiated				91			
2016	178		39	unavailable	unavailable	unavailable	Unavailable
Ongoing from prev yrs in 2016		402	168	unavailable	unavailable	unavailable	Unavailable
Undifferentiated				82			
2017	unavail		unavail	unavailable	unavailable	unavailable	Unavailable
Ongoing from prev yrs in 2017		unavail	unavail	unavailable	unavailable	unavailable	Unavailable
Totals			2174	1075	126	336	79

NB These figures include those cases in which the requested person consented to surrender. The available statistics do not differentiate between contested surrenders and consent surrenders. However, based on my experience I would estimate that the number of consent surrenders would not exceed 15%.

– b. out of this total number of EAW cases referred to under a.:

- the total number of EAW's for the purpose of prosecution:

- the total number of EAW's for the purpose of execution of a custodial sentence or detention order

It has not been possible to answer this question properly because the available statistics do not differentiate been EAW's for prosecution purposes, and EAW's for execution purposes. It has, however, been possible to provide the requested data in those cases in which there have been reserved judgments, and the table below contains that data. Regrettably, the information is not available for cases in which there were *ex-tempore* judgments, which comprises the majority of cases.

Year	**Prosecution**	**Execution**	**Both**

2008	11	14	1
2009	9	8	1
2010	11	10	2
2011	13	27	1
2012	14	16	1
2013	13	9	1
2014	11	6	2
2015	10	9	0
2016	16	10	0
2017	15	13	0

– c. out of the total number of EAW cases referred to under a.: the total number of cases in which either the 60 day time limit or the 90 day time limit could not be observed, broken down into prosecution-EAW's and execution-EAW's:

It is only possible to answer this question in part. The available statistics record the total numbers of cases in each year in which the Irish Central Authority made a report to Eurojust concerning a failure to achieve the 60 and/or 90 day time limits. However, they do not differentiate between prosecution and execution warrants. Accordingly, it has only been possible to provide a breakdown in those cases in which there were written judgments. A breakdown is not available for cases in which there were *ex-tempore* judgments, and these represent the majority of cases. There were a total of 214 written judgments in the period 2008 -2017. Of that number the time limits were adhered to in just 14 cases. There were 8 inside the 90 day limit, and 6 inside the 60 day limit.

	Undifferentiated totals		Cases with written judgments - either limit missed	
Year	60 Day Missed	90 Day Missed	Prosecution warrant	Execution warrant
2008	29	29	9	12
2009	19	19	6	8
2010	74	74	11	9
2011	167	136	12	25
2012	113	104	13	7
2013	73	72	12	8
2014	117	118	9	5
2015	80	81	9	9
2016	72	72	15	10
2017	unavailable	unavailable	13	12

While these figures are disappointing and are indicative of a systemic problem with adherence to the time limits in the Irish system, a number of points require to be made.

First, the number of EAW's received in Ireland increased dramatically up until 2011, since when it has fallen somewhat and has plateaued. The table below illustrates the trajectory. The biggest increases were between 2008 and 2011. This corresponded with a period of severe national financial crisis when Ireland was the subject of IMF intervention, and there was no possibility of obtaining additional resources. Indeed, it was difficult to hold on to existing resources during this period. Clearly, however, additional resources were, and continue to be, required to address an ever growing backlog.

2005	67
2006	127
2007	173
2008	198
2009	326
2010	373
2011	384
2012	313
2013	223
2014	183
2015	176
2016	178
2017	unavailable

Secondly, there is zero judicial training in Ireland with respect to EAW law. Accordingly, any new judge taking over the list, unless they have been a EAW practitioner while at the Bar or as a Solicitor, such as the present EAW judge, starts from a position of zero knowledge concerning how the system is meant to operate. It takes time to get up to speed, and to become efficient at managing a unique list in those circumstances.

Thirdly, there are, I believe, systemic problems with the way that Ireland tries and manages EAW cases due in large part to our adversarial tradition. Although EAW cases are said to be *sui generis*, and are subject to neither an adversarial nor inquisitorial procedure, the actual procedures adopted, particularly the pre-trial procedures are heavily influenced by our adversarial tradition.

Ireland, unlike the UK, has eschewed the use of oral evidence in EAW cases. The procedure actually employed, based as it is on exchanges of affidavits, replying affidavits, affidavits in rejoinder and the pleading

of points of objection, is in my view inimical to speedy disposition of cases.

In support of this procedure a system of case management has grown up in which cases are listed numerous times for procedural purposes before a case is listed for hearing. Thus, counsel will seek three weeks for the preparation of points of objection and a grounding affidavit. The next time the case is back in the management list the Central Authority will look for further time, say another three weeks, saying they have to get the respondent's affidavit translated and sent to the authorities in the issuing state for their comments. On the next occasion the respondent's counsel is likely to say "we have just received additional information from the issuing authority, we need time to respond to it", and so another three weeks may be given, and it goes on and back and forwards in this way. Further time may be sought to investigate assertions made, to obtain expert reports, to get documents translated, and on both sides to prepare and file written legal submissions.

When translations have to be obtained at every stage; where time has to be afforded to a party served with new documents to consider them so as to determine whether they require to be replied to; where either side may have to instruct an expert and obtain a report, or an affidavit, from an expert or a relevant lay persons, in the issuing state in order to reply to an assertion made by the other side; where the Central Authority or the Court considers it necessary to seek additional information from the issuing judicial authority to respond to something asserted by the respondent; all of this takes time and adds to the delay. It is therefore not uncommon for the 60 or 90 day time limits to have expired well before a case is considered ready to accept a hearing date. Then it may not get a date for some time due to a backlog of cases.

Our Constitution attaches great important to the rules of natural justice, such that a respondent is entitled to know exactly the case being made in support of his surrender, is entitled to engage with it and reply to it, is entitled to challenge the evidence supporting it, and is entitled to be afforded sufficient time to meaningfully prepare his case. Judges are very nervous, notwithstanding the 60 and 90 day time limits, of being accused of violating a respondent's constitutional right to properly prepare his/her defence by forcing on a case before the respondent's side says it is ready. Clearly deliberate foot dragging can be, and is, deprecated and not tolerated. However, the view is that if the request for further time is reasonable, and it usually is in the context of how our system is organised, it must be granted.

Fourthly, there has been a tendency for test cases, or appealed cases, awaiting a final determination, to hold up the disposition of numerous other cases relying on the same point. For example, very many cases were adjourned awaiting the outcome of the Lipinski/Ardic litigation. The same was true in the Celmar case involving Poland.

- d. out of the total number of EAW cases referred to under a.: the total number of cases in which the execution of the EAW was refused, broken down into prosecution-EAW's and execution-EAW's

It is not possible to provide this information save where there has been a reserved judgment. The majority of cases, however, were dealt with by means of ex tempore judgments. For what it is worth, an analysis of the available reserved judgments is provided.

Year	**Prosecution Refused**	**Execution Refused**
2008	1	4
2009	0	1
2010	3	3
2011	2	4
2012	6	8
2013	3	5
2014	2	2
2015	5	4
2016	5	4
2017	4	2

- e. of the EAW's for the purpose of execution (b.):

  Before transposition of Art. 2 FD 2009/299/JHA by your Member State
  - the total number of cases in which the EAW was issued 'for the purposes of executing a sentence or a detention order imposed by a decision rendered in absentia and if the person concerned has not been summoned in person or
    otherwise informed of the date and place of the hearing which led to the decision rendered in absentia' (Art. 5 par. 1 FD 2002/584/JHA):

Again, it is only possible to provide this information in those cases in which there was a reserved judgment.

Pre- transposition	**Year**	***In absentia***
	2008	10
	2009	1
	2010	4
	2011	5
	2012	5

- of those cases: the total number of cases in which the executing judicial authority demanded a guarantee that the requested person 'will have an opportunity to apply for a retrial of the case in the issuing Member State' (Art. 5 par. 1 FD 2002/584/JHA)

Again, it is only possible to provide this information in those cases in which there was a reserved judgment.

Year	***Undertaking of re-trial required***
2008	1
2009	1
2010	2
2011	3
2012	3

- of those cases: the total number of cases in which the executing judicial authority either held that the guarantee was 'adequate' or held that the guarantee was insufficient and refused to execute the EAW on the basis of Art. 5 par. 1 FD 2002/584/JHA.

Again, it is only possible to provide this information in those cases in which there was a reserved judgment.

Year	***Undertaking deemed adequate***	***Undertaking deemed insufficient***
2008	0	1
2009	0	1
2010	2	0
2011	1	2
2012	1	2

- the total number of cases in which the information in the EAW was insufficient to verify whether the conditions of Art. 5 par. 1 FD 2002/584/JHA had been met and Art. 15(2) FD 2002/584/JHA was applied.

Again, it is only possible to provide this information in those cases in which there was a reserved judgment.

Year	***Art 15.2 (s. 20.1 of the 2003 Act Applied***
2008	0
2009	1
2010	0
2011	1
2012	1

- in case of application of Art. 15(2) FD 2002/584/JHA: the total number of cases in which either the 60 day time limit or the 90 day time limit could not be observed

While total figures are available and have been provided above, there is no breakdown specifically referable to in absentia cases. Again, it is only possible to provide this information in those cases in which there was a reserved judgment.

Year	***Time limit could not be observed***
2008	0
2009	1
2010	0
2011	1
2012	1

After transposition of Art. 2 FD 2009/299/JHA by your Member State

- the total number of cases in which the requested person was present in person at the trial resulting in the decision.

While total figures are available and have been provided above, there is no breakdown specifically referable to in absentia cases. Again, it is only possible to provide this information in those cases in which there was a reserved judgment.

Year	***Present at trial***
2013	2
2014	5
2015	3
2016	4
2017	8

- the total number of cases to which Art. 4a was applicable

Again, it is only possible to provide this information in those cases in which there was a reserved judgment.

Year	***In absentia/Article 4a applicable***

2013	7
2014	1
2015	6
2016	6
2017	5

- the total number of cases in which the information in the EAW was insufficient to verify whether the conditions of Art. 4a FD 2002/584/JHA had been met and out of these: the total number of cases in which Art. 15(2) FD 2002/584/JHA was applied because the information in the EAW was insufficient to verify whether the conditions of Art. 4a had been met:

Again, it is only possible to provide this information in those cases in which there was a reserved judgment.

Year	***Insufficient information in EAW***	***Article 15(2) applied***
2013	3	2
2014	1	1
2015	0	0
2016	1	0
2017	1	1

- in case of application of Art. 15(2) FD 2002/584/JHA because the information in the EAW was insufficient to verify whether the conditions of Art. 4a had been met: the total number of cases in which either the 60 day time limit or the 90 day time limit could not be observed

Again, it is only possible to provide this information in those cases in which there was a reserved judgment. It should also be pointed out in this context that while additional information is sought in many cases, the Irish Central Authority is very proactive in anticipating likely judicial needs and will have initiated the process informally in the majority of cases without any need for the Court to have to make a formal order under s.20 of the European Arrest Warrant Act 2003 (which transposed Art 15(2) FD2002/584/JHA into Irish domestic law). Accordingly the number of formal s.20 / Art 15(2) Orders made is not at all reflective of the number of requests for additional information actually made.

Year	***Time limit not observed***
2013	2
2014	1
2015	0
2016	0
2017	1

- the total number of cases in which the execution of the EAW was refused on the basis of Art. 4a FD 2002/584/JHA.

Again, it is only possible to provide this information in those cases in which there was a reserved judgment.

Year	**Refused on basis of Article 4a**
2013	3
2014	0
2015	2
2016	1
2017	0

Part 5: conclusions, opinions, et cetera

91. What is your overall assessment, did FD 2009/299/JHA achieve its objectives of facilitating judicial cooperation and enhancing the rights of the defence? If yes, please explain. If not, please explain why and add what should have been done.

In general, Yes. However, there is a real problem in the Irish context in terms of routine non-adherence to the 60 day and 90 day time limits. The problem is not confined to in absentia cases, however. It is applicable to all EAW cases. There needs to be a root and branch re-consideration of case procedures, better case management, the provision of subject specific training for judges engaged in EAW work, and the available of greater resources, particularly more judges and faster translation services.

92. Did you notice a difference in the practice of *in absentia* EAW's before and after the implementation of the FD?

The new system is in general much easier to operate from the perspective of an executing judicial authority.

93. Did you see (partial) refusals of *in absentia* EAW's of which you think they were not justified?

Yes, I happen to think that the correctness of the Court of Appeal's decision in *Palonka* is questionable. The Court of Appeal may have been technically correct in its application of national rules of statutory interpretation but I personally believe the effect of it is that Article 4a has not been effectively transposed into Irish domestic law, and I am reinforced in this view by the CJEU's decisions in *Dworzecki* and *Tupiskas*. Although I was overruled by the Court of Appeal, I remain personally convinced that the Irish legislation was capable of being given the required conforming interpretation, and that the interpretation that I applied in the High Court was not *contra legem*. However, we operate a system of *stare decisis*, and the Court of Appeal's decision is binding on me and on all other Irish Judges at Court of Appeal level and below, and so even though I may disagree with it I must, of course, apply it.

94. Did you see surrenders granted in *in absentia* cases that should have led to a refusal?

No

95. Do requests for supplementary information by the executing judicial authority have an impact on the trust which should exist between the cooperating judicial authorities?

Perhaps they do, but they should not have in my view. See my detailed views in that regard in the *Brunell* and *McArdle* cases cited in earlier answers

96. What kind of questions should an executing judicial authority ask when requesting supplementary information on *in absentia* proceedings?

It is impossible to generalise, as every situation is case specific.

97. Do executing judicial authorities occasionally ask too much supplementary information on *in absentia* proceedings? If so, on what issues?

Not in my experience. However, I must acknowledge a bias in as much as Irish judges have so far only ever been executing judicial authorities in *in absentia* cases. As we do not try defendants in absentia we do not have experience from the other perspective.

98. Are there Member States whose *in absentia* EAW's and/or whose decisions on the execution of *in absentia* EAW's are particularly problematic in your experience? if so, what are the problems that emerge?

We have had a situation on two separate occasions of a particular State (Italy) issuing an EAW for prosecution purposes, and then before it is processed in Ireland, and without informing the Irish executing judicial authority, proceeding to try the respondent *in absentia*. This led to a situation in one case where the Irish High Court was being asked to surrender a person to face trial, only to discover entirely accidentally in the course of the surrender hearing that the respondent had in fact already been tried, although he was personally unaware of it, and that while he had been convicted and sentenced on some charges he had also acquitted on certain other charges, but nobody on behalf of the issuing judicial authority had thought to inform the executing judicial authority or the Irish Central Authority that this had taken place.

99. What is your opinion on the usability of the *HANDBOOK ON HOW TO ISSUE AND EXECUTE A EUROPEAN ARREST WARRANT* (COM(2017) 6389 final) for judicial practitioners as regards *in absentia* EAW's?

I think it is satisfactory in so far as it goes.

100. What relevance, if any, do your answers have for other framework decisions which contain a ground for refusal comparable to Art. 4a FD 2002/584/JHA (i.e. FD 2005/214/JHA, FD 2006/783/JHA, FD 2008/909/JHA and FD 2008/947/JHA, as amended by FD 2009/299/JHA)?

None, because Ireland has not opted in to the other Framework Decisions.

101. If your Member State will not transpose Directive 2016/343 and you are of the opinion that your Member State should transpose this directive (as regards *in absentia* proceedings), please state your reasons here.

Nothing to add.

Appendix 1

Section 12 of the Petty Sessions (Ireland) Act 1851

12. The manner in which summonses shall be served shall be subject to the following provisions:

1. It shall be lawful for the justices of each petty sessions to appoint some one or more persons, who shall be able to read and write, to act as summons server or servers of the district during the pleasure of such justices; . . .

2. In cases of offences prosecuted by the constabulary the summons shall be served by a head or other constable; but in all other cases it may be served by the summons server of the district, or (if the justice issuing the same shall so direct or permit) by any other person whom the complainant shall employ, and who shall be able to read and write, but in no case by the complainant himself:

3. Every summons shall be served upon the person to whom it is directed by delivering to him a copy of such summons, or, if he cannot be conveniently met with, by leaving such copy for him at his last or most usual place of abode, or at his office, warehouse, counting-house, shop, factory, or place of business, with some inmate of the house not being under sixteen years of age, a reasonable time before the hearing of the complaint; and such last-mentioned service shall be deemed sufficient service of such summons in every case except where personal service shall be specially required by this Act; and in every case the person who shall serve such summons shall endorse on the same the time and place where it was served, and shall attend with the same at the hearing of the complaint to depose., if necessary, to such service:

Provided always, that nothing herein contained shall be construed to affect the provisions of any Act authorising the substitution of service in particular cases.

Section 1 of the Courts (No 3) Act, 1986

1.—(1) Proceedings in the District Court in respect of an offence may be commenced by the issuing, as a matter of administrative procedure, of a document (referred to subsequently in this section as "a summons") by the appropriate office of the District Court.

(2) Summonses shall be issued under the general superintendence of an appropriate District Court clerk and the name of an appropriate District Court clerk shall appear on each summons.

(3) A summons shall—

(a) state shortly in ordinary language particulars of the offence alleged and the name and, if known, the address of the person alleged to have committed the offence, and

(b) notify him that he will be accused of that offence at a sitting of the District Court which sitting shall be specified by reference to its date and location and, insofar as is practicable, its time.

(4) An application for the issue of a summons in relation to an offence may be made to the appropriate office of the District Court by or on behalf of the Attorney General, the Director of Public Prosecutions, a member of the Garda Síochána or any person authorised by or under statute to prosecute the offence.

(5) In any proceedings, a document purporting to be a summons shall, unless the contrary is shown, be deemed to be a summons duly applied for and issued.

(6) A summons duly issued under this Act shall be deemed for all purposes to be a summons duly issued pursuant to the law in force immediately before the passing of this Act.

(7) (a) Any provision made by or under any statute passed before the passing of this Act relating to the time for making a complaint in relation to an offence shall apply, with any necessary modifications, in relation to an application under subsection (4) of this section.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, where a complaint in relation to an offence was duly made by a person referred to in subsection (4) of this section and was received, on or after the 20th day of March, 1986, and before the passing of this Act and during the period within which the complaint was required by law to be made, by a District Court clerk or a Peace Commissioner, then, not later than the 20th day of March, 1987, it shall be lawful for such person to apply under subsection (4) of this section for the issue of a summons in relation to the offence and for the appropriate office of the District Court to issue the summons.

(8) The procedures provided for in this section in relation to applications for, and the issue of, summonses are without prejudice to any other procedures in force immediately before the passing of this Act whereby proceedings in respect of an offence can be commenced and, accordingly, any of those other procedures may be adopted, where appropriate, as if this Act had not been passed.

(9) In this section—

"appropriate District Court clerk", in relation to a summons, means a District Court clerk assigned to any District Court area in the District Court district in which a justice of the District Court has jurisdiction in relation to the offence to which the summons relates;

"appropriate office of the District Court", in relation to a summons, means the office of any District Court clerk assigned to any District Court area in the District Court district in which a justice of the District Court has jurisdiction in relation to the offence to which the summons relates;

"summons" has the meaning assigned to it by subsection (1) of this section.

Section 22 of the Courts Act 1991

22.—(1) Notwithstanding section 12 of the Act of 1851 and without prejudice to the provisions of any Act authorising the service of summonses in any particular manner in particular cases, a summons issued in a case of summary jurisdiction under section 11 (2) or 13 of the Act of 1851 or section 1 of the Act of 1986 may be served upon the person to whom it is directed—

(a) by sending, by registered prepaid post, a copy thereof in an envelope addressed to him at his last known residence or most usual place of abode or at his place of business in the State,

(b) by sending, by any other system of recorded delivery prepaid post specified in rules of court, a copy thereof in such an envelope as aforesaid, or

(c) by delivery by hand, by a person other than the person on whose behalf it purports to be issued authorised in that behalf by rules of court, of a copy thereof in such an envelope as aforesaid.

(2) Service of a summons upon a person pursuant to subsection (1) of this section shall, upon proof that a copy of the summons was placed in an envelope and that the envelope was addressed, recorded, prepaid and sent or was delivered in accordance with the provisions of the said subsection (1), be deemed to be good service of the summons upon the person unless it is proved, whether in pursuance of an application under subsection (6) of this section or otherwise, that the person did not receive notice of the summons or of the hearing to which the summons relates.

(3) Where service of a summons upon a person is effected by a means provided for in subsection (1) (a) or (b) of this section—

(a) the summons shall, subject to subsection (2) of this section, be deemed to be served upon the person at the time at which the envelope containing a copy of the summons would be delivered in the ordinary course of post,

(b) the placing of a copy of the summons in the envelope and the addressing, recording, prepaying and sending, in accordance with the provisions of subsection (1) (a) or (b) of this section, of the envelope may be proved by a statutory declaration (which shall be endorsed upon the original summons and shall be made, not earlier than 10 days after the day on which the envelope is posted, by the person who posted the envelope) exhibiting the record of posting of the envelope aforesaid and stating, if it be the case, that the original summons was duly issued at the time of posting and that the envelope has not been returned undelivered to the sender, and

(c) the time, date and place of posting of the envelope shall be endorsed upon the original summons.

(4) Where a summons has been issued under section 11 (2) of the Act of 1851 or section 1 of the Act of 1986 and served upon the person to whom it is directed by a means of service provided for in subsection (1) of this section and that person neither appears at the time and place specified in the summons nor at the hearing of the complaint or accusation to which the summons relates, the District Court may, if it considers it undesirable in the interests of justice, whether because of the gravity of the offence or otherwise, to continue the hearing in the absence of the person, adjourn the hearing to such time and place as the Court may direct to enable the person to be notified in such manner as the Court may direct of the adjourned hearing.

(5) Where the District Court has adjourned the hearing of a complaint or accusation under subsection (4) of this section and the person to whom the summons concerned is directed does not appear at the adjourned hearing, the District Court may, if the complaint or accusation has been substantiated on oath and if the Court is satisfied that reasonable notice of the adjourned hearing was given to the person in accordance with the said subsection (4), issue a warrant for

the arrest and bringing of the person before it to answer the said complaint or accusation or proceed to hear the complaint or accusation in the absence of the person.

(6) (a) Where a summons has been issued under section 11 (2) of the Act of 1851 or section 1 of the Act of 1986 and the District Court has proceeded to hear the complaint or accusation to which the summons relates, the person to whom the summons is directed may, if he did not receive notice of the summons or of the hearing to which the summons relates, within 21 days after the said summons or hearing comes to his notice or such further period as the District Court may, having regard to the circumstances, allow, apply to the District Court to have the proceedings set aside.

(b) Notice of an application under paragraph (a) of this subsection shall—

(i) be lodged with the District Court clerk for the District Court area in which the hearing to which the summons relates has taken place,

(ii) be in the form prescribed by rules of court,

(iii) state that the applicant did not receive notice of the summons or of the hearing to which the summons relates until a time specified in the notice of the said application, being a time after the commencement of the hearing to which the summons relates,

and the hearing of the application shall not take place before the expiration of a period of 21 days from the date of such lodgment as aforesaid or such shorter period as the District Court may allow.

(c) A person who, in connection with an application under this subsection, makes a statement that he knows to be false or misleading in a material respect shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500 or to 3 months imprisonment or to both.

(7) The District Court may, on the hearing of an application under subsection (6) of this section, grant or refuse to grant the application and may direct that the complaint or accusation to which it relates be heard again at such time and place as the Court may direct.

(8) The rule-making authority for the time being for the District Court may make rules for carrying this section into effect.

(9) In this section—

"the Act of 1986" means the Courts (No. 3) Act, 1986 ;

"a case of summary jurisdiction" means a case which may be heard or disposed of only summarily or under section 6 of the Criminal Justice Act, 1951 ;

"District Court area" shall include the Dublin Metropolitan District.

District Court Rules 1997 – Order 10

1. In this Order—

the "1851 Act" means the Petty Sessions (Ireland) Act 1851;

the "1986 Act" means the Courts (No. 3) Act 1986 (No. 33 of 1986);

the "1991 Act" means the Courts Act 1991 (No. 20 of 1991).

a "document" means a "District Court document" within the meaning of section 7(1) of the Courts Act 1964.

2 Service of summons in criminal proceedings

2. (1) In proceedings by way of summons in which the prosecutor is the Director of Public Prosecutions or an officer or member of the Garda Síochána, a Minister of the Government or a Minister of State or an officer of either such Minister, or an officer of the Revenue Commissioners, a document shall be served by a member of the Garda Síochána, or by any other person or any other means authorised by statute or these Rules or otherwise as directed by the Court.

(2) A member of the Garda Síochána shall not serve a document in any proceedings in which that member is the person instituting the proceedings.

3 Mode of service — summary jurisdiction: section 22, Courts Act 1991

3. In a case of summary jurisdiction to which section 22(1) of the Courts Act 1991 relates, a summons may, subject to the provisions of that section, be served upon the person to whom it is directed—

(a) by sending, by registered prepaid post, a copy thereof in an envelope addressed to that person at his or her last known residence or most usual place of abode or at his or her place of business in the State, or

(b) by delivery by hand, by a person (other than the person on whose behalf it purports to be issued) authorised by these Rules in that behalf, of a copy thereof in such an envelope as aforesaid.

4 Application to set aside

4. Where the Court has proceeded to hear a complaint or accusation to which a summons referred to in rule 3 relates and such person claims not to have had notice of the summons or the hearing to which it relates, application pursuant to section 22(6) of the said Act to have the proceedings set aside may be made in accordance with that section and rule 5.

5 Application to have proceedings set aside

5. (1) Where a summons has been issued under section 11(2) of the 1851 Act or section 1 of the 1986 Act and the Court has proceeded to hear the complaint or accusation to which the summons relates and the person to whom the summons is directed intends to apply pursuant to section 22(6)(a) of the 1991 Act to have the proceedings set aside on the ground that he or she did not receive notice of the summons or of the hearing to which the summons relates, such application may be made at any sitting of the Court for the transaction of summary business for the Court area wherein the hearing to which the summons relates has taken place.

(2) Where the application is not made within 21 days after the summons or hearing comes to the notice of the applicant, a further period within which to make the application may be sought ex parte at any sitting of the Court for the relevant Court area.

(3) Notice of an application to have proceedings set aside must be in the Form 10.5, Schedule B, and when completed, must forthwith be lodged with the Clerk for the relevant Court area.

(4) On receipt of the notice, the Clerk must enter and, having regard to the provisions of section 22(6)(b) of the 1991 Act, must list the matter for hearing and give, or send by ordinary post, to the applicant and the opposing party named in the proceedings a notice in the Form 10.6, Schedule B.

(5) The order of the Court on hearing the application must be in the Form 10.7, Schedule B.

6 Application of certain provisions of Order 41

6. The provisions of Order 41, rules 3 to 19 inclusive as regards mode of service, service on particular parties, proof of service and related matters, apply with the necessary modifications in criminal proceedings in the Court.

District Court Rules 1997 – Order 15

1. (1). Where in the first instance a summons is sought pursuant to section 10 of the Petty Sessions (Ireland) Act 1851 to require the attendance before the Court of a person against whom a complaint is made, the complaint shall be made to a Judge and may be made with or without oath as the Judge shall direct.

(2). Where the complaint is made on oath it shall be made by sworn information (Form 15.3 Schedule B).

(3). Having received such complaint, the Judge may issue a summons (Form 15.1 Schedule B) in any case in which that Judge has jurisdiction in the district to which he or she is assigned.

Application to and issue of summons by Court Office.

2. (1). When, upon application made to an appropriate office (within the meaning of section 1(14) of the Courts (No. 3) Act 1986 as amended) pursuant to section 1(3) of the Courts (No. 3) Act 1986 as amended, for the issue of a summons in relation to an offence, a summons is issued, such summons shall be in the Form 15.2 Schedule B.

Contents of summons and Court to which returnable.

3. (1). A summons shall state shortly and in ordinary language particulars of the cause of complaint or offence alleged, and shall

state the name of the person against whom the complaint has been made or who is alleged to have committed the offence and the address (if known) at which he or she ordinarily resides.

(2). A summons issued by an appropriate office and to which rule 2(1) of this Order relates shall also notify such person that he or she will be accused of that offence at a sitting of the District Court to be specified in the summons. Such summons shall also contain the particulars specified in section 1(6) of the Courts (No. 3) Act 1986 as amended.

(3). Every summons shall require the appearance of the person to whom it is directed at a sitting of the Court having jurisdiction to deal with the complaint or the offence alleged, provided that the court at which such person is required to appear shall -

(a) Where the summons is issued by a Judge, be a court within the area of jurisdiction, of that Judge, or

(b) Where the summons is issued by an appropriate office be a court within the district in which a judge has jurisdiction in relation to the offence to which the summons relates.

4. Two or more complaints or offences may be alleged in the one summons.

O.15, r.5 Signing of summonses

5. (1). A summons issued by a Judge shall be signed by the Judge who issues it and no summons shall be signed in blank.

(2). A summons against a person who is a member of the Garda Síochána shall be signed by a Judge.

(3). (a) Where a summons is signed by a Judge such summons shall not be avoided by reason of the death of that Judge or by reason of his or her ceasing to hold office

(b) Where a summons is issued by an appropriate office such summons shall not be avoided by reason of the death of the appropriate District Court Clerk whose name is specified on the summons or by reason of his or her ceasing to hold office.

Copies for service

6. In the case of every summons issued otherwise than by transmitting it by electronic means to the person who applied for it or a person acting on his or her behalf, there shall be issued with such summons a copy thereof for service upon each person to whom the summons is directed. Where a summons is issued by transmitting it by electronic means to the person who applied for it or a person acting on his or her behalf, a true copy of such summons shall be served upon each person to whom the summons is directed by electronic means.

May be served in any part of the State.

7. A summons may be served in any part of the State and upon service being effected in a manner prescribed by these Rules, the person against whom the complaint is made or the offence is alleged shall be as effectively bound by the proceedings as if he or she resided within the area of jurisdiction of the Judge issuing it or (if issued out of an appropriate office) within the limits of the court area or areas to which the appropriate Clerk whose name is specified on the summons has been assigned.

8. Where an enactment constituting an offence states the offence to be the doing or the omission to do any one of a number of different acts in the alternative, or states any part of the offence in the alternative, the acts, omissions or other matters stated in the alternative in the enactment may be stated either in the alternative or in the conjunctive in the summons alleging such offence.

9. In alleging an offence contrary to any statute or statutes it shall be sufficient to state the substance of the offence in ordinary language with such particulars of the offence as may be necessary for giving reasonable information as to the nature of the complaint, and it shall not be necessary to negative any exception or exemption from or qualification to the operation of a statute creating such offence.

Summons in lieu of a warrant

10. Where under Order 16, rule 1(1) of these Rules a warrant is sought for the arrest of a person charging that person with having committed an indictable offence a Judge may, if he or she thinks fit, instead of issuing a warrant issue a summons requiring the appearance of that person, notwithstanding that the complaint had been made by information on oath and in writing. A Judge who has issued such summons may at any time (the complaint having been made by information) issue a warrant for the arrest of that person.

District Court Rules 1997 – Order 22

[Failure to appear, — on summons or evading service]

1. Where a summons is issued requiring the appearance before the Court of a person against whom a complaint has been made or an offence has been alleged and such person fails to appear at the required time and place or at any adjourned hearing of the matter, and it is proved to the Judge there present that such person has been served with the summons, or where at any time either before or after the date on which such person is required by the summons to appear an information, in the Form 22.1, Schedule B, is made that he or she is evading service or is about to abscond or has absconded, the Judge may issue a warrant, in the Form 22.2, Schedule B, for the arrest of such person.

[after release or remand on bail]

2. Where

(a) a person who has been arrested and charged with an offence is released on bail by recognisance by a member of the Garda Síochána for his or her appearance before a sitting of the Court at a time on a date and at a place specified in the recognisance or

(b) an accused person is before the Court in connection with an offence and, on being remanded, is admitted to bail by recognisance for his or her appearance before a subsequent sitting of the Court (either in the same or another place), and that person, having entered into the recognisance, fails to appear at a time on a date and at a place at or on which he or she was bound by the recognisance to appear, the Judge then and there sitting may, on production of the recognisance to him or her, issue a warrant, in the Form 22.3, Schedule B, for the arrest of that person.

[in a case of summary jurisdiction. Court may adjourn and notify deft.]

3. Where a summons has been issued under section 11 (2) of the Petty Sessions (Ireland) Act, 1851 or section 1 of the Courts (No. 3) Act, 1986 and served upon the person to whom it is directed by a means of service provided for in section 22 (1) of the Courts Act, 1991 and that person neither appears at the time and place specified in the summons nor at the hearing of the complaint or accusation to which the summons relates, and the Court, considering it undesirable in the interests of justice, because of the gravity of the offence or otherwise, to continue the hearing in the absence of the person, adjourns the hearing pursuant to section 22 (4) of the said Act of 1991 to enable the person to be notified of the adjourned hearing, the Clerk shall, unless the Court otherwise directs, issue and serve or cause to be served upon that person a notice in the Form 22.4, Schedule B. Service shall be effected at least fourteen days prior to the date of the adjourned hearing and in such manner as the Court shall direct. The original notice, with the details of service endorsed thereon, shall be retained by the Clerk and produced to the Court at the adjourned hearing.

[where deft. claims not to have received summons]

4. Where, in any case to which rule 3 hereof relates, the Court has proceeded to hear the complaint or accusation to which the summons relates and the defendant, having failed to appear at the said hearing, subsequently claims not to have received the summons or notice of the said hearing, such defendant may make application, as provided for in Order 10, rule 23 of these Rules, to have the proceedings set aside.

District Court Rules 1997 – Order 41

1 Definitions

1. In this Order-

a "document" means a "District Court document" within the meaning of section 7(1) of the Courts Act 1964.

2 Persons authorised to serve documents

2. (1) In civil proceedings, a document may be served by:

(a) a summons-server standing assigned to the Court area concerned; or

(b) any person authorised to do so by the party or person on whose behalf the document is served,

unless these Rules or statute otherwise provide or unless the Court otherwise directs.

(2) The fee to be paid to a summons-server for the service of any document is the sum as determined by the County Registrar from time to time, payable on proof of each separate service effected. Where the fee to be paid for the service of any document is for the time being prescribed by rule of court or otherwise, the fee becomes payable on proof of each separate service effected.

3 Mode of service — registered post

3. (1) A document in proceedings to which section 7(1) of the Courts Act 1964 relates may, subject to and in accordance with the provisions of, section 7 of the Courts Act 1964, be served by sending a

copy of the document by registered prepaid post in an envelope addressed to the person to be served at his or her last known residence or place of business in the State.

(2) The document may be posted by the person on whose behalf it purports to be issued or by a person authorised by him in that behalf.

4 Mode of service — personal service

4. Personal service of a document in accordance with the provisions of section 7 of the Courts Act 1964 must be effected on a person in the State:

(a) by delivering a copy of the document to the person to be served, or

(b) where it appears by evidence that the person to be served is personally within the jurisdiction and that due and reasonable diligence has been exercised in endeavouring to effect personal service on him or her, by leaving a copy of the document for the person to be served at his or her last or most usual place of residence, or at his or her office, shop, factory, home or place of business with:

(i) the husband or wife of the person to be served; or

(ii) the civil partner of the person to be served; or

(iii) a child or other relative of the person to be served, who apparently resides with the person to be served; or

(iv) a child or other relative of the husband, wife or civil partner of the person to be served, who apparently resides with the person to be served; or

(v) any agent or employee of the person to be served; or

(vi) the person in charge of the house or premises where the person to be served usually resides,

provided that the person with whom the copy is left:

(I) is not under the age of 16 years, and

(II) is not himself or herself the person beginning the civil proceedings.

5 Service on a company

5. (1) A document may be served on a company by leaving a copy of the document at or sending a copy of the document by post to the registered office of the company or, if the company has not given notice to the Registrar of Companies of the situation of its registered office, by registering the document at the office of the Registrar of Companies.

(2) For the purposes of this rule, any document left at or sent by post to the place for the time being recorded by the Registrar of Companies as the situation of the registered office of a company must be deemed to have been left at or sent by post to the registered office of the company notwithstanding that the situation of its registered office may have been changed.

6 Service on a local authority or an unincorporated body

6. A document may be served on a local authority, statutory board or body, or an unincorporated society or club by leaving a copy of the document with any employee of the authority, board, body, society or club at its principal office or by sending a copy of the document by prepaid registered post to its principal office.

7 Service on a partnership

7. (1) Where persons are sued as partners in the name of their firm, a copy of the document must be served either:

(a) on any one or more of the partners; or

(b) at the principal place within the State at which the business of the partnership is carried on, on any person having at the time of service the control or management of the partnership business there;

and such service must be deemed good service on the firm sued, whether any of the members of the partnership are outside the State or not.

(2) The permission of the Court is not necessary for the issue and service on a partnership of a claim notice or other originating document where one or more of the partners is in the State and one or more outside the State, provided that in the case of a partnership which has been dissolved to the knowledge of the claimant before the civil proceedings are begun, the claim notice or other originating document must be served on every person within the State sought to be made liable.

8 Service on a child

8. Where the person to be served is a child, a document is effectively served if served:

(a) on the father, mother or other guardian having actual custody of the child or with whom the child resides; or

(b) if the child has no father, mother or other guardian, on the person with whom the child resides or under whose care the child is; or

(c) on the child's solicitor unless the Court otherwise decides.

9 Service on a ward of court or a person of unsound mind

9. Where the person to be served is a ward of court or a person of unsound mind not so found by inquisition, a document is effectively served if served:

(a) on the person's solicitor; or

(b) on the committee of the ward of court; or

(c) on the guardian ad litem of the person to be served; or

(d) on the person with whom the person of unsound mind resides or under whose care he or she is,

unless the Court otherwise decides.

10 Service on a prisoner

10. Where the person to be served is a prisoner or a person detained in a place of detention under the order of any court or tribunal, service on the governor, director or other person in charge of the prison or place of detention is, unless the Court otherwise decides, good service on the prisoner or person detained.

11 Acceptance of service

11. (1) Service of a document must be deemed good service if the Court is satisfied that a solicitor acting on behalf of the person to be served has accepted service of the document.

(2) Service on the solicitor for a party may be effected:

(a) by delivering a copy of the document to the solicitor; or

(b) by leaving a copy of the document at the solicitor's office; or

(c) by sending a copy of the document by post in an envelope to, the solicitor; or

(d) by sending a copy of the document to a document exchange service designated by that solicitor in accordance with sub-rule (3) through which that solicitor accepts documents.

(3) Delivery or service through a document exchange service under sub-rule (2):

(a) is effective provided that the solicitor concerned has confirmed in writing to the party serving the document or copy (or that party's solicitor) that he or she will accept service of documents in the civil proceedings through the document exchange service designated by him or her;

(b) ceases to be effective where, prior to delivery or service, the solicitor concerned has in writing revoked such confirmation.

(4) Any statutory declaration verifying delivery or service through a document exchange service must exhibit the written confirmation referred to in sub-rule (3) and contain a statement that the confirmation had not, at the time of the delivery or service concerned, been revoked in accordance with this rule.

12 Substituted service

12. (1) Where the Court is satisfied that, for good cause shown, service of a document cannot be effected in a manner or in any manner prescribed by these Rules, the Court may make an order:

(a) for substituted or other service; or

(b) for the substitution for service of notice by advertisement or otherwise.

(2) Particulars of any order for substituted or other service must be endorsed on the original and on each copy of the document to be served.

(3) An application for an order for substituted or other service may be made ex parte.

(4) Where the Court is satisfied that any particular mode of service prescribed is at any time not then available, the Court may by order in writing direct that the service of documents or of any particular class of documents be effected in such other manner as it thinks proper.

(5) A direction under sub-rule (4) must be retained by the Clerk and remains in force until the mode of service concerned is again available or until the direction is revoked by the Court.

13 Service deemed good

13. The Court may, if it considers it just to do so, deem the service of any document actually effected in any civil proceedings to be good and effected service, even though the service was not effected in a manner prescribed by these Rules.

14 Proof of service

14. (1) A person who serves a document may prove the service:

(a) by evidence given orally before the Court; or

(b) by statutory declaration as to service made in accordance with the Statutory Declarations Act 1938.

(2) A statutory declaration as to service must be in the Form 41.01, 41.02 or 41.03, Schedule C, as the case may be.

(3) When service of a document on a person has been effected by registered prepaid post, a statutory declaration of service, which must be in the Form 41.01, Schedule C must be made not earlier than ten days after the day on which the envelope containing the copy of the document for service was posted.

(4) A statutory declaration of service by registered post must:

(a) be made by the person who posted the envelope; and

(b) exhibit the certificate of posting; and

(c) state, where appropriate, that the original document was duly stamped at the time of posting, and

(d) state that the envelope has not been returned undelivered to the sender.

15 Person proving service by statutory declaration need not attend Court

15. Where a statutory declaration is made, and filed with the Clerk under rule 19:

(a) the statutory declaration is prima facie evidence of the mode, time and place of service as set out in the statutory declaration; and

(b) it is not necessary for the person who effected service to attend in person at the Court to prove service on oral evidence,

but the Court may, if it considers it necessary, require the person who effected service to attend before it and give evidence concerning the service notwithstanding the making of a statutory declaration.

16 Deemed time of service

16. Where service of a document is effected by registered prepaid post or by ordinary prepaid post, the document must be deemed to be served on the person to whom it was directed at the time at which the envelope containing the copy of the document for service would be delivered in the ordinary course of post.

17 Service invalid unless document stamped, where required

17. Where a document is required by law to be stamped (or payment of a Court fee on the document otherwise recorded), service of the document has no effect or validity unless, at the time of service, the original document was so stamped (or payment of the appropriate Court fee on the document otherwise recorded).

18 Time for service before hearing

18. Save where otherwise provided by another enactment or by these Rules, a document which must be served before a hearing in the Court must be served at least seven days or, in the case of service by registered prepaid post, at least 21 days, before the date fixed for the hearing concerned.

19 Time for filing before hearing

19. Subject to any order or direction of the Court, a document which must be filed with the Clerk before a hearing in the Court, including any statutory declaration of service, must be filed at least four days or, in the case of filing by prepaid post, at least seven days, before the date fixed for the hearing concerned.

20 Service under Civil Liability and Courts Act 2004

20. The delivery or service of any notice for the purposes of section 8 or section 17 of the Civil Liability and Courts Act 2004 must be in the manner prescribed in section 4 of that Act.

APPENDIX 2

BLACK TEXT = 2003 ACT

RED TEXT = AMENDMENTS CONTAINED IN THE CRIMINAL JUSTICE (TERRORIST OFFENCES) ACT 2005

BLUE TEXT = AMENDMENTS CONTAINED IN THE CRIMINAL JUSTICE (MISCELLANEOUS PROVISIONS) ACT 2009

GREEN TEXT = AMENDMENTS IN THE EUROPEAN ARREST WARRANT (APPLICATION TO THIRD COUNTRIES AND AMENDMENT) AND EXTRADITION (AMENDMENT) ACT 2012

PLEASE ALSO NOTE THAT THE 2012 ACT PROVIDES THAT ORDERS MAY BE MADE TO EXTEND THE PROVISIONS OF THE 2003 ACT, AS AMENDED, TO THIRD COUNTRIES.

AN ACT TO GIVE EFFECT TO COUNCIL FRAMEWORK DECISION OF 13 JUNE 2002 [Footnote: OJ No. L190 of 18.7.2002, p.1] ON THE EUROPEAN ARREST WARRANT AND THE SURRENDER PROCEDURES BETWEEN MEMBER STATES; TO AMEND THE EXTRADITION ACT 1965 AND CERTAIN OTHER ENACTMENTS; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

Preliminary and General

1.—(1) This Act may be cited as the European Arrest Warrant Act 2003.

(2) This Act comes into operation on 1 January 2004.

2.—(1) In this Act, except where the context otherwise requires—

‘‘Act of 1965’’ means the Extradition Act 1965;

‘‘Act of 2001’’ means the Extradition (European Union Conventions) Act 2001;

alert ’ means an alert entered in the SIS for the arrest and surrender, on foot of a European arrest warrant, of the person named therein;

‘‘Central Authority in the State’’ shall be read in accordance with section 6;

'Council Decision' means Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System;

‘Council Framework Decision 2009/299/JHA’ means Council 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.

‘‘Eurojust’’ means the body established by Council Decision of 28 February 2002 [Footnote: OJ No. L63 of 6.3.2002, p.1] setting up Eurojust with a view to reinforcing the fight against serious crime;

‘‘European arrest warrant’’ means a warrant, order or decision of a judicial authority of a Member State, issued under such laws as give effect to the Framework Decision in that Member State, for the arrest and surrender by the State to that Member State of a person in respect of an offence committed or alleged to have been committed by him or her under the law of that Member State;

‘‘European Communities’’ has the same meaning as it has in the European Communities Act 1972;

~~‘‘facsimile copy’’ means, in relation to a document, a facsimile copy of that document transmitted in accordance with section 12;~~

‘‘Framework Decision’’ means Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, the text of which—

(a) in the Irish language, is set out in Part A of the Schedule, and

(b) in the English language, is set out in Part B of the Schedule;

‘‘functions’’ includes powers and duties, and references to the performance of functions include, as respects powers and duties, references to the exercise of the powers and the carrying out of the duties;

‘‘issuing judicial authority’’ means, in relation to a European arrest warrant, the judicial authority in the issuing state that issued the European arrest warrant concerned;

‘‘issuing state’’ means, in relation to a European arrest warrant, a Member State designated under section 3, a judicial authority of which has issued that European

arrest warrant;

‘‘judicial authority’’ means the judge, magistrate or other person authorised under the law of the Member State concerned to perform functions the same as or similar to those performed under section 33 by a court in the State;

‘‘Member State’’ means a Member State of the European Communities (other than the State) or Gibraltar;

‘‘Minister’’ means the Minister for Justice, Equality and Law Reform;

‘Schengen Convention’ means the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders done at Schengen on 19 June 1990 and includes any amendment to or modification of that Convention whether before or after the passing of this Act but does not include the Council Decision;

‘SIS’ means the system referred to in Title IV of the Schengen Convention or, as appropriate, the system established under Chapter 1 of the Council Decision;

‘‘third country’’ means a country other than the State or a Member State;

‘‘true copy’’ shall be read in accordance with section 12(7).

(2) In this Act—

(a) a reference to a section, Part or Schedule is a reference to a section or Part of, or a Schedule to, this Act, unless it is indicated that a reference to some other enactment is intended,

(b) a reference to a subsection, paragraph or subparagraph is a reference to a subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that a reference to some other provision is intended, and

(c) a reference to any enactment is a reference to that enactment as amended, extended or adapted, whether before or after the passing of this Act, by or under any subsequent enactment.

3.—(1) For the purposes of this Act, the Minister for Foreign Affairs may, by order, designate a Member State that has, under its national law, given effect to the Framework Decision.

(2) The Minister for Foreign Affairs may, by order, amend or revoke an order under this section, including an order under this subsection.

4.—(1) This ~~Subject to subsections (2) and (3), this~~ Act shall apply in relation to an offence, whether committed or alleged to have been committed before or after the commencement of this Act.

~~(2) This Act shall, in relation to a European arrest warrant issued by a judicial authority in the Republic of Austria or the Italian Republic, apply to offences committed or alleged to have been committed on or after 7 August 2002 only.~~

~~(3) This Act shall, in relation to a European arrest warrant issued by a judicial authority in the French Republic, apply to offences committed or alleged to have been committed on or after 1 November 1993 only.~~

4A.—It shall be presumed that an issuing state will comply with the requirements of the Framework Decision, unless the contrary is shown.

5.—For the purposes of this Act, an offence specified in a European arrest warrant corresponds to an offence under the law of the State, where the act or omission that constitutes the offence so specified would, if committed in the State on the date on which the European arrest warrant is issued, constitute an offence under the law of the State.

6.—(1) The Minister shall be the Central Authority in the State for the purposes of this Act.

(2) The Minister may, by order, designate such persons as he or she considers appropriate to perform such functions of the Central Authority in the State as are specified in the order and different persons may be so designated to perform different functions of the Central Authority in the State.

(3) For so long as an order under subsection (2) remains in force, a reference in this Act to the Central Authority in the State shall, insofar as it relates to the performance of a function specified in the order, be construed as a reference to the person designated by the order to perform the function concerned.

(4) The Minister shall, by notice in writing, inform the General Secretariat of the Council of the European Union of the making of an order under this section and of the names of the persons designated under the order.

(5) The Minister may, by order, amend or revoke an order under this section (including an order under this subsection).

(6) The Central Authority in the State shall, in each year, prepare a report on the operation, in the preceding year, of Part 2, and shall cause copies of each such report to be laid before both Houses of the Oireachtas as soon as may be after it is so prepared.

7.—Every order and regulation under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House sits after the order or regulation is laid before it, the order or regulation shall be annulled accordingly, but without prejudice to anything previously done thereunder.

8.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

PART 2

European Arrest Warrant

Chapter 1

European Arrest Warrant Received in State

9.—For the purposes of the Framework Decision, the High Court shall be the executing judicial authority in the State.

10.—Where a judicial authority in an issuing state ~~duly~~ issues a European arrest warrant in respect of a person—

(*a*) against whom that state intends to bring proceedings for an offence to which the European arrest warrant relates,

(*b*) who is the subject of proceedings in that state for an offence to which the European arrest warrant relates,

(*c*) who has been convicted of, but not yet sentenced in respect of, an offence in that state to which the European arrest warrant relates, or

(*d*) on whom a sentence of imprisonment or detention has been imposed in that state in respect of an offence to which the European arrest warrant relates, ~~and who fled from the issuing state before he or she—~~

~~(i) commenced serving that sentence, or~~

~~(ii) completed serving that sentence,~~

that person shall, subject to and in accordance with the provisions of this Act ~~and the Framework Decision,~~ be arrested and surrendered to the issuing state.

11.— (1) A European arrest warrant shall, in so far as is practicable, be in the form set out in the Annex to the Framework Decision as amended by Council Framework Decision

2009/299/JHA.

(1A) Subject to subsection (2A), a European arrest warrant shall specify—

(*a*) the name and the nationality of the person in respect of whom it is issued,

(*b*) the name of the judicial authority that issued the European arrest warrant, and the address of its principal office,

(*c*) the telephone number, fax number and email address (if any) of that judicial authority,

(*d*) the offence to which the European arrest warrant relates, including the nature and classification under the law of the issuing state of the offence concerned,

(*e*) that a conviction, sentence or detention order is immediately enforceable against the person, or that a warrant for his or her arrest, or other order of a judicial

authority in the issuing state having the same effect, has been issued in respect of ~~the offence~~ one of the offences to which the European arrest warrant relates,

(f) the circumstances in which the offence was committed or is alleged to have been committed, including the time and place of its commission or alleged commission, and the degree of involvement or alleged degree of involvement of the person in the commission of the offence, and

(*g*) (i) the penalties to which that person would, if convicted of the offence specified in the European arrest warrant, be liable,

(ii) where that person has been convicted of the offence specified in the European arrest warrant but has not yet been sentenced, the penalties to which he or she is liable in respect of the offence, or

(iii) where that person has been convicted of the offence specified in the European arrest warrant and a sentence has been imposed in respect thereof, the penalties of which that sentence consists.

(2) Where it is not practicable for the European arrest warrant to be in the form referred to in subsection (1), it shall include such information, additional to the information specified in subsection (1A), as would be required to be provided were it in that form.

(2A) ~~If it is not practicable for any of the information to which subsection (1A) (inserted by *section 72(a)* of the *Criminal Justice (Terrorist Offences) Act 2005*) applies to be specified in the European arrest warrant, it may be specified in a separate document~~

If any of the information to which subsection (1A) (inserted by section 72(*a*) of the Criminal Justice (Terrorist Offences) Act 2005) refers is not specified in the European arrest warrant, it may be specified in a separate document.

~~(3) Where a European arrest warrant is issued in the issuing state in respect of a person who has not been convicted of the offence specified therein, the European arrest warrant shall be accompanied by a statement in writing of the issuing judicial authority that —~~

~~(a) the person has been charged with, and a decision to try him or her for, the offence concerned has been made, or~~

~~(b) where the person has not been charged with the offence concerned, a decision to charge him or her with, and try him or her for, the offence concerned has been made,~~

~~by a person who in the issuing state, or part thereof, performs functions the same as, or similar to, those performed in the State by the Director of Public Prosecutions.~~

(4) For the avoidance of doubt, a European arrest warrant may be issued in respect of one or more than one offence.

12.—(1) A European arrest warrant shall be transmitted by, or on behalf of, the issuing judicial authority to the Central Authority in the State and, where the European arrest warrant is in a language other than the Irish language, the English language or such other languages as the Minister may by order prescribe, a translation of the European arrest warrant into the Irish language or the English language shall be so transmitted with the European arrest warrant.

(2) Such undertakings as are required to be given under this Act shall be transmitted by, or on behalf of, issuing judicial authority or the issuing state, as may be appropriate, to the Central Authority in the State, and where any such undertaking is in a language other than the Irish language, the English language or such other languages as the Minister may by order prescribe, a translation of that undertaking into the Irish language or the English language shall be so transmitted with the undertaking.

(3) A European arrest warrant, or an undertaking required to be given under this Act or any other document to be transmitted for the purposes of this Act, may be transmitted to the Central Authority in the State by—

(a) delivering it to the Central Authority in the State, or

(b) ~~one of the methods specified in paragraphs 2 and 3 of Article 10 of the Framework Decision~~ any means capable of producing a written record under conditions allowing the Central Authority in the State to establish its authenticity.

(3A) An undertaking required under this Act may be set out in the European arrest warrant or in a separate document.

(3B) The written record of a document that is transmitted in accordance with subsection (3)(*b*) shall be deemed to be the document that was transmitted.

(4) Notwithstanding subsection (3), the issuing judicial authority shall be deemed to have complied with subsection (1) —

(*a*) if facsimile copies of —

(i) the European arrest warrant, and

(ii) where appropriate, a translation thereof,

are transmitted by or on behalf of the issuing judicial authority to the Central Authority in the State, and

(*b*) where the Minister makes regulations under subsection (10), there is, in relation to those facsimile copies, compliance with the regulations.

(5) Notwithstanding subsection (3), an issuing judicial authority or the issuing state, as may be appropriate shall be deemed to have complied with subsection (2)

(*a*) if facsimile copies of —

(i) such undertakings as are required under this Act, and
(ii) where appropriate, translations thereof,

are transmitted by it or on its behalf to the Central Authority in the State, and

(*b*) where the Minister makes regulations under subsection (10) there is, in relation to those facsimile copies, compliance with the regulations.

(6) If the Central Authority in the State or the High Court is not satisfied that the facsimile copy of a document transmitted in accordance with this section corresponds to the document of which it purports to be a facsimile copy, he or she, or it, shall require the issuing judicial authority or the issuing state, as may be appropriate, to cause the original of the document or a true copy thereof to be transmitted to the Central Authority in the State, and shall agree with the issuing judicial authority or the issuing state, as may be appropriate, the manner in which such original or true copy

~~shall be transmitted.~~

(7) ~~For the purposes of this Act, a document shall be deemed to be a true copy of an original document if it has been certified as a true copy of the original document by—~~

~~(a) the issuing judicial authority, or~~

~~(b) an officer of the central authority of the issuing state duly authorised to certify it as a true copy,~~

~~and where the seal of the issuing judicial authority or the central authority of the issuing state has been affixed to the document, judicial notice shall be taken of that seal.~~

For the purposes of this Act, a document shall be deemed to be a true copy of an original document if it has been certified as a true copy of the original document by—

(*a*) the issuing judicial authority, or

(*b*) an officer of the central authority of the issuing state.

(8) In proceedings to which this Act applies, a document that purports to be—

(a) a European arrest warrant issued by a judicial authority in the issuing state,

(b) an undertaking required under this Act of an issuing judicial authority or the issuing state, as may be appropriate,

(*c*) a document referred to in section 11(2A) (inserted by *section 72(b)* of the *Criminal Justice (Terrorist Offences) Act 2005*)

(c) a translation of a European arrest warrant or undertaking under this Act, or

(d) a true copy of such a document,

shall be received in evidence without further proof.

(9) In proceedings to which this Act applies, a document that purports to be a ~~facsimile copy or~~ true copy of a European arrest warrant, undertaking or translation referred to in subsection (8) shall, unless the contrary is shown, be evidence of the European arrest warrant, undertaking or translation concerned, as the case may be.

(10) The Minister may, for the purposes of ensuring the accuracy of documents transmitted in accordance with this section, make regulations prescribing—

(a) the procedures that shall be followed in connection with the transmission of documents in accordance with this section, and

(b) that such features as are specified in the regulations shall be present in any equipment being used in that connection.

(11) In this section 'European arrest warrant' includes a document referred to in section 11(2A) (inserted by *section 72(b)* of the *Criminal Justice (Terrorist Offences) Act 2005*).

13.—(1) The Central Authority in the State shall, as soon as may be after it receives a European arrest warrant transmitted to it in accordance with section 12, apply, or cause an application to be made, to the High Court for the endorsement by it of the European arrest warrant, or a ~~facsimile copy or~~ true copy thereof, for execution of the European arrest warrant concerned.

(2) If, upon an application under subsection (1), the High Court is satisfied that, in relation to a European arrest warrant, there has been compliance with the provisions of this Act, it may endorse ~~(a)~~ the European arrest warrant for execution~~, or~~.

~~(b) (i) where compliance with section 12(1) was effected by transmitting a facsimile copy of the European arrest warrant in accordance with section 12(4), the facsimile copy of the European arrest warrant, or~~

~~(ii) where a true copy of the European arrest warrant was transmitted pursuant to a requirement under section 12(6), the true copy of the European arrest warrant,~~

~~for execution of the European arrest warrant~~.

(3) A European arrest warrant may, upon there being compliance with subsection (2), be executed by any member of the Garda Síochána in any part of the State and may be so executed notwithstanding that it is not in the possession of the member when he or she executes the European arrest warrant, and the warrant, ~~the facsimile copy of the warrant or~~ or the true copy of the warrant, as the case may be, endorsed in accordance with subsection (2), shall be shown to and a copy thereof given to, the person arrested at the time of his or her arrest or, if the warrant~~, facsimile copy~~ or true copy, as the case may be, is not then in the possession of the member, not later than 24 hours after the person's arrest.

(4) A person arrested under a European arrest warrant shall, upon his or her arrest, be

informed of his or her right to—

(a) consent to his or her being surrendered to the issuing state under section 15,

(b) obtain, or be provided with, professional legal advice and representation, and

(c) where appropriate, obtain, or be provided with, the services of an interpreter.

(5) A person arrested under a European arrest warrant shall, as soon as may be after his or her arrest, be brought before the High Court, and the High Court shall, if satisfied that that person is the person in respect of whom the European arrest warrant was issued—

(a) remand the person in custody or on bail (and, for that purpose, the High Court shall have the same powers in relation to remand as it would have if the person were brought before it charged with an indictable offence),

(b) fix a date for the purpose of section 16 (being a date that falls not later than 21 days after the date of the person's arrest), and

(c) inform the person that he or she has the right to—

(i) consent to his or her surrender to the issuing state under section 15,

(ii) obtain, or be provided with, professional legal advice and representation, and

(iii) where appropriate, obtain, or be provided with, the services of an interpreter.

~~**14.** (1) A member of the Garda Síochána may arrest a person without warrant where—~~

~~(a) a Schengen alert has been issued by a judicial authority in a Member State in respect of that person, and~~

~~(b) the member believes, on reasonable grounds, that the person is likely to leave the State before the European arrest warrant to which the Schengen alert refers is received in the State.~~

~~(2) A person arrested under this section shall, upon his or her arrest, be informed of his or her right to—~~

~~(a) consent to his or her being surrendered to the issuing state under section 15,~~

~~(b) obtain, or be provided with, professional legal advice and representation, and~~

(c) where appropriate, obtain, or be provided with, the services of an interpreter.

(3) A person arrested under this section shall, as soon as may be after his or her arrest, be brought before the High Court, and the High Court shall —

(a) if satisfied that that person is the person in respect of whom the Schengen alert was issued, and

(b) pending the production to the High Court of the European arrest warrant,

remand the person in custody and, for that purpose, the High Court shall have the same powers in relation to remand as it would have if the person were brought before it charged with an indictable offence.

(4) When a person arrested under this section is brought before the High Court under subsection (3), the High Court shall inform the person that he or she is entitled to —

(a) consent to his or her being surrendered to the issuing state under section 15,

(b) obtain, or be provided with, professional legal advice and representation, and

(c) where appropriate, obtain, or be provided with, the services of an interpreter.

(5) A person who has been arrested under this section shall be released from custody upon the expiration of the period of 7 days from his or her arrest unless, before the expiration of that period, the European arrest warrant concerned is produced to the High Court.

(6) Notwithstanding subsection (5), the High Court may order the release from custody of a person remanded in custody under this section if, at any time after the person has been so remanded, it appears to the High Court that a European arrest warrant has not been issued in respect of the person or, where appropriate, the issuing judicial authority has not made a statement under section 11(3).

(7) Where, in relation to a person who has been remanded in custody under subsection (3), a European arrest warrant is transmitted to the Central Authority in the State in accordance with section 12 —

(*a*) that person shall be brought before the High Court as soon as may be, and

(*b*) the European arrest warrant, or a facsimile or true copy thereof, shall be produced to the High Court,

and the High Court shall, if satisfied that the person is the person in respect of whom the European arrest warrant was issued —

(i) remand the person in custody or on bail (and for that purpose the High Court shall have the same powers in relation to remand as it would have if the person were brought before it charged with an indictable offence), and

(ii) fix a date for the purposes of section 16 (being a date that falls not later than 21 days after the date of the person's arrest).

(8) In proceedings under this section, a document that purports to be a reproduction in writing of a Schengen alert certified by a member of the Garda Síochána not below the rank of sergeant to have been obtained by him or her using equipment designed, or intended for use, for the purposes of the Schengen Information System shall, unless the contrary is shown, be evidence of the Schengen alert concerned.

(9) If, in relation to a person who has been released from custody in accordance with subsection (5) or (6), a European arrest warrant is transmitted to the Central Authority in the State, an application may be made to the High Court under section 13.

(10) In this section —

'Schengen alert' means a document that —

(*a*) indicates that a European arrest warrant has been issued by a judicial authority in a Member State in respect of the person named in the document on such date as is specified in the document,

(*b*) has been transmitted by electronic means by or on behalf of the judicial authority concerned or the issuing state concerned, as may be appropriate, to the Garda Síochána using equipment designed, or intended for use, for the purposes of the Schengen Information System, and

(*c*) is capable of being viewed by the Garda Síochána by means of equipment designed, or intended for use, for those purposes;

''Schengen Information System'' means the system referred to in Title IV of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of

~~Germany and the French Republic on the gradual abolition of checks at their common borders done at Schengen on 19 June 1990.~~

14.—(1) A member of the Garda Sıochana may arrest any person without a warrant that the member believes, on reasonable grounds, to be a person named in an alert.

(2) A person arrested under this section shall, upon his or her arrest, be informed, in ordinary language, of the reason for the arrest and of his or her right to—

(*a*) obtain or be provided with professional legal advice and representation, and

(*b*) where appropriate, obtain or be provided with the services of an interpreter.

(3) A person arrested under this section shall, as soon as may be after his or her arrest—

(*a*) be furnished with a copy of the alert,

and

(*b*) be brought before the High Court, which court shall, if satisfied that he or she is the person named in the alert—

(i) inform the person of his or her right to—

(I) obtain or be provided with professional legal advice and representation, and

(II) where appropriate, obtain or be provided with the services of an interpreter,

and

(ii) remand the person in custody or, at its discretion, on bail for a period

not exceeding 14 days (and for that purpose the High Court shall have the same powers in relation to remand as it would have if the person were brought before it charged with an indictable offence) for production to the High Court of the European arrest warrant on foot of which the alert was entered.

(4) Where, in respect of a person remanded in custody or on bail under subsection (3), a European arrest warrant is transmitted to the Central Authority in the State pursuant to section 12—

(*a*) that person shall be brought before the High Court as soon as may be,

(*b*) the European arrest warrant shall be produced to the High Court,

(*c*) a copy shall be given to that person, and

(*d*) the High Court, if satisfied that the provisions of this Act have been complied

with and that the person before it is the person in respect of whom the European arrest warrant was issued, shall—

(i) inform the person of his or her right to consent to being surrendered to the issuing state under section 15, and

(ii) if the person does not exercise his or her right to consent under paragraph (i)—

(I) remand the person in custody or on bail (and for that purpose

the High Court shall have the same powers in relation to remand as it would have if the person were brought before it charged with an indictable offence), and

(II) fix a date for the purposes of section 16 within the period of 21 days next following.

(5) Where, in respect of a person remanded in custody or on bail under subsection (3), the European arrest warrant is not produced on the date fixed by the Court for the purpose under that subsection the person shall be released from custody.

15.— (1) Where a person is brought before the High Court under section 13, he or she may consent to his or her being surrendered to the issuing state and, if he or she so consents, the High Court shall—

(*a*) if the European arrest warrant, or a ~~facsimile or~~ true copy thereof, has been endorsed in accordance with section 13 for execution of the warrant,

(*b*) if it is satisfied that—

(i) the person voluntarily consents to his or her being surrendered to the issuing state concerned and is aware of the consequences of his or her so consenting, and

(ii) the person has obtained, or has been afforded the opportunity of obtaining or being provided with professional legal advice before consenting to his or her surrender,

(*c*) if it is not required, under section 21A, 22, 23 or 24 (inserted by *sections 79*, *80*, *81* and *82* of the *Criminal Justice (Terrorist Offences) Act 2005*), to refuse to surrender the person under this Act, and

(*d*) if the surrender of the person is not prohibited by Part 3 ~~or the Framework Decision (including the recitals thereto),~~

make an order directing that the person be surrendered to such other person as is duly authorised by the issuing state to receive him or her.

(2) Where a person is brought before the High Court under section 14, he or she may consent to his or her being surrendered to the issuing state and, if he or she so consents, the High Court shall—

(*a*) upon production to the High Court of the European arrest warrant or ~~facsimile or true copies~~ a true copy thereof,

(*b*) if it is satisfied that—

(i) the person voluntarily consents to his or her being surrendered to the issuing state concerned and is aware of the consequences of his or her so consenting, and

(ii) the person has obtained, or has been afforded the opportunity of obtaining or being provided with, professional legal advice and representation before consenting to his or her surrender,

(*c*) if it is not required, under section 21A, 22, 23 or 24 (inserted by *sections 79*, *80*, *81* and *82* of the *Criminal Justice (Terrorist Offences) Act 2005*), to refuse to surrender the person under this Act, and

(*d*) if the surrender of the person is not prohibited by Part 3 ~~or the Framework Decision (including the recitals thereto)~~,

make an order directing that the person be surrendered to such other person as is duly authorised by the issuing state to receive him or her

(3) An order under subsection (1) or (2) shall, subject to section 18, take effect upon the expiration of 10 days beginning on the date of the making of the order or such earlier date as the High Court, on the application of the Central Authority in the State and with the consent of the person to whom the order applies, directs.

(3A) Subject to subsections (5) and (6), a person to whom an order for the time being in force under subsection (1) or (2) applies shall be surrendered to the issuing state concerned not later than 10 days after the order takes effect in accordance with subsection (3).

(3B) An appeal against an order under subsection (1) or (2), or a decision not to make such an order, may be brought in the Supreme Court if, and only if, the High Court certifies that the order or decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.

(4) Where the High Court makes an order under subsection (1) or (2), it shall, unless it orders postponement of surrender under section 18—

(*a*) inform the person to whom the order relates of his or her right to make a complaint under Article 40.4.2□□of the Constitution at any time before his or her surrender to the issuing state,

(*b*) record in writing that the person concerned has consented to his or her being surrendered to the issuing state concerned,

(*c*) order that that person be detained in a prison (or, if the person is not more than 21 years of age, in a remand institution) for a period not exceeding 20 days pending the carrying out of the terms of the order, and

(*d*) direct that the person be again brought before the High Court—

(i) if he or she is not surrendered before the expiration of the time for surrender under subsection (3A), as soon as practicable after that expiration, or

(ii) if it appears to the Central Authority in the State that, because of circumstances beyond the control of the State or the issuing state concerned, that person will not be surrendered on the expiration referred to in subparagraph (i), before that expiration.

(5) Where a person is brought before the High Court pursuant to subsection (4)(*d*), the High Court shall—

(*a*) if satisfied that, because of circumstances beyond the control of the State or the issuing state concerned, the person was not surrendered within the time for surrender under subsection (3A) or, as the case may be, will not be so surrendered—

(i) with the agreement of the issuing judicial authority, fix a new date for the surrender of the person, and

(ii) order that the person be detained in a prison (or, if the person is not more than 21 years of age, in a remand institution) for a period not exceeding 10 days after the date fixed under subparagraph (i), pending the surrender, and

(*b*) in any other case, order that the person be discharged.

(5A) A person to whom an order for the time being in force under subsection (5)(*a*) applies—

(*a*) shall be surrendered to the issuing state concerned not later than 10 days after the new date fixed under that subsection, or

(*b*) if surrender under paragraph (*a*) has not been effected, shall be discharged.

(5B) Where a person is ordered, under subsection (4)(*c*), to be detained in a prison (or, if the person is not more than 21 years of age, in a remand institution) and is

brought before the High Court pursuant to subsection (4)(*d*), the person shall be deemed to be in lawful custody at all times beginning at the time of the making of the order under subsection (4)(*c*) and ending when he or she is brought before the Court.

(6) Where a person—

(*a*) lodges an appeal pursuant to subsection (3B), or

(*b*) makes a complaint under Article 40.4.2□□of the Constitution, he or she shall not be surrendered to the issuing state while proceedings relating to the appeal or complaint are pending.

(7) Where a person lodges an appeal pursuant to subsection (3B), the High Court may remand the person in custody or on bail pending the hearing of the appeal and, for that purpose, the High Court shall have the same powers in relation to remand as it would have if the person

were brought before it charged with an indictable offence..

~~(3) An order under this section shall take effect upon the expiration of 10 days beginning on the date of the making of the order or such earlier date as the High Court, upon the request of the person to whom the order applies, directs.~~

~~(3A) An appeal against an order under this section or a decision not to make such an order may be brought in the Supreme Court if, and only if, the High Court certifies that the order or decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.~~

~~(4) Where the High Court makes an order under this section, it shall—~~

~~(a) inform the person to whom the order relates of his or her right to make a complaint under Article 40.4.2° of the Constitution at any time before his or her surrender to the issuing state,~~

~~(b) record in writing that the person concerned has consented to his or her being surrendered to the issuing state concerned, and~~

~~(c) commit the person to a prison (or, if the person is not more than 21 years of age, to~~

a remand institution) pending the carrying out of the terms of the order.

(5) Subject to subsection (6), subsection (7) and section 18, a person to whom an order for the time being in force under this section applies shall be surrendered to the issuing state concerned not later than 10 days after —

(*a*) the order takes effect in accordance with subsection (3) (inserted by *section 75(b)* of the *Criminal Justice (Terrorist Offences) Act 2005*), or

(b) such date (being a date that falls after the expiration of that period) as may be agreed by the Central Authority in the State and the issuing state.

(6) Where a person makes a complaint under Article 40.4.2° of the Constitution, he or she shall not be surrendered to the issuing state while proceedings relating to the complaint are pending.

Where a person-

(a) appeals an order made under this section, or

(b) makes a complaint under Article 40.4.2 of the Constitution,

he or she shall not be surrendered to the issuing state while proceedings relating to the appeal or complaint are pending.

(7) A person (to whom an order for the time being in force under this section applies) who is not surrendered to the issuing state in accordance with subsection (5), shall be released from custody immediately upon the expiration of the 10 days referred to in that subsection, unless, upon such expiration, proceedings referred to in subsection (6) are pending.

Where a person (to whom an order for the time being in force under this section applies) is not surrendered to the issuing state within the relevant period specified in subsection (5) and the surrender is not prohibited by reason of subsection (6) the High Court may remand

the person in custody or on bail for such further period as is necessary to effect the surrender unless it considers it would be unjust or oppressive to do so.

(8) Subsection (7) shall not apply if —

(a) (i) the person has been sentenced to a term of imprisonment for an offence of which he or she was convicted in the State,

~~(ii) on the date on which he or she would, but for this subsection, be entitled to be released from custody under subsection (7), all or part of that term of imprisonment remains unexpired, and~~

~~(iii) the person is required to serve all or part of the remainder of that term of imprisonment,~~

~~or~~

~~(b) (i) the person has been charged with or convicted of an offence in the State, and~~

~~(ii) on the date on which he or she would, but for this paragraph, be entitled to be released from custody under subsection (7), he or she is required to be in custody by virtue of having been remanded in custody pending his or her being tried, or the imposition of sentence, in respect of that offence.~~

~~(9) A person who has consented under this section to his or her being surrendered may, at any time thereafter but before his or her surrender in accordance with an order under this section, withdraw his or her consent and, where he or she withdraws his or her consent —~~

~~(a) the order made by the High Court under this section shall stand annulled, and~~

~~(b) the period between the giving of such consent before the High Court and the withdrawal by him or her of such consent shall not be taken into account for the purposes of calculating the periods specified in subsections (10) and (11) of section 16.~~

~~Where a person lodges an appeal pursuant to subsection (3A), the High Court may remand the person in custody or on bail pending the hearing of the appeal and, for that purpose, the High Court shall have the same powers in relation to remand as it would have if the person were brought before it charged with an indictable offence.~~

16.—(1) Where a person does not consent to his or her surrender to the issuing state ~~or has withdrawn his or her consent under section 15(9)~~ the High Court may, upon such date as is fixed under section 13 or such later date as it considers appropriate, make an order directing that the person be surrendered to such other person as is duly authorised by the issuing state to receive him or her, provided that—

(*a*) the High Court is satisfied that the person before it is the person in respect of whom

the European arrest warrant was issued,

(*b*) the European arrest warrant, or a ~~facsimile or~~ true copy thereof, has been endorsed in accordance with section 13 for execution of the warrant,

(*c*) the European arrest warrant states, where appropriate, the matters required by section 45 (inserted by *section 23* of the *European Arrest Warrant (Application to Third Countries and Amendment) and Extradition (Amendment) Act 2012*), ~~where appropriate, an undertaking under section 45 or a facsimile or true copy thereof is provided to the court,~~

(*d*) the High Court is not required, under section 21A, 22, 23 or 24 (inserted by 5 *sections 79*, *80*, *81* and *82* of the *Criminal Justice (Terrorist Offences) Act 2005*), to refuse to surrender the person under this Act, and

(*e*) the surrender of the person is not prohibited by Part 3 ~~or the Framework Decision (including the recitals thereto)~~.

(2) Where a person does not consent to his or her surrender to the issuing state ~~or has withdrawn his or her consent under section 15(9)~~, the High Court may, upon such date as is fixed under section 14 or such later date as it considers appropriate, make an order directing that the person be surrendered to such other person as is duly authorised by the issuing state to receive him or her, provided that—

(*a*) the European arrest warrant, including, where appropriate, the matters required by section 45 (inserted by *section 23* of the *European Arrest Warrant (Application to Third Countries and Amendment) and Extradition (Amendment) Act 2012*), is provided to the court, ~~the European arrest warrant and, where appropriate, an undertaking under section 45, or facsimile or true copies thereof are provided to the court,~~

(*b*) the High Court is satisfied that the person before it is the person in respect of whom

the European arrest warrant was issued,

(*c*) the High Court is not required, under section 21A, 22, 23 or 24 (inserted by *sections 79*, *80*, *81* and *82* of the *Criminal Justice (Terrorist Offences) Act 2005*), to refuse to surrender the person under this Act, and

(*d*) the surrender of the person is not prohibited by Part 3~~ or the Framework Decision (including the recitals thereto)~~.

(2A) Where the High Court does not—

(*a*) make an order under subsection (1) on the date fixed under section 13, or

(*b*) make an order under subsection (2) on the date fixed under section 14,

it may remand the person before it in custody or on bail and, for those purposes, the High Court shall have the same powers in relation to remand as it would have if the person were brought before it charged with an indictable offence.

(3) An order under subsection (1) or (2) shall, subject to section 18, take effect upon the expiration of 15 days beginning on the date of the making of the order or such earlier date as the High Court, on the application of the Central Authority in the State and with the consent of the person to whom the order applies, directs.

(3A) Subject to subsections (5) and (6), a person to whom an order for the time being in force under subsection (1) or (2) applies shall be surrendered to the issuing state concerned not later than 10 days after the order takes effect in accordance with subsection (3).

(4) Where the High Court makes an order under subsection (1) or (2), it shall, unless it orders postponement of surrender under section 18—

(*a*) inform the person to whom the order relates of his or her right to make a complaint under Article 40.4.2□□of the Constitution at any time before his or her surrender to the issuing state,

(*b*) order that that person be detained in a prison (or, if the person is not more than 21 years of age, in a remand institution) for a period not exceeding 25 days pending the carrying out of the terms of the order, and

(*c*) direct that the person be again brought before the High Court—

(i) if he or she is not surrendered before the expiration of the time for surrender under subsection (3A), as soon as practicable after that expiration, or

(ii) if it appears to the Central Authority in the State that, because of circumstances beyond the control of the State or the issuing state concerned, that person will not be surrendered on the expiration referred to in subparagraph (i), before that expiration.

(5) Where a person is brought before the High Court pursuant to subsection (4)(*c*), the High Court shall—

(*a*) if satisfied that, because of circumstances beyond the control of the State or the issuing state concerned, the person was not surrendered within the time for surrender under subsection (3A) or, as the case may be, will not be so surrendered—

(i) with the agreement of the issuing judicial authority, fix a new date for the surrender of the person, and

(ii) order that the person be detained in a prison (or, if the person is not more than 21 years of age, in a remand institution) for a period not exceeding 10 days after the date fixed under subparagraph (i), pending the surrender,

and

(*b*) in any other case, order that the person be discharged.

(5A) A person to whom an order for the time being in force under subsection (5)(*a*) applies—

(*a*) shall be surrendered to the issuing state concerned not later than 10 days after the order takes effect, or

(*b*) if surrender under paragraph (*a*) has not been effected, shall be discharged.

(5B) Where a person is ordered, under subsection (4)(*b*), to be detained in a prison (or, if the person is not more than 21 years of age, in a remand institution) and is brought before the High Court pursuant to subsection (4)(*c*), the person shall be deemed to be in lawful custody

at all times beginning at the time of the making of the order under subsection (4)(*b*) and ending when he or she is brought before the Court.

(6) Where a person—

(*a*) lodges an appeal pursuant to subsection (11), or

(*b*) makes a complaint under Article 40.4.2□□of the Constitution,

he or she shall not be surrendered to the issuing state while proceedings relating to the appeal or complaint are pending.

(7) Where the High Court decides not to make an order under subsection (1) or (2)—

(*a*) it shall give reasons for its decision, and

(*b*) the person shall, subject to subsection (8), be released from custody.

(8) Subsection (7)(*b*) shall not apply if—

(*a*) (i) the person has been sentenced to a term of imprisonment,

(ii) on the date on which he or she would, but for this subsection, be entitled to be released under subsection (7), all or part of the term of imprisonment remains unexpired, and

(iii) the person is required to serve all or part of the remainder of that term of imprisonment in the State,

or

(*b*) (i) the person has been charged with or convicted of an offence in the State, and

(ii) on the date on which he or she would, but for this paragraph, be entitled to be

released from custody under subsection (7), he or she is required to be in custody

by virtue of having been remanded in custody pending his or her being tried, or the

imposition of sentence, in respect of that offence.

(9) If the High Court has not, after the expiration of 60 days from the arrest of the person concerned under section 13 or 14, made an order under subsection (1) or (2) or subsection (1) or (2) of section 15, or has decided not to make an order under subsection (1) or (2), it shall direct the Central Authority in the State to inform the issuing judicial authority and, where appropriate, Eurojust in relation thereto and of the reasons therefor specified in the direction, and the Central Authority in the State shall comply with such direction.

(10) If the High Court has not, after the expiration of 90 days from the arrest of the person concerned under section 13 or 14, made an order under subsection (1) or (2) or subsection (1) or (2) of section 15, or has decided not to make an order under subsection (1) or (2), it shall

direct the Central Authority in the State to inform the issuing judicial authority and, where appropriate, Eurojust in relation thereto and of the reason therefor specified in the direction, and the Central Authority in the State shall comply with such direction.

(11) An appeal against an order under subsection (1) or (2) or a decision not to make such an order may be brought in the Supreme Court if, and only if, the High Court certifies that the order or decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.

(12) Where a person lodges an appeal pursuant to subsection (11), the High Court may remand the person in custody or on bail pending the hearing of the appeal and,

for that purpose, the High Court shall have the same powers in relation to remand as it would have if the person were brought before it charged with an indictable offence.

~~(3) An order under this section shall not take effect until the expiration of 15 days beginning on the date of the making of the order, or such earlier date as the High Court, upon the request of the person to whom the order applies, directs~~

~~(4) When making an order under this section the High Court shall also make an order committing the person to a prison (or if he or she is not more than 21 years of age, to a remand institution) there to remain pending his or her surrender in accordance with the order under this section, and shall inform the person —~~

~~(a) that he or she will not, without his or her consent, be surrendered to the issuing state, before the expiration of the period of 15 days specified in subsection (3), and~~

~~(b) of his or her right to make a complaint under Article 40.4.2° of the Constitution at any time before his or her surrender to the issuing state.~~

~~(5) Subject to subsection (6), subsection (7) and section 18, a person to whom an order for the time being in force under this section applies shall be surrendered to the issuing state not later than 10 days after —~~

~~(*a*) the order takes effect in accordance with subsection (3) (inserted by *section 76(d)* of the *Criminal Justice (Terrorist Offences) Act 2005*), or~~

~~(b) such date (being a date that falls after the expiration of that period) as may be agreed by the Central Authority in the State and the issuing state.~~

~~(6) Where a person makes a complaint under Article 40.4.2° of the Constitution, he or she shall not be surrendered to the issuing state while proceedings relating to the complaint are pending.~~

~~Where a person —~~

~~(*a*) appeals an order made under this section, or~~

~~(*b*) makes a complaint under Article 40.4.2 of the Constitution,~~

~~he or she shall not be surrendered to the issuing state while proceedings relating to the appeal or complaint are pending.~~

(7) A person (to whom an order for the time being in force under this section applies) who is not surrendered to the issuing state in accordance with subsection (5) shall be released from custody immediately upon the expiration of the 10 days referred to in that subsection unless, upon such expiration, proceedings referred to in subsection (6) are pending.

Where a person (to whom an order for the time being in force under this section applies) is not surrendered to the issuing state within the relevant period specified in subsection (5) and the surrender is not prohibited by reason of subsection (6) the High Court may remand 5

the person in custody or on bail for such further period as is necessary to effect the surrender unless it considers it would be unjust or oppressive to do so.

(8) Where the High Court decides not to make an order under this section —

(a) it shall give reasons for its decision, and

(b) the person shall, subject to subsection (9), be released from custody.

(9) Subsections (7) and (8) shall not apply if —

(*a*) (i) the person has been sentenced to a term of imprisonment for an offence of which he or she was convicted in the State,

(ii) on the date on which he or she would, but for this subsection, be entitled to be released under subsection (7) or (8), all or part of the term of imprisonment

remains unexpired, and

(iii) the person is required to serve all or part of the remainder of that term of imprisonment, or

(*b*) (i) the person has been charged with or convicted of an offence in the State, and

(ii) on the date on which he or she would, but for this paragraph, be entitled to be released from custody under subsection (7) or (8), he or she is required to be in custody by virtue of having been remanded in custody pending his or her being tried, or the imposition of sentence, in respect of that offence.

~~(10) If the High Court has not, after the expiration of 60 days from the arrest of the person concerned under section 13 or 14, made an order under this section or section 15, or has decided not to make an order under this section, it shall direct the Central Authority in the State to inform the issuing judicial authority and, where appropriate, Eurojust in relation thereto and of the reasons therefor specified in the direction, and the Central Authority in the State shall comply with such direction.~~

~~(11) If the High Court has not, after the expiration of 90 days from the arrest of the person concerned under section 13 or 14, made an order under this section or section 15, or has decided not to make an order under this section, it shall direct the Central Authority in the State to inform the issuing judicial authority and, where appropriate, Eurojust in relation thereto and of the reasons therefor specified in the direction, and the Central Authority in the State shall comply with such direction.~~

~~(12) An appeal against an order under this section or a decision not to make such an order may be brought in the Supreme Court on a point of law only if, and only if, the High Court certifies that the order or decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.~~

~~(13) Where a person lodges an appeal pursuant to subsection (12), the High Court may remand the person in custody or on bail pending the hearing of the appeal and, for that purpose, the High Court shall have the same powers in relation to remand as it would have if the person were brought before it charged with an indictable offence.~~

17.—Where, in relation to an offence specified in a European arrest warrant, the High Court decides not to make an order under section 15 or 16, it shall not be necessary for the issuing judicial authority to issue another European arrest warrant in respect of such other offences as are specified in that warrant, and, where such other offences are specified in the European arrest warrant, that warrant shall be treated as having been issued in respect of those other offences only.

18.—(1) The High Court may direct that the surrender of a person to whom an order under subsection (1) or (2) of section 15 or subsection (1) or (2) of section 16 applies be postponed in accordance with this section where—

(*a*) the High Court is satisfied that circumstances exist that would warrant that postponement, on humanitarian grounds, including that a manifest danger to

the life or health of the person concerned would likely be occasioned by his or her surrender to the issuing state,

(*b*) the person is being proceeded against for an offence in the State, or

(*c*) the person has been sentenced to a term of imprisonment for an offence and is required to serve all or part of that term of imprisonment in the State.

(2) The postponement shall continue until the High Court makes an order under subsection (4).

(3) Where the High Court decides to postpone a person's surrender under this section, it shall remand the person in custody or on bail and, for that purpose, the High Court shall have

the same powers in relation to remand as it would have if the person were brought before it charged with an indictable offence.

(4) The High Court shall make an order ending the postponement of surrender—

(*a*) where paragraph (*a*) of subsection (1) applies, when the High Court is satisfied that the circumstances referred to in that paragraph no longer exist,

(*b*) where paragraph (*b*) of subsection (1) applies, when the High Court is satisfied that the proceedings in respect of the offence concerned have been finally determined (where the person concerned is not required to serve a term of imprisonment), or

(*c*) where paragraph (*c*) of subsection (1) applies, when the High Court is satisfied that the person concerned is no longer required to serve any part of the term

of imprisonment concerned.

(5) Section 15 or 16, as the case may be, shall apply to the person concerned as of the date of the order under subsection (4) as though that order were an order made under subsection

(1) or (2) of section 15 or (1) or (2) of section 16, as the case may be.

~~18.~~ ~~(1) The High Court may, if satisfied that circumstances exist that would warrant the postponement, on humanitarian grounds, of the surrender to the issuing state of a person to whom an order under section 15 or 16 applies, direct that the person's surrender be postponed until such date as the High Court states that, in its opinion, those circumstances no longer exist.~~

~~(2) Without prejudice to the generality of subsection (1), circumstances to which that paragraph applies include a manifest danger to the life or health of the person concerned likely to be occasioned by his or her surrender to the issuing state in~~

accordance with section 15(5) or 16(5).

(2A) Where the High Court decides to postpone a person's surrender under this section, it may remand the person in custody or on bail and, for that purpose, the High Court shall have

the same powers in relation to remand as it would have if the person were brought before it charged with an indictable offence

(3) Subject to section 19, where a person to whom an order under section 15 or 16 applies —

(a) is being proceeded against for an offence in the State, or

(b) (i) has been sentenced to a term of imprisonment for an offence of which he or she was convicted in the State, and

(ii) is required to serve all or part of that term of imprisonment,

the High Court may direct the postponement of that person's surrender to the issuing state until —

(i) in the case of a person who is being proceeded against for an offence, the date of his or her acquittal or conviction (where he or she is not required to serve a term of imprisonment), or

(ii) in the case of a person who is required to serve all or part of a term of imprisonment, the date on which he or she is no longer required to serve any part of that term of imprisonment.

Subject to section 19, where a person to whom an order under section 15 or 16 applies —

(*a*) is being proceeded against for an offence in the State, or

(*b*) (i) has been sentenced to a term of imprisonment for an offence of which he or she was convicted in the State, and

(ii) is required to serve all or part of that term of imprisonment,

the High Court may direct the postponement of that person's surrender to the issuing state until —

(I) in the case of a person who is being proceeded against for an offence, the date of the final determination of those proceedings (where he or she is not required to serve a term of imprisonment), or

(II) in the case of a person who is required to serve all or part of a term of imprisonment, the date on which he or she is no longer required to serve any part of that term of imprisonment.

(4) Subject to subsection (5), a person to whom this section applies shall be surrendered to the issuing state not later than 10 days after such date (being a date that falls after the date specified in subsection (1) or subsection (3)(i) or (ii) (3)(*b*)(I) or (II), as the case may be) as may be agreed by the Central Authority in the State and the issuing state.

(5) Where a person makes a complaint under Article 40.4.2° of the Constitution, he or she shall not be surrendered to the issuing state while proceedings relating to the complaint are pending.

19.— (1) Where a person to whom an order under section 15 or 16 applies has been sentenced to a term of imprisonment for an offence and is, at the time of the making of the order, required to serve all or part of that term of imprisonment in the State, the High Court may, subject to such conditions as it shall specify, direct that the person be surrendered to the issuing state for the purpose of his or her being tried for the offence to which the European arrest warrant concerned relates.

(1) Where a person to whom an order under section 15 or 16 applies —

(a) has been sentenced to a term of imprisonment for an offence of which he or she was convicted in the State, and

(b) is, at the time of the making of the order, required to serve all or part of that term of imprisonment,

the High Court may, subject to such conditions as it shall specify, direct that the person be surrendered to the issuing state for the purpose of his or her being tried for the offence to which the European arrest warrant concerned relates.

(2) Where a person is surrendered to the issuing state under this section, then any term of imprisonment or part of a term of imprisonment that the person is required to serve in the State shall be reduced by an amount equal to any period of time spent by that person in custody or detention in the issuing state consequent upon his or her being so surrendered, or pending trial.

20.—(1) In proceedings to which this Act applies the High Court may, if of the opinion that the documentation or information provided to it is not sufficient to enable it to perform its functions under this Act, require the issuing judicial authority or the issuing state, as may be appropriate, to provide it with such additional documentation or information as it may specify, within such period as it may specify.

(2) The Central Authority in the State may, if of the opinion that the documentation or information provided to it under this Act is not sufficient to enable it or the High Court to perform functions under this Act, require the issuing judicial authority or the issuing state, as may be appropriate, to provide it with such additional documentation or information as it may specify, within such period as it may specify.

~~(3) In proceedings under this Act, evidence as to any matter to which such proceedings relate may be given by affidavit, declaration, affirmation, attestation or by a statement in writing that purports to have been sworn —~~

~~(a) by the deponent in a place other than the State, and~~

~~(b) in the presence of a person duly authorised under the law of the place concerned to attest to the swearing of such a statement by a deponent,~~

~~howsoever such a statement is described under the law of that place.~~

~~(4) In proceedings referred to in subsection (3), the High Court may, if it considers that the interests of justice so require, direct that oral evidence of the matters described in the affidavit or statement concerned be given, and the court may, for the purpose of receiving oral evidence, adjourn the proceedings to a later date.~~

21.— (1) The Minister may direct that a person remanded in custody under this Act or detained in a prison or remand institution pursuant to an order under subsection (1) or (2) of section 15 or (1) or (2) of section 16 be removed to a hospital or any other place if the Minister considers that in the interests of the person's health, it is necessary that he or she be so removed, and the person shall, while detained in a hospital or other place pursuant to a direction under this subsection, be deemed to be in lawful custody.

(2) Sections 10 and 11 of the Criminal Justice Act 1960 shall apply to a person who is not less than 16, nor more than 21, years of age remanded in custody under this Act or detained

in a prison or remand institution pursuant to an order under subsection (1) or (2) of section 15 or (1) or (2) of section 16, subject to the following modifications:

(*a*) in section 10(1), the reference to 'a person detained under section 9 of this Act or this section' shall be construed as a reference to 'a person remanded in custody or detained in a prison or remand institution under the European Arrest Warrant Act 2003';

(*b*) in section 11(1), the reference to 'a person who is detained in a remand institution pursuant to section 9 of this Act' shall be construed as a reference to 'a person remanded in custody or detained in a prison or remand institution under the European Arrest Warrant Act 2003'; and

(*c*) in section 11(3), the reference to 'section 9' shall be construed as a reference to 'the European Arrest Warrant Act 2003'.

~~21 – (1) The Minister may direct that a person remanded in custody under this Act or committed to a prison or remand institution under section 15 or 16 be removed to a hospital or any other place if the Minister considers that in the interests of the person's health, it is necessary that he or she be so removed, and the person shall, while detained in a hospital or other place pursuant to a direction under this subsection be deemed to be in lawful custody.~~

~~(2) Sections 10 and 11 of the Criminal Justice Act 1960 shall apply to a person who is not less than 16, nor more than 21, years of age remanded in custody under this Act or committed to a prison or remand institution under section 15 or 16, subject to the following modifications:~~

~~(a) in section 10(1), the reference to ''a person detained under section 9 of this Act or this section'' shall be construed as a reference to ''a person remanded in custody or committed to a prison or remand institution under the European Arrest Warrant Act 2003'';~~

~~(b) in section 11(1), the reference to ''a person who is detained in a remand institution pursuant to section 9 of this Act'' shall be construed as a reference to ''a person remanded in custody or committed to a prison or remand institution under the European Arrest Warrant Act 2003''; and~~

~~(c) in section 11(3), the reference to ''section 9'' shall be construed as a reference to ''the European Arrest Warrant Act 2003''.~~

21A.—(1) Where a European arrest warrant is issued in the issuing state in respect of a person who has not been convicted of an offence specified therein, the High Court shall refuse to surrender the person if it is satisfied that a decision has not been made to charge the person with, and try him or her for, that offence in the issuing state.

(2) Where a European arrest warrant is issued in respect of a person who has not been convicted of an offence specified therein, it shall be presumed that a decision has been made to charge the person with, and try him or her for, that offence in the issuing state, unless the contrary is proved.

22.—(1) In this section, except where the context otherwise requires, 'offence' means, in relation to a person to whom a European arrest warrant applies, an offence (other than an

offence specified in the European arrest warrant in respect of which the person's surrender is ordered under this Act) under the law of the issuing state committed before the person's surrender, but shall not include an offence consisting, in whole, of acts or omissions of which the offence specified in the European arrest warrant consists in whole or in part.

(2) Subject to this section, the High Court shall refuse to surrender a person under this Act if it is satisfied that—

(*a*) the law of the issuing state does not provide that a person who is surrendered to it pursuant to a European arrest warrant shall not be proceeded against, sentenced or detained for the purposes of executing a sentence or detention order, or otherwise restricted in his or her personal liberty, in respect of an offence, and

(*b*) the person will be proceeded against, sentenced, or detained for the purposes of executing a sentence or detention order, or otherwise restricted in his or her personal liberty, in respect of an offence.

(3) It shall be presumed that, in relation to a person to whom a European arrest warrant applies, the issuing state does not intend to—

(*a*) proceed against him or her,

(*b*) sentence or detain him or her for a purpose referred to

in subsection (2)(*a*), or

(*c*) otherwise restrict him or her in his or her personal 20

liberty, in respect of an offence, unless the contrary is proved.

(4) The surrender of a person under this Act shall not be

refused under subsection (2) if—

(*a*) upon conviction in respect of the offence concerned he or she is not liable to a term of imprisonment or detention, or

(*b*) the High Court is satisfied that, where upon such conviction he or she is liable to a term of imprisonment or detention and such other penalty as does not involve a restriction of his or her personal liberty, the said other penalty only will be imposed if he or she is convicted of the offence.

(5) The surrender of a person under this Act shall not be refused under subsection (2) if it is intended to impose in the issuing state a penalty (other than a penalty consisting of a restriction of the person's liberty) including a financial penalty in respect of an offence of which the person claimed has been convicted, notwithstanding that where such person fails or refuses to pay the penalty concerned (or, in the case of a penalty that is not a financial penalty, fails or refuses to submit to any measure or comply with any requirements of which the penalty consists) he or she may, under the law of the issuing state be detained or otherwise deprived of his or her personal liberty.

(6) The surrender of a person under this Act shall not be refused under subsection (2) if the High Court—

(*a*) is satisfied that—

(i) proceedings will not be brought against the person in respect of an offence,

(ii) a penalty will not be imposed on the person in respect of an offence, and

(iii) the person will not be detained or otherwise restricted in his or her personal liberty for the purposes of an offence, without the issuing judicial authority first obtaining the consent thereto of the High Court,

(*b*) is satisfied that—

(i) the person consents to being surrendered under section 15,

(ii) at the time of so consenting he or she consented to being so proceeded against, to such a penalty being imposed, or being so detained or restricted in his or her personal liberty, and was aware of the consequences of his or her so consenting, and

(iii) the person obtained or was afforded the opportunity of obtaining, or being provided with, professional legal advice in relation to the matters to which this section relates,

(*c*) is satisfied that—

(i) such proceedings will not be brought, such penalty will not be imposed and the person will not be so detained or otherwise restricted in his or her personal liberty before the expiration of a period of 45 days from the date of the person's final discharge in respect of the offence for which he or she is surrendered, and

(ii) during that period he or she will be free to leave the issuing state, except where having been so discharged he or she leaves the issuing state and later returns thereto (whether during that period or later), or

(*d*) is satisfied that such proceedings will not be brought, such penalty will not be imposed and the person will not be so detained or restricted in his or her personal liberty unless—

(i) the person voluntarily gives his or her consent to being so proceeded against, such a penalty being imposed, or being so detained or restricted in his or her personal liberty, and is fully aware of the consequences of so doing,

(ii) that consent is given before the competent judicial authority in the issuing state, and

(iii) the person obtains or is afforded the opportunity of obtaining, or being provided with, professional legal advice in the issuing state in relation to the matters to which this section

relates before he or she gives that consent.

(7) The High Court may, in relation to a person who has been surrendered to an issuing state under this Act, consent to—

(*a*) proceedings being brought against the person in the issuing state for an offence,

(*b*) the imposition in the issuing state of a penalty, including a penalty consisting of a restriction of the person's liberty, in respect of an offence, or

(*c*) proceedings being brought against, or the detention of, the person in the issuing state for the purpose of executing a sentence or order of detention in respect of an offence, upon receiving a request in writing from the issuing state in that behalf.

(8) The High Court shall not give its consent under subsection (7) if the offence concerned is an offence for which a person could not by virtue of Part 3 ~~or the Framework Decision~~

~~(including the recitals thereto)~~ be surrendered under this Act.

~~(8) The High Court shall not give its consent under subsection (7) if the offence concerned is an offence for which a person could not by virtue of Part 3 or the Framework Decision (including the recitals thereto) be surrendered under this Act.~~

~~**22.** (1) Subject to this section, a person shall not be surrendered under this Act unless—~~

(*a*) under the law of the issuing state a person who is surrendered to it pursuant to a European arrest warrant shall not be proceeded against, sentenced, or detained for the purposes of executing a sentence or detention order, or otherwise restricted in his or her personal freedom, for an offence committed before his or her surrender other than the offence (in respect of which he or she is surrendered) specified in the European arrest warrant, or

(*b*) an undertaking in writing is given to the High Court by the issuing judicial authority that the person will not be proceeded against, sentenced, or detained for the purposes of executing a sentence or detention order, or otherwise restricted in his or her personal freedom, for an offence committed before his or her surrender other than the offence (in respect of which he or she is surrendered) specified in the European arrest warrant concerned.

(2) The surrender of a person under this Act shall not be refused on the ground that it is intended to proceed against him or her in the issuing state for an offence (other than the offence specified in the European arrest warrant) alleged to have been committed by him or her before his or her surrender provided that —

(*a*) upon conviction he or she is not liable to a term of imprisonment or detention, or

(*b*) in circumstances where upon conviction he or she is liable to a term of imprisonment or detention and such other penalty as does not involve a restriction of his or her personal liberty, the High Court is satisfied that the said other penalty only will be imposed should he or she be convicted of the offence concerned.

(3) The surrender of a person under this Act shall not be refused on the ground that it is intended to impose in the issuing state a penalty (other than a penalty consisting of the restriction of the person's liberty) including a financial penalty in respect of an offence —

(*a*) of which the person claimed has been convicted,

(*b*) that was committed before his or her surrender, and

(*c*) that is not the offence specified in the European arrest warrant,

notwithstanding that where such person fails or refuses to pay the penalty concerned (or, in the case of a penalty that is not a financial penalty, fails or refuses to submit to any measure or comply with any requirements of which the penalty

consists) he or she may, under the law of the issuing state be detained or otherwise deprived of his or her personal liberty.

(4) The surrender of a person under this Act shall not be refused on the ground that it is intended to proceed against or detain him or her in the issuing state for the purpose of executing a sentence or order of detention in respect of an offence —

(a) of which the person claimed has been convicted,

(b) that was committed before his or her surrender, and

(c) that is not the offence specified in the European arrest warrant concerned,

or otherwise restrict his or her personal liberty as a consequence of being convicted of such offence provided that —

(i) after his or her surrender he or she consents to such execution or to his or her personal liberty being so restricted, and

(ii) under the law of the issuing state such consent shall be given before the competent judicial authority in the issuing state and be recorded in accordance with the law of the issuing state.

(5) (a) The surrender of a person under this Act shall not be refused on the ground that it is intended —

(i) to proceed against him or her in the issuing state for an offence committed or alleged to have been committed by the person before his or her surrender,

(ii) to impose in the issuing state a penalty (including a penalty consisting of a restriction of the person's liberty), in respect of an offence of which he or she was convicted before his or her surrender, or

(iii) to proceed against or detain him or her in the issuing state for the purpose of executing a sentence or order of detention in respect of an offence of which the person was convicted before his or her surrender,

provided that, upon the receipt of a request in writing from the issuing judicial authority in that behalf by the Central Authority in the State, the Central Authority in the State consents to the person's surrender.

(b) In this subsection "offence" means an offence —

(i) other than —

(I) the offence specified in the European arrest warrant concerned, and

(II) an offence in respect of which a person could not, by virtue of Part 3 or the Framework Decision (including the recitals thereto), be surrendered under this Act,

and

(ii) that is an offence under the law of the issuing state —

(I) on the day of its commission or alleged commission, and

(II) on the day on which the European arrest warrant is issued.

(6) The surrender of a person under this Act shall not be refused on the ground that it is intended —

(a) to proceed against him or her in the issuing state for an offence committed or alleged to have been committed by him or her before his or her surrender,

(b) to impose in the issuing state a penalty (including a penalty consisting of a restriction of the person's liberty) in respect of an offence of which he or she was convicted before his or her surrender, or

(c) to proceed against or detain him or her in the issuing state for the purpose of executing a sentence or order of detention in respect of an offence of which the person was convicted before his or her surrender,

where the offence concerned is not the offence specified in the European arrest warrant, provided that —

(i) an undertaking in writing is given by or on behalf of the issuing judicial authority to the High Court that the person will not be so proceeded against and no such penalty will be imposed before the expiration of a period of 45 days from the date of the person's final discharge in respect of the offence for which he or she is surrendered during which he or she shall be free to leave the issuing state, or unless having been so discharged he or she leaves the issuing state and later returns thereto,

(ii) the High Court is satisfied that —

(I) the person consents to being surrendered under section 15 ,

(II) at the time of so consenting he or she consented to being so proceeded against or to such a penalty being imposed and was aware of the consequences of his or her so doing, and

(III) the person obtained or was given the opportunity to obtain professional legal advice in relation to the matters to which this subparagraph applies before so consenting,

or

(iii) an undertaking in writing is given by or on behalf of the issuing judicial authority to the High Court that the person will not be so proceeded against or detained, and no such penalty will be imposed, unless —

(I) the person voluntarily gives his or her consent to being so proceeded against or detained, or to such a penalty being imposed, and is fully aware of the consequences of so doing,

~~(II) that consent is given before the competent judicial authority in the issuing state, and~~

~~(III) the person obtains or is given the opportunity to obtain professional legal advice in the issuing state in relation to the matters to which this subparagraph applies before so consenting.~~

23—(1) In this section, except where the context otherwise 20

requires—

‘offence’ means, in relation to a person to whom a European arrest warrant applies, an offence under the law of a Member State (other than the issuing state) committed before the person’s surrender to the issuing state under this Act; and

‘Member State’ means a Member State other than the issuing state.

(2) Subject to this section, the High Court shall refuse to surrender a person under this Act if it is satisfied that—

(*a*) the law of the issuing state does not provide that a person who is surrendered to it pursuant to a European arrest warrant shall not be surrendered to a Member State pursuant to a European arrest warrant issued by a judicial authority in that Member State in

respect of an offence, and

(*b*) the person will be surrendered to a Member State pursuant to a European arrest warrant issued by a judicial authority in that Member State in respect of an offence.

(3) It shall be presumed that, in relation to a person to whom a European arrest warrant applies, the issuing state does not intend to surrender him or her to a Member State pursuant to a European arrest warrant issued by a judicial authority in that Member State in respect of an offence, unless the contrary is proved.

(4) The surrender of a person under this Act shall not be refused under subsection (2) if the High Court—

(*a*) is satisfied that the issuing judicial authority will not surrender the person to a Member State pursuant to a European arrest warrant issued by a judicial authority in that Member State, without first obtaining the consent thereto of the High Court,

(*b*) is satisfied that—

(i) the person consents to being surrendered under section 15,

(ii) at the time of so consenting he or she consented to being surrendered by the issuing state to a Member State pursuant to a European arrest warrant issued by a judicial authority in that Member State, and was aware of the consequences of his or her so consenting, and

(iii) the person obtained or was afforded the opportunity of obtaining, or being provided with, professional legal advice in relation to the matters to which this section relates,

(*c*) is satisfied that—

(i) the person will not be surrendered by the issuing state to a Member State pursuant to a European arrest warrant issued by a judicial authority in that Member State, before the expiration of a period of 45 days from the date of the person's final discharge in respect of the offence for which he or she is surrendered under this Act, and

(ii) during that period he or she will be free to leave the issuing state,

except where having been so discharged he or she leaves the issuing state and later returns thereto (whether during that period or later), or

(*d*) is satisfied that the person will not be surrendered to a Member State pursuant to a European arrest warrant issued by a judicial authority in that Member State unless—

(i) the person voluntarily gives his or her consent to being so surrendered and is fully aware of the consequences of his or her so doing,

(ii) that consent is given before the competent judicial authority in the issuing state, and

(iii) the person obtains or is afforded the opportunity of obtaining, or being provided with, professional legal advice in the issuing state in relation to the matters to which this section relates before he or she gives that consent.

(5) The High Court may, in relation to a person who has been surrendered to an issuing state under this Act, consent to the person being surrendered by the issuing state to a Member State

pursuant to a European arrest warrant issued by a judicial authority in that Member State, upon receiving a request in writing from the issuing state in that behalf.

(6) The High Court shall not give its consent under subsection (5) if the offence concerned is an offence for which a person could not by virtue of Part 3 ~~or the Framework Decision~~

~~(including the recitals thereto)~~ be surrendered under this Act.

~~23.~~ ~~(1) Subject to this section, a person shall not be surrendered under this Act unless —~~

~~(*a*) under the law of the issuing state the person shall not be surrendered to another Member State pursuant to a European arrest warrant issued by a judicial authority in that Member State in respect of an offence committed or alleged to have been committed before his or her surrender to the issuing state, or~~

~~(*b*) an undertaking in writing is given to the High Court by the issuing judicial authority that the person will not be surrendered to another Member State pursuant to a European arrest warrant issued by a judicial authority in that Member State in respect of such an offence.~~

(2) Subject to *subsection (3)*, a person shall not be surrendered under this Act unless —

(*a*) under the law of the issuing state a person shall not be surrendered, or

(*b*) an undertaking in writing is given to the High Court by or on behalf of the issuing judicial authority that the person will not be surrendered,

to another Member State pursuant to a European arrest warrant issued by a judicial authority in that Member State —

(i) (I) before the expiration of a period of 45 days from the date of the person's final discharge in respect of the offence for which he or she is surrendered to the issuing state during which time he shall be free to leave the issuing state, or

(II) unless having been so discharged he or she leaves the issuing state and later returns thereto,

or

(ii) unless —

(I) he or she voluntarily gives his or her consent to being so surrendered to another Member State and is fully aware of the consequences of his or her so doing,

(II) that consent is given before the competent judicial authority of the issuing state, and

(III) he or she obtains or is given the opportunity to obtain professional legal advice in relation to the matters to which this paragraph applies before he or she gives that consent.

(3) The surrender of a person under this Act shall not be refused on the ground that, in relation to the issuing state, there is no compliance with *subsection (2)(a)* or *(b)*, provided that —

(*a*) in relation to the person, the High Court is satisfied as to the matters specified in *section 22 (6)(ii)*, or

(*b*) the Central Authority in the State gives its consent under *subsection (4)*.

(4) (*a*) An issuing judicial authority may request the Central

~~Authority in the State to consent to a person named in a European arrest warrant being surrendered by the issuing state concerned to another Member State pursuant to a European arrest warrant issued by a judicial authority in that other Member State in respect of that person.~~

~~(*b*) Upon receipt of a request under *paragraph (a)* the Central Authority in the State shall give its consent to the surrender of the person to the other Member State by the issuing state unless the surrender of the person in respect of the offence specified in the European arrest warrant issued by a judicial authority in that other Member State would, if that person's surrender were sought by that other Member State under this Act, be prohibited under *Part 3* or the Framework Decision (including the recitals thereto).~~

24—(1) The High Court shall refuse to surrender a person under this Act if it is satisfied that—

(*a*) the law of the issuing state does not provide that a person who is surrendered to it pursuant to a European arrest warrant shall not be extradited to a third country without the consent of the High Court and the Minister first being obtained, and

(*b*) the person will be extradited to a third country without such consent first being obtained.

(2) It shall be presumed that, in relation to a person to whom a European arrest warrant applies, the issuing state does not intend to extradite him or her to a third country, unless the

contrary is proved.

(3) The issuing state may request, in writing, the High Court to consent to the extradition to a third country by the issuing state of a person surrendered to the issuing state under this Act.

(4) The High Court shall give its consent to a request under subsection (3) if it is satisfied that—

(*a*) were the person concerned in the State, and

(*b*) were a request for his or her extradition received in the State from the third country concerned,

his or her extradition pursuant to such a request would not be prohibited under the Extradition Acts 1965 to 2001.

~~**24.** (1) A person shall not be surrendered under this Act unless the issuing judicial authority gives an undertaking in writing that the person will not be extradited to a third state without the consent of the High Court and the Minister.~~

~~(2) The issuing judicial authority may request in writing the High Court to consent to the extradition to a third state by the issuing state of a person surrendered to the issuing state under this Act.~~

~~(3) The High Court shall not give its consent to a request under *subsection (2)* unless the extradition of the person concerned to the third state in respect of the offence concerned would be permitted under the Extradition Acts 1965 to 2001, were a request for such extradition to be received by the State from the third state.~~

25.—(1) A member of the Garda Síochána, may, for the purposes of performing functions under section 13 or 14, enter any place (if necessary by the use of reasonable force) and search that place, if he or she has reasonable grounds for believing that a person in respect of whom a European arrest warrant has been issued is to be found at that place.

(2) Where a member of the Garda Síochána enters a place under subsection (1), he or she may search that place and any person found at that place, and may seize anything found at that place or anything found in the possession of a person present at that place at the time of the search that the said member believes to be evidence of, or relating to, an offence specified in a European arrest warrant, or to be property

obtained or received at any time (whether before or after the passing of this Act) as a result of or in connection with the commission of that offence.

(3) Subject to subsection (4), a member of the Garda Síochána, who has reasonable grounds for believing that evidence of, or relating to, an offence specified in a European arrest warrant, or property obtained or received at any time (whether before or after the passing of this Act) as a result of, or in connection with, the commission of that offence is to be found at any place, may enter that place (if necessary by the use of reasonable force) and search that place and any person found at that place, and may seize anything found at that place or anything found in the possession of a person present at that place at the time of the search that the member believes to be such evidence or property.

(4) (a) A member of the Garda Síochána shall not enter a dwelling under subsection (3), other than—

(i) with the consent of the occupier, or

(ii) in accordance with a warrant issued under paragraph (b).

(b) On the application of a member of the Garda Síochána, a judge of the District Court may, if satisfied that there are reasonable grounds for believing that—

(i) evidence of, or relating to, an offence specified in a European arrest warrant, or

(ii) property obtained or received at any time (whether before or after the passing of this Act) as a result of or in connection with the commission of that offence,

is to be found in any dwelling, issue a warrant authorising a named member of the Garda Síochána accompanied by such other members of the Garda Síochána as may be necessary, at any time or times, within one month of the date of the issue of the warrant, to enter the dwelling (if necessary by the use of reasonable force) and search the dwelling and any person found at the dwelling, and a member of the Garda Síochána who enters a dwelling pursuant to such a warrant may seize anything found at the dwelling or anything found in the possession of a person present at the dwelling at the time of the search that the member believes to be such evidence or property.

(5) A member of the Garda Síochána who is performing functions under this section may—

(a) require any person present at the place where the search is carried out to give to the member his or her name and address, and

(b) arrest otherwise than pursuant to a warrant any person who—

(i) obstructs or attempts to obstruct that member in the performance of his or her

functions,

(ii) fails to comply with a requirement under paragraph (a), or

(iii) gives a name or address which the member has reasonable cause for believing is false or misleading.

(6) A person who—

(a) obstructs or attempts to obstruct a member of the Garda Síochána in the performance of his or her functions under this section,

(b) fails to comply with a requirement under paragraph (a) of subsection (5), or

(c) gives a false name or address to a member of the Garda Síochána,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3,000, or to imprisonment for a period not exceeding 6 months, or to both.

(7) In this section ‘‘place’’ includes a ship or other vessel, an aircraft, a railway wagon or other vehicle, and a container used for the transporting of goods.

26.—(1) Subject to the provisions of this section, any property seized under section 25 shall, if a person is surrendered under this Act, be handed over to any person duly authorised by the issuing state to receive it, as soon as may be after the surrender of the person, and the said property shall be so handed over notwithstanding that the surrender of the person cannot be carried out by reason of the death or escape from custody of the person claimed.

(2) Any property seized under section 25 may, if any criminal proceedings to which the property relates are pending in the State, be retained in the State for the purposes of those proceedings or may, if the Central Authority in the State, after consultation with the Director of Public Prosecutions, so directs, be handed over to the issuing state subject to the issuing state agreeing to return the property.

(3) This section shall not operate to abrogate any rights lawfully vested in the State, or any person, in any property to which this section applies and, where any such rights exist, the property shall not be handed over unless an undertaking is given by the issuing state that it will return the property as soon as may be after the trial of the person surrendered and without charge to the State or person in whom such rights vest.

27.—(1) A person remanded in custody under this Act may be detained in a prison (or, if he or she is not more than 21 years of age, in a remand institution) or, for a period not exceeding 48 hours, in a Garda Síochána station.

(2) A person shall not be remanded on bail or otherwise released from custody under

this Act if—

(a) (i) the person has been sentenced to a term of imprisonment for an offence of which he or she was convicted in the State,

(ii) on the date of his or her being remanded or on which he or she would, but for this paragraph, be entitled to be released, all or part of the term of imprisonment remains unexpired, and

(iii) the person is required to serve all or part of the remainder of that term of imprisonment,

or

(b) (i) the person has been charged with or convicted of an offence in the State, and

(ii) on the date of his or her being remanded or on which he or she would, but for this paragraph, be entitled to be released, he or she is required to be in custody by virtue of having been remanded in custody pending trial for that offence or the imposition of sentence in respect of that offence.

28.—(1) Transit through the State of a person being conveyed from an executing state to an issuing state, upon his or her surrender pursuant to a European arrest warrant, shall be permitted where the Central Authority in the State receives a request in that behalf from the issuing state and where the issuing state provides the Central Authority in the State with the following information:

(a) the nationality of the person and such other information as will enable the person to be identified by the Central Authority in the State;

(b) information showing that a European arrest warrant has been issued by the issuing state in respect of the person;

(c) the nature and classification under the law of the issuing state of the offence to which the European arrest warrant relates;

(d) the circumstances in which the offence specified in the European arrest warrant was committed or is alleged to have been committed, including the date and place of its commission.

(2) The transit of a person through the State shall be supervised by members of the Garda Síochána if the Central Authority in the State considers it appropriate, and where a person's transit is so supervised the person shall be deemed to be in the custody of any member of the Garda Síochána who accompanies him or her.

(3) (a) This subsection applies to an aircraft that has taken off from a place (other than the State) and that is scheduled to land in a place (other than the State) and on board which there is a person who is being conveyed to an issuing state upon his or her surrender pursuant to a European arrest warrant.

(b) Where an aircraft to which this subsection applies lands (for whatever reason) in the State, the issuing state shall, upon its landing or as soon as may be after it lands, provide the Central Authority in the State with the information referred to in subsection (1).

(c) While an aircraft to which this subsection applies is in the State, a person referred to in paragraph (a) who is on board that aircraft shall be deemed to be in transit through the State and subsection (2) shall apply accordingly.

(4) Where a person has been extradited by a third country to a Member State this section shall apply subject to the modifications that—

(a) the reference to an executing state shall be construed as a reference to a third state,

(b) references to a European arrest warrant shall be construed as references to an extradition request, and

(c) references to an issuing state shall be construed as references to a Member State.

(5) In this section ‘‘executing state’’ means, in relation to a European arrest warrant, a Member State (a judicial authority of which has ordered the arrest and surrender to the issuing state, pursuant to the European arrest warrant, of a person in respect of whom that warrant was issued).

29.—(1) Where the Central Authority in the State receives two or more European arrest warrants in respect of a person, ~~neither of which or not all of which, as the case may be, have been issued by the same issuing state~~, the Central Authority in the State shall, where the High Court has not yet made an order under subsection (1) or (2) of section 15~~,~~ or subsection (1) or (2) of section 16, in relation to the person, inform the High Court as soon as may be of the receipt by it of those warrants and the High Court shall, having regard to all the circumstances, decide, in relation to which of those European arrest warrants it shall—

(a) perform functions under section 13, or

(b) where it has already performed such functions in relation to one of those European arrest warrants, perform functions under section 15 or 16, as may be appropriate.

(2) Without prejudice to the generality of subsection (1), the High Court shall in making a decision under subsection (1) have regard to—

(a) the seriousness of the offences specified in the European arrest warrants concerned,

(b) the places where the offences were committed or are alleged to have been committed,

(c) the dates on which the European arrest warrants were issued, and

(d) whether the European arrest warrants concerned were issued for the purposes of bringing proceedings for an offence against the person named in the warrants or for the purposes of executing a sentence or detention order in respect of the person.

30.—(1) If the Central Authority in the State receives a European arrest warrant in respect of a person and the State receives a request from a third country for the extradition of that person, the Central Authority in the State shall, where an order has not yet been made under subsection (1) or (2) of section 15, or subsection (1) or (2) of section 16, in relation to

the person, so inform the High Court, and the High Court shall not perform functions under this Act in relation to the European arrest warrant, unless the Minister has informed the High

Court that—

(*a*) the request for extradition is not being proceeded

with, or

(*b*) the European arrest warrant is to have precedence

over the request for extradition.

(2) If the Central Authority in the State receives a European arrest warrant in respect of a person and the State receives a request from the International Criminal Court for the arrest and surrender of the same person, the Central Authority in the State shall, where an order has not yet been made under subsection (1) or (2) of section 15, or subsection (1) or (2) of section 16, in relation to that person, so inform the High Court, and the High Court shall not perform functions under this Act in relation to the European arrest warrant, unless the arrest and surrender of that person pursuant to such a request is prohibited, or not provided for, under the law of the State.

~~**30.** (1) If the Central Authority in the State receives a European arrest warrant in respect of a person and a request from a third country for the extradition of that person, the Central Authority in the State shall, where the High Court has not yet made an order under section 15, or subsection (1) or (2) of section 16, in relation to the person, inform the High Court as soon as may be of the receipt by it of the~~

~~European arrest warrant and the request for extradition, and the High Court shall, having regard to all the circumstances, decide whether it shall perform functions —~~

~~(a) in relation to the European arrest warrant, under this Act, or~~

~~(b) in relation to the request for extradition, under the Extradition Acts 1965 to 2001.~~

~~(2) Without prejudice to the generality of subsection (1), the High Court shall in making a decision under subsection (1) have regard to —~~

~~(a) the seriousness of —~~

~~(i) the offence specified in the European arrest warrant, and~~

~~(ii) the offence to which the request for extradition relates,~~

~~(b) the places where the offences concerned were committed or are alleged to have been committed,~~

~~(c) the date on which the European arrest warrant was issued and the date on which the request for extradition was made,~~

~~(d) whether the European arrest warrant was issued, or the request for extradition was made, for the purposes of bringing proceedings for an offence against the person concerned or for the purposes of executing a sentence or detention order in respect of the person, and~~

~~(e) the relevant extradition provisions.~~

~~(3) If the Central Authority in the State receives a European arrest warrant in respect of a person and the State receives a request from the International Criminal Court for the arrest and surrender of the same person, the Central Authority in the State shall, where an order has not yet been made under section 15, or subsection (1) or (2) of section 16, in relation to that person, so inform the High Court, and the High Court shall not perform functions under this Act in relation to the European arrest warrant, unless the arrest and surrender of that person pursuant to such a request is prohibited, or not provided for, under the law of the State.~~

~~(4) In this section ‘‘extradition provisions’’ has the same meaning as it has in the Act of 1965.~~

Chapter 2

Issue of European Arrest Warrant by State

31.—In this Chapter—

‘‘domestic warrant’’ means a warrant (other than a European arrest warrant) issued, for the arrest of a person, by a court in the State;

‘‘European arrest warrant’’ means a warrant to which the Framework Decision applies issued by a court, in accordance with this Chapter and for the purposes of—

(a) the arrest, in a Member State, of that person, and

(b) the surrender of that person to the State by the Member State concerned.

32.—(1) For the purposes of paragraph 2 of Article 2 of the Framework Decision, the Minister may, by order, specify the offences under the law of the State to which that paragraph applies.

(2) The Minister may, by order, amend or revoke an order under this section (including an order under this subsection).

(3) This section shall not operate to require that an order under this section be in force before a court may issue a European arrest warrant under section 33.

33.— (1) A court may, upon an application made by or on behalf of the Director of Public Prosecutions, issue a European arrest warrant in respect of a person where it is satisfied that—

(*a*) a domestic warrant has been issued for the arrest of that person but has not been

executed, and

(*b*) a term of imprisonment or detention of not less than 4 months has been imposed on the person in respect of the offence concerned and the person is required to serve all or part of that term of imprisonment or detention, or, as the case may be, the person would, if convicted of the offence concerned, be liable to a term of imprisonment or detention of 12 months or more than 12 months.,

~~(1) A court may, upon an application made by or on behalf of the Director of Public Prosecutions, issue a European arrest warrant in respect of a person —~~

~~(a) where it is satisfied upon reasonable grounds that —~~

(i) a domestic warrant was issued for the arrest of that person but was not executed, and

(ii) the person is not in the State,

and

(1) A court may, upon an application made by or on behalf of the Director of Public Prosecutions, issue a European arrest warrant in respect of a person where it is satisfied that

(a) a domestic warrant has been issued for the arrest of that person but has not been executed, and

(b) the person may not be in the State, and

(b) where

(i) the person would, if convicted of the offence concerned, be liable to a term of imprisonment or detention of 12 months or more than 12 months, or

(ii) a term of imprisonment or detention of not less than 4 months has been imposed on the person in respect of the offence concerned and the person is required to serve all or part of that term of imprisonment or detention.

(1A) Where a court issues a European arrest warrant in respect of a person under this section, such issue shall be deemed to constitute a request by the court for entry of an alert and of a copy of the European arrest warrant in respect of that person.

~~(1B) For the purposes of subsection (1), where a member of the Garda Síochána not below the rank of Sergeant states that he or she believes that a person may not be in the State, the statement is admissible as evidence that the person may not be in the State.~~

(2) A European arrest warrant shall, in so far as is practicable, be in the form set out in the Annex to the Framework Decision as amended by Council Framework Decision 2009/299/JHA and shall specify—

(a) the name and the nationality of the person to whom it relates,

(b) the name, address, fax number and e-mail address of—

(i) the District Court Office for the district in which the District Court was sitting when it issued the European arrest warrant,

(ii) the Circuit Court Office of the county in which the Circuit Criminal Court was sitting when it issued the European arrest warrant,

(iii) the Central Office of the High Court, or

(iv) the Registrar of the Special Criminal Court,

as may be appropriate,

(c) the offence to which the European arrest warrant relates including a description thereof,

(d) that a conviction, sentence or detention order is immediately enforceable against the person, or that a domestic warrant for his or her arrest has been issued in respect of that offence,

(e) the circumstances in which the offence was committed or is alleged to have been committed, including the time and place of its commission or alleged commission, and the degree of involvement or alleged degree of involvement of the person in the commission of the offence, and

(f) (i) the penalties to which the person named in the European arrest warrant would, if convicted of the offence to which the European arrest warrant relates, be liable,

(ii) where the person named in the European arrest warrant has been convicted of the offence specified therein and a sentence has been imposed in respect thereof, the penalties of which that sentence consists, and

(iii) where the person named in the European arrest warrant has been convicted of the offence specified therein but has not yet been sentenced, the penalties to which he or she is liable in respect of the offence.

(3) Where it is not practicable for the European arrest warrant to be in the form set out in the Annex to the Framework Decision, the European arrest warrant shall, in addition to containing the information specified in subsection (2), include such other information as would be required to be provided were it in that form.

(4) For the avoidance of doubt, a European arrest warrant may be issued in respect of one or more than one offence.

(5) In this section ‘‘court’’ means—

(a) the court that issued the domestic warrant to which to which subsection (1)(*a*) applies ~~subparagraph (i) of section 33(1)(a) applies~~, or

(b) the High Court.

34.—A European arrest warrant issued under section 33 ~~shall~~ may be transmitted to a Member State by the Central Authority in the State.

35.—(1) Where a person is surrendered to the State pursuant to a European arrest warrant—

(a) the domestic warrant issued for his or her arrest and referred to in ~~subparagraph (i) of~~ section 33(1)(a),

(b) subject to paragraph (c), where more than one such domestic warrant was issued, those domestic warrants, or

(c) where—

(i) more than one such domestic warrant was issued, and

(ii) the executing judicial authority ordered the surrender of the person in respect of one or more but not all of the offences specified in the European arrest warrant,

the domestic warrants issued in respect of the offences for which the person was surrendered,

may be executed by any member of the Garda Síochána in any part of the State and

may be so executed notwithstanding that the domestic warrant concerned is not in the possession of the member when he or she executes the warrant, and the domestic warrant concerned shall be shown to and a copy thereof given to the person arrested at the time of his or her arrest or, if the domestic warrant or copy thereof is not then in the possession of the member, not later than 24 hours after the person's arrest.

(2) Where a person is surrendered to the State pursuant to a European arrest warrant issued by the High Court (whether or not sitting as the Central Criminal Court), the Central Authority in the State shall inform the Central Office of the High Court, in writing, of the person's surrender.

36.—(1) Where a person is surrendered to the State pursuant to a European arrest warrant, then any term of imprisonment that the person is required to serve by virtue of the imposition of a sentence by a court in the State (whether before or after the person's surrender) in respect of the offence specified in that European arrest warrant shall be reduced by an amount equal to any period of time spent by that person in custody or detention in the executing state in contemplation, or in consequence, of the execution of the European arrest warrant.

(2) In this section ''executing state'' means, in relation to a European arrest warrant, a Member State (a judicial authority of which has ordered the arrest and surrender to the State, pursuant to the European arrest warrant, of a person in respect of whom that warrant was issued).

PART 3

Prohibition on Surrender

37.—(1) A person shall not be surrendered under this Act if—

(a) his or her surrender would be incompatible with the State's obligations under—

(i) the Convention, or

(ii) the Protocols to the Convention,

(b) his or her surrender would constitute a contravention of any provision of the Constitution (other than for the reason that the offence specified in the European arrest warrant is an offence to which section 38(1)(b) applies),

(c) there are reasonable grounds for believing that—

(i) the European arrest warrant was issued in respect of the person for the purposes of facilitating his or her prosecution or punishment in the issuing state for reasons connected with his or her sex, race, religion, ethnic origin, nationality, language,

political opinion or sexual orientation, or

(ii) in the prosecution or punishment of the person in the issuing state, he or she will be treated less favourably than a person who—

(I) is not of his or her sex, race, religion, nationality or ethnic origin,

(II) does not hold the same political opinions as him or her,

(III) speaks a different language than he or she does, or

(IV) does not have the same sexual orientation as he or she does,

or

(iii) were the person to be surrendered to the issuing state—

(I) he or she would be sentenced to death, or a death sentence imposed on him or her would be carried out, or

(II) he or she would be tortured or subjected to other inhuman or degrading treatment.

(2) In this section—

‘‘Convention’’ means the Convention for the Protection of Human Rights and Fundamental Freedoms done at Rome on the 4th day of November, 1950, as amended by Protocol No. 11 done at Strasbourg on the 11th day of May, 1994; and

‘‘Protocols to the Convention’’ means the following protocols to the Convention, construed in accordance with Articles 16 to 18 of the Convention:

(a) the Protocol to the Convention done at Paris on the 20th day of March, 1952;

(b) Protocol No. 4 to the Convention securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto done at Strasbourg on the 16th day of September, 1963;

(c) Protocol No. 6 to the Convention concerning the abolition of the death penalty done at Strasbourg on the 28th day of April, 1983;

(d) Protocol No. 7 to the Convention done at Strasbourg on the 22nd day of November, 1984.

38.—(1) Subject to subsection (2), a person shall not be surrendered to an issuing state under this Act in respect of an offence unless—

(a) the offence corresponds to an offence under the law of the State, and—

(i) under the law of the issuing state the offence is punishable by imprisonment or detention for a maximum period of not less than 12 months, or

(ii) a term of imprisonment or detention of not less than 4 months has been imposed on the person in respect of the offence in the issuing state, and the person is required under the law of the issuing state to serve all or part of that term of imprisonment,

or

(b) the offence is an offence to which paragraph 2 of Article 2 of the Framework Decision applies ~~or is an offence that consists of conduct specified in that paragraph,~~ and under the law of the issuing state the offence is punishable by imprisonment for a maximum period of not less than 3 years.

(2) The surrender of a person to an issuing state under this Act shall not be refused on the ground that, in relation to a revenue offence—

(a) no tax or duty of the kind to which the offence relates is imposed in the State, or

(b) the rules relating to taxes, duties, customs or exchange control that apply in the issuing state differ in nature from the rules that apply in the State to taxes, duties, customs or exchange control.

(3) In this section ‘‘revenue offence’’ means, in relation to an issuing state, an offence in connection with taxes, duties, customs or exchange control.

39.—(1) A person shall not be surrendered under this Act where he or she has been granted a pardon, under Article 13.6 of the Constitution, in respect of an offence consisting of an act or omission that constitutes in whole or in part the offence specified in the European arrest warrant issued in respect of him or her.

(2) A person shall not be surrendered under this Act where he or she has, in accordance with the law of the issuing state, become immune, by virtue of any amnesty or pardon, from prosecution or punishment in the issuing state for the offence specified in the European arrest warrant issued in respect of him or her.

(3) A person shall not be surrendered under this Act where he or she has, by virtue of any Act of the Oireachtas, become immune from prosecution or punishment for an offence consisting of an act or omission that constitutes in whole or in part the offence specified in the European arrest warrant issued in respect of him or her.

~~**40.**—A person shall not be surrendered under this Act where—~~

~~(a) the act or omission constituting the offence specified in the European arrest warrant issued in respect of him or her is an offence under the law of the State, and~~

~~(b) the person could not, by reason of the passage of time, be proceeded against, in the State, in respect of the secondmentioned offence.~~

41.—(1) A person shall not be surrendered under this Act for the purpose of his or her being proceeded against in the issuing state for an offence consisting of an act or omission that constitutes in whole or in part an offence in respect of which final judgment has been given in the State or a Member State.

(2) A person shall not be surrendered under this Act for the purpose of his or her being proceeded against in the issuing state for an offence consisting of the act or omission that constitutes an offence in respect of which final judgment has been given in a third country, provided that where a sentence of imprisonment or detention was imposed on the person in the third country in respect of the secondmentioned offence—

(a) the person has completed serving the sentence, or

(b) the person is otherwise no longer liable under the law of the third country to serve any period of imprisonment or detention in respect of the offence.

42.—A person shall not be surrendered under this Act if—

(a) the Director of Public Prosecutions or the Attorney General is considering, but has not yet decided, whether to bring proceedings against the person for an offence, or

(b) proceedings are pending ~~have been brought~~ in the State against the person for an offence consisting of an act or omission ~~that constitutes in whole or in part~~ of which the offence specified in the European arrest warrant issued in respect of him or her consists in whole or in part.

~~(c) the Director of Public Prosecutions or the Attorney General, as the case may be, has decided not to bring, or to enter a nolle prosequi under section 12 of the Criminal Justice (Administration) Act 1924 in proceedings against the person for an offence consisting of an act or omission that constitutes in whole or in part the offence specified in the European arrest warrant issued in respect of him or her, for reasons other than that a European arrest warrant has been issued in respect of that person.~~

43.—A person shall not be surrendered under this Act if the offence specified in the European arrest warrant issued in respect of him or her corresponds to an offence under the law of the State in respect of which a person of the same age as the person in respect of whom the European arrest warrant was issued could not be proceeded against by reason of his or her age.

44.—A person shall not be surrendered under this Act if the offence specified in the European arrest warrant issued in respect of him or her was committed or is alleged to have been committed in a place other than the issuing state and the act or omission of which the offence consists does not, by virtue of having been committed in a place other than the State, constitute an offence under the law of the State.

45.—**A** person shall not be surrendered under this Act if he or she did not appear in person at the proceedings resulting in the sentence or detention order in respect of which the European

arrest warrant was issued, unless the European arrest warrant indicates the matters required by points 2, 3 and 4 of point (d) of the form of warrant in the Annex to the Framework

Decision as amended by Council Framework Decision 2009/299/JHA, as set out in the table to this section.

TABLE

(*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,

OR

❒ the person did not request a retrial or appeal within the applicable time frame;

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 time frame within which he or she has to request a retrial or appeal, which will be . . . days.

4. If you have ticked the box under points 3.1b, 3.2 or 3.3 above, please provide information about how the relevant condition has been met:

.....

.....”.

~~45_A person shall not be surrendered under this Act if—~~

~~(a) he or she was not present when he or she was tried for and convicted of the offence specified in the European arrest warrant, and~~

~~(b) (i) he or she was not notified of the time when, and place at which, he or she would be tried for the offence, or~~

~~(ii) he or she was not permitted to attend the trial in respect of the offence concerned,~~

~~unless the issuing judicial authority gives an undertaking in writing that the person will, upon being surrendered—~~

~~(I) be retried for that offence or be given the opportunity of a retrial in respect of that offence,~~

~~(II) be notified of the time when, and place at which any retrial in respect of the~~

~~offence concerned will take place, and~~

~~(III) be permitted to be present when any such retrial takes place.~~

~~A person shall not be surrendered under this Act if —~~

~~(*a*) he or she was not present when he or she was tried for and convicted of the offence specified in the European arrest warrant, and~~

~~(*b*) (i) he or she was not notified of the time when, and place at which, he or she would be tried for the offence, or~~

~~(ii) he or she was not permitted to attend the trial in respect of the offence concerned,~~

~~unless the issuing judicial authority gives an undertaking in writing that the person will, upon being surrendered —~~

~~(I) be retried for that offence or be given the opportunity of a retrial in respect of that offence,~~

~~(II) be notified of the time when, and place at which any retrial in respect of the offence concerned will take place, and~~

~~(III) be permitted to be present when any such retrial takes place.~~

45A.—(1) Where a member of the Garda Síochána arrests a person under any power conferred by this Act, the member of the Garda Sı´ocha´na may, in order to assist in verifying or ascertaining his or her identity for the purpose of proceedings under this Act and for no other purpose—

(*a*) take, or cause to be taken, his or her fingerprint,

(*b*) take, or cause to be taken, his or her palm print,

(*c*) photograph him or her or cause him or her to be photographed.

(2) Where a fingerprint, palm print or photograph taken pursuant to subsection (1) is lost or damaged, or is otherwise unsuitable for use for the purpose referred to in that subsection, it may be taken on a second or any further occasion.

(3) The powers conferred by subsection (1) shall not be exercised except on the authority of a member of the Garda Sıochana not below the rank of inspector.

(4) A member of the Garda Sı´ocha´na may, where a person fails or refuses to allow his or her fingerprint, palm print or photograph to be taken pursuant to subsection (1), use such force as he or she reasonably considers necessary to take the fingerprint, palm print or photograph or to cause the photograph to be taken.

(5) (*a*) The powers conferred by subsection (4) shall not be exercised except on the authority of a member of the Garda Sı´ocha´na not below the rank of superintendent.

(*b*) An authorization pursuant to paragraph (*a*) may be given orally or in writing and if given orally shall be confirmed in writing as soon as practicable.

(6) Where a member of the Garda Sıochana intends to exercise a power conferred by subsection (4), he or she shall inform the person—

(*a*) of that intention, and

(*b*) that an authorization to do so has been given pursuant to subsection (5)(*a*).

(7) Every fingerprint, palm print or photograph taken pursuant to subsection (4) shall be taken in the presence of a member of the Garda Sı´ocha´na not below the rank of inspector.

(8) The taking of every fingerprint, palm print or photograph pursuant to subsection (4) shall be video-recorded.

(9) Every fingerprint, palm print or photograph of a person taken in pursuance of a power conferred by this section and every copy and record thereof shall be destroyed within the period of 12 months from the date of the taking of the fingerprint, palm print or photograph, as the case may be, or on the conclusion of proceedings under this Act in relation to the person, whichever occurs later.

(10) A person who obstructs a member of the Garda Sı´ocha´na in exercise of the powers under this section shall be guilty of an offence and shall, on summary conviction, be liable to a fine not exceeding \5,000 or to imprisonment for a term not exceeding 12 months or to both.

(11) Where a fingerprint, palm print or photograph of a person to whom a European arrest warrant relates is transmitted by or on behalf of an issuing judicial authority, such fingerprint, palm print or photograph shall be received in evidence without further proof.

45B.—(1) Where a national or resident of another state from which he or she is surrendered—

(*a*) is surrendered to the State pursuant to a European arrest warrant with a view to being prosecuted in the State, and

(*b*) whose surrender is subject to the condition that he or she, after being so prosecuted, is returned if he or she so consents to that other state in order to serve any custodial sentence or detention order imposed upon him or her

in the State,

the Minister shall, following the final determination of the proceedings and if the person consents, issue a warrant for the transfer of the person from the State to that other state in order to serve there any custodial sentence or detention order so imposed.

(2) A warrant issued under subsection (1) shall authorise—

(*a*) the taking of the person to a place in any part of the State and his or her delivery at a place of departure from the State into the custody of a person

authorized by the other state to receive the person, for conveyance to the other state concerned, and the keeping of the person in custody until the delivery is effected, and

(*b*) the removal of the person concerned, by the person to whom he or she is delivered, from the State.

(3) Where a warrant has been issued in respect of a person under this section, the person shall be deemed to be in legal custody at any time when he or she is being taken under the warrant to or from any place or being kept in custody under the warrant and, if the person escapes or is unlawfully at large, he or she shall be liable to be retaken in the same manner as any person who escapes from lawful custody.

(4) The Minister may designate any person as a person who is for the time being authorised to take the person concerned to or from any place under the warrant or to keep the person in custody under the warrant.

(5) A person authorized pursuant to subsection (4) to take the person concerned to or from any place or to keep the person in custody shall, while so taking or keeping the person, have all the powers, authority, protection and privileges of a member of the Garda S1ochana.

(6) The order by virtue of which a person is required to be detained at the time a warrant is issued in respect of him or her under this section shall continue to have effect after his or her removal from the State so as to apply to him or her if he or she is again in the State at any time when under that order he or she is to be or may be detained.

45C.— For the avoidance of doubt, an application for surrender under section 16 shall not be refused if the Court is satisfied that no injustice would be caused to the person even if—

(*a*) there is a defect in, or an omission of, a non-substantial detail in the European arrest warrant or any accompanying document grounding the application,

(*b*) there is a variance between any such document and the evidence adduced on the part of the applicant at the hearing of the application, so long as the Court is satisfied that the variance is explained by the evidence, or

(*c*) there has been a technical failure to comply with a provision of this Act, so long as the Court is satisfied that the failure does not impinge on the merits of the application.

~~(1) Subject to subsection (2), and 40 application for surrender under section 16 shall not be refused on the grounds of —~~

~~(*a*) a defect in substance or in form or an omission of non-substantial detail in the European arrest warrant or any accompanying document grounding the application,~~

~~(*b*) any variance between any such document and the evidence adduced on the part of the applicant at the hearing of the application, or~~

~~(*c*) failure to comply with any provision of this Act where the Court is satisfied that such failure is of a technical nature and does not impinge on the merits of the application.~~

~~(2) Subsection (1) shall not apply where the Court is satisfied that an injustice would thereby be caused to the respondent.~~

46.—A person who, by virtue of his or her holding any office or other position, is under the law of the State immune from prosecution for any offence, shall not while he or she holds such office or position be surrendered under this Act.

PART 4

Miscellaneous

47.—Section 3 of the Act of 1965 is amended by—

(a) the insertion in subsection (1) of the following definition:

‘‘ ‘country’ includes territories for whose external relations the country concerned is responsible;’’,

(b) the substitution of the following subsection for subsection (1A):

‘‘(1A) For the purposes of the amendments to this Act effected by Part 2 of the Extradition (European Union Conventions) Act 2001, ‘Convention country’ means—

(a) a country designated under section 4(1) of that Act, or

(b) in such provisions of this Act as are specified in an order under subsection (1A) (inserted by section 52 of the European Arrest Warrant Act 2003) of section 4 of the Extradition (European Union Conventions) Act 2001, a country designated by that order, to which the provisions so specified apply.’’,

and

(c) the substitution of the following subsection for subsection (1B) (inserted by section 9 of the Act of 2001):

‘‘(1B) For the purposes of the amendments to this Act effected by Part 3 of the Extradition (European Union Conventions) Act 2001, ‘Convention country’ means—

(a) a country designated under section 10(1) of that Act, or

(b) in such provisions of this Act as are specified in an order under subsection (1A) (inserted by section 52 of the European Arrest Warrant Act 2003) of section 10 of the Extradition (European Union Conventions) Act 2001, a country designated by that order, to which the provisions so specified apply.’’.

48.—The Act of 1965 is amended by the substitution of the following section for section 4 (inserted by section 21 of the Act of 2001):

‘‘4.—Every order under section 8 of this Act made after the commencement of section 48 of the European Arrest Warrant Act 2003 shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House sits after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.’’.

49.—Section 8 of the Act of 1965 is amended by—

(a) the substitution in subsection (1) of—

(i) ‘‘Minister is’’ for ‘‘Government are’’ where it first occurs, and

(ii) ‘‘Minister for Foreign Affairs may, after consultation with the Minister,’’ for ‘‘Government may’’,

(b) the substitution in subsection (1A) (inserted by section 23 of the Act of 2001) of ‘‘Minister for Foreign Affairs may, after consultation with the Minister,’’ for ‘‘Government may’’,

(c) the substitution in subsection (2) of ‘‘Minister for Foreign Affairs may, after consultation with the Minister’’, for ‘‘Government may’’,

(d) the substitution in subsection (6) of ‘‘Minister for Foreign Affairs may, after consultation with the Minister,’’ for ‘‘Government may’’, and

(e) the insertion of the following subsection:

‘‘(9) An order under this section in force immediately before the commencement of the European Arrest Warrant Act 2003 shall continue in force after such commencement as if made under this section (as amended by section 49 of that Act), and may be amended or revoked accordingly.’’,

and the said section 8 as so amended is set out in the Table to this section.

TABLE

8.—(1) Where by any international agreement or convention to which the State is a party an arrangement (in this Act referred to as an extradition agreement) is made with another country for the surrender by each country to the other of persons wanted for prosecution or punishment or where the Minister is satisfied that reciprocal facilities to that effect will be afforded by another country, the Minister for Foreign Affairs may, after consultation with the Minister, by order apply this Part in relation to that country.

(1A) Where at any time after the making of an order under subsection (1) a country becomes a party to an extradition agreement to which that order applies, the Minister for Foreign Affairs may, after consultation with the Minister, by order so declare, and this Part shall, upon the making of the second-mentioned order, apply to that country.

(2) Where the Government have made an arrangement amending an extradition agreement the Minister for Foreign Affairs may, after consultation with the Minister,

by order so declare and the extradition agreement shall thereupon have effect as so amended.

(3) An order relating to an extradition agreement (other than an order under subsection (1A) (inserted by section 23(a) of the Extradition (European Union Conventions) Act 2001)) shall recite or embody the terms of the agreement and shall be evidence of the making of the agreement and of its terms.

(3A) An order under subsection (1A) shall in relation to the extradition agreement concerned recite or embody the terms of any reservation or declaration entered to that agreement by a country to which the order applies, and shall be evidence of the reservation or declaration (if any) and of its terms.

(3B) An order under subsection (2) shall recite or embody the terms of the amendment and shall be evidence of the making of the arrangement amending the extradition agreement concerned and of the terms of the amendment.

(4) An order applying this Part in relation to any country otherwise than in pursuance of an extradition agreement, may be made subject to such conditions, exceptions and qualifications as may be specified in the order.

(5) Every extradition agreement and every order applying this Part otherwise than in pursuance of an extradition agreement shall, subject to the provisions of this Part, have the force of law in accordance with its terms.

(6) The Minister for Foreign Affairs may, after consultation with the Minister, by order revoke or amend an order under this section.

PART B

Text in the English language of Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

COUNCIL FRAMEWORK DECISION

of 13 June 2002

on the European arrest warrant and the surrender procedures between Member States

(2002/584/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 31(a) and (b) and Article 34(2)(b) thereof,

Having regard to the proposal from the Commission [Footnote 1: OJ C 332 E, 27.11.2001, p. 305.],

Having regard to the opinion of the European Parliament [Footnote 2:Opinion delivered on 9 January 2002 (not yet published in the Official Journal).],

Whereas:

(1) According to the Conclusions of the Tampere European Council of 15 and 16 October 1999, and in particular point 35 thereof, the formal extradition procedure should be abolished among the Member States in respect of persons who are fleeing from justice after having been finally sentenced and extradition procedures should be speeded up in respect of persons suspected of having committed an offence.

(2) The programme of measures to implement the principle of mutual recognition of criminal decisions envisaged in point 37 of the Tampere European Council Conclusions and adopted by the Council on 30 November 2000 [Footnote 3: OJ C 12 E, 15.1.2001, p. 10.], addresses the matter of mutual enforcement of arrest warrants.

(3) All or some Member States are parties to a number of conventions in the field of extradition, including the European Convention on extradition of 13 December 1957 and the European Convention on the suppression of terrorism of 27 January 1977. The Nordic States have extradition laws with identical wording.

(4) In addition, the following three Conventions dealing in whole or in part with extradition have been agreed upon among Member States and form part of the Union acquis: the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders [Footnote 4: OJ

L 239, 22.9.2000, p. 19.] (regarding relations between the Member States which are parties to that Convention), the Convention of 10 March 1995 on simplified extradition procedure between the Member States of the European Union [Footnote 5: OJ C 78, 30.3.1995, p. 2.] and the Convention of 27 September 1996 relating to extradition between the Member States of the European Union [Footnote 6: OJ C 313, 13.10.1996, p. 12.].

(5) The objective set for the Union to become an area of freedom, security and justice leads to abolishing extradition between Member States and replacing it by a system of surrender between judicial authorities. Further, the introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. Traditional cooperation relations which have prevailed up till now between Member States should be replaced by a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice.

(6) The European arrest warrant provided for in this Framework Decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the ‘cornerstone’ of judicial cooperation.

(7) Since the aim of replacing the system of multilateral extradition built upon the European Convention on Extradition of 13 December 1957 cannot be sufficiently achieved by the Member States acting unilaterally and can therefore, by reason of its scale and effects, be better achieved at Union level, the Council may adopt measures in accordance with the principle of subsidiarity as referred to in Article 2 of the Treaty on European Union and Article 5 of the Treaty establishing the European Community. In accordance with the principle of proportionality, as set out in the latter Article, this Framework Decision does not go beyond what is necessary in order to achieve that objective.

(8) Decisions on the execution of the European arrest warrant must be subject to sufficient controls, which means that a judicial authority of the Member State where the requested person has been arrested will have to take the decision on his or her surrender.

(9) The role of central authorities in the execution of a European arrest warrant must be limited to practical and administrative assistance.

(10) The mechanism of the European arrest warrant is based on a high level of confidence between Member States. Its implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in Article 6(1) of the Treaty on European Union, determined by the Council pursuant to Article 7(1) of the said Treaty with the consequences set out in Article

7(2) thereof.

(11) In relations between Member States, the European arrest warrant should replace all the previous instruments concerning extradition, including the provisions of Title III of the Convention implementing the Schengen Agreement which concern extradition.

(12) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union [Footnote 1: OJ C 364, 18.12.2000, p. 1.], in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons.

This Framework Decision does not prevent a Member State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media.

(13) No person should be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

(14) Since all Member States have ratified the Council of Europe Convention of 28 January 1981 for the protection of individuals with regard to automatic processing of personal data, the personal data processed in the context of the implementation of this Framework Decision should be protected in accordance with the principles of the said Convention

HAS ADOPTED THIS FRAMEWORK DECISION:

CHAPTER 1

GENERAL PRINCIPLES

Article 1

Definition of the European arrest warrant and obligation to execute it

1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.

3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.

Article 2

Scope of the European arrest warrant

1. A European arrest warrant may be issued for acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months.

2. The following offences, if they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined by the law of the issuing Member State, shall, under the terms of this

Framework Decision and without verification of the double criminality of the act, give rise to surrender pursuant to a European arrest warrant:

— 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. The Council may decide at any time, acting unanimously after consultation of the European Parliament under the conditions laid down in Article 39(1) of the Treaty on European Union (TEU), to add other categories of offence to the list contained in paragraph 2. The Council shall examine, in the light of the report submitted by the Commission pursuant to Article 34(3), whether the list should be extended or amended.

4. For offences other than those covered by paragraph 2, surrender may be subject to the condition that the acts for which the European arrest warrant has been issued constitute an offence under the law of the executing Member State, whatever the constituent elements or however it is described.

Article 3

Grounds for mandatory non-execution of the European arrest warrant

The judicial authority of the Member State of execution (hereinafter ‘executing judicial authority’) shall refuse to execute the European arrest warrant in the following cases:

1. if the offence on which the arrest warrant is based is covered by amnesty in the executing Member State, where that State had jurisdiction to prosecute the offence under its own criminal law;

2. if the executing judicial authority is informed that the requested person has been finally judged by a Member State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State;

3. if the person who is the subject of the European arrest warrant may not, owing to his age, be held criminally responsible for the acts on which the arrest warrant is based under the law of the executing State.

Article 4

Grounds for optional non-execution of the European arrest warrant

The executing judicial authority may refuse to execute the European arrest warrant:

1. if, in one of the cases referred to in Article 2(4), the act on which the European arrest warrant is based does not constitute an offence under the law of the executing Member State; however, in relation to taxes or duties, customs and exchange, execution of the European arrest warrant shall not be refused on the ground that the law of the executing Member State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and

exchange regulations as the law of the issuing Member State;

2. where the person who is the subject of the European arrest warrant is being prosecuted in the executing Member State for the same act as that on which the European arrest warrant is based;

3. where the judicial authorities of the executing Member State have decided either not to prosecute for the offence on which the European arrest warrant is based or to halt proceedings, or where a final judgment has been passed upon the requested person in a Member State, in respect of the same acts, which prevents further proceedings;

4. where the criminal prosecution or punishment of the requested person is statute-barred according to the law of the executing Member State and the acts fall within the jurisdiction of that Member State under its own criminal law;

5. if the executing judicial authority is informed that the requested person has been finally judged by a third State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing country;

6. if the European arrest warrant has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a resident of the executing Member State and that State undertakes to execute the sentence or detention order in accordance with its domestic law;

7. where the European arrest warrant relates to offences which:

(a) are regarded by the law of the executing Member State as having been committed in whole or in part in the territory of the executing Member State or in a place treated as such; or

(b) have been committed outside the territory of the issuing Member State and the law of the executing Member State does not allow prosecution for the same offences when committed outside its territory.

Article 5

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

The execution of the European arrest warrant by the executing judicial authority may, by the law of the executing Member State, be subject to the following conditions:

1. where the European arrest warrant has been issued for the purposes of executing a sentence or a detention order imposed by a decision rendered and if the person concerned has not been summoned in person or otherwise informed of the date and

place of the hearing which led to the decision rendered in absentia, surrender may be subject to the condition that the issuing judicial authority gives an assurance deemed adequate to guarantee the person who is the subject of the European arrest warrant that he or she will have an opportunity to apply for a retrial of the case in the issuing Member State and to be present at the judgment;

2. if the offence on the basis of which the European arrest warrant has been issued is punishable by custodial life sentence or life-time detention order, the execution of the said arrest warrant may be subject to the condition that the issuing Member State has provisions in its legal system for a review of the penalty or measure imposed, on request or at the latest after 20 years, or for the application of measures of clemency to which the person is entitled to apply for under the law or practice of the issuing Member State, aiming at a non-execution of such penalty or measure;

3. where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the executing Member State, surrender may be subject to the condition that the person, after being heard, is returned to the executing Member State in order to serve there the custodial sentence or detention order passed against him in the issuing Member State.

Article 6

Determination of the competent judicial authorities

1. The issuing judicial authority shall be the judicial authority of the issuing Member State which is competent to issue a European arrest warrant by virtue of the law of that State.

2. The executing judicial authority shall be the judicial authority of the executing Member State which is competent to execute the European arrest warrant by virtue of the law of that State.

3. Each Member State shall inform the General Secretariat of the Council of the competent judicial authority under its law.

Article 7

Recourse to the central authority

1. Each Member State may designate a central authority or, when its legal system so provides, more than one central authority to assist the competent judicial authorities.

2. A Member State may, if it is necessary as a result of the organisation of its internal judicial system, make its central authority(ies) responsible for the administrative transmission and reception of European arrest warrants as well as for all other official correspondence relating thereto.

Member State wishing to make use of the possibilities referred to in this Article shall communicate to the General Secretariat of the Council information relating to the designated central authority or central authorities. These indications shall be binding upon all the authorities of the issuing Member State.

Article 8

Content and form of the European arrest warrant

1. The European arrest warrant shall contain the following information set out in accordance with the form contained in the Annex:

(a) the identity and nationality of the requested person;

(b) the name, address, telephone and fax numbers and e-mail address of the issuing judicial authority;

(c) evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 1 and 2;

(d) the nature and legal classification of the offence, particularly in respect of Article 2;

(e) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person;

(f) the penalty imposed, if there is a final judgment, or the prescribed scale of penalties for the offence under the law of the issuing Member State;

(g) if possible, other consequences of the offence.

2. The European arrest warrant must be translated into the official language or one of the official languages of the executing Member State. Any Member State may, when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the European Communities.

CHAPTER 2

SURRENDER PROCEDURE

Article 9

Transmission of a European arrest warrant

1. When the location of the requested person is known, the issuing judicial authority may transmit the European arrest warrant directly to the executing judicial authority.

2. The issuing judicial authority may, in any event, decide to issue an alert for the requested person in the Schengen Information System (SIS).

3. Such an alert shall be effected in accordance with the provisions of Article 95 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of controls at common borders. An alert in the Schengen Information System shall be equivalent to a European arrest warrant accompanied by the information set out in Article 8(1).

For a transitional period, until the SIS is capable of transmitting all the information described in Article 8, the alert shall be equivalent to a European arrest warrant pending the receipt of the original in due and proper form by the executing judicial authority.

Article 10

Detailed procedures for transmitting a European arrest warrant

1. If the issuing judicial authority does not know the competent executing judicial authority, it shall make the requisite enquiries, including through the contact points of the European Judicial Network [Footnote 1: Council Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network (OJ L 191, 7.7.1998, p. 4).] , in order to obtain that information from the executing Member State.

2. If the issuing judicial authority so wishes, transmission may be effected via the secure telecommunications system of the European Judicial Network.

3. If it is not possible to call on the services of the SIS, the issuing judicial authority may call on Interpol to transmit a European arrest warrant.

4. The issuing judicial authority may forward the European arrest warrant by any secure means capable of producing written records under conditions allowing the executing Member State to establish its authenticity.

5. All difficulties concerning the transmission or the authenticity of any document needed for the execution of the European arrest warrant shall be dealt with by direct contacts between the judicial authorities involved, or, where appropriate, with the involvement of the central authorities of the Member States.

6. If the authority which receives a European arrest warrant is not competent to act upon it, it shall automatically forward the European arrest warrant to the competent authority in its Member State and shall inform the issuing judicial authority accordingly.

Article 11

Rights of a requested person

1. When a requested person is arrested, the executing competent judicial authority shall, in accordance with its national law, inform that person of the European arrest warrant and of its contents, and also of the possibility of consenting to surrender to the issuing judicial authority.

2. A requested person who is arrested for the purpose of the execution of a European arrest warrant shall have a right to be assisted by a legal counsel and by an interpreter in accordance with the national law of the executing Member State.

Article 12

Keeping the person in detention

When a person is arrested on the basis of a European arrest warrant, the executing judicial authority shall take a decision on whether the requested person should remain in detention, in accordance with the law of the executing Member State. The person may be released provisionally at any time in conformity with the domestic law of the executing Member State, provided that the competent authority of the said Member State takes all the measures it deems necessary to prevent the person absconding.

Article 13

Consent to surrender

1. If the arrested person indicates that he or she consents to surrender, that consent and, if appropriate, express renunciation of entitlement to the ‘speciality rule’, referred to in Article 27(2), shall be given before the executing judicial authority, in accordance with the domestic law of the executing Member State.

2. Each Member State shall adopt the measures necessary to ensure that consent and, where appropriate, renunciation, as referred to in paragraph 1, are established in such a way as to show that the person concerned has expressed them voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel.

3. The consent and, where appropriate, renunciation, as referred to in paragraph 1, shall be formally recorded in accordance with the procedure laid down by the domestic law of the executing Member State.

4. In principle, consent may not be revoked. Each Member State may provide that consent and, if appropriate, renunciation may be revoked, in accordance with the rules

applicable under its domestic law. In this case, the period between the date of consent and that of its revocation shall not be taken into consideration in establishing the time limits laid down in Article 17. A Member State which wishes to have recourse to this possibility shall inform the General Secretariat of the Council accordingly when this Framework Decision is adopted and shall specify the procedures whereby revocation of consent shall be possible and any amendment to them.

Article 14

Hearing of the requested person

Where the arrested person does not consent to his or her surrender as referred to in Article 13, he or she shall be entitled to be heard by the executing judicial authority, in accordance with the law of the executing Member State.

Article 15

Surrender decision

1. The executing judicial authority shall decide, within the timelimits and under the conditions defined in this Framework Decision, whether the person is to be surrendered.

2. If the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Articles 3 to 5 and Article 8, be furnished as a matter of urgency and may fix a time limit for the receipt thereof, taking into account the need to observe the time limits set in Article 17.

3. The issuing judicial authority may at any time forward any additional useful information to the executing judicial authority.

Article 16

Decision in the event of multiple requests

1. If two or more Member States have issued European arrest warrants for the same person, the decision on which of the European arrest warrants shall be executed shall be taken by the executing judicial authority with due consideration of all the circumstances and especially the relative seriousness and place of the offences, the respective dates of the European arrest warrants and whether the warrant has been issued for the purposes of prosecution or for execution of a custodial sentence or detention order.

2. The executing judicial authority may seek the advice of Eurojust [Footnote 1:

Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 63, 6.3.2002, p. 1).] when making the choice referred to in paragraph 1.

3. In the event of a conflict between a European arrest warrant and a request for extradition presented by a third country, the decision on whether the European arrest warrant or the extradition request takes precedence shall be taken by the competent authority of the executing Member State with due consideration of all the circumstances, in particular those referred to in paragraph 1 and those mentioned in the applicable convention.

4. This Article shall be without prejudice to Member States' obligations under the Statute of the International Criminal Court.

Article 17

Time limits and procedures for the decision to execute the European arrest warrant

1. A European arrest warrant shall be dealt with and executed as a matter of urgency.

2. In cases where the requested person consents to his surrender, the final decision on the execution of the European arrest warrant should be taken within a period of 10 days after consent has been given.

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

4. Where in specific cases the European arrest warrant cannot be executed within the time limits laid down in paragraphs 2 or 3, the executing judicial authority shall immediately inform the issuing judicial authority thereof, giving the reasons for the delay. In such case, the time limits may be extended by a further 30 days.

5. As long as the executing judicial authority has not taken a final decision on the European arrest warrant, it shall ensure that the material conditions necessary for effective surrender of the person remain fulfilled.

6. Reasons must be given for any refusal to execute a European arrest warrant.

7. Where in exceptional circumstances a Member State cannot observe the time limits provided for in this Article, it shall inform Eurojust, giving the reasons for the delay. In addition, a Member State which has experienced repeated delays on the part of another Member State in the execution of European arrest warrants shall inform the Council with a view to evaluating the implementation of this Framework Decision at Member State level.

Article 18

Situation pending the decision

1. Where the European arrest warrant has been issued for the purpose of conducting a criminal prosecution, the executing judicial authority must:

(a) either agree that the requested person should be heard according to Article 19;

(b) or agree to the temporary transfer of the requested person.

2. The conditions and the duration of the temporary transfer shall be determined by mutual agreement between the issuing and executing judicial authorities.

3. In the case of temporary transfer, the person must be able to return to the executing Member State to attend hearings concerning him or her as part of the surrender procedure.

Article 19

Hearing the person pending the decision

1. The requested person shall be heard by a judicial authority, assisted by another person designated in accordance with the law of the Member State of the requesting court.

2. The requested person shall be heard in accordance with the law of the executing Member State and with the conditions determined by mutual agreement between the issuing and executing judicial authorities.

3. The competent executing judicial authority may assign another judicial authority of its Member State to take part in the hearing of the requested person in order to ensure the proper application of this Article and of the conditions laid down.

Article 20

Privileges and immunities

1. Where the requested person enjoys a privilege or immunity regarding jurisdiction or execution in the executing Member State, the time limits referred to in Article 17 shall not start running unless, and counting from the day when, the executing judicial authority is informed of the fact that the privilege or immunity has been waived. The executing Member State shall ensure that the material conditions necessary for effective surrender are fulfilled when the person no longer enjoys such privilege or immunity.

2. Where power to waive the privilege or immunity lies with an authority of the

executing Member State, the executing judicial authority shall request it to exercise that power forthwith. Where power to waive the privilege or immunity lies with an authority of another State or international organisation, it shall be for the issuing judicial authority to request it to exercise that power.

Article 21

Competing international obligations This Framework Decision shall not prejudice the obligations of the executing Member State where the requested person has been extradited to that Member State from a third State and where that person is protected by provisions of the arrangement under which he or she was extradited concerning speciality. The executing Member State shall take all necessary measures for requesting forthwith the consent of the State from which the requested person was extradited so that he or she can be surrendered to the Member State which issued the European arrest warrant. The time limits referred to in Article 17 shall not start running until the day on which these speciality rules cease to apply. Pending the decision of the State from which the requested person was extradited, the executing Member State will ensure that the material conditions necessary for effective surrender remain fulfilled.

Article 22

Notification of the decision

The executing judicial authority shall notify the issuing judicial authority immediately of the decision on the action to be taken on the European arrest warrant.

Article 23

Time limits for surrender of the person

1. The person requested shall be surrendered as soon as possible on a date agreed between the authorities concerned.

2. He or she shall be surrendered no later than 10 days after the final decision on the execution of the European arrest warrant.

3. If the surrender of the requested person within the period laid down in paragraph 2 is prevented by circumstances beyond the control of any of the Member States, the executing and issuing judicial authorities shall immediately contact each other and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.

4. The surrender may exceptionally be temporarily postponed for serious humanitarian reasons, for example if there are substantial grounds for believing that it would manifestly endanger the requested person’s life or health. The execution of the

European arrest warrant shall take place as soon as these grounds have ceased to exist. The executing judicial authority shall immediately inform the issuing judicial authority and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.

5. Upon expiry of the time limits referred to in paragraphs 2 to 4, if the person is still being held in custody he shall be released.

Article 24

Postponed or conditional surrender

1. The executing judicial authority may, after deciding to execute the European arrest warrant, postpone the surrender of the requested person so that he or she may be prosecuted in the executing Member State or, if he or she has already been sentenced, so that he or she may serve, in its territory, a sentence passed for an act other than that referred to in the European arrest warrant.

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

Article 25

Transit

1. Each Member State shall, except when it avails itself of the possibility of refusal when the transit of a national or a resident is requested for the purpose of the execution of a custodial sentence or detention order, permit the transit through its territory of a requested person who is being surrendered provided that it has been given information on:

(a) the identity and nationality of the person subject to the European arrest warrant;

(b) the existence of a European arrest warrant;

(c) the nature and legal classification of the offence;

(d) the description of the circumstances of the offence, including the date and place.

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

the issuing Member State.

2. Each Member State shall designate an authority responsible for receiving transit requests and the necessary documents, as well as any other official correspondence relating to transit requests. Member States shall communicate this designation to the General Secretariat of the Council.

3. The transit request and the information set out in paragraph 1 may be addressed to the authority designated pursuant to paragraph 2 by any means capable of producing a written record. The Member State of transit shall notify its decision by the same procedure.

4. This Framework Decision does not apply in the case of transport by air without a scheduled stopover. However, if an unscheduled landing occurs, the issuing Member State shall provide the authority designated pursuant to paragraph 2 with the information provided for in paragraph 1.

5. Where a transit concerns a person who is to be extradited from a third State to a Member State this Article will apply mutatis mutandis. In particular the expression ‘European arrest warrant’ shall be deemed to be replaced by ‘extradition request’.

CHAPTER 3

EFFECTS OF THE SURRENDER

Article 26

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

1. The issuing Member State shall deduct all periods of detention arising from the execution of a European arrest warrant from the total period of detention to be served in the issuing Member State as a result of a custodial sentence or detention order being passed.

2. To that end, all information concerning the duration of the detention of the requested person on the basis of the European arrest warrant shall be transmitted by the executing judicial authority or the central authority designated under Article 7 to the issuing judicial authority at the time of the surrender.

Article 27

Possible prosecution for other offences

1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States that have given the same notification, consent is presumed to have been given for the prosecution, sentencing or detention with a view

to the carrying out of a custodial sentence or detention order for an offence committed prior to his or her surrender, other than that for which he or she was surrendered, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

2. Except in the cases referred to in paragraphs 1 and 3, a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered.

3. Paragraph 2 does not apply in the following cases:

(a) when the person having had an opportunity to leave the territory of the Member State to which he or she has been surrendered has not done so within 45 days of his or her final discharge, or has returned to that territory after leaving it;

(b) the offence is not punishable by a custodial sentence or detention order;

(c) the criminal proceedings do not give rise to the application of a measure restricting personal liberty;

(d) when the person could be liable to a penalty or a measure not involving the deprivation of liberty, in particular a financial penalty or a measure in lieu thereof, even if the penalty or measure may give rise to a restriction of his or her personal liberty;

(e) when the person consented to be surrendered, where appropriate at the same time as he or she renounced the speciality rule, in accordance with Article 13;

(f) when the person, after his/her surrender, has expressly renounced entitlement to the speciality rule with regard to specific offences preceding his/her surrender. Renunciation shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's domestic law. The renunciation shall be drawn up in such a way as to make clear that the person has given it voluntarily and in full awareness of the consequences. To that end, the person shall have the right to legal counsel;

(g) where the executing judicial authority which surrendered the person gives its consent in accordance with paragraph 4.

4. A request for consent shall be submitted to the executing judicial authority, accompanied by the information mentioned in Article 8(1) and a translation as referred to in Article 8(2). Consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision. Consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4. The

decision shall be taken no later than 30 days after receipt of the request.

For the situations mentioned in Article 5 the issuing Member State must give the guarantees provided for therein.

Article 28

Surrender or subsequent extradition

1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States which have given the same notification, the consent for the surrender of a person to a Member State other than the executing Member State pursuant to a European arrest warrant issued for an offence committed prior to his or her surrender is presumed to have been given, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

2. In any case, a person who has been surrendered to the issuing Member State pursuant to a European arrest warrant may, without the consent of the executing Member State, be surrendered to a Member State other than the executing Member State pursuant to a European arrest warrant issued for any offence committed prior to his or her surrender in the following cases:

(a) where the requested person, having had an opportunity to leave the territory of the Member State to which he or she has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it;

(b) where the requested person consents to be surrendered to a Member State other than the executing Member State pursuant to a European arrest warrant. Consent shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's national law. It shall be drawn up in such a way as to make clear that the person concerned has given it voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel;

(c) where the requested person is not subject to the speciality rule, in accordance with Article 27(3)(a), (e), (f) and (g).

3. The executing judicial authority consents to the surrender to another Member State according to the following rules:

(a) the request for consent shall be submitted in accordance with Article 9, accompanied by the information mentioned in Article 8(1) and a translation as stated in Article 8(2);

(b) consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision;

(c) the decision shall be taken no later than 30 days after receipt of the request;

(d) consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4.

For the situations referred to in Article 5, the issuing Member State must give the guarantees provided for therein.

4. Notwithstanding paragraph 1, a person who has been surrendered pursuant to a European arrest warrant shall not be extradited to a third State without the consent of the competent authority of the Member State which surrendered the person. Such consent shall be given in accordance with the Conventions by which that Member State is bound, as well as with its domestic law.

Article 29

Handing over of property

1. At the request of the issuing judicial authority or on its own initiative, the executing judicial authority shall, in accordance with its national law, seize and hand over property which:

(a) may be required as evidence, or

(b) has been acquired by the requested person as a result of the offence.

2. The property referred to in paragraph 1 shall be handed over even if the European arrest warrant cannot be carried out owing to the death or escape of the requested person.

3. If the property referred to in paragraph 1 is liable to seizure or confiscation in the territory of the executing Member State, the latter may, if the property is needed in connection with pending criminal proceedings, temporarily retain it or hand it over to the issuing Member State, on condition that it is returned.

4. Any rights which the executing Member State or third parties may have acquired in the property referred to in paragraph 1 shall be preserved. Where such rights exist, the issuing Member State shall return the property without charge to the executing Member State as soon as the criminal proceedings have been terminated.

Article 30

Expenses

1. Expenses incurred in the territory of the executing Member State for the execution

of a European arrest warrant shall be borne by that Member State.

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

CHAPTER 4

GENERAL AND FINAL PROVISIONS

Article 31

Relation to other legal instruments

1. Without prejudice to their application in relations between Member States and third States, this Framework Decision shall, from 1 January 2004, replace the corresponding provisions of the following conventions applicable in the field of extradition in relations between the Member States:

(a) the European Convention on Extradition of 13 December 1957, its additional protocol of 15 October 1975, its second additional protocol of 17 March 1978, and the European Convention on the suppression of terrorism of 27 January 1977 as far as extradition is concerned;

(b) the Agreement between the 12 Member States of the European Communities on the simplification and modernisation of methods of transmitting extradition requests of 26 May 1989;

(c) the Convention of 10 March 1995 on simplified extradition procedure between the Member States of the European Union;

(d) the Convention of 27 September 1996 relating to extradition between the Member States of the European Union;

(e) Title III, Chapter 4 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders.

2. Member States may continue to apply bilateral or multilateral agreements or arrangements in force when this Framework Decision is adopted in so far as such agreements or arrangements allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of European arrest warrants.

Member States may conclude bilateral or multilateral agreements or arrangements after this Framework Decision has come into force in so far as such agreements or arrangements allow the prescriptions of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of European arrest warrants, in particular by fixing time

limits shorter than those fixed in Article 17, by extending the list of offences laid down in Article 2(2), by further limiting the grounds for refusal set out in Articles 3 and 4, or by lowering the threshold provided for in Article 2(1) or (2).

The agreements and arrangements referred to in the second subparagraph may in no case affect relations with Member States which are not parties to them.

Member States shall, within three months from the entry into force of this Framework Decision, notify the Council and the Commission of the existing agreements and arrangements referred to in the first subparagraph which they wish to continue applying.

Member States shall also notify the Council and the Commission of any new agreement or arrangement as referred to in the second subparagraph, within three months of signing it.

3. Where the conventions or agreements referred to in paragraph 1 apply to the territories of Member States or to territories for whose external relations a Member State is responsible to which this Framework Decision does not apply, these instruments shall continue to govern the relations existing between those territories and the other Members States.

Article 32

Transitional provision

1. Extradition requests received before 1 January 2004 will continue to be governed by existing instruments relating to extradition. Requests received after that date will be governed by the rules adopted by Member States pursuant to this Framework Decision. However, any Member State may, at the time of the adoption of this Framework Decision by the Council, make a statement indicating that as executing Member State it will continue to deal with requests relating to acts committed before a date which it specifies in accordance with the extradition system applicable before 1 January 2004. The date in question may not be later than 7 August 2002. The said statement will be published in the Official Journal of the European Communities. It may be withdrawn at any time.

Article 33

Provisions concerning Austria and Gibraltar

1. As long as Austria has not modified Article 12(1) of the ‘Auslieferungs- und Rechtshilfegesetz’ and, at the latest, until 31 December 2008, it may allow its executing judicial authorities to refuse the enforcement of a European arrest warrant if the requested person is an Austrian citizen and if the act for which the European arrest warrant has been issued is not punishable under Austrian law.

2. This Framework Decision shall apply to Gibraltar.

Article 34

Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 31 December 2003.

2. Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. When doing so, each Member State may indicate that it will apply immediately this Framework Decision in its relations with those Member States which have given the same notification.

The General Secretariat of the Council shall communicate to the Member States and to the Commission the information received pursuant to Article 7(2), Article 8(2), Article 13(4) and Article 25(2). It shall also have the information published in the Official Journal of the European Communities.

3. On the basis of the information communicated by the General Secretariat of the Council, the Commission shall, by 31 December 2004 at the latest, submit a report to the European Parliament and to the Council on the operation of this Framework Decision, accompanied, where necessary, by legislative proposals.

4. The Council shall in the second half of 2003 conduct a review, in particular of the practical application, of the provisions of this Framework Decision by the Member States as well as the functioning of the Schengen Information System.

Article 35

Entry into force

This Framework Decision shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Communities.

Done at Luxembourg, 13 June 2002.

For the Council

The President

M. RAJOY BREY

ANNEX

EUROPEAN ARREST WARRANT [Footnote: This warrant must be written in, or translated into, one of the official languages of the executing Member State, when that State is known, or any other language accepted by that State.]

This warrant has been issued by a competent judicial authority. I request that the person mentioned below be arrested and surrendered for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

_____

(a) Information regarding the identity of the requested person:.....

Name: .....……

Forename(s): .....

Maiden name, where applicable: .....

Aliases, where applicable:.....

Sex: ..

Nationality: .....

Date of birth: .....

Place of birth:.....

Residence and/or known address: .....

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

.....

Distinctive marks/description of the requested person: .....

.....

Photo and fingerprints of the requested person, if they are available and can be transmitted, or contact details of the person to be contacted in order to obtain such information or a DNA profile (where this evidence can be supplied but has not been included)

_____

(b) Decision on which the warrant is based:

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

Type:

2. Enforceable judgement:
.....

.....

Reference……

_____

(c) Indications on the length of the sentence:

1. Maximum length of the custodial sentence or detention order which may be imposed for the offence(s):

.....

.....

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

.....

Remaining sentence to be served: .....

.....

.....

_____

(d) Decision rendered in absentia and:

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

or

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

advance)

Specify the legal guarantees

.....

.....

.....

(e) Offences:

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, tick one or more of the following offences punishable in the issuing Member State by a custodial sentence or detention order of a maximum of at least 3 years as defined by the laws of the issuing Member State:

participation in a criminal organisation;

terrorism;

trafficking in human beings;

sexual exploitation of children and child pornography;

illicit trafficking in narcotic drugs and psychotropic substances;

illicit trafficking in weapons, munitions and explosives;

corruption;

fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of European Communities' financial interests;

laundering of the proceeds of crime;

counterfeiting of currency, including the euro;

computer-related crime;

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

facilitation of unauthorised entry and residence;

murder, grievous bodily injury;

illicit trade in human organs and tissue;

kidnapping, illegal restraint and hostage-taking;

racism and xenophobia;

organised or armed robbery;

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

swindling;

racketeering and extortion;

counterfeiting and piracy of products;

forgery of administrative documents and trafficking therein;

forgery of means of payment;

illicit trafficking in hormonal substances and other growth promoters;

illicit trafficking in nuclear or radioactive materials;

trafficking in stolen vehicles;

rape;

arson;

crimes within the jurisdiction of the International Criminal Court;

unlawful seizure of aircraft/ships;

sabotage.

II. Full 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 offence(s) on the basis of which this warrant has been issued is(are) punishable by/has(have) led to a custodial life sentence or lifetime detention order:

— the legal system of the issuing Member State allows for a review of the penalty or measure imposed — on request or at least after 20 years — aiming at a nonexecution of such penalty or measure,

and/or

— the legal system of the issuing Member State allows for the application of measures of clemency to which the person is entitled under the law or practice of the issuing Member State, aiming at non-execution of such penalty or measure.

(i) The judicial authority which issued the warrant:

Official name:

Name of its representative [Footnote: In the different language versions a reference to the ‘‘holder’’ of the judicial authority will be included.]:
.....

.....

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

.....

File reference: .....

Address: .....

.....

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

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

E-mail: .....

Contact details of the person to contact to make necessary practical arrangements for the surrender: .....

.....

Where a central authority has been made responsible for the transmission and

administrative reception of European arrest warrants:

Name of the central authority:

.....

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

.....

Address: .....

.....

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

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

E-mail: .....

_____

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

.....

Name: ...

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

Date: .....

Official stamp (if available)

_____

STATEMENTS MADE BY CERTAIN MEMBER STATES ON THE ADOPTION OF THE FRAMEWORK DECISION

Statement provided for in Article 32

Statement made by France:

Pursuant to Article 32 of the framework decision on the European arrest warrant and the surrender procedures between Member States, France states that as executing

Member State it will continue to deal with requests relating to acts committed before 1 November 1993, the date of entry into force of the Treaty on European Union signed in Maastricht on 7 February 1992, in accordance with the extradition system applicable before 1 January 2004.

Statement by Italy:

Italy will continue to deal in accordance with the extradition rules in force with all request relating to acts committed before the date of entry into force of the framework decision on the European arrest warrant, as provided for in Article 32 thereof.

Statement by Austria:

Pursuant to Article 32 of the framework decision on the European arrest warrant and the surrender procedures between Member States, Austria states that as executing Member State it will continue to deal with requests relating to punishable acts committed before the date of entry into force of the framework decision in accordance with the extradition system applicable before that date.

Statements provided for in Article 13(4)

Statement by Belgium:

The consent of the person concerned to his or her surrender may be revoked until the time of surrender.

Statement by Denmark:

Consent to surrender and express renunciation of entitlement to the ‘specialty rule’ may be revoked in accordance with the relevant rules applicable at any time under Danish law.

Statement by Ireland:

In Ireland, consent to surrender and, where appropriate, express renunication of the entitlement to the ‘specialty rule’ referred to in Article 27(2) may be revoked. Consent may be revoked in accordance with domestic law until surrender has been executed.

Statement by Finland:

In Finland, consent to surrender and, where appropriate, express renunication of entitlement to the ‘specialty rule’ referred to in Article 27(2) may be revoked. Consent may be revoked in accordance with domestic law until surrender has been executed.

Statement by Sweden:

Consent or renunciation within the meaning of Article 13(1) may be revoked by the party whose surrender has been requested. Revocation must take place before the decision on surrender is executed.