

LEGAL ALERT

LAW NO. 52/2023, OF 28 AUGUST

COMPLETES THE TRANSPOSITION OF DIRECTIVES ON CRIMINAL PROCEDURE AND THE EUROPEAN ARREST WARRANT

On 28 August 2023, the Official Journal of Portugal (*Diário da República*) published [Law no. 52/2023](#), which came into force the day after its publication, and whose purpose is to complete the transposition of the:

1. [Framework Decision 2002/584/JHA](#), of the Council, of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (Framework Decision 2002/584/JHA);
2. [Directive \(EU\) 2010/64](#) of the European Parliament and of the Council, of 20 October 2010, on the right to interpretation and translation in criminal proceedings (Directive (EU) 2010/64);
3. [Directive \(EU\) 2012/13](#) of the European Parliament and of the Council, of 22 May 2012, on the right to information in criminal proceedings (Directive (EU) 2012/13);
4. [Directive \(EU\) 2013/48](#) of the European Parliament and of the Council, of 22 October 2013, on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (Directive (EU) 2013/48).

Thus, Law no. 52/2023 amends:

1. [Law no. 65/2003](#), of 23 August, which approved the legal framework of the European arrest warrant (Law no. 65/2003); and
2. The [Code of Criminal Procedure](#), approved by Decree-Law no. 78/87, of 17 February.

The present *Legal Alert* aims to point out the main changes introduced in these two pieces of legislation.

I. Amendment to Law no. 65/2003

Firstly, the new wording of Article 17(2) of Law no. 65/2003 now expressly enshrines the right of a person who is sought by a Member State for the purposes of criminal proceedings or for the enforcement of a custodial sentence or detention order and who is deprived of liberty, to be assisted by a defence lawyer and to be informed of the right to appoint a lawyer in the issuing Member State to assist the lawyer appointed in national territory.

In fact, when the detainee is presented for a hearing by the reporting judge of the court with jurisdiction over the judicial proceedings for the execution of the European arrest warrant, the judge, as required by the new wording of Article 18(4) of Law no. 65/2003, in addition to appointing a defence lawyer in advance, if the detainee does not have a lawyer, must also inform the detainee of the right to appoint a lawyer in the issuing Member State to assist the defence lawyer appointed in the national territory. If the detainee declares that he wishes to exercise this right, the competent authority of the issuing Member State must be informed promptly.

In fact, Law no. 65/2003 now has a new Article 10-A, according to which, whenever the executing Member State of a European arrest warrant informs a detained person that he or she wishes to exercise the right to appoint a lawyer in the issuing Member State, the executing Member State shall be provided, without undue delay, with information to help the detainee exercise this right. On the other hand, Law no. 65/2003 now demands in Article 30(5) that the detention of the wanted person necessarily ceases when the following time limits have elapsed:

- The maximum period of 10 days from the final decision to execute the European arrest warrant within which the surrender must take place;
- 10 days from the new surrender date agreed immediately between the court and the issuing judicial authority, when it was made impossible to surrender the requested person within 10 days of the final decision on the execution of the European arrest warrant as a result of a force majeure event occurring in one of the Member States; or
- A period of 10 days from the new surrender date agreed immediately between the court and the issuing judicial authority, after the serious humanitarian reasons that led to the temporary suspension of the surrender of the requested person under the law have ceased to exist.

Last but not least, Law no. 52/2023 repealed Article 11(f) of Law no. 65/2003, which means that the list of reasons for the mandatory non-execution of the European arrest warrant no longer includes the circumstance that the fact motivating the issuance of the European arrest warrant does not constitute an offence punishable under Portuguese Law.

II. Amendment to the Code of Criminal Procedure

As for the Code of Criminal Procedure, the changes are mainly related to the explicit inclusion of translation and interpretation in the list of the defendant's rights foreseen in Article 61 and the deepening of the Code's provisions regarding the language of procedural acts and the appointment of an interpreter.

According to Article 92 of the Code of Criminal Procedure, the language of procedural acts is Portuguese, under penalty of breach of procedure. When a person who does not know or is unable to speak Portuguese intervenes in the proceedings, a suitable interpreter is appointed at no cost to the person, even if the authority presiding over the proceedings or any of the participants in the proceedings knows the language used.

With Law no. 52/2023, article 58(6) of the Code of Criminal Procedure now stipulates that if the defendant does not know or is unable to speak Portuguese, the information pertaining to his procedural rights and duties will be given orally, if necessary with the intervention of an interpreter, without prejudice to the fact that he will subsequently be given, without undue delay, a written document with that information in a language he understands. The defendant will have the same

right when, having previously been declared *in absentia*, the declaration lapses due to the defendant's presentation or arrest, in the light of Article 336(2) of the Code of Criminal Procedure. In addition, Article 92(3) of the Code of Criminal Procedure now also stipulates that the entity responsible for the procedural act must provide the defendant who does not know or speak Portuguese, within a reasonable time, with a written translation of the most relevant documents in the case, such as the indictment, the judicial decision to prosecute, the challenge, the appointment of a trial date, the sentence, the application of coercive measures and asset guarantees and the filing of a civil claim, as well as others that the entity deems essential for the exercise of the defence.

Exceptionally, Portuguese criminal procedure law now allows the defendant to be given a translation or oral summary of the documents, as long as this does not jeopardise the fairness of the proceedings.

However, the Law also states that passages from these documents that are irrelevant to the exercise of the defence do not have to be translated.

Finally, with Law no. 52/2023, the Code of Criminal Procedure now expressly enshrines, in Article 92(6), the defendant's right to submit a reasoned request for a translation of documents from the case file that he considers essential for the exercise of his right to defence.

João Rodrigues Brito [+info]
Tiago da Costa Andrade [+info]

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