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**Commission on Crime Prevention  
and Criminal Justice**

**Thirty-second session**

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Item 6 (d) of the provisional agenda\*

**Integration and coordination of efforts by the  
United Nations Office on Drugs and Crime and by  
Member States in the field of crime prevention and  
criminal justice: other crime prevention and  
criminal justice matters**

**Conference room paper submitted by the Permanent  
Mission of Canada to the United Nations (Vienna), on behalf  
of the G7 Roma-Lyon Group: Criminal and Legal Affairs  
Subgroup\*\***

The attached conference room paper has been submitted by the Permanent Mission of Canada to the United Nations (Vienna), on behalf of the G7 Rome-Lyon Group: Criminal and Legal Affairs Subgroup, for consideration by the Commission under agenda item 6 (d) at its thirty-second session.

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\* [E/CN.15/2023/1](#).

\*\* This document has not been edited.



# **G7 Roma-Lyon Group: Criminal and Legal Affairs Subgroup**

## **Seeking Extradition from G7 Countries**

### **Information Handbook**

Updated: December 2022

## Foreword

Transnational crimes, including terrorism, organized crime and corruption are serious international problems that require effective international solutions. It is now well-recognized that criminals who operate on a worldwide scale exploit national boundaries to evade detection and to achieve their unlawful objectives. This serves to destabilize security, both domestically and internationally.

A coordinated approach to the detection and suppression of crime and the prosecution of criminals is imperative in order to meet this growing global threat. This includes developing robust tools and guides for the timely surrender of persons wanted for prosecution or sentencing in a requesting State.

While G7 countries have extradition agreements in place to make and respond to extradition requests, some Requesting States have difficulty providing sufficient substantive information to satisfy the requirements of some G7 countries. This is often due to a lack of understanding of the legal system that applies in the G7 country from which extradition is sought. This can lead to delays in executing requests and in ensuring the person sought for extradition faces justice in the Requesting State in a timely manner.

The purpose of this *Information Handbook* is to provide Requesting States with practical guidance on some of the key substantive requirements for requesting extradition from each G7 country (excluding the European Arrest Warrant regime).<sup>1</sup> It is a starting point for seeking extradition and attempts to respond to some of the recurring challenges experienced by some Requesting States when preparing their documentation to support an extradition request. An increased understanding of the framework of each G7 country's extradition regime will assist in expediting the extradition process.

For G7 countries that rely on evidence as a basis for extradition, this *Information Handbook* provides guidance on meeting those evidentiary requirements. For G7 countries that rely on other types of information, it provides an outline of basic information and documentation that may be needed, subject to specific treaty requirements.

It should be noted that this *Information Handbook* does not address all of the substantive and procedural requirements for extradition as these may vary significantly based on the specific circumstances of individual cases. However, it is a helpful point of departure for Requesting States which will save time and effort in the preparation of materials needed in support of extradition.

Importantly, the *Information Handbook* identifies specific contact points in each G7 country, who are responsible for dealing with extradition requests. Requesting States are encouraged to consult with these authorities to obtain complete information on the requirements for seeking extradition in a given case.

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<sup>1</sup> This *Handbook* does not set out the evidentiary requirements for *in absentia* cases. Those seeking information concerning such cases are encouraged to directly contact the Central Authority/Point of Contact for extradition for the relevant G7 country.

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# CANADA

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**\*\*N.B. This Handbook does not set out the evidentiary requirements for *in absentia* cases. Requesting States seeking the extradition of persons who have been convicted *in absentia* should contact Canada's Central Authority for guidance (see contact information below).**

## **I. BRIEF OVERVIEW OF THE EXTRADITION PROCESS**

### **A. Key Stages of the Canadian Extradition Process**

The *Extradition Act* gives Canada the legal basis on which to extradite persons who are sought, by an "extradition partner", for prosecution or for the imposition or enforcement of a sentence. There are 3 key stages to Canada's extradition process, as follows:

#### ***Stage 1 - Issuance of "Authority to Proceed"***

A document called an *Authority to Proceed* is issued on behalf of Canada's Minister of Justice, and authorizes the commencement of extradition proceedings in Canada. The *Authority to Proceed* contains the name of the person whose extradition is sought; the name of the extradition partner; and lists the offence(s) under Canadian law that would correspond to the conduct alleged against the person, or the conduct in respect of which the person was convicted, as the case may be.

Note that the *Authority to Proceed* (section 15 of the *Extradition Act*) may be preceded by the issuance of an *Authorization to Apply for Provisional Arrest* (section 12 of the *Extradition Act*) where it is necessary in the public interest (e.g. flight risk, danger to community).

#### ***Stage 2 - Extradition Hearing***

When an *Authority to Proceed* is issued, an extradition hearing is held before the Superior Court of the province in which the person sought is located. This is an evidentiary hearing in which the following issues must be decided by the extradition judge:

- Where the person is sought for prosecution, the extradition judge must determine:
  - Whether the conduct alleged against the person would justify his/her committal for trial on the Canadian corresponding offence(s) listed in the Authority to Proceed, had the alleged conduct been committed in Canada (**dual criminality requirement**); and

- Whether the person appearing before the extradition judge is the person sought by the extradition partner (**identification**).
- Where the person is sought for the imposition or enforcement of a sentence, the extradition judge must determine:
  - Whether the conviction relates to criminal conduct that corresponds to the Canadian offence(s) set out in the Authority to Proceed (**dual criminality requirement**); and
  - Whether the person appearing before the extradition judge is the person who was convicted by the extradition partner (**identification**).

### ***Stage 3 - Surrender Decision***

If the extradition judge orders the committal of the person sought for extradition, Canada's Minister of Justice must then personally decide whether to order his/her surrender to the extradition partner. This is a political decision which involves a weighing of different factors, including Canada's treaty obligations, the person's constitutional rights and humanitarian considerations.

#### **B. Who is an "Extradition Partner"**

"Extradition partners" may seek a person's extradition from Canada. They comprise the following:

- Countries with which Canada has an extradition agreement (bilateral treaties or multilateral conventions);
- Countries with which Canada has entered into a case-specific agreement; or
- Countries or international courts whose names appear in the Schedule to the *Extradition Act*.

#### **C. Appeal Rights**

Both the committal order and the Minister's surrender decision may be appealed to the applicable provincial court of appeal.

A decision of the court of appeal may be further appealed to Canada's highest court, the Supreme Court of Canada, with leave of that court.

#### **D. Dual Criminality Requirement**

In all cases, the conduct for which extradition is sought must be considered criminal in both the state seeking extradition and in Canada.

## **II. EVIDENCE REQUIRED FOR EXTRADITION**

As noted above, the second stage of the Canadian extradition process is the extradition hearing, which involves an assessment of the evidence against the person sought for extradition. The evidence needed for a Canadian extradition hearing will vary depending on whether the person is sought for prosecution, or for the imposition or enforcement of a sentence, as described below.

### **A. Persons Sought for Prosecution**

In the case of a person who is sought for prosecution, a Requesting State must provide Canada with the following evidence:

1. A description of the evidence that is available to the Requesting State to prosecute the person for the offence(s) for which he/she is wanted. This summary of the evidence is necessary for the extradition judge to determine whether the alleged criminal conduct would constitute an offence in Canada if it had been committed in our country (i.e. evidence needed to satisfy the dual criminality requirement). To meet the dual criminality requirement, there must be “some evidence” on every element of the Canadian corresponding offence.

*N.B. Requesting States are encouraged to consult with Canada’s Central Authority on the evidence that is needed to satisfy the elements of the Canadian offence that corresponds to the alleged criminal conduct. By way of example, where the conduct alleged by the Requesting State corresponds to the Canadian offence of murder, the following evidence is needed: evidence that a person was killed; evidence that the victim’s death was caused by the person sought (identification); and evidence that the person sought knew or ought to have known that their actions would cause the victim’s death or grievous bodily harm to the victim.*

*Further, as set out below, there is no requirement to send copies of the evidence itself (i.e. witness statements, reports, etc.); rather a summary describing the evidence gathered by the Requesting State is preferred.*

2. Identification evidence demonstrating that the person appearing before the extradition judge is,
  - ✓ the person whose extradition is sought by the Requesting State (to be proven on a “balance of probabilities”, i.e. it is more probable than not that the person before the court is the person sought for extradition);  
and

- ✓ the person who committed the alleged criminal conduct (on a *prima facie* standard, i.e. there is “some evidence” linking the accused person to the crime).

*N.B. It is possible that the same identification evidence may be used to satisfy both of the above identification requirements. For example, a photograph depicting the person who has been identified by a witness as the individual who committed the alleged crime(s), could also be used at the extradition hearing to establish that the person before the court is the person who is wanted by the Requesting State.*

### **B. Persons Sought for Imposition or Enforcement of a Sentence**

In the case of a person sought for the imposition or enforcement of a sentence, a Requesting State must provide Canada with:

- A description of the conduct for which the person was convicted. This evidence is necessary for the extradition judge to determine whether the conduct underlying the foreign conviction would constitute an offence in Canada if it had been committed in our country (i.e. this evidence must satisfy the dual criminality requirement).

*N.B. Requesting States are encouraged to consult with Canada’s Central Authority on the evidence that is needed to satisfy the elements of the Canadian offence that corresponds to the criminal conduct for which the person was convicted.*

- A copy of the conviction record; and
- Identification evidence demonstrating that the person appearing before the extradition judge is,
  - ✓ the person whose extradition is sought by the Requesting State (to be proven on a “balance of probabilities”, i.e. it is more probable than not that the person before the court is the person sought for extradition); and
  - ✓ the person who was convicted by the Requesting State (on a *prima facie* standard, i.e. there is “some evidence” that the person sought for extradition is the person who was convicted).

*N.B. It is possible that the same identification evidence may be used to satisfy both of the above requirements. For example, a photograph depicting the person who was convicted of the criminal conduct for which extradition is*



*sought could also be used at the extradition hearing to establish that the person before the court is the person who is wanted by the Requesting State.*

### **III. FORM EVIDENCE MUST TAKE**

#### **A. Record of the Case Format**

The most streamlined evidentiary process, and that which is most commonly used when seeking extradition from Canada, is the *Record of the Case* format. The contents and certification of the *Record of the Case* will vary depending on whether extradition is sought for the purpose of prosecution or for the imposition or enforcement of a sentence, as described below.

#### **(i) Persons Sought for Prosecution**

##### **a. *Summary of the Evidence of Criminal Conduct***

In the case of a person sought for prosecution, the *Record of the Case* is a summary of the evidence available to the Requesting State to prosecute the person. For example, summaries of the relevant portions of witness statements, forensic and other reports, the fruits of intercepted communications and other information are included in the *Record of the Case*.

Where the *Record of the Case* format is used, there is no need to include the sworn statements/depositions of witnesses, actual reports, including forensic reports, etc. A summary of the contents of the statement, reports and other documents is all that is required.

- *How much detail is necessary in the summary of evidence?*

Only evidence that is relevant to the prosecution of the person sought for extradition should be summarized in the *Record of the Case*. This evidence must satisfy the elements of the Canadian offence that corresponds to the alleged criminal conduct. There is no need to include every aspect of the investigative file. The key evidence against the person sought for extradition is all that is required.

In complex cases (e.g. cases involving conspiracy, multiple defendants/suspects, etc.), it may be helpful to include a preambular paragraph in the *Record of the Case*, which gives a brief overview of the case. The overview would provide context to the summary of the evidence that would follow.

- *Allegations must be sourced and substantiated*

The allegations summarized in the *Record of the Case* must be sourced and substantiated (e.g. “Witness A will testify that...” or “X report prepared by Y person on DATE establishes that...” or “Constable B will testify that...”).

Conclusory statements in the *Record of the Case* will not be admissible in Canadian extradition proceedings, e.g. “From 2010 to 2012, Mr. X was a member of a criminal organization involved in the trafficking of thousands of pounds of cocaine, which were destined for Y country.” This statement is a conclusion and would not be admissible in a Canadian extradition proceeding. A better approach would be the following: “Witness B has given a statement to the police on DATE in which he advised that, from 2010 to 2012, Mr. X was a member of a criminal organization involved in the trafficking of thousands of pounds of cocaine, which were destined for Y country... Specifically, witness B said...” or “Analysis of wiretap evidence reveals that...”

Please note that where witness evidence is used, it is important to indicate how a witness was in a position to know the evidence that they are providing. For example, was the witness the victim of the offence? Were they a co-conspirator or a co-accused person?

In the case of a confidential witness or informant, it is essential to indicate why the witness can be believed (e.g. is there other evidence to support the evidence of the witness?).

- *Evidence gathered in Canada*

The *Record of the Case* may also include a summary of relevant evidence that was gathered in Canada and shared with the Requesting State (e.g. in cross-border investigations). However, if such evidence is being relied upon in the *Record of the Case*, include how it came into the possession of the Requesting State (e.g. MLAT, agency-to-agency cooperation, etc.) and how it was obtained in Canada, if this is known (e.g. through a search warrant, wiretap order, etc).

- *Exhibits*

The *Record of the Case* may attach documentary exhibits (e.g. a report that is central to the case). However, in general, a summary of the available evidence is sufficient to meet the requirements of Canadian law, and copies of original evidence are not required.

### ***b. Identification Evidence***

In addition to summarizing the evidence in support of the extradition offence(s), the Requesting State must include identification evidence in the *Record of the Case*.

The usual forms of identification evidence are recent photographs and/or fingerprint comparison (e.g. Canadian booking fingerprints and fingerprints taken by the Requesting State). Other identification information may include a description of the person's physical characteristics, date of birth and residential address.

The Requesting State must attach the identification evidence to the *Record of the Case* as an exhibit and must indicate in the *Record of the Case* that a witness has identified the person depicted in the photograph or through fingerprint comparison as the person who committed the alleged crime(s).

***c. Certification***

To be admissible in a Canadian court, the *Record of the Case* must be certified in accordance with Canada's *Extradition Act*.

In the case of a person sought for prosecution, a judicial or prosecuting authority who is familiar with the case must certify that the evidence summarized or contained therein is,

- available for trial, and
- is either (1) sufficient under the laws of the Requesting State to justify prosecution, **OR** (2) was gathered according to the law of the Requesting State.

The name and title of the judicial or prosecuting authority preparing the *Record of the Case* must be included in the certification. In addition, he/she must sign and date the certification.

The certification of the *Record of the Case* makes its contents presumptively reliable for the purpose of the Canadian extradition hearing.

**For exact wording of certification to be used, see ANNEX 1 below - CHECKLIST WHEN *RECORD OF THE CASE* FORMAT IS USED TO SEEK EXTRADITION FROM CANADA.**

**(ii) Persons Sought for Imposition/Enforcement of Sentence**

***a. Description of Conduct for Which Person Was Convicted and Conviction Record***

In the case of a person sought for the imposition or enforcement of a sentence, the *Record of the Case*,

- describes the conduct for which the person was convicted (i.e. the facts underlying the conviction);
- attaches a copy of the record of conviction as an exhibit to the *Record of the Case*.

N.B. When describing the conduct for which the person was convicted, it is not necessary to source the information.

***b. Outcome of Any Conviction/Sentence Appeals***

Where the conviction and/or sentence was appealed by the person sought for extradition, documents indicating the outcome of the appeal(s) should also be included as exhibits to the *Record of the Case* and referred to in the *Record of the Case* itself, to reflect the final disposition of the matter.

***c. Identification Evidence***

In addition to a. and b. above, the Requesting State must include identification evidence in the *Record of the Case*.

The usual forms of identification evidence are recent photographs (including the circumstances in which the photograph was taken) and/or fingerprint comparison (e.g. Canadian booking fingerprints and fingerprints taken by the Requesting State). Other identification information may include a description of the person's physical characteristics, date of birth and residential address.

The Requesting State must attach the identification evidence to the *Record of the Case* as an exhibit and must include information in the *Record of the Case* itself which establishes that the person depicted in the photograph or through fingerprint comparison is the person who was convicted.

***d. Certification***

To be admissible in a Canadian court, the *Record of the Case* must be certified in accordance with Canada's *Extradition Act*.

In the case of a person sought for the imposition or enforcement of a sentence, a judicial, prosecuting or correctional authority who is familiar with the case must certify that the documents contained in the *Record of the Case* are accurate.

The name and title of the judicial, prosecuting or correctional authority preparing the *Record of the Case* must be included in the certification. In addition, he/she must sign and date the certification.

The certification of the *Record of the Case* makes its contents presumptively reliable for the purpose of the Canadian extradition hearing.

**For exact wording of certification to be used, see ANNEX 1 below - CHECKLIST WHEN *RECORD OF THE CASE* FORMAT IS USED TO SEEK EXTRADITION FROM CANADA.**

**B. Information that Should NOT be Included in a *Record of the Case***

There should be **no** reference to foreign law in the *Record of the Case*. In particular, a Requesting State should not include the charging document, arrest warrant, information about the prescription period applicable to the foreign offences, or any other information concerning the law of the Requesting State.

This information is included in a **separate** document entitled the "*General Legal Statement*" and is not the subject of discussion in this *Handbook*.

Requesting States should consult with the Canadian Central Authority (see contact information below) to discuss the form and substance of the *General Legal Statement*.

**C. Other Admissible Forms of Evidence**

Aside from the *Record of the Case* format, the following evidence is also admissible at an extradition hearing in Canada:

- Evidence that is otherwise admissible under Canadian law, e.g. *viva voce* evidence and certified business records;
- Documents that comply with the terms of an applicable extradition agreement, e.g. sworn witness depositions, statements or reports.

**IV. INFORMATION REQUIRED FOR PROVISIONAL ARREST**

The following information/documents may be required when seeking the provisional arrest of a person in Canada:

***(N.B. Not every provisional arrest request will require the same information. Requesting States should consult with the Canadian Central Authority on the specific information needed in each circumstance)***

- A brief summary of the alleged criminal conduct for which extradition will be sought. This information is needed to make an initial assessment of dual

criminality before authorization is given to apply for a provisional arrest warrant;

- Identification information (e.g. photographs, fingerprints, etc.);
- A statement of the existence of a warrant for arrest or order of conviction, as the case may be, against the person sought (unless the relevant treaty otherwise requires);
- the particulars of the person sought for extradition (date and place of birth, citizenship, physical description);
- as much information as is known about his/her location;
- whether the penalty for the offence(s) for which extradition will be sought complies with the terms of the applicable treaty;
- a statement that extradition will be requested and supporting documents provided within the time period specified in an extradition agreement or, where the extradition agreement does not so specify, within 60 days from provisional arrest; and
- the grounds for urgency.

Unlike in the *Record of the Case* situation described above, it is not necessary to certify or source the allegations contained in the factual summary or the identification information provided in support of a provisional arrest request.

## **V. CONTACT INFORMATION**

### **A. Canadian Central Authority**

Requesting States should consult with the Central Authority on what information is needed to seek a person's extradition from Canada. The contact information for Canada's Central Authority is the following:

International Assistance Group (IAG)  
 Litigation Branch  
 Department of Justice Canada  
 284 Wellington Street, 2nd Floor  
 Ottawa, ON K1A 0H8  
 Emergency After Hours number: 613-851-7891  
 Fax: 613-957-8412  
 e-mail: [cdncentralauthority@justice.gc.ca](mailto:cdncentralauthority@justice.gc.ca)

**B. Liaison in Europe**

A member of Canada's Central Authority is posted in Brussels, Belgium and is available to assist in the preparation and submission of extradition requests made to Canada by European partners. The relevant contact information is as follows:

Counsellor of International Criminal Operations  
Canadian Mission to the European Union  
Avenue de Tervuren 2  
1040 Brussels, Belgium  
Telephone: + 32 (0)2 741 07 71  
Fax: + 32 (0)2 741 06 43

A member of Canada's Central Authority is also posted in Paris, France and is available to assist in the preparation and submission of extradition requests made to Canada by French authorities. The relevant contact information is as follows:

Liaison Counsellor  
Department of Justice Canada  
Embassy of Canada in Paris  
130 rue du Faubourg Saint-Honoré  
75008 Paris, France  
Telephone: + 33 (0)1 44 43 22 31  
Fax: + 33 (0)1 44 43 29 86

# CANADA

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## ANNEX 1

### **CHECKLIST WHEN *RECORD OF THE CASE* FORMAT IS USED TO SEEK EXTRADITION FROM CANADA**

*(N.B. The evidentiary requirements listed below are for consideration only. Not every extradition request will require the same information. Requesting States should consult with the Canadian Central Authority on the specific information needed in each circumstance.)*

#### **Extradition Requests for Prosecution**

- Record of the Case* is prepared by judicial authority or prosecutor who is familiar with the case.
- Record of the Case* comprises a summary of the evidence that is available to the Requesting State to prosecute the person sought (summaries of witness statements, reports, other documents, etc.).  
\*\*Where necessary (complex cases), a brief overview of the case precedes the summary of available evidence.
- The evidence summarized in the *Record of the Case* is sourced/substantiated, i.e. allegations are attributed to a particular named witness or specific document.
- If relying on Canadian-gathered evidence, the *Record of the Case* clearly indicates that it was gathered in Canada, how it was gathered in Canada and how it came into the possession of the Requesting State.
- Some evidence of identification, e.g.
  - If a photograph is relied upon, attach it as an exhibit. The photograph should be identified by witness/witnesses as depicting the person who committed the alleged criminal conduct



- If fingerprints are relied upon, attach a copy of the prints as an exhibit. In addition, include a comparative analysis to demonstrate that the fingerprints match those of the person sought (e.g. Canadian booking fingerprints match fingerprints taken by the authorities of the Requesting State).
- Judicial authority or prosecutor who prepared the *Record of the Case* certified it as follows:

**I, [insert name of judicial authority or prosecutor and insert title /position] certify that the evidence summarized or contained in the attached documents is available for trial and**

**is sufficient under the law of [name of Requesting State] to justify prosecution.**

**(OR)**

**was gathered according to the law of [name of Requesting State].**

- Certification is signed and dated by the judicial authority or prosecutor who prepared the *Record of the Case* and its certification.
- There is no reference to foreign law in the *Record of the Case* – no arrest warrant or charging document are attached.
- Canadian Central Authority was consulted before submitting the extradition request to ensure that all requirements for seeking extradition from Canada have been met.

### **Extradition Requests for Imposition or Enforcement of Sentence**

- Record of the Case* is prepared by judicial, prosecuting or correctional authority who is familiar with the case.
- Record of the Case* includes a description of the conduct for which the wanted person was convicted. Description of outcome of any appeal from conviction and/or sentence is also included.
- Copy of record of conviction is attached as exhibit to the *Record of the Case*.

- Documents setting out the outcome of any appeal from conviction and/or sentence are attached as exhibits to the *Record of the Case*.
- Some evidence of identification.
- Record of the Case* is certified as follows:

**I, [insert name of judicial authority or prosecutor or correctional authority and insert title /position] certify that the attached documents are accurate.**

- Certification is signed and dated by the judicial authority, prosecutor or correctional authority who prepared the *Record of the Case* and its certification.
- Canadian Central Authority was consulted before submitting the extradition request to ensure that all requirements for seeking extradition from Canada have been met.

# CANADA

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## ANNEX 2

### CHECKLIST OF POSSIBLE INFORMATION/DOCUMENTS NEEDED FOR PROVISIONAL ARREST

***(N.B. The items listed below are for consideration only. Not every request for provisional arrest will require the same information. Requesting States should consult with the Canadian Central Authority on the specific information needed in each circumstance.)***

- Grounds of urgency (e.g. flight risk, danger to the community, etc.), are clearly set out.
- A clear and brief summary of the alleged criminal conduct for which extradition will be sought is provided.
- Identification information (photographs, fingerprints, etc.) is attached to the summary.
- A statement of the existence of a warrant for arrest or order of conviction, as the case may be, against the person sought (unless the relevant treaty otherwise requires).
- The particulars of the person sought for extradition (date and place of birth, citizenship, physical description) are included.
- His/her location is specified in as much detail as possible.
- Applicable legal provisions setting out the penalty for the offence(s) for which extradition will be sought are included to ensure compliance with the terms of the applicable treaty.
- A statement is made that extradition will be requested and supporting documents provided within the time period specified in an extradition agreement or, where the extradition agreement does not so specify, within 60 days from provisional arrest.
- Contact information (names, numbers, email addresses) for police and/or prosecuting authorities in Canada and in the Requesting State who are familiar with the case is included.

# FRANCE

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## **I. Brief Overview of the Extradition Process**

The extradition of a foreigner can be requested for offenses criminalized in both States, unless said offenses may be regarded as military or political offenses, or unless it appears that extradition is sought for political reasons.

Furthermore, extradition is not granted where the requested person would be tried in the requesting state by a court which does not provide fundamental procedural guarantees and protection for the rights of the defence, or where the incurred penalty is contrary to French public order (i.e. death penalty).

Where France is the requested State, the request is sent through diplomatic channels, and transmitted by the Ministry of Foreign Affairs to the Ministry of Justice (office for Mutual Legal Assistance in Criminal Matters). If the request meets all formal requirements, it is forwarded to the competent Prosecutor General, who will, after the person has been arrested, refer it to the “investigative chamber” of the Court of appeal which reviews the legality of the extradition.

The Court will issue an opinion on the legal admissibility of the request. The decision can be referred, by the requested person or the Prosecutor General, to the Cour de cassation, the French judicial Supreme Court.

If the court concludes that extradition should be granted, the second – administrative – stage of the proceedings is initiated. In the course of this second stage the executive authorities examine whether or not extradition should be granted (see below for details).

There are therefore two stages to France’s extradition process according to the relevant provisions of the French Code of criminal procedure (articles 696 – 696-47 CCP).

### **Stage 1: Judicial stage**

The request is immediately submitted to the investigative chamber. The requested person appears before the chamber within a period of ten working days from the time of his/her appearance before the prosecutor general following his arrest.

If, at his/her appearance, the requested person declares that he/she does not consent to being extradited, the investigating chamber issues a reasoned opinion on the extradition request.

This opinion is unfavourable if the court finds that the legal requirements have not been met.

The Court is not required by law to examine the validity or seriousness of the charges brought before the person, unless if there appears to be an obvious error.

A cassation application against the opinion of the investigating chamber may be based only on errors of form which have the effect of depriving the opinion of the essential conditions of its legal existence.

### **Stage 2: Administrative stage**

When the government decides to grant extradition, it issues a reasoned extradition decree signed by the Prime Minister and countersigned by the Minister of Justice. This decree, which does not prejudge the criminal liability of the person sought, may in some cases be subject to reservations and conditions.

An appeal against the above-mentioned decree may be lodged, within one month of its notification to the defendant, before the Conseil d'Etat (French Supreme administrative court).

If, within one month<sup>2</sup> of the notification of this decree (when final) to the requesting state, the requested person has not been received by the agents of that state then, except in cases of "force majeure" leading to the impossibility to organize the surrender, he/she is released and the extradition may no longer be requested in connection with the same matter.

### **Consequences of extradition:**

The extradition decree orders that the person sought be surrendered to the requesting State. The latter may, according to circumstances, either make him/her serve his/her sentence if he/she has already been convicted, or bring him/her to trial, but under the conditions specified in the order and only for the facts that led to extradition (specialty principle).

## **II. Materials/Documents Required for Extradition**

### **a. Person wanted for Prosecution**

The type and amount of documents required for extradition depend on the provisions of the applicable Treaty or legislation.

However, in most cases, the following documentation is required:

- An extradition request containing the following information:
  - Identity of the requesting judicial authority

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<sup>2</sup> The delay may vary depending of the relevant convention or treaty.

- A reference to the applicable Treaty or, where no Treaty is applicable, a reference to the principle of reciprocity;
  - The identity of the requested person (including his/her nationality);
  - A detailed summary of the facts for which extradition is sought, including time and place of their perpetration;
  - The legal denomination of the offences for which extradition is sought and information relating to the incurred penalty/penalties;
  - A reference to the relevant legal provisions of the requesting State criminalizing the offence;
  - Information on the procedure that led to the issuance of an arrest warrant;
  - Information relating to lapse of time, including a reference to the applicable legal provisions of the requesting State.
- The original or authenticated copy of an arrest warrant or any other order having the same effect;
  - A copy of the relevant provisions of the law of the requesting State with respect to the offences for which extradition is sought and lapse of time.

#### **b. Person wanted for Imposition/Enforcement of Sentence**

As noted above, the documentation required depends on the applicable Treaty or legislation.

The following documentation is however usually required:

- An extradition request containing the following information:
  - Identity of the requesting judicial authority
  - A reference to the applicable Treaty or, where no Treaty is applicable, a reference to the principle of reciprocity;
  - The identity of the requested person (including his/her nationality);
  - A detailed summary of the facts for which extradition is sought, including time and place of their perpetration;
  - The legal denomination of the offences for which extradition is sought and information relating to the incurred penalty/penalties;
  - A reference to the relevant legal provisions of the requesting State criminalizing the offence;
  - Information on the procedure that led to the conviction and on any legal remedies available against the conviction;
  - Information on the sentence imposed and the remainder of the sentence to be enforced;
  - Information relating to lapse of time, including a reference to the applicable legal provisions of the requesting State.
- The original or authenticated copy of the conviction and sentence;
- A copy of the relevant provisions of the law of the requesting State with respect to the offences for which extradition is sought and lapse of time.

### **III. Form in which Materials/Documents Must be Presented**

The original of the extradition request must be submitted (copies are not admissible). Regarding the supporting documentation, either originals or authenticated copies must be provided.

The request and the supporting documents must be submitted both in their original language and in French.

### **IV. Evidence/Information Required for Provisional Arrest**

As noted above regarding the requirements for extradition, the information required for provisional arrest depends on the provisions of the applicable Treaty or, when no Treaty is applicable, the provisions of the French Code of criminal procedure.

As a general rule, requests for provisional arrest should at least contain the following information:

- The particulars of the person whose arrest is sought (including nationality) and any available information regarding his/her location;
- A summary of the alleged criminal conduct, including time and place of perpetration;
- The legal denomination of the offence(s) for which provisional arrest is requested;
- When the person is sought for the purpose of prosecution: the penalty incurred;
- When the person is sought for the purpose of enforcing a sentence: the penalty imposed and the remainder of the penalty to be served;
- A statement of the existence of an arrest warrant or conviction;
- An undertaking that if the person is arrested, an extradition request shall be submitted within the time period specified in the applicable Treaty or, where no Treaty is applicable, within 30 days from the provisional arrest.

### **V. Central Authority Contact Information**

#### **A- French Central Authority**

The contact information for the French Central Authority is the following:

Ministère de la Justice  
 Direction des Affaires criminelles et des grâces  
 Bureau de l'entraide pénale internationale  
 Telephone : +33 (0)1.44.77.60.60  
 Email : extradition-bepi.dacg@justice.gouv.fr

**B- Liaison Magistrates in G7 Member States**

In addition to the Central Authority, French liaison magistrates may be contacted in order to provide further information and to assist in the preparation of an extradition request or request for provision arrest.

Below are the contact details for the liaison magistrates posted in G7 Member States:

**Germany:**

Mr. Thomas MEINDL  
Bundesministerium der Justiz  
Mohrenstraße 37,  
10117 Berlin  
Telephone : +49 30 20 25 96 47  
Fax : +49 30 20 25 96 50  
Email: meindl-th@bmj.bund.de

**Italy:**

Ms. Stéphanie FELIX  
Ministero della Giustizia  
Via Arenula 70  
00186 ROMA  
Telephone: +39 06 68 89 75 39 or +39 06 68 85 21 06  
Fax: +39 06 23 32 51 38  
Email: stephanie.felix@giustizia.it

**United Kingdom:**

Ms. Estelle CROS  
Ambassade de France  
58 Knightsbridge  
LONDON SW1X 7JT

**OR:** Home Office  
Judicial Co-operation Unit  
5th Floor, Fry Building  
2 Marsham Street  
London SW1P 4DF

Telephone: +44 (0) 20 7073 1017  
Fax: +44 (0) 20 7073 1179  
Email: estelle.cros@diplomatie.gouv.fr



**United States of America:**

Ms. Florence HERMITE

Ambassade de France

4101, Reservoir Road

N.W. WASHINGTON D.C.

20007 U.S.A

Telephone: +1.202.944.6033

Fax: +1.202.944.6556

Email: [florence.hermite@diplomatie.gouv.fr](mailto:florence.hermite@diplomatie.gouv.fr)

## **ANNEXES**

### **1. Extradition Checklist**

*(NB: The requirements listed below are for consideration only. The type and amount of documentation required depends on the applicable Treaty and, where no Treaty is applicable, on French domestic legislation)*

#### **Extradition requests for the purpose of prosecution:**

- Extradition request containing the following information:
  - Identity of the requesting judicial authority;
  - A reference to the applicable Treaty or, where no Treaty is applicable, a reference to the principle of reciprocity;
  - The identity of the requested person (including his/her nationality);
  - A detailed summary of the facts for which extradition is sought, including time and place of their perpetration;
  - The legal denomination of the offences for which extradition is sought and information relating to the incurred penalty/penalties;
  - A reference to the relevant legal provisions of the requesting State criminalizing the offence;
  - Information on the procedure that led to the conviction and on any legal remedies available against the conviction;
  - Information on the sentence imposed and the remainder of the sentence to be enforced;
  - Information relating to lapse of time, including a reference to the applicable legal provisions of the requesting State.
- The original or authenticated copy of an arrest warrant or any other order having the same effect
- A copy of the relevant provisions of the law of the requesting State with respect to the offences for which extradition is sought and lapse of time

#### **Extradition for the purpose of enforcing a sentence:**

- An extradition request containing the following information:
  - Identity of the requesting judicial authority
  - A reference to the applicable Treaty or, where no Treaty is applicable, a reference to the principle of reciprocity;
  - The identity of the requested person (including his/her nationality);
  - A detailed summary of the facts for which extradition is sought, including time and place of their perpetration;

- The legal denomination of the offences for which extradition is sought and information relating to the incurred penalty/penalties;
  - A reference to the relevant legal provisions of the requesting State criminalizing the offence;
  - Information on the procedure that led to the conviction and on any legal remedies available against the conviction;
  - Information on the sentence imposed and the remainder of the sentence to be enforced;
  - Information relating to lapse of time, including a reference to the applicable legal provisions of the requesting State.
- The original or authenticated copy of the conviction and sentence;
- A copy of the relevant provisions of the law of the requesting State with respect to the offences for which extradition is sought and lapse of time.

## **2. Checklist for Provisional Arrest**

***(NB: The requirements listed below are for consideration only. The type and amount of documentation required depends on the applicable Treaty and, where no Treaty is applicable, on French domestic legislation)***

- The particulars of the person whose arrest is sought (including nationality) and any available information regarding his/her location;
- A summary of the alleged criminal conduct, including time and place of perpetration;
- The legal denomination of the offence(s) for which provisional arrest is requested;
- When the person is sought for the purpose of prosecution: the penalty incurred;
- When the person is sought for the purpose of enforcing a sentence: the penalty imposed and the remainder of the penalty to be served;
- A statement of the existence of an arrest warrant or conviction;
- An undertaking that if the person is arrested, an extradition request shall be submitted within the time period specified in the applicable Treaty or, where no Treaty is applicable, within 30 days from the provisional arrest.

# GERMANY

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## **I. Brief Overview of the Extradition Process**

Extradition proceedings are covered by the German Act on International Cooperation in Criminal Matters (IRG). An English translation of the Act is available at [http://www.gesetze-im-internet.de/englisch\\_irg/index.html](http://www.gesetze-im-internet.de/englisch_irg/index.html)

The proceeding is divided into two stages:

- process of judicial admissibility
- approval procedure of executive authorities.

Extradition must not be granted unless a court has ruled it admissible.

A Higher Regional Court has jurisdiction.

The decision of the Higher Regional Court is not subject to appeal.

The public prosecution service at the Higher Regional Court prepares the decision regarding extradition and executes the extradition order if granted.

## **II. Evidence Required for Extradition**

There is no specific requirement for evidence.

In principle the Court will not take into account if there are reasonable grounds to believe that the person sought has committed the offence. If special circumstances justify a review as to whether there are reasonable grounds to believe that the person sought has committed the offence with which he is charged, extradition shall be not granted unless a description of the facts showing probable cause for the commission of the offence has been submitted.

The Court will take into account the arrest warrant and statements containing supplementary information.

## **III. Form Evidence Must Take**

There is no specific rule on the presentation of evidence in extradition cases. A German Court will take into consideration the rules on evidence in the German Code of Criminal Procedure, sect. 244 and sect. 249

Sect. 244 [Taking of evidence]  
(1)...

(2) In order to establish the truth, the court shall, proprio motu, extend the taking of evidence to all facts and means of proof relevant to the decision....

(3)....

Sect. 249 [Reading out Documents]

(1) Certificates and other documents serving as evidence shall be read out at the main hearing. This rule shall apply in particular to previous criminal judgements, criminal records and extracts from parish registers and registers of births, deaths and marriages and to written records of a judicial inspection.

(2)....

An English translation of the Code is available at [http://www.gesetze-im-internet.de/englisch\\_stpo/index.html](http://www.gesetze-im-internet.de/englisch_stpo/index.html).

#### **IV. Evidence/Information Required for Provisional Arrest**

Rules can be found in section 15, 16 and 17 IRG:

Upon receipt of an extradition request extradition detention of a person may be ordered if there is a danger that he may avoid the extradition proceedings or the execution of the extradition; or if based on ascertainable facts there is strong reason to believe that the person would obstruct the investigation of the truth in the foreign proceedings or in the extradition proceedings. It shall not apply if it appears ab initio that extradition will not be granted.

Provisional Extradition Detention may be ordered, if a competent authority of the requesting State so requests; or if there is a strong reason to believe that a foreigner, based on ascertainable facts, may have committed an offence which could lead to his extradition.

The extradition arrest warrant shall be lifted if the person sought has been in detention from the day of his apprehension or arrest for a period of two months for the purpose of extradition and an extradition request accompanied by the extradition documents has neither been received by the authorities mentioned in s. 74 nor by any other authorities competent to receive the request and documents. If a non-European State has requested the order for provisional extradition detention, the period shall be three months. Time frames in bilateral treaties may be different.

After receipt of the extradition request and extradition documents, the Higher Regional Court shall decide without undue delay whether the detention is to be upheld.

If the conditions for an extradition arrest warrant are fulfilled the public prosecution service and the police may provisionally arrest the person sought.

**V. Central Authority Contact Information**

You may contact the Federal Office of Justice, Division III 1, Adenauerallee 99-103, 53113 Bonn, Phone: (49) 228 9941040, Fax: (49) 228 994105591

# GERMANY

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## ANNEXES

### **1. Extradition Checklist**

It has to be submitted to a competent authority ( Sect. 10 IRG):

- an arrest warrant or a document with corresponding legal force or an enforceable decision ordering detention from a competent authority of the requesting State
- a description of the applicable laws have been submitted in relation to the offence.
- if extradition is requested for the purpose of prosecution of multiple offences, a document from the competent authorities of the requesting State describing the charges made against the person sought shall suffice with regard to additional offences and replace an arrest warrant or a document with corresponding legal force.
- if special circumstances justify a review as to whether there are reasonable grounds to believe that the person sought has committed the offence with which he is charged, extradition shall be not granted unless a description of the facts showing probable cause for the commission of the offence has been submitted.
  
- Extradition for the purpose of enforcing a sentence or another penalty imposed in a third State shall not be granted unless the following documents have been submitted:
  - the enforceable decision ordering detention and a document from the third State showing its consent to its enforcement by the State assuming enforcement.
  - a document from a competent authority of the State assuming enforcement certifying that the sentence or other penalty is enforceable there.
  - a description of the applicable laws.

### **2. Checklist for Provisional Arrest**

- upon receipt of an extradition request extradition detention of a person may be ordered (Sect. 15 IRG)
  - if there is a danger that he may avoid the extradition proceedings or the execution of the extradition; or
  - if based on ascertainable facts there is strong reason to believe that the person would obstruct the investigation of the truth in the foreign proceedings or in the extradition proceedings.
  
- Provisional Extradition Detention may be ordered prior to receipt of the extradition request, if (Sect. 16 IRG)
  - a competent authority of the requesting State so requests ; or
  - if there is a strong reason to believe that a foreigner, based on ascertainable facts, may have committed an offence which could lead to his extradition.



- the extradition arrest warrant shall be lifted if the person sought has been in detention from the day of his apprehension or arrest for a period of two months for the purpose of extradition and an extradition request accompanied by the extradition documents has neither been received by the authorities mentioned in section 74 IRG (Ministry of Justice/ Federal Office of Justice with the consent of the Federal Foreign Office and other federal ministries whose portfolio would be affected by the legal assistance) nor by any other authorities competent to receive the request and documents. If a non-European State has requested the order for provisional extradition detention, the period shall be three months.
  - After receipt of the extradition request and extradition documents, the Higher Regional Court shall decide without undue delay whether the detention is to be upheld.
- the provisional extradition detention and the extradition detention shall be ordered by the Higher Regional Court in a written arrest warrant (extradition arrest warrant, see Sect. 17 IRG).
- The extradition arrest warrant must mention the following:
- the person sought,
  - the State to which, depending on the circumstances of the case, he is to be extradited;
  - the offence with which the person sought is charged;
  - the request or in the case that there is a strong reason to believe that a foreigner, based on ascertainable facts, may have committed an offence which could lead to his extradition: the facts which show that there is strong reason to believe that the person sought has committed an offence which may lead to his extradition and
  - the reason for the arrest and the facts supporting it.

# ITALY

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## I. Brief Overview of the Extradition Process

In Italy there are 3 regimes in the field of extradition:

1. Among the EU member States the extradition procedure is replaced by the European Arrest Warrant (EAW – FD 2002/584/JHA, implemented in Italy with law 69/2005, as amended by legislative decree 10/2021), which is exclusively a judicial procedure;
2. With the countries members of the Council of Europe and with many other countries relevant multilateral and bilateral conventions are in force;
3. Where an international convention or agreement is not in place, the rules of the Italian code of criminal procedure (CPC) apply, which provide for both a judicial and an executive stage, and for an appellate procedure.

The key stages are the following:

1. The request for extradition is transmitted by the requesting State to the Minister of Justice (MOJ);
2. Extradition is not allowed for political offences or if there are grounds for refusal (risk of discrimination, inhuman or cruel treatment, death penalty in the requesting State);
3. The request is to be supported with documents, including the arrest warrant or the final decision, a report on the crime(s) committed and its juridical assessment; relevant laws of the requesting State; elements for the identification of the person sought;
4. The Court of Appeals decides whether the request for extradition may be granted (unless there is the consent to extradition of the person sought), but the favourable judicial decision does not oblige the MOJ to grant the extradition;
5. The requesting State is allowed to intervene before the Court through a lawyer;
6. The MOJ forwards the request to the Prosecutor General before the Court of Appeals, which identifies the interested person, gathers its consent where existing, presents its conclusions to the Court within 3 months. The person sought is always assisted by a lawyer;
7. The Court, following a hearing, decides whether legal requirements to grant extradition (including double criminality and *non bis in idem*) are met;
8. The decision of the Court of Appeals may be challenged before the Supreme Court (Corte di Cassazione) by the interested person, the Prosecutor General, the representative of the requesting State;

9. The MOJ decides on the surrender of the person within 45 days following the favourable (for the requesting State) conclusion of the judicial stage of the procedure;
10. Provisional arrest and coercive measure are possible (within given conditions and terms) pending the judicial stage of the procedure.

As to factors considered by the MOJ in deciding whether to surrender the person, they are only related to political/opportunity/foreign relationships factors. Legal issues related to extradition fall within the exclusive competence of the Courts. Such power of the Minister in general is not applicable/used where a multi- or bi-lateral treaty exists (e.g. Council of Europe Convention on Extradition). Under the EAW regime which replaces extradition with a surrender procedure among EU Member States, the Minister is not involved in the procedure (the EAW establishes an exclusively judicial procedure).

Only the judicial authority is responsible for assessing the evidence in support of an extradition request. The MOJ is responsible for the political decision on granting or not extradition. The MOJ cannot surrender a person without a decision allowing extradition from the competent judicial authority, but is not obliged to grant extradition where the judicial authority declared it admissible.

## **II. Materials/Documents Required for Extradition**

The extradition request is to be supported with the conviction decision or detention order or warrant of Arrest; a statement of the offences for which extradition is requested, the time and place of their commission, their legal descriptions and a reference to the relevant legal provisions; a statement of the relevant law and as accurate a description as possible of the person claimed, together with any other information which will help to establish his/her identity and nationality.

The Court of Appeals decides in favour of extradition whether “gravi indizi di colpevolezza” are existing or a definitive conviction is existing, unless the procedure in the requesting State is not compliant with fundamental rights or there are elements contrary to fundamental juridical principles of the Italian State or if there are grounds for refusal (risk of discrimination, inhuman or cruel treatment, death penalty in the requesting State).

The notion of “gravi indizi di colpevolezza” (significant indications of criminal responsibility or serious circumstantial evidence of guilt or grave indicia or serious elements of liability – translation is not easy) is not directly defined by the Italian law, and is therefore shaped by case-law, in particular, by the Supreme Court of Cassation (Corte di Cassazione).

In general, it could be said that it is something slightly less than full evidence required for convicting a defendant, but however with a sufficient, serious and high degree of probable declaration of culpability (i.e. being the defendant guilty) at the

end of the trial. In fact, the Supreme Court clarified that such notion means any evidentiary element, adequate for a judgment of qualified probability on the responsibility of the accused person for the crime(s) for which he/she is accused.

As to fundamental juridical principles of the Italian State, their source is the Constitution. With respect to criminal procedural law, they have been identified mainly in the respect of the right of defence (substantially, not with the same Italian rules) and of the principle of fair trial.

It is for the Court of Appeals and for the Supreme Court to assess whether evidence is sufficient, following the CPC rules. In general, the principles of freedom of sources of evidence and of freedom of assessment of evidence by the judge are applicable.

For executive extradition, the principle of criminal liability ascertained beyond a reasonable doubt applies. However, it is not for the requested State to assess the evidence which supports the declaration of criminal liability, unless a violation of fundamental rights of the defendant or the existence in the foreign decision of provisions contrary to fundamental juridical principles above are alleged and demonstrated.

The person sought/fugitive has in principle the ability to give information to challenge the allegations brought against him/her, including information to challenge the reliability and/or credibility of witnesses, information concerning the defence, information to support a claim of abuse of process/misconduct by the Requesting or Requested State, information to support claims of torture-derived evidence.

If the Requested State has additional evidence that would support the allegations made by the Requesting State in the extradition request, this evidence can be used to supplement the evidence from the Requesting State.

Hearsay in principle is not admissible as evidence in criminal proceedings in Italy (art. 194 CPC).

Intelligence (i.e. unsourced information collected by government agencies) cannot be used as evidence in criminal proceedings.

### **III. Form in which Materials/Documents Must be Presented**

According to the Italian CPC, means of evidence are regulated by the CPC (witnesses, experts, declarations of the defendant, documents, etc.). However, all means of evidence useful for assessing facts and responsibilities are admissible, if they are not against persons' moral freedom and dignity (art. 187 and following articles of the CPC). In general, evidence is presented orally to the judge with the presence of the prosecutor, the defendant's lawyer, and other interested parties to the trial.

Officials from the Requesting State (through a lawyer and with reciprocity – art. 702 CPC) and victims (through the *partie civile* system, which in practice would be rarely applicable in extradition procedures) might be an “interested party”, other than the defence and prosecutor, for the purpose of the hearing.

#### **IV. Evidence/Information Required for Provisional Arrest**

According to art. 715 and 716 CPC, provisional arrest may be ordered by the Court of Appeals at the request of MOJ following a specific request of the requesting State (or in case of urgency carried out by Police and confirmed by the judicial authority within 4 days), if the following conditions are met:

- a) the Requesting State declares that an arrest warrant or a final conviction have been issued and it is about to present an extradition request;
- b) the Requesting State provides a description of facts, a description of the crime and sufficient identification information of the person sought;
- c) there is a risk of escape.

A copy of the arrest warrant or final conviction is needed.

#### **V. Central Authority Contact Information**

**Ministero della Giustizia**  
**Dipartimento per gli Affari di Giustizia**  
**Direzione Generale degli Affari Internazionali e della Cooperazione**  
**Giudiziaria**  
**Ufficio I - Cooperazione Giudiziaria Internazionale**  
Via Arenula, 70 - 00186 ROMA  
tel: +39 06 68852180  
fax: +39 06 68897528  
e-mail: [cooperation.dginternazionale.dag@giustizia.it](mailto:cooperation.dginternazionale.dag@giustizia.it)

# ITALY

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## ANNEXES

### **1. Extradition Checklist**

In case of extradition for the execution of a detention order following a final conviction, the assessment is not directly on evidence, but on the compliance of the procedure with Italian constitutional and general principles (which include free assessment of evidence by the judge), on respect of rule of law and fundamental rights, on double criminality.

In case of extradition for the execution of a warrant of arrest, the test of “gravi indizi di colpevolezza” (significant indications of criminal responsibility) must be met, which is the same used for the imposition of coercive measures pending investigations, described by case-law as elements which lead to qualified probability on the responsibility of the person subject to investigations (705 CPC).

In extradition proceedings, in order to establish identification, identification marks and all other possible information useful to determine identity and nationality of the person sought is required. (art. 700.2.c CPC)

Bail is not envisaged in the Italian CPC. The person sought/fugitive has the right to apply for the revocation of the arrest or for less coercive measures pending extradition procedure. A number of safeguards (e.g. retirement of passport, obligation to sign in a Police Office every day, order to reside in a specific place, etc.) may be imposed to prevent fleeing or commission of offences.

As to information considered by the Italian Court in determining whether a person sought for extradition must be detained pending the completion of the extradition process, the same rules in general for coercive measures apply, with the specification that the need for granting that the person for whom extradition is required avoids possible surrender has to be taken in due account (art. 742.2. CPC). All relevant information to such respect, including police reports and reports from the Requesting State, may be considered.

### **2. Checklist for Provisional Arrest**

According to art. 715 and 716 CPC, provisional arrest may be ordered by the Court of Appeals at the request of MOJ following a specific request of the requesting State (or in case of urgency carried out by Police and confirmed by the judicial authority within 4 days) if the following conditions are met:

a) the Requesting State declares that an arrest warrant or a final conviction have been issued and it is about to present an extradition request;

b) the Requesting State provides a description of facts, a description of the crime and sufficient identification information of the person sought;

c) there is a risk of flight.

A copy of the arrest warrant or final conviction is needed.

Identification marks and all other possible information useful to determine identity and nationality of the person sought is required.

# JAPAN

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## I. Brief Overview of the Extradition Process

### 1. Who can make an extradition request?

In Japan, the extradition procedure is carried out in accordance with the Extradition Act. In addition, if there is an applicable extradition treaty between Japan and the requesting State, such treaty is also applied.

Japan is able to surrender a fugitive to the requesting State without an extradition treaty as long as the request satisfies the requirements under the Extradition Act.

### 2. Overview of the procedure

#### (1) Language

An extradition request and all the relevant materials have to be translated into Japanese.

#### (2) Channel for submitting a request

An extradition request has to be submitted by a diplomatic channel.

The Minister for Foreign Affairs checks if the request is made in accordance with the extradition treaty when there is an applicable treaty, or if the request honours the reciprocity when there is not an applicable treaty. Then the Minister for Foreign Affairs transfers the request and the relevant materials to the Minister of Justice.

#### (3) First Step: Action by the Minister of Justice

The Minister of Justice transfers the request and the relevant materials to the Superintending Prosecutor of Tokyo High Prosecutors Office unless the request falls into any of the following circumstances. However, (ii), (vi) and (vii) below are not applicable if it is contrary to an applicable treaty:

- (i) The requested offense (offense for which extradition is sought) is a political offense, or the extradition request is deemed to have been made with a view to trying or punishing the fugitive for a political offense;
- (ii) The requested offense would not be punishable by imprisonment of three years or more or by more severe punishment under the laws of the requesting State or Japan;
- (iii) It is deemed that convicting a fugitive or executing a punishment against the fugitive would not be possible under Japanese law due to legal defense or restrictions supposing that the requested offense was committed in Japan or if the fugitive were tried in a Japanese court;
- (iv) Except when a fugitive has been convicted for the requested offense in the requesting country, there is no probable cause to suspect that the fugitive committed the act constituting the requested offense;



- (v) The fugitive's criminal case for the act constituting the requested offense is pending before a Japanese court, or a judgment in such a case has become final;
- (vi) The fugitive's criminal case for the act other than the requested offense is pending before a Japanese court, or the fugitive's sentence for an offense other than the requested offense has not been executed or execution of the sentence is still enforceable; and
- (vii) The fugitive is a Japanese national.

(1) Second Step: Examination by Tokyo High Court

A public prosecutor of Tokyo High Prosecutors Office applies to the Tokyo High Court for an examination on whether the case is extraditable. When necessary, the prosecutor detains the fugitive by obtaining a detention permit from a judge of Tokyo High Court prior to the application above.

Tokyo High Court promptly starts the examination and make a decision on whether the case is extraditable.

If the fugitive is detained, Tokyo High Court shall make a decision within two months since the day on which the fugitive was taken into custody.

(2) Third Step: Order of the Minister of Justice and Surrender

If Tokyo High Court decides that the case is extraditable, and when the Minister of Justice finds the surrender appropriate, the Minister orders the Superintending Prosecutor of Tokyo High Prosecutors Office to surrender the fugitive.

The fugitive has to be surrendered to the requesting State within 30 days from the day following the day of the surrender order.

The Minister of Justice sends a permit of custody to the Minister for Foreign Affairs, and the Minister for Foreign Affairs sends it to the requesting State. Officials of the requesting State come to Japan and receive the fugitive by showing the permit of custody.

### 3. Appeal

Under the Japanese extradition procedure, a fugitive is not allowed to appeal the Tokyo High Court's decision to the higher court. On the other hand, when it is found that the Minister of Justice deviates from or abuses his/her discretionary power, the fugitive is able to file a lawsuit seeking a cancellation of the order.

#### I. Evidence Required for Extradition

##### a. Information necessary for all the fugitives

- i) Fugitive's name, age, sex, nationality, occupation and address (e.g. passport, photograph, etc.);
- ii) Text of the relevant articles of the requesting State's laws;
- iii) Details of the act that constitutes the requested offense
  - Provide sufficient and detailed information explaining that the act constitutes an offense and it is punishable (there are no circumstances which bars the punishment such as expiration of the statute of limitation) under the requesting State's law.

- When Japan considers the dual criminality requirement, Japan examines the relevant facts meticulously. If it is found that the facts constituting the requested offense and other facts related thereto constitute, as a whole, an offense under Japanese law, regardless of the name or the category of the requested offense under the requesting State's law, dual criminality requirement is satisfied. Thus it is important to provide relevant facts as detailed as possible in the extradition request.
- iv) Stage of the criminal procedure against the fugitive in the requesting State (e.g. investigation stage before the indictment, indicted but before the trial, after the conviction, etc.)

## **b. Person wanted for Prosecution**

### **i) Facts supporting probable cause to suspect that the fugitive committed the requested offense**

When the fugitive has not been convicted in the requesting State, the requesting State shall show probable cause to suspect that the fugitive committed the requested offense.

In detail, the requesting State has to address the existence of the act which constitutes an offense under the requesting State's law as well as Japanese law (such act has to satisfy all the elements of an offense); the existence of the result of such act; the fact that the fugitive was the person who did that act; and the fugitive's *mens rea*.

The standard of the proof is "probable cause" standard. This standard is lower than the standard required for convicting a person (proof beyond a reasonable doubt); probable cause standard is thought to be satisfied if the suspicion is tentatively found based on the specific evidence.

However, the actual level of presenting the facts/evidence is different depending on the circumstances of a specific case. For example, if a fact which casts doubts on the fugitive's *mens rea* is found in the relevant evidence, stronger evidence supporting the fugitive's *mens rea* has to be presented; and if only indirect or circumstantial evidence is available, many pieces of evidence have to be presented depending on the probative value of those pieces. Moreover, sometimes *mens rea* is easily shown through the act committed by the fugitive; on the other hand, in some murder case, circumstantial factors have to be taken into account when finding *mens rea* because the offensive act does not clearly show *mens rea*. Thus the requesting State has to show with the supporting evidence that all the elements of an offense stipulated by law are satisfied.

It is difficult to say the exact amount or contents of the evidence necessary to make a successful request because it is determined on case-by-case basis. It is strongly encouraged to consult with the International Affairs Division, Criminal Affairs Bureau of the Ministry of Justice (contact information is shown below) on the contents and amount of the evidence necessary for the request prior to make a formal extradition request to Japan.

### **ii) Facts showing that the refusal grounds are not applicable**

It is also necessary to show that there are no circumstances barring a conviction under Japanese law such as the expiration of statute of limitation, self defense and insanity defense.

It is impossible to make an accurate decision on the necessary evidence without knowledge on Japanese laws. Thus it is encouraged to consult with the International Affairs Division, Criminal Affairs Bureau of the Ministry of Justice on the contents and amount of the evidence necessary for the request prior to make a formal extradition request to Japan.

### **c. Person wanted for Imposition/Enforcement of Sentence**

#### **i) Existence of the conviction**

If the fugitive has already been convicted in the requesting State, it is not necessary to show probable cause to suspect that the fugitive committed the requested offense; the requesting State has only to show that the fugitive has been convicted. Specifically, the requesting State has only to submit a certified copy of the court decision showing the fugitive's conviction.

#### **ii) Facts showing that the refusal grounds are not applicable**

Even if the fugitive has already been convicted in the requesting State, there has to be no circumstances barring the conviction under Japanese law such as the expiration of the statute of limitation, self defense or insanity defense.

It seems that, in view of the fact that the fugitive has already been convicted in the requesting State, certain refusal grounds such as self defense and insanity defense would also be denied under Japanese law; however, depending on the specific circumstances in a specific case, there may be a case where the requesting State has to submit evidence denying such refusal grounds, and thus the requesting State has to be cautious when making a extradition request.

## **II. Form Evidence Must Take**

1. The Extradition Act and relevant rules do not provide for the specific forms or contents of the evidence which is to be submitted by the requesting State. However, in practice it seems important to follow the points below in order to make a successful extradition request.

2. Extradition request

If the following points are described in the extradition request, the whole picture of the case will be understood more easily:

- i) Fugitive's name, age, sex, nationality, occupation and address;
- ii) Name of the requested offense, relevant articles of the requesting State's penal laws;
- iii) Outline of the act constituting the requested offense (describe the relevant facts in detail including the date, place, who committed the act, how he/she committed it and the result of such act, so that we can easily find that all the elements of an offense stipulated by law are satisfied);

- iv) If there is a defense/excuse which is expected to be asserted by the defense attorney, the content of it and the detailed grounds showing that such defense/excuse is not applicable; and
  - v) The stage of the criminal procedure against the fugitive in the requesting State.
3. Materials/documents supporting the facts described in the extradition request
- i) Materials showing the identity of the fugitive are important in ensuring capturing a right person. Submit materials with which we can identify the fugitive for sure such as a copy of a passport, a photograph of the face and fingerprints;
  - ii) Attach the “primary” evidence showing the existence of the act constituting the requested offense. For example, photographs of the crime scene, inspection reports on the crime scene, judicial autopsy report, photographs of the weapon used by the perpetrator, and written statements of the eyewitnesses are deemed primary evidence. Do not attach all the evidence collected by the requesting State with regard to the case; screen the evidence carefully and attach only the best evidence sufficient to show the existence of the act constituting the requested offense and the fact that the fugitive is the perpetrator;  
Sometimes an extract of a piece of the evidence could be preferred rather than the whole piece of evidence. Sometimes an investigator could make a report compiling the extracts of several pieces of evidence. However, it is not appropriate if an investigator interprets the contents of the evidence and summarizes them, because we cannot confirm the existence of or the exact contents of the primary evidence from such summary. Moreover, when a part of the primary evidence is extracted, please consider the possibility that the defense attorney asserts that the exculpatory contents were excluded when the investigator made an extract;
  - iii) Provide a copy of the judgment if the fugitive has already been convicted in the requesting State;
  - iv) Provide the text of the relevant articles of the requesting State’s law;
  - v) Provide a copy of the warrant justifying taking the fugitive into custody such as arrest warrant, if applicable;
  - vi) Evidence which is submitted to Japan can be a copy of the original, and the way of the authentication is not specified. However, it is essential to make an accurate copy of the whole or a part of the original evidence.

### **III. Evidence/Information Required for Provisional Arrest**

1. Information necessary for the provisional arrest request  
Provide the following information in the provisional arrest request:
  - i) Fugitive’s name, age, sex, nationality, occupation and address;
  - ii) Name of the requested offense, relevant articles of the requesting State’s penal laws;
  - iii) Outline of the act constituting the requested offense (describe the relevant facts as detailed as possible including the date, place, who committed the act,

- how he/she committed it and the result of such act, so that we can easily find that all the elements of an offense stipulated by law are satisfied. If we are not able to find that the act constitute an offense under the requesting State's law and that the act could constitute an offense under Japanese law, we cannot make a provisional arrest);
- iv) The stage of the criminal procedure against the fugitive in the requesting State.
  - v) Circumstances showing the urgency which justifies the provisional arrest;
  - vi) The fact that arrest warrant has been issued against the fugitive or that the sentence has been rendered for the fugitive;
  - vii) Assurance that the requesting State will make an extradition request; and
  - viii) Assurance of the reciprocity when there is not an applicable treaty.

## 2. Materials to be attached to the request

- i) At least a copy of an arrest warrant or a judgment on sentencing the fugitive has to be attached to the provisional arrest request.
- ii) In the provisional arrest procedure it is not required to attach the evidence showing probable cause to suspect that the fugitive committed the act constituting the requested offense.

On the other hand, the requesting State has to make an extradition request as soon as the provisional arrest is successfully executed; and such evidence is necessary in making an extradition request. Thus when we consider whether or not to accept the provisional arrest, we review the contents of the provisional arrest request to see whether the requesting State would be able to show probable cause to suspect that the fugitive committed the act constituting the requested offense. Therefore, it is important for the requesting State to show the relevant facts corroborated by the evidence as detailed as possible when making the provisional arrest request.

In practice, it is recommended that the requesting State presents some kind of evidentially documents so that a Japanese judge issuing a provisional arrest warrant can see the existence of sufficient evidence and the ability of the requesting State to make an extradition request.

- iii) If a refusal ground on extradition stipulated by the Extradition Act is found, the case is not extraditable and the provisional arrest cannot be made. Therefore, additional materials will be required to show the non-existence of a refusal ground if such ground is suspected to exist.

## **IV. Central Authority Contact Information**

The contact point in charge of extradition is:  
 International Affairs Division, Criminal Affairs Bureau of the Ministry of Justice  
 1-1-1 Kasumigaseki, Chiyoda-ku,  
 Tokyo 100-8977 Japan  
 +81-3-3592-7049 (Direct)  
 e-mail: [cabiad@moj.go.jp](mailto:cabiad@moj.go.jp)

# JAPAN

## ANNEXES

- **Checklist on Evidentiary Requirements for Extradition**

- The following are described in the extradition request:
- Fugitive's name, age, sex, nationality, occupation and address
- Name of the requested offense, relevant articles of the requesting State's penal laws
- Outline of the act constituting the requested offense (describe the relevant facts such as date, place, perpetrator, the way of committing the act and the result of it, so that we can easily find that all the elements of an offense are satisfied)
- If there is a defense/excuse which is expected to be asserted by the defense attorney, the content of it and the detailed grounds showing that such defense/excuse is not applicable
- The stage of the criminal procedure against the fugitive in the requesting State
- Assurance of the reciprocity
- Materials showing the identity of the fugitive are attached
- Copy of the primary evidence showing the existence of the act constituting the requesting State and the fact that the fugitive is the perpetrator is attached, if the fugitive has not been convicted in the requesting State
- Copy of the judgment is attached, if the fugitive has already been convicted in the requesting State
- Text of the relevant articles of the requesting State's law is attached
- Copy of a warrant justifying taking the fugitive into custody such as an arrest warrant is attached

- **Checklist for Provisional Arrest**

The following are described in the provisional arrest request

- Fugitive's name, age, sex, nationality, occupation and address
- Name of the requested offense, relevant articles of the requesting State's penal laws
- Outline of the act constituting the requested offense (describe the relevant facts such as date, place, perpetrator, the way of committing the act and the result of it, so that we can easily find that all the elements of an offense are satisfied)
- The stage of the criminal procedure against the fugitive in the requesting State
- Circumstances showing the urgency which justifies the provisional arrest
- The fact that arrest warrant has been issued against the fugitive or that the sentence has been rendered for the fugitive
- Assurance that the requesting State will make an extradition request
- Assurance of the reciprocity when there is not an applicable treaty

- Copy of an arrest warrant or a judgment on sentencing the fugitive is attached
- Evidence supporting the facts described in the request is attached as much as possible



# UNITED KINGDOM

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## I. Brief Overview of the Extradition Process

1. The United Kingdom operates two processes for the purposes of extraditing persons wanted for criminal prosecution purposes i.e. to face charges/trial or conviction, or persons wanted for the purposes of executing a custodial sentence or detention order.

### A: **Extradition from the UK: category 1 territories**

#### Extradition and the UK's exit from the European Union

Following the end of the Transition Period on 31 December 2020, the UK is no longer part of the European Arrest Warrant (EAW) framework. A new agreement between the UK and the European Union (EU) which allows for streamlined extradition warrant-based arrangements (similar to the EU's surrender agreement with Norway and Iceland) came into effect on 1 January 2021.

The following transitional arrangements are in place for existing EAW cases:

- Article 62 of the Withdrawal Agreement applies to existing EAWs, where an arrest has already taken place on an EAW before 11pm on 31 December 2020. In these cases, the extradition process will continue to follow the EAW framework.
- The rules for EAWs issued before the end of the Transition Period where no arrest has taken place are set out in Title VII (Surrender) of the UK-EU Trade and Co-operation Agreement. If an EAW has been issued but no arrest has been made, it will constitute a valid warrant under the new arrangements.

Part 1 of the Extradition Act 2003 (the '2003 Act'), and the 2003 Act as amended by the Future Relationship Act, implements the EAW and the arrangements under Title VII (Surrender) of the UK-EU Trade and Co-operation Agreement.

These Agreements apply to extradition between the following territories (designated as 'category 1 territories' under the 2003 Act):

#### Category 1 territories

Austria	Estonia	Ireland	Poland
Belgium	Finland	Italy	Portugal
Bulgaria	France	Latvia	Romania
Croatia	Germany	Lithuania	Slovakia
Cyprus	Gibraltar	Luxembourg	Slovenia
Czech Republic	Greece	Malta	Spain
Denmark	Hungary	Netherlands	Sweden



The process for extradition from the UK to these territories follows these steps:

- a warrant is submitted by the requesting state (usually electronically, via Interpol)
- certificate is issued by the relevant UK authority (after a proportionality test is applied)
- arrest
- initial hearing
- extradition hearing

In urgent cases a 'requested person' (the person a country is requesting be surrendered for prosecution or for punishment) can be arrested before the receipt of a warrant. The warrant must be received in time for a court hearing, which must be held within 48 hours of the arrest.

The National Crime Agency (NCA) is the designated authority for category 1 cases.

### **Issuing a certificate**

The NCA can only issue a certificate if the requirements of section 2 of the 2003 Act are met (including a proportionality test). Once issued the requested person can then be arrested and, once arrested, must be brought before a district judge at the magistrates' court (or in Scotland, a sheriff at the sheriff's court) as soon as practicable.

### **Initial hearing**

At the initial hearing the judge must:

- confirm the identity of the requested person (ie that the person brought before him or her is the person named on the warrant)
- inform the person about the procedures for consenting to his or her extradition
- fix a date for the extradition hearing if the requested person does not to consent to his or her extradition

### **Extradition hearing**

The extradition hearing should normally begin within 21 days of arrest.

The judge must be satisfied that the conduct described in the warrant amounts to an extradition offence (including, in almost all cases, the requirement that the conduct would amount to a criminal offence were it to have occurred in the UK, and minimum levels of severity of punishment), and that none of the statutory bars to extradition apply. These bars are:

- rule against double jeopardy
- the absence of a prosecution decision (whether the prosecution case against the accused is sufficiently advanced)

- extraneous considerations (whether the request for extradition is improperly motivated)
- passage of time
- the requested person's age
- speciality (the requested person must only be dealt with in the requested state for the offences for which they have been extradited)
- onward extradition (where the requested person has previously been extradited to the UK from a third country, and consent for onward extradition from that country is required but has not been forthcoming)
- forum (whether it would be more appropriate for the requested person to be prosecuted in the UK instead)

If none of the bars apply, the judge must next decide if extradition would be disproportionate or would be incompatible with the requested person's human rights. If the judge decides it would be both proportionate and compatible, extradition must be ordered.

#### **Appeals: High Court (High Court of Judicature in Scotland)**

If either the requested person or the requested state to the extradition proceedings is unhappy with the judge's decision at the extradition hearing, they may ask the High Court for leave (permission) to appeal.

An application for permission to appeal must be made within 7 days of the relevant decision being made (i.e. an order for extradition or an order discharging the extradition case against the requested person). If the High Court grants permission, it will go on to consider the appeal.

If the High Court allows an appeal brought by the requested person, it will quash the order for extradition and order the person's discharge. If the High Court allows an appeal brought by the requesting state, it will quash the order discharging the person and will send the case back to the magistrates' or sheriff's court for a new decision to be taken.

#### **Appeals: Supreme Court**

In England, Wales and Northern Ireland, a party who is unhappy with the decision of the High Court on appeal can ask for permission for a further, final appeal to the Supreme Court. Permission can either be given by the High Court or by the Supreme Court itself. An appeal to the Supreme Court can only be made where the case involves a point of law of general public importance. If permission is granted, the Supreme Court will hear the appeal.

For Scottish cases, the Supreme Court will only hear an extradition case where it involves a 'devolution issue'.

**Surrender of a requested person**

The person should normally be extradited within 10 days of the final court order. This time limit can be extended in exceptional circumstances.

**B) Non- EU extradition process (“Part 2” process)****Extradition from the UK: category 2 territories**

Part 2 of the 2003 Act applies to territories with whom the UK has formal arrangements through the European Convention on Extradition, the Commonwealth Scheme or a bilateral treaty. These territories are separated into two types, A & B. Type A countries are not required to provide prima facie evidence in support of their requests for extradition, whilst those in Type B are still required to do so.

The category 2 territories are:

Type A

Albania	Curacao	Moldova	Serbia
Andorra	Faroe Islands	Monaco	Sint Eustatius
Armenia	Georgia	Montenegro	Sint Maarten
Aruba	Greenland	New Zealand	South Africa
Australia	Hong Kong SAR	Norway	Switzerland
Azerbaijan	Iceland	Republic of Korea	Turkey
Bonaire	Israel	Russian Federation	Ukraine
Bosnia & Herzegovina	Liechtenstein	Saba	USA
Canada	FYR Macedonia	San Marino	

Type B

Algeria	Ecuador	Maldives	South Georgia & the South Sandwich Islands
Anguilla	El Salvador	Mauritius	Sovereign Bases Areas of Akrotiri & Dhekalia
Antigua & Barbuda	Falkland Islands	Mexico	Sri Lanka
Argentina	Fiji	Montserrat	Swaziland
Bahamas	Gambia	Nauru	Tanzania
Bangladesh	Ghana	Nicaragua	Thailand
Barbados	Grenada	Nigeria	Tonga
Belize	Guatemala	Panama	Trinidad & Tobago
Bermuda	Guyana	Papua New Guinea	Turks & Caicos Islands
Bolivia	Haiti	Paraguay	Tuvalu

Botswana	India	Peru	Uganda
Brazil	Iraq	Philippines	Uruguay
British Antarctic Territory	Jamaica	Pitcairn, Henderson, Ducie and Oeno Islands	United Arab Emirates
British Indian Ocean Territory	Kenya	St Christopher and Nevis	Vanuatu
Brunei	Kiribati	St Helena, Ascension & Tristan de Cunha	(British) Virgin Islands
Cayman Islands	Kosovo	St Lucia	(Western) Samoa
Chile	Lesotho	St Vincent & the Grenadines	Zambia
Colombia	Liberia	Seychelles	Zimbabwe
Cook Islands	Libya	Sierra Leone	
Cuba	Malawi	Singapore	
Dominica	Malaysia	Solomon Islands	

Requests from these territories need decisions by both the Secretary of State and the courts.

The extradition process to these territories follows these steps:

- extradition request is made by the requesting state to the Secretary of State
- Secretary of State decides whether to certify the request
- Secretary of State sends the case to the court
- judge decides whether to issue a warrant for arrest
- the person wanted is arrested and brought before the court
- preliminary hearing
- extradition hearing
- Secretary of State decides whether to order extradition

Requesting states are advised to submit an initial draft request to the following departments so that any potential problems can be resolved at the outset:

- for England and Wales, Crown Prosecution Service (CPS)
- for Scotland, the Crown Office and Procurator Fiscal Service (COPFS) extradition team
- for Northern Ireland, the Crown Solicitor's Office

### **Issuing a certificate**

When an extradition request is made to the UK Central Authority (UKCA) at the Home Office, the request will be valid if extradition is stated to be for the purpose of prosecuting or punishing a person accused or convicted of an offence in a category 2

territory, and if the request is made by an appropriate authority on behalf of that territory.

Where these basic criteria are fulfilled the Secretary of State certifies the request and sends it to the courts. Where the person is believed to be in Scotland, Scottish Ministers certify the request.

### **Issuing a warrant**

If the court is satisfied that enough information has been supplied, an arrest warrant can be issued. The court must be satisfied that there are reasonable grounds for believing that the conduct described in the request is an extradition offence (which includes the requirement for dual criminality). Generally, the information accompanying a request needs to include:

- details of the person
- details of the offence of which they are accused or convicted
- if the person is accused of an offence: a warrant for their arrest or provisional arrest (or an authenticated copy)
- if someone is unlawfully at large after conviction of an offence: a certificate of the conviction and sentence (or an authenticated copy), or for provisional arrest, details of the conviction
- evidence (for Type B territories) or information (for Type A territories) that justifies the issue of a warrant for arrest in the UK, within the jurisdiction of a judge of the court that would hold the extradition hearing

### **Arrest and preliminary hearing**

After the person has been arrested he is brought before the court and the judge sets a date for the extradition hearing.

### **Extradition hearing**

The extradition hearing before the District Judge is where most of the issues in the case are decided. The CPS will represent the requesting State in the proceedings.

The judge must be satisfied that the conduct amounts to an extradition offence (dual criminality), that there is prima facie evidence of guilt (where applicable and in accusation cases), and that none of the bars to extradition apply, including that extradition would not breach the person's human rights.

### **Appealing judge's decision: High Court**

The judge's decision whether to send a case to the Secretary of State can be appealed within 14 days of being notified of the decision. However, the High Court will not hear the appeal unless and until the Secretary of State orders the requested person's extradition (see below).

If the District Judge orders the requested person's discharge, the requesting State can ask the High Court for permission to appeal that decision. Any application for

permission to appeal must be made within 14 days of the judge's decision. If the High Court grants permission it will go on to consider the appeal. If the High Court allows the appeal, it will quash the order discharging the requested person and send the case back to the District Judge for a fresh decision to be taken.

### **Secretary of State's decision**

The Secretary of State must order extradition unless the surrender of a person is prohibited by certain statutory provisions in the 2003 Act. The requested person may make any representations as to why they should not be extradited within 4 weeks of the case being sent to the Secretary of State. The Secretary of State is not required to consider any representations received after the expiry of the 4 week period.

Extradition is prohibited by statute if:

- the person could face the death penalty (unless the Secretary of State gets adequate written assurance that the death penalty will not be imposed or, if imposed, will not be carried out)
- there are no speciality arrangements with the requesting country – 'speciality' requires that the person must be dealt with in the requesting state only for the offences for which they have been extradited (except in certain limited circumstances)
- the person has already been extradited to the UK from a third state or transferred from the International Criminal Court and consent for onward extradition is required from that third state or that Court (unless the Secretary of State has received consent)

If none of these prohibitions apply, the Secretary of State must order extradition. Or, if surrender is prohibited, the person must be discharged.

The Secretary of State has to make a decision within 2 months of the day the case is sent, otherwise the person may apply to be discharged. However, the Secretary of State can apply to the High Court for an extension of the decision date. More than one extension can be sought if necessary.

### **Appealing Secretary of State's decision: High Court**

Appeal is only possible with the leave (permission) of the High Court. Notice of application for leave to appeal must be sought within 14 days of extradition being ordered by the Secretary of State or discharge being ordered by the Secretary of State. Any appeal by the requested person against the decision of the judge to send the case to the Secretary of State will be heard at the same time as the appeal against the Secretary of State's order, assuming permission is granted.

### **Appealing High Court decisions: Supreme Court**

A requested person, or a requesting State, can apply for leave to appeal to the Supreme Court against the High Court's decision. Notice of application for leave to

appeal must be given within 14 days of the High Court decision. Permission can be granted either by the High Court or by the Supreme Court itself. Appeals to the Supreme Court can only be made if the High Court has certified that the case involves a point of law of general public importance.

### **Extraditing a requested person**

Unless there is an appeal, a requested person must be extradited within 28 days of the Secretary of State's decision to order extradition.

### **Provisional arrest**

For urgent cases where a requested person is deemed to be a flight risk and insufficient time is available to prepare a full request, a requesting State can make a provisional arrest request. Where this is accepted, the requested person can be arrested before the formal extradition request is submitted. Subsequent to arrest, the requesting State must submit the full order request within the time limit specified by law.

The Extradition (Provisional Arrest) Act 2020 allows for the provisional arrest (i.e. arrest without warrant) of people, for extradition purposes, for serious offences for specified countries listed in Schedule A1 of that Act.

The power of a provisional arrest under the 2020 Act arises once an Interpol Red Notice or Red Diffusion issued by a territory listed on Schedule A1 of the 2020 Act has been reviewed and, if considered appropriate, certified by the NCA. Certification by the NCA is therefore required before an arrest or provisional arrest can be made.

Specified Category 2 Territories listed on Schedule A1 of the 2020 Act:

- Australia
- Canada
- Iceland
- Lichtenstein
- New Zealand
- Norway
- Switzerland
- United States

### **Extradition from the UK: other territories**

Even if the UK has no extradition arrangement or treaty with a particular territory, it may still be possible for that territory to make an extradition request to the UK. Incoming requests are made to the UKCA. The Secretary of State then decides whether to enter into 'special extradition arrangements'.

### **Extradition to the UK**

European Union Member States

Extradition warrants issued under the mechanisms outlined within the EU-UK Trade and Cooperation Agreement are processed under Part 3 of the Extradition Act 2003.

#### Other Territories

Outgoing extradition requests to territories outside of the scope of the 2003 Act are made under the Royal Prerogative.

The UKCA at the Home Office forwards extradition requests that have been prepared by the prosecuting authorities in England and Wales and Northern Ireland (e.g. CPS, Serious Fraud Office or Public Prosecution Service Northern Ireland) to the requested state through the diplomatic route.

The Crown Office deals with Scottish outgoing extradition requests, and these are also transmitted to the requested State through diplomatic channels.

An outgoing request can either be:

- a full order request (ie a request which fully complies within the requirements of the relevant treaty or other international arrangement with the requested state)
- a request for provisional arrest - this is made when someone is known to be in a particular country but where there is insufficient time to prepare a full request, because the person is deemed to be a flight risk

Where a request for provisional arrest is accepted, the person will usually be arrested in the requested state before extradition papers are formally submitted. When someone is provisionally arrested, there is a deadline within which the papers must be submitted. This deadline is set out in the treaty or other arrangements governing extradition arrangements with that state. The UKCA liaises with the relevant prosecuting authority to make sure the papers are delivered in enough time to meet the deadline.

#### **Bringing a requested person back to the UK**

Once a requested person is available for surrender, the UKCA will be notified by the British Embassy or High Commission, or the police will be notified by Interpol.

Officers from the National Extradition Unit will make arrangements to collect and escort the requested person back to the UK. The UKCA will forward the officers' travel arrangements to the relevant British Embassy or High Commission and can provide a letter of introduction for officers, which will allow them to bring the requested person back.

#### **Extradition of UK Nationals**

The UK will, as a matter of policy, extradite its own nationals, providing no bars to extradition apply.



Some countries are not permitted to extradite their own nationals, but usually have provisions in place that mean that although they will not extradite their own nationals, they may be prepared to prosecute them.

## **II. Central Authority Contact Information**

For extradition requests to and from the United Kingdom to those territories who operate under Part 2 of the 2003 Act:

Extradition Section, UK Central Authority  
International Criminality Unit - Home Office  
2 Marsham Street  
London SW1P 4DF

✉ [ExtraditionCasework@homeoffice.gov.uk](mailto:ExtraditionCasework@homeoffice.gov.uk)

For EU requests to the United Kingdom, under Part 1 of the 2003 Act:

National Crime Agency  
Fugitives Unit  
UK International Crime Bureau  
PO Box 58345, London NW1W 9JJ

✉ [ncastrategy@nca.gov.uk](mailto:ncastrategy@nca.gov.uk)

# UNITED STATES

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## **I. Brief Overview of the Extradition Process**

Requests for extradition may be initiated in one of two ways. First, the requesting country may submit a diplomatic note to the Department of State seeking extradition. This diplomatic note must be accompanied by documents containing information in support of that request. Second, the requesting country may submit a request for provisional arrest (PA) seeking the detention of the wanted person (the fugitive), typically under circumstances that constitute urgency, prior to the preparation and submission of the more expansive extradition request and supporting documents. PA requests may be transmitted through a number of different channels, as authorized in the applicable treaty, e.g., via diplomatic note, Interpol channels or directly between the foreign Attorney General or Ministry of Justice and the U.S. Department of Justice. The United States extradites on the basis of bilateral extradition treaties and may extradite under its domestic law in only very limited circumstances. The United States generally does not extradite solely on the basis of multilateral treaties.

### **A. Executive Branch Review**

When submitted through diplomatic channels to the Secretary of State, the Office of the Legal Adviser at the Department of State reviews a request for extradition for completeness and compliance with the technical requirements of the applicable extradition treaty. PA requests submitted through diplomatic channels undergo a similar review. Thereafter, the request is forwarded to the Office of International Affairs (OIA), Criminal Division, U.S. Department of Justice, for further review and evaluation of the allegations and supporting evidence of criminality. Upon a determination that the extradition request and supporting documents meet U.S. legal standards for arrest and that all other legal requirements have been satisfied, OIA coordinates with a U.S. law enforcement agency (usually the U.S. Marshals Service) to locate the fugitive. Thereafter, OIA forwards the extradition request to the Office of the United States Attorney (USAO) in the district where the fugitive is believed to be located.

Working with OIA, the USAO is tasked with seeking court approval of requests for extradition. This requires the assignment of an Assistant United States Attorney (AUSA), who reviews the documentation submitted with the extradition request (or the information in support of a PA request) and files a complaint with a federal district judge or a magistrate judge, alleging that the fugitive is wanted for prosecution, imposition of a sentence or service of a penal sentence in the requesting country. The complaint seeks the issuance of an arrest warrant based on the extradition or PA request. The court then reviews the complaint and, upon concluding that the information supports a finding of probable cause for the arrest of the fugitive sought for extradition, will issue an arrest warrant for the fugitive.

## **B. Judicial Review**

After the fugitive is arrested, he or she will be brought before the court (typically a magistrate judge, depending on local rules) and the charges in the complaint will be explained to him or her. The fugitive may attempt to seek bail or release from custody. There is a general presumption against bail in extradition cases; however, determinations concerning the possible release from custody of the fugitive are made by the court. The standard applied is a showing of "special circumstances" for why the fugitive should not be held in custody, in addition to a showing that the fugitive is not a flight risk or a danger to the community.

Typically, the court next schedules an extradition hearing. The purpose of the extradition hearing is set out by statute, 18 U.S.C. § 3184: the court must hear and consider the evidence of criminality presented by the requesting state and determine whether it suffices to sustain the charge under the treaty. To simplify the analysis, the scope of the hearing is sometimes broken into its constituent parts or elements. In addition to jurisdictional elements, these parts or elements generally include:

- (1) whether there is an extradition treaty in force between the United States and the requesting country (usually established by the declaration of the State Department's Office of the Legal Adviser);
- (2) whether the offense(s) for which extradition was requested is or are extraditable under the relevant treaty;
- (3) whether the person before the court is the person whose extradition is sought by the requesting country; and
- (4) whether there is probable cause to believe that a crime was committed and that the person whose extradition is requested, and who is appearing before the court, likely committed it.

Note that an extradition hearing does not seek to determine whether a person is guilty, but rather merely whether he or she may be extradited to face charges or serve a sentence in the requesting state.

Much of the jurisprudence surrounding extradition has been established for more than a century. An early Supreme Court opinion explained that a determination of extraditability was proper if: the judicial officer who conducted the extradition hearing had jurisdiction; the crimes for which surrender was requested were covered by the applicable treaty; and there was competent evidence warranting the court's probable-cause finding.

If the evidence supports extradition, the court will certify that finding and refer the matter to the Secretary of State for further consideration on issuance of a

surrender warrant. In most instances, the court will also order the fugitive to remain in or be remanded to the custody of the U.S. Marshals to await the Secretary of State's surrender decision. If the court finds that the evidence does not support a finding of extraditability or the request fails to comply with the treaty requirements in other respects, the court will order the release of the fugitive from custody and dismiss the extradition complaint without prejudice. Should additional evidence become available or the deficiencies be corrected, the U.S. Government has the discretion to re-file the extradition request at a later time.

### **C. Appeals of Court's Certification of Extraditability**

There is no direct appeal of a finding regarding extraditability. However, a fugitive may file a petition for a writ of habeas corpus as the means to challenge his or her detention for extradition and, indirectly, a finding of extraditability. The habeas corpus petition will be made before a district court judge. The denial of a habeas corpus petition may be appealed to a court of appeals, although a fugitive may be required to obtain a stay of extradition in order to proceed with his or her appeal. The fugitive may also petition for the U.S. Supreme Court to review the matter, if he or she is unsuccessful in the court of appeals. Review by the Supreme Court, however, is discretionary and in practice rarely occurs.

### **D. Secretary of State's Surrender Decision**

If the fugitive's challenge to the finding of extraditability is unsuccessful, the Secretary of State will render a decision on surrender. At this stage, the fugitive may make additional filings to the Secretary of State in opposition of the surrender. The Secretary of State's decision to surrender the fugitive is generally not subject to judicial review. Upon issuance of a surrender warrant, the Department of State will formally notify the requesting country by diplomatic note, and OIA will contact the requesting country and make arrangements with the U.S. Marshals (or other coordinating law enforcement agency) for the transfer of custody of the fugitive. The U.S. Marshals or other agency will surrender the fugitive to foreign police escorts assigned by the requesting country to transport the fugitive, in custody, to the foreign territory.

## **II. Materials/Documents Required for Extradition**

All extradition treaties to which the United States is a party set forth the information which must be included in a request for extradition, and the specific documentation required depends upon whether the fugitive is charged with or already has been convicted of the criminal offenses for which extradition is sought. The following types of information and documentation are generally required for international extradition under U.S. law and our bilateral treaties: the facts and procedural history of the case; applicable legal provisions (penal code violated, penalties, applicable prescriptive laws); identification of person sought; and the arrest warrant or judgment of conviction.

Generally, older treaties contain “lists” of offenses that are extraditable, while newer treaties require “dual criminality,” and some hybrid treaties require both. When dual criminality is required, U.S. courts typically review the relevant statutory provisions in the United States and in the requesting state that criminalize the offense with which the fugitive is charged. The United States generally does not extradite solely on the basis of multilateral treaties, but all multilateral treaties with extradition provisions to which both the United States and the requesting country are parties can be used to expand the list of extraditable offenses.

#### **A. Person Wanted for Prosecution**

Generally speaking, the legal standard determining the sufficiency of factual information is probable cause, i.e., information sufficient to show a reasonable basis to believe that the person sought probably committed an extraditable offense. In addition, because the United States has a common law system, some case decisions regarding specific treaties have led extradition requests submitted under a particular treaty to be reviewed by the court in light of other courts’ interpretations of that treaty.

The court’s determination of probable cause could be based on a description of witness testimony, physical evidence, and/or documentary evidence. Because the “probable cause” standard applies equally to orders of international extradition and arrest warrants in domestic criminal cases, the requesting state in an extradition case must include information with its request to show a reasonable basis to believe that the person sought probably committed an extraditable offense. In establishing “probable cause” for extradition, it is important for the requesting authority to sufficiently articulate the sources of its information about the alleged crime in order to show that such sources are reliable. The United States does not require any “first person” evidence such as witness statements or laboratory results. Summaries of such evidence are admissible in extradition proceedings.

#### **B. Person Wanted for Imposition/Enforcement of Sentence**

If a person has already been convicted of the offenses for which extradition is sought, the extradition request typically should include a copy of the judicial document setting forth the finding of guilt against the person sought; and if not part of the judgment of conviction, the extradition request also should include a copy of the judicial document setting forth the criminal penalty imposed against the person sought for the offense for which he was found guilty. In addition, the request should include a statement establishing to what extent the sentence has already been carried out.

### **C. *In Absentia* Cases**

If the person sought has been convicted *in absentia* of the offenses for which extradition is sought, the extradition request generally must include the same materials required in cases in which the person is wanted for prosecution. In some cases, the United States may seek an assurance that a new trial will be available should the fugitive be extradited.

### **III. Form in which Materials/Documents Must be Presented**

The evidence or information presented at the extradition hearing almost always consists of the documents in support of the extradition request, which may be based on hearsay evidence. Hearsay evidence is admissible at extradition hearings and may support a finding of extraditability. Extradition treaties do not contemplate the introduction of testimony of live witnesses at extradition proceedings because to do so “would defeat the whole object of the treaty.” *Bingham v. Bradley*, 241 U.S. 511, 517 (1916). Thus, a finding of extraditability may be and typically is based entirely on documentary evidence.

Establishment of identification is part and parcel of a “probable cause” determination, which is a U.S. Constitutional standard. Identification can be established in a variety of ways, typically by a witness identifying a photo of the individual.

The documentation presented in support of a foreign request for extradition must be fully translated into English and properly authenticated by the principal U.S. consular or diplomatic official resident in the requesting state, or by the relevant Ministry of Justice or Ministry of Foreign Affairs, depending on the treaty.

### **IV. Evidence/Information Required for Provisional Arrest**

Recognizing that fugitives are often flight risks or present a danger to the community, almost all of the U.S. bilateral extradition treaties allow a party to seek, in urgent circumstances and prior to the presentation of a fully-documented extradition request, the PA or temporary detention of a fugitive located in the territory of the other party.

Many of these treaties require that a request for provisional arrest be presented through the diplomatic channel, although some allow for direct transmission between Ministries of Justice, and all set forth a time limit, often 45 or 60 days from the date of the fugitive’s provisional arrest, in which the requesting

state must present its fully-documented extradition request or risk release of the fugitive.

Although some extradition treaties are more specific than others with regard to the information required for provisional arrest, the following information, if provided by foreign authorities through the appropriate channel, should allow U.S. authorities to respond most effectively to a request for the provisional arrest of a foreign fugitive in the United States:

- identification and location information for the suspect,
- the specifics of the charging document or judgment of conviction,
- the specifics of the arrest warrant,
- a description of the facts of the case,
- a photograph of the suspect,
- the treaty or treaties being relied on for coverage of the crime, and
- an assurance that the formal request for extradition will be submitted by the relevant deadline.

The U.S. Constitution requires that no court may issue a warrant for the arrest of a person without a showing of “probable cause.” In other words, in the extradition context, for a court to order the provisional arrest of a fugitive, the government must show a reasonable basis to believe that the person sought probably committed an extraditable offense.

#### **V. Competent Authority Contact Information**

The Office of the Legal Adviser  
U.S. Department of State  
2201 C St NW, Room 4331  
Washington, DC 20520  
(202) 647-5111

The Office of International Affairs  
U.S. Department of Justice  
1301 New York Avenue, NWSuite 300  
Washington, DC 20530  
Telephone: (202) 514-0000



# UNITED STATES

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## ANNEX

### EXTRADITION CHECKLIST

#### I. All Extradition Requests Should Contain the Following Information

Countries should consult the applicable bilateral extradition treaty to determine the specific information that should be contained in an extradition request. The following summary is provided only as general guidance. The terms of the applicable bilateral extradition treaty control.

- **FACTS AND PROCEDURAL HISTORY OF THE CASE** — The extradition request should provide an *overview of the facts* and procedural history of the case, including the applicable law of the requesting state and the criminal charges against the person sought. This information is often provided in the form of a case summary, which is prepared by a prosecutor or investigating magistrate specifically for the extradition request, and which references all other documentation submitted in support of the extradition request.
- **APPLICABLE LEGAL PROVISIONS** — The extradition request should include the text or a summary of the text (depending on the treaty) of the requesting state's laws that are relevant to the criminal case against the person sought, including: (1) the penal code sections allegedly violated by the person sought; (2) the provisions setting forth the penalties for such offenses; and (3) any applicable prescriptive laws setting forth the time limits for bringing the prosecution or executing the penalty against the person sought.
- **IDENTIFICATION OF PERSON SOUGHT** — The extradition request should include all known information to establish the identity of the person sought, including a physical description, date and place of birth, country of citizenship, and identification numbers. In addition, the request should include a photograph and, if available, fingerprints of the person sought. The request should *show the requesting authority's basis for believing that the person whose photograph and other identifying information are provided is the same person who committed the offense for which extradition is sought.*



II. **Requests for Persons who are Charged with, but not yet Convicted of, the Offenses for Which Extradition is Sought Should Include, in Addition to the Items in Section I Above, the Following:**

- **CHARGING DOCUMENT** — If required by the treaty, the extradition request should include a copy of the judicial document that sets forth the formal accusation against the person sought, if one exists. (It is important that the charging document include all crimes for which extradition is being requested.)
- **ARREST WARRANT** — If not part of the charging document, the extradition request also should include a copy of the judicial document ordering the arrest or detention of the person sought, based on the charges that are the subject of the request. If the arrest warrant does not include all charges for which extradition is sought, the request should include an explanation that the warrant is nonetheless valid to detain the person for all charges for which extradition is sought.
- **EVIDENCE OF CRIMINALITY** — The extradition request should *explain the links between the facts of the case, and a description of evidence that demonstrates these facts, in order for a court to have a reasonable basis to believe that the person sought probably committed an extraditable offense.* If possible, an extradition request should include summaries of key witness statements, reports, or other documentation that led the foreign authorities to believe that a crime was committed and that it was committed by the person sought.

III. **Requests for Persons who have been Convicted of the Offenses for Which Extradition is Sought Should Include, in Addition to the Items in Section I Above, the Following:**

- **JUDGMENT OF CONVICTION** — The extradition request should include a copy of the judicial document setting forth the finding of guilt against the person sought.
- **SENTENCE** — If not part of the judgment of conviction, the extradition request also should include a copy of the judicial document setting forth the criminal penalty imposed against the person sought for the offense for which he was found guilty. In addition, the request should include a statement establishing to what extent the sentence has already been carried out.

- **CONVICTION *IN ABSENTIA*** — If the person sought has been convicted *in absentia* of the offenses for which extradition is sought, the requesting country should be clear in their request that the conviction was obtained *in absentia* and consult with appropriate U.S. authorities about the specific information that will need to be included in such a request.
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