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**NOTE**

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from:	Estonian Delegation
to:	Working Party on Cooperation in Criminal Matters (Experts on the European arrest warrant)
No prev. doc.:	11227/08 COPEN 131 EJN 48 EUROJUST 64
Subject :	Implementation of the Framework Decision on the European arrest warrant

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Delegations will find attached updated information from the Republic of Estonia regarding the implementation of the European Arrest Warrant.

## Execution of a European arrest warrant

### Practical information issued by Estonia

#### I. PRELIMINARY COMMENTS

##### Applicable law

In the context of its relations with Member States of the European Union, since 1 July 2004 the Republic of Estonia has applied the European arrest warrant on its territory for the surrender of persons arrested, irrespective of when the offence forming the legal basis for the European arrest warrant was committed. The applicable law is Division 8 of Chapter 19 of the Estonian Criminal Procedure Code, adopted by *Riigikogu* (Parliament) on 28 June 2004 (*RT I 2004, 54, 387*).

Further information on this law may be obtained from the contact point of the Ministry of Justice whose address is noted in the practical details under item 6.

##### Organisation and structure

In accordance with Estonian law the execution authorities are Harju County Court if the person concerned has been arrested in Tallinn or Harju, Rapla, Lääne-Viru, Ida-Viru, Järva, Lääne, Hiiu, Saare or Pärnu County, and Tartu County Court if the person is arrested in Jõgeva, Põlva, Tartu, Viljandi, Võru or Valga County.

All incoming European arrest warrants must be sent to the Ministry of Justice (the central authority) by post, fax or any other means capable of producing written records.

All public prosecutors in Estonia may act as issuing judicial authorities for European arrest warrants for prosecution purposes, Estonian courts may issue European arrest warrants for court procedures and for the execution/enforcement of judgments.

## **II. PROCEDURE FOR EXECUTION OF EUROPEAN ARREST WARRANTS**

### 1. Provisional arrest

A person may be arrested on the basis of the European arrest warrant or provisional international arrest warrant sent via the SIRENE bureau and the decision must be taken by the judge carrying out the preliminary investigation at the request of the public prosecutor. The decision must be taken within 48 hours. At the same time the person must also be informed of the possibility of giving consent to his/her surrender.

If the person was arrested on the basis of the provisional international arrest warrant, **the EAW must be sent to the Ministry of Justice (Central Authority) within 3 working days**. If the European arrest warrant has not been received in time, the person sought will be released.

A provisionally arrested person must be informed of his/her right to be assisted by a lawyer.

### 2. Recording of consent

Consent to surrender must be given or repeated before the examining court. Consent is irrevocable.

### 3. Possibility for the issuing authority to submit comments

The issuing authority may be asked for additional information, but it may also transmit additional information on its own initiative. However, the issuing authority does not become a party to the proceedings and will therefore not be able to appeal.

### 4. Time limits within which the court must act

If a person consents to surrender, the court hearing must take place within 5 days of the date on which the European arrest warrant was received by the court and the decision must be taken within 10 days of the arrival of the European arrest warrant in Estonia.

### 5. Possible appeal against the decision to surrender and time limits applicable

An appeal against the surrender decision may be lodged within 3 days of receipt of the decision. An appeal against a decision of Harju County Court must be lodged with Tallinn Court of Appeal and a decision of Tartu County Court with the Tartu Court of Appeal.

An appeal against the decision must be heard in written procedure within 10 days of receipt of an appeal by the Appeal Court.

The decision of the Court of Appeal is final.

### 6. Grounds for non-execution

#### 6.1 Surrender will be refused, if:

- the Estonian Penal Code may be applied to the criminal offence and an amnesty precludes imposition of a punishment in Estonia for the criminal offence which is the basis for an arrest warrant;

- the person has been finally convicted or acquitted on the same charges in another Member State or, in the case of judgment of conviction, the punishment imposed has been served or the execution of the punishment cannot be ordered pursuant to the legislation of the State which made the judgment;
- the person with regard to whom an arrest warrant has been issued is under 14 years old;
- an arrest warrant has been issued with regard to an Estonian citizen for the execution of imprisonment and the person applies for enforcement of the punishment in Estonia.

## 6.2 Surrender may be refused, if:

- criminal proceedings concerning a criminal offence which is the basis for the arrest warrant have been initiated with regard to the person in Estonia;
- criminal proceedings concerning a criminal offence which is the basis for the arrest warrant have not been initiated or have been terminated with regard to the person in Estonia;
- the Estonian Penal Code may be applied to the criminal offence and the criminal offence which is the basis for the arrest warrant has expired pursuant to the Estonian Penal Code;
- the person has been finally convicted or acquitted on the same charges in a non-EU State or, in the same case of a judgment of conviction, the punishment imposed has been served or execution of the punishment cannot be ordered pursuant to the legislation of the State which made the judgment;
- the criminal offence which is the basis for the arrest warrant was committed outside the territory of the Republic of Estonia under the same circumstances;
- if the additional information has not been submitted by the requesting country in due time.

## 6.3 Guarantees

### 6.3.1 Custodial life sentence

A guarantee concerning the execution of a custodial life sentence is not required.

### 6.3.2 Nationals for the purpose of prosecution

Surrender of Estonian nationals will be guaranteed only for the purpose of prosecution and where the issuing judicial authority has provided a guarantee in writing that the person may serve his/her sentence in Estonia.

In this respect it is important to note that lack of double criminality will be an obstacle to the surrender of a national. The reason is that the existence of double criminality is a condition for the transfer of a sentenced person and, subsequently, of his/her sentence.

The arrangements for the transfer back to Estonia must be made with the Estonian Ministry of Justice.

## 7. Multiple requests

If several countries have issued the European arrest warrant for the same person, the competent court decides to which Member State the person is to be surrendered.

If a European arrest warrant and a request for extradition have been submitted in respect of the same person, the Minister for Justice will decide which request is to be executed.

## 8. Time limits for surrender of the person

All arrangements concerning surrender of a person to and from Estonia will be made via the SIRENE bureau.

The person is to be surrendered no later than 10 days after the court's legally binding decision. Surrender may be postponed on certain imperative grounds.

Surrender may be postponed if the person is charged with another offence in Estonia or is serving a prison sentence in Estonia. However, instead of postponement the person may be temporarily surrendered under a written agreement between the requesting State and Estonia.

### **III. PRACTICAL DETAILS**

#### **1. Competent authorities for the execution of a European arrest warrant**

Harju County Court is competent to conduct proceedings regarding the European arrest warrant if the person has been detained in Tallinn or in Harju, Rapla, Lääne-Viru, Ida-Viru, Järva, Lääne, Hiiu, Saare or Pärnu County.

Tartu County Court is competent to conduct proceedings regarding the European arrest warrant if the person is detained in Jõgeva, Põlva, Tartu, Viljandi, Võru or Valga County.

The competent prosecutor in the area of jurisdiction of the district or the State prosecutor submits a request for the person's surrender to the court.

#### **2. Telephone numbers, fax, e-mail**

##### **Estonian Ministry of Justice**

Tõnismägi 5a

15191 Tallinn

Tel +372 620 81 90

Fax +372 620 81 91

+372 620 81 09

E-mail: [central.authority@just.ee](mailto:central.authority@just.ee)

### **Harju County Court**

Liivalaia 24

15034 Tallinn

Tel +372 620 00 02

Fax +372 620 00 00

E-mail: [hmkliivalaia.menetlus@just.ee](mailto:hmkliivalaia.menetlus@just.ee)

### **Tartu County Court**

Kalevi 1

51010 Tartu

Tel +372 750 05 28

Fax +372 750 06 11

E-mail: [tartumk.menetlus@just.ee](mailto:tartumk.menetlus@just.ee)

### **SIRENE bureau**

Tööstuse 52

10416 Tallinn

Tel +372 612 38 10

+372 612 38 11

Fax +372 612 38 12

E-mail: [sirene@kkp.pol.ee](mailto:sirene@kkp.pol.ee)

3. Time limits and procedures for forwarding European arrest warrants to the Estonian authorities

**European arrest warrants must be submitted to the Estonian authorities within 3 working days of the person's arrest.**



If the person was arrested on the basis of an international provisional arrest warrant, the EAW must be supplied to the Ministry of Justice (central authority) within 3 working days by any secure means capable of producing written records.

4. Language in which the European arrest warrant should be forwarded to the Estonian authorities

Estonia accepts European arrest warrants drafted in or translated into **English or Estonian**.

5. Procedure for submitting comments

Contact the Ministry of Justice. Contact may be made by any suitable means (telephone, fax, e-mail).

6. National contact points

The central authority referred to in Article 7 of the Framework Decision is the Ministry of Justice (see the information above).

Arrest warrants and the correspondence relating thereto may however also be sent to the Estonian SIRENE bureau (see the information above).