

BELGIUM – National Procedures for Extradition
Updated 18/05/2015

The information contained in this table should be updated on a yearly basis.

<p>The Central Authority (name of the institution, address, telephone, fax and e-mail where available) responsible for extradition:</p>	<p>Federal Public Service Justice</p> <p>Directorate General Legislation, Fundamental Rights and Freedoms</p> <p>Central Authority</p> <p>International Cooperation in Criminal Matters</p> <p>115, Boulevard de Waterloo</p> <p>1000 Brussels – Belgium</p> <p>Central e-mail: centralauthority.iccm@just.fgov.be</p> <p>Central Fax number: +32 2 542 71 95</p>
<p>If different from the Central Authority the authority to which the request should be sent (name of the institution, address, telephone, fax and e-mail where available):</p>	<p>All extradition requests – both incoming and outgoing and contrary to European Arrest Warrants – are received and transmitted by the Central Authority.</p> <p>Contact details of the judicial authority or police service dealing with certain aspects of the extradition case are provided when necessary. It may happen that for practical reasons, direct contacts are required, esp. when the surrender – either way - needs to be arranged.</p>
<p>Channels of communication for the request for extradition (directly, through diplomatic channels or other):</p>	<p>Since Belgium made a reservation to the 2nd Additional Protocol, extradition requests need to be transmitted through the diplomatic channel.</p> <p>However, in practice and based upon reciprocity, direct transmission between central authorities is applied and accepted.</p> <p>Remark: This particular reservation will be lifted in the near future as part of a global revision of the declarations and reservations made to the CoE instruments in the realm of the PC-OC.</p>

Means of communication (e.g. by post, fax, e-mail ¹):	Beyond the formal transmission of extradition requests, all preliminary, intermediate and posterior communication can be done through e-mail or any other means of (direct) communication as appropriate.	
Language requirements:	<p>Extradition requests transmitted to Belgium must be accompanied by a French or a Dutch translation.</p> <p>Please consult with the central authority in case of doubt. Esp. when the wanted parson or the person sought is located in Brussels either Dutch or French applies. If the extradition request must be dealt with by the Prosecutor's Office for Eupen, a German translation helps.</p>	
Documentation required:	<p>Belgium does not require any other documentation than the documents in support of the extradition request required by the Convention and its Protocols.</p> <p>In case the extradition request is based upon 'old(er)' offences or aims at the execution of a sentence that was imposed a long(er) time ago, additional information on lapse of time of the prosecution or the sentence is most welcome.</p>	
Provisional arrest:	Time limit for presentation of formal extradition request if the person is in provisional arrest	40 days.
	Is there a need for an explicit request for prolongation of the provisional arrest beyond the 18 days mentioned in Article 16, paragraph 4 of the European Convention on Extradition (ETS No.24)?	No

¹ Please indicate if encryption or electronic signature is required.

<p>Extradition procedures: Please describe shortly the different types of procedure (e.g. normal, simplified, other) indicating the main differences:</p>	<p>The Belgian extradition procedure, including the detention for the purpose of extradition is barely regulated in the Extradition Act of 1874. Most aspects of the extradition process are (being) developed by case law – esp. the case law of the Belgian Supreme Court (Cour de Cassation).</p> <p>In a nutshell, the extradition process is chronologically divided in seven stages or phases. Of these the final stage 7 is optional since that stage only occurs when certain proceedings continue after the surrender of the person sought. Phase 1 is optional since not in all cases the person sought is provisionally arrested. Phase 3, the advice procedure does not apply when the person consents to his or her extradition (simplified procedure).</p> <p>1. Provisional arrest</p> <p>After the arrest by the police of a wanted fugitive that may last 24 hours, the prosecutor requests an investigating judge to issue a provisional arrest warrant on the basis of a provisional arrest request - usually an Interpol Red Notice.</p> <p>The fugitive can then request his provisional release to the court, both appeal and a supreme court petition are possible.</p> <p>2. Judicial evaluation of the extradition request – extradition requests based on an arrest warrant</p> <p>As soon as the extradition request arrives and the request is based upon an arrest warrant, the first instance court will decide on the conditions of the extradition. This is a pure formality since there is no hearing. The actual purpose of this procedure is to create a new basis for the detention of the fugitive. Since the PA-stage is over (and is strictly limited in time anyway in accordance with the extradition convention), the detention needs a new basis.</p> <p>This is the so-called <i>exequatur</i> of the foreign arrest warrant that then serves as a basis to continue the detention of the person sought.</p> <p>The <i>exequatur</i> can be appealed and finally there is a possibility to petition to the Supreme Court.</p> <p>This stage differs if the extradition request is based upon a definitive or at least an enforceable judgment. The judgment will immediately be notified and phase 3 then starts. In those cases, stage 2 takes very little time since there is no possibility whatsoever to appeal the notification.</p>
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3. The advice

Insofar the person sought did not consent to his extradition, the court of appeal will give an advice. After a hearing the advice is provided only to the Minister of Justice who solely decides on the extradition. The advice is not a binding decision, since it is for the Minister only. In this stage, the Court of appeal is a semi-administrative advisor to the Executive. The advice cannot be appealed (before the Supreme Court).

In case of consent, the simplified extradition procedure applies. Phase 3 is then skipped. The simplified extradition procedure still requires a full extradition package. The simplification is thus minimal.

4. The extradition order

The advice is the most important basis for the extradition order. The Minister may divert from the advice, either way – it is just an advice after all. The order must be motivated: especially when the advice is not followed in part or as a whole, the motivation of the order is even more important.

The extradition order is then served (notified) to the person.

5. Appeals against the extradition (order)

The extradition order can be the subject of a motion to suspend and to annul the order. This is an administrative appeal that is dealt with by the State's Council, the highest administrative court.

Such an appeal must be lodged within 60 days from the date of the notification of the extradition order.

The Council does not evaluate the underlying facts of the matter but rather evaluates the motivation of the extradition order. Hence the importance to explicitly mention all the arguments that have led to the (Executive) extradition order.

The appeal does in itself not suspend the execution of the order. Only when a *summary procedure* is used – i.e. when the surrender is imminent – the surrender is delayed (if necessary) until the judgment is made available. In summary proceedings, the State's Council decides within a few days.

6. Surrender

	<p>The surrender can take place despite a State's Council appeal, unless the Council would suspend the order after a summary procedure or in case the Council would impose a provisional measure.</p> <p>The surrender is arranged between police services, usually via Interpol channels.</p> <p>7. New or continued proceedings (after the surrender)</p> <p>After the surrender, State Council's Proceedings may continue since these do not suspend the execution of the extradition order.</p> <p>Other proceedings may be started, even long after the surrender.</p> <p>ECtHR proceedings may also continue after the surrender.</p>
<p>Detention before and after the receipt of the extradition request, (deadlines, conditional release, etc.):</p>	<p>Provisional arrest is a <i>sui generis</i> type of deprivation of liberty since it is solely for the purpose of extradition. The only relevant condition is the existence of a (imminent) risk of flight. Typically foreigners having a legal residence in Belgium will not be provisionally arrested, unless a sudden risk of flight would occur.</p> <p>From the (timely) arrival of the extradition request and the subsequent notification of either the judgment or the arrest warrant (after exequatur) – see stage 2 above, the person sought is detained for the purpose of extradition. That detention is in principle indefinite, i.e. until the surrender takes place. It is the person sought who should, during the extradition proceedings and at any given time, request his provisional release. Appeal and Supreme Court appeals are always possible, either by the person sought or the prosecutor's office.</p>
<p>Statutes of limitation for the purpose of prosecution and for the execution of sentences (general principles):</p>	<p>Since the statutes of limitation regulation is complicated, we advise to consult the Central Authority if an issue on lapse of time rises.</p> <p>Lapse of time is always evaluated <i>in abstracto</i>: the time limit for a crime applies, even when that crime would be prosecuted in Belgium as a lesser offence carrying a lesser</p>

sentence and consequently a much shorter period of time allowed for the prosecution of such an offence.

Time limits for the **prosecution** are regulated in article 21 and following of Preliminary Title of the Criminal Prosecution Code.

Counting from the day of the (last) fact(s), the basic delay is 5 years for offences and 10 years for crimes (punishable with a sentence of 5 years or more). The prosecution of the crime of murder elapses after 15 years. This delay will be prolonged to 20 years later this year (2015).

Acts of investigation and acts of prosecution interrupt the above delays, which means that if such an act occurs on the last day of the initial 5, 10 or 15-year period, the delay will be doubled to 10, 20 or 30 years. According to case law acts of investigation and acts of prosecution are interpreted very widely. For instance, the mere emission of an Interpol Red Notice is considered an act of investigation and interrupts the statutes of limitation.

Other acts *suspend* the lapse of time period.

Not all interrupting and suspending acts are regulated in the law: case law, esp. of the Belgian Supreme Court (Cour de Cassation) is at least as important.

Time limits for the **execution of sentences** are regulated in articles 92-96 of the Criminal Code.

The delay starts running from the date of the (final) judgment imposing the sentence.

Correctional sentences (maximum 5 years) of less than 3 years elapse after 5 years.

Correctional sentences of more than 3 years elapse after 10 years.

Criminal sentences (more than 5 years) elapse after 20 years.

The arrest of the sentenced person (fugitive) is the only interrupting act (article 96 BCC). The term 'arrest' is interpreted broadly: it includes every arrest for the purpose of the execution of the sentence, such as the provisional arrest in another jurisdiction for the purpose of surrender

	<p>or extradition.</p> <p>A special regulation applies in case the sentenced person 'escapes', or rather flees after a portion of the sentence is executed. During the time frame the sentenced person fled, the time limit is suspended (article 95 BCC).</p> <p>Certain legal acts suspend the execution of the sentence and thus the status of limitation. The above indicated delays do not run during a conditional release or as long as the sentence or a part of the sentence is suspended on probation.</p>
Provisions concerning extradition of nationals:	<p>Belgium does not extradite its nationals, not even for prosecution purposes only and under the condition of the 'return' of the person sought in order to serve his or her sentence in Belgium.</p> <p>(Belgian) nationality is determined at the time of the extradition decision and not the time of the offence(s).</p> <p>The only exception is contained in the nationality clause of the Belgian-Moroccan extradition Convention of 07.07.1997. According to this Convention, nationality is assessed at the time of the offence(s).</p>
Surrender (e.g. deadlines):	<p>There are no particular – legal - deadlines for the surrender, other than the 30-days timeframe provided for in article 18§4 of the Convention.</p>
Other particularly relevant information (such as, specific requirements concerning double criminality):	<p>Double criminality is always evaluated in abstracto and departing from the period of time the extradition request is evaluated (the final day is the day of the extradition order, yet this is theoretical).</p>
Links to national legislation, national guides on procedure,	<p>www.just.fgov.be</p>

