

# Social Fieldwork Research (FRANET)

## European Arrest Warrant proceedings – safeguards for requested persons

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## EXECUTIVE SUMMARY

The goal of this study was to evaluate how and to what extent Latvian national legal standards comply with the rules covering the European Arrest Warrant procedure. The two-fold analysis include the legal outline of the relevant national law and its compatibility with the EU regulations, which is then followed by the summaries of the interviews from the prosecutors and lawyers issuing and executing the EAW in Latvia.

The analysis covers the following main research topics: right to information, right to interpretation and translation, right to access to a lawyer, factors considered in issuing and execution of the EAW, and the use of digital and technological tools in EAW proceedings in Latvia.

### *Right to information*

According to the rules of the surrender procedure in Latvia, set out in article 715 of the Criminal Procedure Act, the requested persons should receive information on their rights in a written form in the Letter of Rights. Findings of the study demonstrate that the law is very well implemented in practice as all practitioners agree that there have been no such cases when requested persons are not informed of their rights and the EAW content.

### *Right to interpretation and translation*

The right to have the criminal proceedings conducted in a language that the person understands is a fundamental right of the Latvian Criminal Procedure, and this is applied also to the EAW proceedings. Before finishing examination on the surrender request, the authorities are required to provide the European arrest decision in a language that the requested person understands. The interviews with practitioners demonstrate that the right to interpretation and translation is robustly ensured and the requested persons are provided with all the necessary translation and interpretation services in Latvia. Documents in Latvian, Russian, or English are provided as a daily practice, but, if necessary, also translated into other languages.

### *Right to access to a lawyer*

In cases when Latvia acts as an executing State, the rights of the requested person are regulated by Latvian legal standards, and according to them the defendant can request a lawyer for legal aid and meet with the lawyer under conditions that ensure confidentiality. When Latvia acts as an issuing State, the requested person will be treated under the Latvian criminal procedure, and the defendant enjoys the fundamental rights of the person entitled to a defence in criminal proceedings. The interviews with practitioners reveal that legal assistance is provided as all practitioners do not see any problems relating to legal representation in EAW cases and proceedings in Latvia. Importantly, that the consent to surrender always is made in a presence of the lawyer and after explaining the consequences to a requested person. If requested, authorities provide a list and contact details of all available lawyers. If asked to find a particular lawyer, this is ensured. However, the appointment of a lawyer in the issuing Member State or communication with a lawyer appointed in the issuing Member State usually does not happen as the EAW decision is usually made quickly.

### *Issuing and execution of the EAW – the factors considered*

The procedure for a European arrest warrant is described in the Latvian Criminal Procedure Act, and according to it, surrender of a requested person may be implemented if a person has been accused of committing a criminal offence punishable under the Latvian Criminal Procedure Act and the expected prison sentence is at least for one year. The interviews with practitioners reveal that proportionality and the individual situation of a requested person are considered when issuing and executing the EAW. The most problematic cases are when the EAW concerns the execution of a conviction for a person tried *in absentia*.

### *The use of digital and technological tools in EAW proceedings*

The most important digital tool used by Latvian practitioners is e-mail, which facilitates fast exchange of documents. However, scanned documents in an e-mail are duplicated by the exchange of hand-signed original documents by regular mail. The exception in this regard is Lithuania and Estonia, where electronically signed documents are accepted. In this regard, the Latvian practitioners believe that a unified EU digital system containing information about each case would be useful and could reduce the circulation of paper documents.

The use of the video conferencing format in the EAW proceedings is not very widespread in the EAW proceedings and was used mainly during the Covid-19 pandemic in court. Regarding the potential to use a format of video conference in the EAW proceedings the interviewed practitioners are sceptical. They do not think that this would lead to fewer EAWs being issued. On the contrary, they think that video conference format is comparably more time and resource consuming, there are risks of technical problems, risks of very formal proceedings in court, and during the videoconference there is a risk that next to the detained person there is another person influencing them (for example, by writing the answers for them).

## INTRODUCTION

Eight interviews were conducted with practitioners working with issuing and executing of the EAW: four with lawyers (L1, L2, L3, L4), and four with prosecutors (J1, J2, J3, J4) for the purposes of the study.

Among the prosecutors, two prosecutors specialize in executing of the EAW, and two prosecutors - in issuing of the EAW. In total, there are only four prosecutors working with the EAW in Latvia.

Among the lawyers, one lawyer has been involved in the EAW cases as a private lawyer, other three lawyers have been engaged as state-provided guaranteed legal aid lawyers. All lawyers could speak mostly about the executing of the EAW and had little knowledge about the issuing of the EAW.

Six interviews were organized as face-to-face interviews in the premises of the workplace of the interviewee. Two interviews were conducted remotely (by using the MS Teams and the Zoom platform). All interviewees signed a consent form agreeing to be audio-recorded, and all interviews were recorded.

### ○ PREPARATION OF FIELDWORK, IDENTIFICATION AND RECRUITMENT OF PARTICIPANTS

To identify relevant prosecutors with EAW experience, international relations department of the Office of the Prosecutor General was contacted. The head of the department swiftly responded by providing the names of two prosecutors executing EAW decisions. They, in turn, suggested the names of colleagues specialising in issuing of the EAW. It appears that all prosecutors with EAW experience were identified and interviewed in Latvia. In identifying lawyers with EAW experience, challenges were encountered. Informal contacts were initially approached at the Latvian Bar Association, followed by a formal letter with accompanying information about the project, albeit with no response. One of the interviewed prosecutors (P2) suggested the name of a private criminal case lawyer. Another private lawyer was identified, however that lawyer's experience in EAW cases dealt with fundamental rights issues and not procedural matters. The interviewer noted frictions among prosecutors towards lawyers as prosecutors would not provide lawyers' names when requested. Eventually a private lawyer suggested that we approach the Latvian Bar Association by requesting information from senior advocates responsible for regions about state appointed lawyers in EAW cases. Information was received from the Latvian Bar Association that senior advocate from Riga Region had sent six names of advocates with EAW experience, of whom four had agreed to be interviewed. Three advocates were contacted, and all agreed to be interviewed.

### ○ SAMPLE AND DESCRIPTION OF FIELDWORK

In total, eight interviews were conducted with practitioners working with issuing and executing of the EAW: four with lawyers and four with prosecutors. The average length of the interviews was between half an hour and one hour, depending on the experience of the interviewee. The atmosphere of the interviews was generally positive and open to research. At the same time, the interviewed prosecutors did not like it if the questions asked did not relate to their sphere of competence.

Defence lawyers:

Requested: 4, completed: 4

Judges/prosecutors:

Requested: 4, completed: 4

**Table 1: Sample professionals**

	<b>Group</b>	<b>Expertise in EAW proceedings</b>	<b>Gender</b>
1	Defence lawyer	Yes	Male
2	Defence lawyer	Yes	Female
3	Defence lawyer	Yes	Female
4	Defence lawyer	Yes	Female
5	Prosecutor	Yes	Male
6	Prosecutor	Yes	Male
7	Prosecutor	Yes	Male
8	Prosecutor	Yes	Female

○ **DATA ANALYSIS**

The data analysis includes: (1) the analysis of legal standards, provisions or accompanying guidance governing the issuing and execution of the EAW and regarding the right to information, the right of interpretation and translation, and the right to access to a lawyer; and (2) the analysis of practitioners’ opinion on whether and how these rights are ensured in practice, and their experience in issuing and executing of the EAW. The analysis of interviews with the practitioners is based on the Interview Reports prepared according to the provided templates and prepared shortly after interviews.

○ **BRIEF OVERVIEW OF THE REPORT’S CONTENTS**

Chapter 1 deals with the legal standards regarding the right to information of requested persons in Latvia acting as an executing MS, and the procedures implemented in practice. Information obtained from interviews with the interviewed practitioners provides insight into their understanding of national practices related to the right to information and how they ensure that this right is applied in practice.

Chapter 2 provides information on legal standards and practice relating to the provision of interpretation and translation that the requested persons in Latvia should enjoy. The interviews with prosecutors and lawyers reveal how they ensure that the right to interpretation and translation of information is applied in practice.

Chapter 3 outlines legal provisions governing access to a lawyer including legal aid in the EAW proceedings both when Latvia is an executing State, and when Latvia is an issuing State. Information obtained in interviews provides practitioners’ opinion on whether and how these rights are ensured in practice, identifying the best practices and criticism.



Chapter 4 summarizes the information on legal provisions or accompanying guidance governing the issuing and execution of the EAW. In the second part of this chapter, the experiences of the practitioners are provided, and they inform whether certain specific circumstances are considered in these procedures.

Chapter 5 analyses legal standards and usage of digital tools, such as on-line questioning or digital transfer of documents during EAW proceedings, this chapter also details how the digital cooperation might look in the future.

## RESEARCH FINDINGS

### 1. Right to information

#### a. Legal overview

According to the rules of the surrender procedure in Latvia, set out in article 715 of the Criminal Procedure Act (*Kriminālprocesa likums*) (CP), the requested person is granted the rights as described in articles 60<sup>2</sup> CP and 698 CP, which they receive in a written form in the Letter of Rights.<sup>1</sup> If the requested person is in detention, the authorities must provide them with a written statement of their rights, and this process should be documented in the detention report.<sup>2</sup> (1) A person who has the right to defence has the following rights: 1) to immediately retain a defence counsel and enter into an agreement with him or her or to use the legal assistance ensured by the State if the person is incapable of entering into an agreement with the defence counsel at the person's own expense; 2) to meet a defence counsel in circumstances that ensure confidentiality of the conversation without a special permit from the person directing the proceedings and without limitation of time; 3) to receive legal assistance from a defence counsel; 4) to request participation of an advocate for ensuring defence in a separate procedural action in the cases provided for by the law, if an agreement on defence has not been entered into yet with a particular advocate or this defence counsel has been unable to appear; 5) to receive from the person directing the proceedings a list of advocates who practice in the relevant court district, as well as to use telephone free of charge for retaining a defence counsel; 6) to be notified of what assumption has been made or what suspicion has arisen against the person or what prosecution has been brought against him or her; 7) to receive an oral or written translation in a language comprehensible to him or her in accordance with the procedures and in the scope laid down in the law; 8) to stay silent, testify or refuse to testify; 9) to appeal the procedural decisions in the cases, within the terms and in accordance with the procedures laid down in the law; 10) to request information regarding the direction of the criminal proceedings, regarding officials who conduct or have conducted the particular criminal proceedings, regarding the restrictions of the rights applicable to a person and their time periods; 11) to request that a defence counsel be replaced, if the obstacles to his or her participation determined in the Law exist.<sup>3</sup> Article 60<sup>2</sup> details with the general fundamental rights of a defendant in criminal proceedings. Whereas the rights of the requested person are specifically defined in the article 698 CP, providing the requested person with the right of interpretation and translation, the right to access the information on the EAW, the right to know who and on what basis is requesting the surrender, and to receive explanations in connection with the surrender procedure, as well as to familiarize themselves with all the investigation files.<sup>4</sup> There are various provisions detailing the requested person's right to a lawyer, for instance, the right to receive a list of lawyers and contact them free of charge.<sup>5</sup> Conversations with lawyers are confidential, and, finally, it should be possible for them to request for a lawyer in the issuing State.<sup>6</sup> After they are informed of their rights, the requested persons can decide whether they wish to consent to the surrender.<sup>7</sup> Alternatively, the requested person may agree to a simplified surrender procedure, which is the case when the person is not a citizen of Latvia and if they give their consent to a simplified

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<sup>1</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 715 (1).

<sup>2</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 699 (3).

<sup>3</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 60<sup>2</sup>.

<sup>4</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Arts. 698 (2) subparas. 1., 2., 3., 5.

<sup>5</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Arts. 698 (2) subparas. 6., 7., 9.

<sup>6</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Arts. 698 (2) subparas. 6., 7., 9.

<sup>7</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 698 (2) subpara. 3.

surrender, which is a fast tracked version of the surrender procedure.<sup>8</sup> Finally, the Criminal Procedure Act obliges the authorities to notify the person's relatives, educational institution or employer about the detention.<sup>9</sup> The requested person has the right to provide explanations with regards to the surrender, as well as to agree or disagree with their surrender.<sup>10</sup>

#### *Application of the 'speciality rule'*

Although there is no direct reference to the term 'speciality rule' or renunciation of it within the Latvian CP, there is an indication that it is possible to prosecute the person for other offences other than that for which they were surrendered, if they have given their consent to this.<sup>11</sup> Moreover, when the national courts refer the CP rules in the national EAW cases, they use the term 'speciality rule'.<sup>12</sup> EAW permits that the consent to surrender equals the renunciation of the speciality rule, however it is required that the state must notify the General Secretariat of Council first, if it chooses to apply this principle. However, when reached out, the Ministry of Justice of Latvia responded that such a notice has not been given to the General Secretariat of Council by the Latvian authorities.

#### *Information Comprehension*

The requested person is entitled to an explanation of the surrender procedure to decide whether they agree or disagree with their surrender.<sup>13</sup> In the simplified procedure, that is, when the person has given their consent to a simplified surrender, the lawyer is present when the person is consenting to the surrender.<sup>14</sup> Effectively, it means that the lawyer will inform them of the content and consequences of such action. The process of the requested person giving their consent and renunciate the speciality rule is documented in a written report.<sup>15</sup>

Article 699 CP mentions that the requested person has two sets of rights, those are, the Fundamental Rights described in article 60<sup>2</sup> CP that they obtain as a defendant in a criminal proceeding, and the rights as a requested person, which are laid down in article 698 (2) CP. It further specifies that the Letter of Rights should be issued in accordance with article 698 CP.<sup>16</sup> However, the only rights that are referred in article 698 CP, are the rights of the requested person. It does not clarify whether the Letter of Rights should also include the Fundamental rights of article 60<sup>2</sup> CP. *[Although from the interviews it can be concluded that in fact, the requested person is also provided with the written statement of their Fundamental Rights as a defendant in a criminal proceeding.]*

According to the article 60<sup>2</sup> CP, a minor's signature is required to certify they have received the information and explanation of their rights.<sup>17</sup> However, it is not clearly indicated if that is a general rule with adults as well, or whether this rule is applied within the EAW surrender procedure at all.

#### *Remedies in case they are not provided with information about the EAW and about their rights during the proceedings*

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<sup>8</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 713.

<sup>9</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 698 (2) subparas. 1-9.

<sup>10</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 698 (2) subpara. 3.

<sup>11</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 695 (2) Subpara 2<sup>1</sup>.

<sup>12</sup> Latvia, Kurzeme Regional Court (*Kurzemes apgabaltiesa*), Liepāja/ 11261075113, 16 March 2016.

<sup>13</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 698(2) subpara 3.

<sup>14</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 713 (2).

<sup>15</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 715(2).

<sup>16</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, 699 (3).

<sup>17</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 60.<sup>2</sup> (4).

In general, the requested person can appeal the decision of their surrender before the Supreme Court within 10 days.<sup>18</sup> Except for the cases, when the person has already consented to their surrender before.<sup>19</sup> However, the legal provision does not detail if the grounds for the appeal can be procedural or substantive, therefore it is not clear whether failure to provide the information about the EAW would affect the surrender procedure.<sup>20</sup>

If the requested person was not informed in advance that the criminal proceedings were instituted against them, and the decision was given in their absence, they can request a copy of the decision, and the Prosecutor General should request the issuing State to make the judgment available, this, however, does not prevent person's surrender.<sup>21</sup>

b. Right to information in practice

- Provision of information (when, how by whom)

According to the information provided by the prosecutors working with the execution of the EAW a Letter of Rights is issued in writing as soon as a person is detained or at the first meeting. In general, there are two options. First, if there is detention, a Letter of Rights is given by the police officer. Second, if not detained, a Letter of Rights is issued by the prosecutor's office. Both prosecutors working with the execution of the EAW in Latvia, emphasize that a Letter of Rights is issued according to the Directive 2012/13/EU. The interviewed lawyers also believe that the detained persons are informed about their rights upon arrest, because the information is issued in writing, and they believe that the rights of persons arrested on a European Arrest Warrant are respected in Latvia. The document on rights has always been prepared in advance:

Q: In your opinion, are the persons detained under the European Arrest Warrant in Latvia informed of their rights after this detention?

A: I believe that they have been informed, because in most cases these rights are also issued in writing and signed for receipt. Therefore, I believe that it is respected in Latvia. [...] The question could only be whether these rights are sufficiently explained. One is that the rights are written, and the other is that whether its meaning is explained, people do not always understand everything. From the formal side, everything is done in 99.9% of cases.

*(Lawyer, Latvia).*

A: Yes, they are informed! A list of rights is issued, in writing. As far as I have seen, they usually print from the law what the rights are. [...] He/she gives this page with rights and says - this remains for you, if you have any questions, you can ask them or you can talk to a lawyer.

*(Lawyer, Latvia).*

A: Yes, rights are always issued to requested persons. Individuals have the right to familiarize themselves with this document, individuals have the right to ask questions if something is not clear. Rights are always explained to persons, while also taking into account that the person

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<sup>18</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Arts.720 (1), (2).

<sup>19</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 720 (1).

<sup>20</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 720 (2).

<sup>21</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 715 (3bis).

also has the right to a lawyer; then the person can also ask the lawyer at any moment. [...] The prosecutor issues in writing and explains, too. And as I already mentioned, if something is not clear, then at any moment the person asks for a lawyer to explain.

*(Lawyer, Latvia).*

A: I would say yes, but it depends a lot on the situation and its complexity. Circumstances are created for a person to be informed, but is he or she actually informed and understands all his/ her rights... I think it's not always all that great. I would say yes, but not 100%.

Q: What makes you think that this person does not always understand his/her rights?

A: I remember a case where a Lithuanian citizen was detained and was to be extradited to Lithuania. I think there was a little problem with the translation. And it was difficult for me to understand how well translation is provided, because I don't understand Lithuanian. Then I thought that maybe she didn't fully understand what was being said to her. Maybe the text was formally translated correctly, but sometimes that wording is difficult to understand even in the native language. It seems that sometimes there can be problems with their translation. I also remember a guy who was invited to the police completely unexpectedly, and he was suddenly taken into custody, and the arrest warrant was provided. He was already given those rights printed on a page... I have only worked with one prosecutor, he is really very professional and good, but I think that in that situation the guy was caught so much by surprise that, when he was told his rights, but I think he didn't fully understand. I think that's a huge disadvantage, and I've seen it in any situation where there's an arrest and a person is just caught by surprise. They give him the pages and say - read and sign. But whether he understands even if it is read to him, that is already such a broader question. [...] Formally it is implemented, but I am not sure if it is effective in all cases.

Q: How and who informs about these rights?

A: Primarily, the prosecutor works and issues the page with the rights. [...] In my opinion, the prosecutor works very professionally. He actually also explains the situation to the requested persons himself. With him, the model has always been that it is issued in writing, he explains himself, and then the persons is always asked if they want to talk to a lawyer. If they have any questions or if I feel that something has not been fully explained, I will double check as a lawyer. But there are people who do not always understand, and as a lawyer I also understand that they have not always fully understood everything.

*(Lawyer, Latvia).*

One of the interviewed prosecutors expressed an opinion that the police do not always explain the rights of a requested person. But a Letter of Rights is a rather long document (up to four pages) and quite complicated, not easy to understand for the average person.

*Q: What rights are a person informed about in this written document?*

*A: All rights. Three or four pages. In line with the amendments to the Directive. The rights of the suspect, the rights of the person involved in the criminal proceedings, the rights of the detained person, plus the individual rights of the person to be extradited. It is just enough for a person to read and understand nothing. It may be useful for a lawyer, but an ordinary person cannot perceive such a pile of rights. He hardly understands anything in that confusion.*

*Q: Do the police explain this right when detained?*

A: No, there must be a lawyer to explain. A Letter of Rights is handed, he can read afterwards. (Prosecutor, Latvia).

This negative aspect is mitigated by the fact that both the prosecutor and the lawyer meet with the detained person quite soon after detention, and they already give a detailed explanation. The prosecutor, when informing about the contents of the EAW, also issues a Letter of Rights in writing, if necessary, with a translation.

**Table 2: Are persons arrested on an EAW informed about their procedural rights?**

	L1	L2	L3	L4	P1	P2	P3	P4	Total
<b>YES</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>8</b>
In writing (Letter of Rights)	-	-	-	-	-	-	-	-	<b>0</b>
Orally	-	-	-	-	-	-	-	-	<b>0</b>
In writing (Letter of Rights) and orally	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>8</b>
<b>NO</b>	-	-	-	-	-	-	-	-	<b>0</b>
<b>Don't know/remember</b>	-	-	-	-	-	-	-	-	<b>0</b>
<b>Did not answer</b>	-	-	-	-	-	-	-	-	<b>0</b>

- Information about the EAW – content and procedure

The prosecutor is obliged to present the EAW content to a requested person within 48 hours after detention. The document is issued in writing. Both prosecutors working with the execution of the EAW in Latvia, issue the document in writing, and inform also orally. The interviewed private lawyer confirms that at the time of detention, the requested persons are informed about the contents of the EAW against them very briefly, in a few sentences. It is written very briefly also in the arrest protocol. But, in a very short time, on the same day or the next, there is a meeting with the prosecutor, who already gives a detailed explanation.

In general, all interviewees agree that a requested person is always informed of why she or he is being detained. The interviewees cannot even theoretically imagine a situation where a requested person is not informed about the contents of the EAW against him or her.

**Table 3: Are persons arrested informed of the contents of the EAW against them?**

	L1	L2	L3	L4	P1	P2	P3	P4	Total
<b>YES</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>8</b>
In writing	-	-	-	-	-	-	-	-	<b>0</b>
Orally	-	-	-	<b>X</b>	-	-	-	-	<b>1</b>
In writing and orally	<b>X</b>	<b>X</b>	<b>X</b>	-	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>7</b>
<b>NO</b>	-	-	-	-	-	-	-	-	<b>0</b>
<b>Don't know/remember</b>	-	-	-	-	-	-	-	-	<b>0</b>
<b>Did not answer</b>	-	-	-	-	-	-	-	-	<b>0</b>

- Information on consenting to surrender

Both interviewed prosecutors and lawyers confirm that the procedure of consenting to the surrender takes place already in the presence of a lawyer when the person has already been introduced to the content of extradition request. The lawyers inform that the prosecutors who work with the execution of the EAW, work very correctly, and explain everything, but in addition there is also an explanation from the lawyer. The requested persons are informed about renouncing the ‘speciality rule’ meaning that if they consent to surrender, they might be prosecuted or detained for previous offences not specified in the current warrant. This is ensured by the prosecutors.

**Table 4: Are the requested persons informed about what consenting to their surrender entails?**

	L1	L2	L3	L4	P1	P2	P3	P4	Total
<b>YES</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>8</b>
<b>NO</b>	-	-	-	-	-	-	-	-	<b>0</b>
<b>Don't know/remember</b>	-	-	-	-	-	-	-	-	<b>0</b>
<b>Did not answer</b>	-	-	-	-	-	-	-	-	<b>0</b>

- Understanding of information

According to the information provided by the prosecutors working with the execution of the EAW, during the meeting of requested persons with a prosecutor, a prosecutor explains the contents of the EAW against them, and their rights if it is needed to guarantee that a requested person understands the information provided. The explanation of the information is given in plain and simple language. Verification as to whether the requested person understands the information about the EAW and about their rights is provided in the conversation, the prosecutor asks if the person understands everything:

*Q: From your experience, do requested persons understand the information provided?*

*A: Yes. I explain until the person understands. People are very confused, and the process is very short. I explain in a simple language. Most people understand.*

*(Prosecutor, Latvia).*

The interviewed lawyers confirm that in general, requested persons in Latvia understand the information because, firstly, prosecutors give the explanation of the rights, and secondly, the presence of a lawyer is always ensured. The perception of information is sometimes hindered by the quality of the translation or the shock that the person is about to be arrested. However, this problem is most often resolved by the lawyer explaining the issues until the person fully understands everything. When deciding whether to agree to extradition or to go the appeal route, the requested person is given the necessary information to choose between both and understand the consequences. This negotiation process shows whether a requested person is fully aware of the entire situation and the risks involved. Everything is explained to a sufficient extent so that a person can decide which way to go, because this decision is made by a requested person, not by a prosecutor or a lawyer. In Latvian practice, there

have been no such cases when requested persons are not informed of their rights. The rights are also explained in court and, if necessary, translated with the help of an interpreter.

c. Additional best practices or challenges

The main challenge regarding the provision of information refers to the fact that a Letter of Rights is a rather long document (up to four pages), and it is quite complicated to understand for the average person. In a situation of detention, a person may not be able to immediately perceive everything that is written there. However, a requested person can read the document afterwards.

This negative aspect of a Letter of Rights (a long document that is hard to understand), is mitigated by the best practice in explaining the given information and rights. Both a prosecutor and a lawyer meet with the detained person shortly after detention, and they provide a detailed explanation.

d. Discussion of findings

Despite the legal requirement that the requested persons should be informed about their procedural rights, findings show that the understanding of the information and the subsequent rights of the requested person is difficult. The information provided is long and hard to understand for the average person. The police, which is present at the moment do not explain the procedural rights of the detainee. However, the information from the practical application of EAW reveals that the person receives the explanation of their rights within 48 hours, which is provided by the Prosecutor's Office. Generally, the requested persons are informed about what consenting to their surrender entails. In most cases they do not agree with renunciation of the speciality rule.



## 2. Right to interpretation and translation

### a. Legal overview

One of the conditions attached to the surrender procedure is that the process happens in a language that the requested person understands, this is established in article 715(1) of the CP.<sup>22</sup> Before finishing examination of the surrender request, the authorities are required to provide the European arrest decision in a language that the requested person understands.<sup>23</sup> Generally, the right to receive the criminal procedure in a language that the person understands is considered to be a fundamental right of Latvian Criminal Procedure.<sup>24</sup> This principle applies during all criminal proceedings, including the execution of the European arrest warrant.<sup>25</sup> The translation and interpretation guidelines are detailed in article 11 CP, where many of the rules are transposed from the Directive 2010/64/ES on the right to interpretation and translation in criminal proceedings. According to article 11 CP, the interpreter should be present during the defendant's meeting with the defence counsel, this is ensured by the instigator of the proceedings.<sup>26</sup> The interpreter's service is free of charge during preparation, drafting and the process of pre-trial as well as trial hearings, their services are also guaranteed for free for drafting complaints on the criminal procedure violations, appeals or cassation appeals.<sup>27</sup>

Article 11 CP further details who and how the necessity for the translator is decided. In most cases, it is the person who is directing the criminal proceedings, that is the criminal prosecutor.<sup>28</sup> In the case of detention, it is the authority of the detention place.<sup>29</sup> The rules on the necessity and extent of interpretation or translation are determined by the Cabinet of Ministers.<sup>30</sup> The requested person and their lawyer have to submit a request for translation, stating the purpose and language of the translation, and then the criminal prosecutor decides whether the translation will be necessary.<sup>31</sup> The evaluation process is not further detailed, however, case law suggests, that even if the person understands Latvian, it is still necessary to translate the process if the person is not capable of expressing themselves entirely. The defendant's knowledge of the language is an essential element, and the court should consult the defendant and examine the need to involve an interpreter in the proceedings.<sup>32</sup> In a case when the requested person's language knowledge is not properly assessed, the Supreme court can refer to the serious violation of criminal procedure as described in article 575(4), and make the decision void.<sup>33</sup> Although the EAW decisions are not publicly available, the other case law that refers to this article clarifies that his right is derived from Directive 2010/64/ES on the

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<sup>22</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Arts. 715 (1), 698 (2) subpara. 2.

<sup>23</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 715 (1).

<sup>24</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 60<sup>2</sup> (1) subpara. 7.

<sup>25</sup> Latvia, Cabinet of Ministers of the Republic of Latvia Amendments to the Criminal Procedure Act (*Grozījumi Kriminālprocesa likumā*) 90/TA-1976 (2012).

<sup>26</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 11(2).

<sup>27</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 11 (2bis).

<sup>28</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 11 (2).

<sup>29</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 11 (2<sup>2</sup>).

<sup>30</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 11 (2<sup>3</sup>).

<sup>31</sup> Latvia, Procedure for the provision of interpreter assistance to a person entitled to a defence during a meeting with a defence counsel (*Kārtība, kādā personai, kurai ir tiesības uz aizstāvību, tikšanās laikā ar aizstāvi tiek nodrošināta tulka palīdzība*) Cabinet of Ministers Regulation No 1342.

<sup>32</sup> Latvia, Supreme Court of the Republic of Latvia (Latvijas Republikas Augstākā Tiesa) Rīga/SKK-556/2016, 9 December 2016, p. 2.

<sup>33</sup> Latvia, Supreme Court of the Republic of Latvia (Latvijas Republikas Augstākā Tiesa) Rīga/SKK-556/2016, 9 December 2016, p. 2.

right to interpretation and translation in criminal proceedings.<sup>34</sup> Since this is the same directive that should be applied in EAW decisions, one can assume that the same rules are applicable to the EAW procedure.

#### *Rules governing the provision of live interpretation*

It is not established whether the interpretation can happen also via digital tools. After the pandemic outbreak, many governmental services changed to digital setting, however, there is no clear indication if this is the case with live interpreters as well.<sup>35</sup> Generally, it seems that the interpreter is visiting in person. Evidence that the interpreter is providing the services in person, is in the Notice of provision of translation,<sup>36</sup> which is filled out by the interpreter and includes the time, route and cost of travel expenses.<sup>37</sup> With regards to verification of the quality of interpretation, the interpreters know their rights and duties and are informed that they will have to face the consequences if they mistranslate or refuse to translate, exception is made for professional interpreters, who already have confirmed their responsibility with a signature up taking their duties as a professional.<sup>38</sup>

#### *Remedies in case interpretation or translation is not provided*

The EAW section of the criminal procedure does not mention available remedies in case the interpretation or translation during the EAW proceedings is not provided. However, the rules of the general criminal procedure are also applicable to the EAW proceedings, and in the case, there are certain violations of the procedure, the person can request an appeal. Not providing a translation in the criminal procedure is considered a serious violation of the criminal procedure, which can result in the court's decision being void.<sup>39</sup>

#### b. Interpretation and translation in practice

- Provision of interpretation (decision and means)

The interviewed prosecutors inform that if a requested person does not speak the official language, the state provides them with an interpreter. The process includes both, the interpretation in person and translation of the documents. The languages that the person speaks are indicated in the detention report, which is prepared by the police. The presence of the interpreter is mandatory in court. A Russian interpreter is needed very often in court. A Lithuanian interpreter is also provided regularly.

The interviewed lawyers confirm that requested persons are always provided with interpretation and translation when needed. In the lawyers' experience the translation is always provided fully, and there has not been a case when some part of the procedure is not translated. The criteria whether

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<sup>34</sup> The EAW decisions are not publicly available.

<sup>35</sup> Latvia, Latvian Court Administration (Latvijas Tiesu Administrācija) *Guidelines for organising the work of the courts during a state of emergency*, 23.12.2020. Available at: [https://www.ta.gov.lv/lv/jaunums/vadlinijas-tiesu-darba-organizesanai-arkartejas-situacijas-laika?utm\\_source=https%3A%2F%2Fwww.google.com%2F](https://www.ta.gov.lv/lv/jaunums/vadlinijas-tiesu-darba-organizesanai-arkartejas-situacijas-laika?utm_source=https%3A%2F%2Fwww.google.com%2F)

<sup>36</sup> Latvia, Procedure for the provision of interpreter assistance to a person entitled to a defence during a meeting with a defence counsel (*Kārtība, kādā personai, kurai ir tiesības uz aizstāvību, tikšanās laikā ar aizstāvi tiek nodrošināta tulka palīdzība*) Cabinet of Ministers Regulation No 1342.

<sup>37</sup> Latvia, Procedure for the provision of interpreter assistance to a person entitled to a defence during a meeting with a defence counsel (*Kārtība, kādā personai, kurai ir tiesības uz aizstāvību, tikšanās laikā ar aizstāvi tiek nodrošināta tulka palīdzība*) Cabinet of Ministers Regulation No 1342.

<sup>38</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 114 (3).

<sup>39</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 575 (1) subpara. 4.

interpretation is necessary are the person's language skills. Their language knowledge must be good, conversational skills are not enough. A person must be able to understand legal terminology. Lawyer's recommendation is always to use the help of an interpreter in those cases where the person does not have a good command of the language.

In most cases interpreters assist requested persons in person. The services of an interpreter at the prosecutor's office are always provided in person. But there have been cases where a requested person is in a prison and the court hearing is streamed online, then an interpreter is present in court and a requested person joins online from the prison. Most of these situations happened during the Covid-19 pandemic.

The interviewed lawyer points out the disadvantages of videoconference format, when used as a communication tool with a requested person, pointing out that only formal issues can be addressed with an interpreter in the videoconference format. Substantive questions about the nature of the case and the chosen tactics should be discussed only in person, as the video conference format does not ensure confidentiality. They also pointed out that, firstly, in the video conference format, it cannot be guaranteed that someone will not be present and listening, and secondly, in this format, it also cannot be guaranteed that the conversation will not be recorded:

*The video conference method for communication with a client can only be used in an emergency situation, as none of the video conferences guarantee confidentiality. A person is never left alone in a video conference room, he will be there with one of the employees of law enforcement institutions. Secondly, there is a question of the security of this video system here; will there not be a recording somewhere of this conversation, even if no one is listening. Therefore, the conversations that take place between the lawyer and the client in the video conference mode are more formal. If it is about the essence of the case, about the tactics, the essence of the offense, then we try to avoid it.*

*(Lawyer, Latvia).*

- Translation of documents

The interviewed prosecutors claim that documents of EAW proceedings are always translated into a language a requested person can understand. Most often the translation is provided in Russian, English and Lithuanian languages. The 'Letter of Rights' also is provided in a language a requested person can understand. The translation of the content of the EAW is provided until a decision to extradite or not to extradite a person has been made:

Q: Is information on the content of the EAW provided in writing?

A: I always try to ensure this right away, because under the Criminal Procedure Law, we have a duty to provide a translation until a decision has been made to extradite or not to extradite a person. However, it is not always possible to present in writing immediately, as sometimes we only have an EAW in English at the time a person is detained. Then we call in an interpreter to explain. But often the warrant is also in the language of the issuing country, and if the person is a national of that country, he or she can read and understand what the extradition is for. But we provide a translation until a decision has been made.

*(Prosecutor, Latvia).*

The interviewed lawyers have mixed experience. While three of interviewed lawyers have no experience where something has not been translated, and the 'Letter of Rights' and the content of the casefile always were provided in writing in a language a requested person can understand. One of the interviewed lawyers provided essential information about shortcomings in the provision of written translation. While the information about the rights is provided in writing in a language that is understood by the requested person, then the translation of the content of the case-file is not immediately provided, and it is orally translated by the interpreter invited by the prosecutor's office. According to this experience, a lack of written translation limited the perception of information. The reason why the written translation of the content of the casefile was not prepared, was lack of time (the prosecutor's office could not provide it in the required pace): the written translation was provided later:

*Q: Are certain documents always provided in a language a requested person can understand?*

*A: I don't want to be pretentious, but I suspect that there might be gaps here. [...] The document was read to him [to the requested person], and there you could see that the interpreter was having difficulties, it was like going through the mountains. I think that when a document is translated orally, it is difficult to understand. [...] There were a lot of episodes in the case, that document was very long, and you could see that he didn't really understand what was being said to him anymore while it was being translated. For example, judging by myself, it would be very important for me to have a document to look at. If I haven't heard or understood it, it's much more comfortable to read it over than to ask again. [...] According to my experience, if that document does not already come from the country in a language that he understands, then individually they do not translate it in writing, only orally.*

*(Lawyer, Latvia).*

- Interpretation of consultations with lawyers

The interviewed prosecutors inform that if the meeting with a lawyer is on the premises of the prosecutor's office, interpretation service is provided by the prosecutor's office administration in cooperation with the translation service providers. To ensure confidentiality, only a person with a lawyer and an interpreter remain in the room. If an appointment with a lawyer is in the police, the police administration takes care of interpretation services and provide them.

The quotation from the interview with a prosecutor says that a state-appointed interpreter is regularly needed for Lithuanians, because they are not good in English or Russian which usually is spoken by lawyers themselves:

*Q: Are the consultations with a lawyer interpreted by a state-appointed interpreter?*

*A: Mandatory (Obligatory). It is not often the case, but it is with Lithuanians. Lithuanians are those who sometimes do not speak any other language. They are then provided with an interpreter in consultation with a lawyer. (Prosecutor, Latvia).*

The interviewed private lawyer emphasizes that he speaks Russian and English fluently, but if interpreter is needed, he cooperates with professional interpreters himself because using the prosecutor's office interpreters cannot guarantee confidentiality:

*The defence usually tries not to use a state-appointed interpreter. The conversation between the client and the lawyer is confidential, therefore any outside interpreter poses a risk that this*

*confidentiality may be violated. The interpreter provided by the state is a police officer. Therefore, lawyers try not to use them and either find their own interpreters, for which the client pays, or mostly the lawyers themselves have a good command of English, German and Russian. (Lawyer, Latvia).*

c. Additional best practices or challenges

The prosecutors and lawyers in Latvia usually speak fluent Russian and English, therefore only in case a requested person does not understand Latvian, Russian, or English an interpreter is necessary. In these three languages all documents are provided as a daily practice. If necessary, interpreters are sought for other languages, a Lithuanian language interpreter is needed relatively more often. If the requested person does not know Latvian, an interpreter is a mandatory requirement in court.

d. Discussion of findings

Findings demonstrate that the law is implemented in practice as all practitioners agree that the documents of the EAW proceeding are always provided in a language a requested person can understand. The threshold for access to the interpretation is low. Even when the person understands conversational language, the interpretation service is provided nevertheless, since the person should be able to understand the legal terminology as well. From the interviews it can be concluded that the interpreters always assist only in person as there are no examples of the interpreters online. Even in the cases when the court proceeding takes place online, the interpreter is with the requested person. In general, Russian interpreters are the most needed. Most often the translation is provided in Russian, English and Lithuanian languages.

### 3. Right to access to a lawyer

#### a. Legal overview

The rights of the requested person when Latvia acts as an *executing State* are laid out in article 698 CP.<sup>40</sup> The defendant can request a lawyer for legal aid and meet with the lawyer under conditions that ensure confidentiality.<sup>41</sup>

To choose the lawyer defendant is given a list of lawyers practising in the judicial district. It does not exclude the possibility for a person to choose privately their own entrusted lawyer. The relevant authorities provide the defendant with a telephone free of charge to request a lawyer.<sup>42</sup> There are also rules that grant dual representation, if the requested person wishes to apply for a lawyer in the issuing State.<sup>43</sup> If the requested person wishes to appoint a lawyer in the issuing State as well, then the Office of the Public Prosecutor informs the state concerned of this request.<sup>44</sup> The requested person is also entitled to the fundamental rights of the defendant in the criminal proceedings.<sup>45</sup> In addition to the rights mentioned above, article 60<sup>2</sup> expands on the right to legal aid and access to a lawyer. Under article 60<sup>2</sup> the lawyer should be accessible without delay, and if the defendant does not have enough resources to hire the lawyer, the State must provide them with a state funded legal aid.<sup>46</sup> In a case if the lawyers are not hired yet, or they are not able to attend the legal proceeding, the state must ensure that there is a lawyer present in the legal proceeding.<sup>47</sup> In case there are any legal obstacles for the defence counsel to participate in the criminal process, the defendant can request their replacement.<sup>48</sup>

When Latvia acts as an *issuing State*, the requested person will be treated under the Latvian criminal procedure, and the defendant enjoys the Fundamental Rights of the person entitled to a defence in criminal proceedings as described in article 60<sup>2</sup> (1) above. There is no legal provision nor any declared initiatives aiming to regulate the cooperation between executing and issuing State lawyers. There is no legal provision nor any declared initiatives aiming to regulate the cooperation between executing and issuing State lawyers.

#### *Remedies that are available when a requested person is not informed about their right to dual legal representation*

The requested person has the same fundamental rights as any person involved in the criminal procedure.<sup>49</sup> These fundamental rights include receiving legal aid, and access to a lawyer as referred to in the previous section.<sup>50</sup> In general, there is a great emphasis on the right to access a lawyer, since the assistance of a lawyer is one of the instruments ensuring the right to a fair trial and unjustified

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<sup>40</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 698.

<sup>41</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 698 (2) subpara. 6.

<sup>42</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 698 (2) subpara 7.

<sup>43</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 698 (2) subpara. 9.

<sup>44</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 715 (1<sup>1</sup>).

<sup>45</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Arts. 715, 60<sup>2</sup>.

<sup>46</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 60<sup>2</sup> (1) subpara. 1.

<sup>47</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 60<sup>2</sup> (1) subpara. 4.

<sup>48</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 60<sup>2</sup> (1) subpara 11.

<sup>49</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 715 (1).

<sup>50</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 60<sup>2</sup>.

restriction of this right is also contrary to the fundamental principle enshrined in Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 92 of the right to a fair trial according to the Constitution and Article 15 of the Criminal Procedure Act.<sup>51</sup> In case there is a substantial violation of the Criminal Procedure Act within the meaning of Article 575(3) CP, the decision can be annulled in its entirety and the case is to be referred back.<sup>52</sup> This article states that there is a violation if the case has been heard in the absence of the accused or the parties involved in the proceedings if the attendance of the accused and those parties are compulsory under this Law.<sup>53</sup> The case law suggests that the lawyer is also considered to be the involved party within the criminal procedure and that by not allowing the lawyer to participate, the court violates the defendant's right to a fair, impartial and independent trial, and the right to a defence.<sup>54</sup>

There are no clear rules, however, on the remedies available in violation of the dual legal representation.

**Table 5: Dual representation (in law)**

Does the law of the executing MS foresee that the person arrested has a right to have the assistance of a lawyer in the issuing Member State and informed of this right?	
Latvia	YES

**Table 6: Cost-free legal assistance (in law)**

Free of cost lawyer provided in law	When your country is an executing State	When your country is an issuing State (e.g. to assist the lawyer in the executing State)
Latvia	YES	NO

b. Right to access to a lawyer in practice

- Information about legal assistance (including on dual representation)

Interviewed prosecutors emphasize that when a person is arrested in Latvia on an EAW issued by another EU Member State, requested persons are always informed about their right to be assisted by a lawyer, and a lawyer is actively involved in the proceedings in Latvia. The police inform a requested person about the right to a lawyer by handing out a written document, and this information also covers state-funded legal assistance:

Q: Is a person in Latvia informed about his right to receive the assistance of a lawyer?

<sup>51</sup> Latvia, Senate of the Republic of Latvia (*Latvijas Republikas Senāts*), Riga/SKK-466/2020, 3 November 2020, p. 3.

<sup>52</sup> Latvia, Senate of the Republic of Latvia (*Latvijas Republikas Senāts*), Riga/SKK-466/2020, 3 November 2020, p. 3.

<sup>53</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 575 (1) subpara. 3.

<sup>54</sup> 3 Latvia, Senate of the Republic of Latvia (*Latvijas Republikas Senāts*), Riga/SKK-466/2020, 3 November 2020, p. 3.; Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 15.

A: Yes, of course. Immediately after the arrest, a person is given an extract from the law, where this right is indicated, that the person can receive free legal aid. [...] In any case, according to the procedure, you can agree to surrender and waive the principle of specialty only in the presence of a lawyer. This is a mandatory condition.

*(Prosecutor, Latvia).*

These are primary rights. People know this and ask for a lawyer if they need it. The police will issue a list of lawyers if necessary. If you have your own lawyer, then your own. He will always have a lawyer in court, whether he wants to or not.

*(Prosecutor, Latvia).*

Interviewed lawyers in general believe that requested persons are informed about their right to be assisted by a lawyer, however, the lawyers who have experience only as state-provided advocates state that they cannot make claims about other cases because they only have experience of their own cases:

Q: When a person is arrested in Latvia on an EAW issued by another EU Member State, is that person informed about their right to be assisted by a lawyer in the proceedings in your country?

A: Always. I haven't heard of a single case where there wasn't. [...] They are always informed about the right to a lawyer and a lawyer actively participate in all procedural activities.

*(Lawyer, Latvia).*

Considering I'm there, they've been notified.

*(Lawyer, Latvia).*

This right is explained to the person. In all cases where I was called as a lawyer provided by the state, the person was informed that a lawyer would be provided. And the prosecutor ensured this.

*(Lawyer, Latvia).*

*I come when I am called. I don't know if the prosecutor calls a lawyer in all these cases. I have only been there when I have been called. Therefore, I do not know if there are situations where a lawyer is not invited.*

*(Lawyer, Latvia).*

All interviewees think that it is not possible that requested persons are not informed about their right to dual legal representation, i.e. to be assisted by a lawyer in both the executing and issuing Member States during the EAW procedure.

**Table 7: Are persons informed of their right to access a lawyer?**

	L1	L2	L3	L4	P1	P2	P3	P4	Total
<b>YES</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>8</b>
In writing	-	-	-	-	-	-	-	-	<b>0</b>
Orally	-	-	-	-	-	-	-	-	<b>0</b>
In writing and orally	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>8</b>
<b>NO</b>	-	-	-	-	-	-	-	-	<b>0</b>



<b>Don't know/remember</b>	-	-	-	-	-	-	-	-	<b>0</b>
<b>Did not answer</b>	-	-	-	-	-	-	-	-	<b>0</b>

Table 8: Information on dual representation, interview findings

Are persons arrested on an EAW informed by authorities on their right to have the assistance of a lawyer in the issuing Member State?									
	L1	L2	L3	L4	P1	P2	P3	P4	Total
<b>YES</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>8</b>
<b>NO</b>	-	-	-	-	-	-	-	-	<b>0</b>
<b>Don't know/remember</b>	-	-	-	-	-	-	-	-	<b>0</b>
<b>Did not answer</b>	-	-	-	-	-	-	-	-	<b>0</b>

- Legal assistance in executing State (access, consultations, lawyer's tasks)

All interviewed prosecutors who have experience with execution of the EAW and the lawyer with the private practice in these cases confirm that immediately after the arrest, the person receives an extract from the law stating the right to a lawyer and the right to get state-funded legal assistance. The police issue a list of lawyers, and the person can choose a lawyer. A requested person may provide the consent to surrender only in the presence of a lawyer. The presence of a lawyer is mandatory during this procedure. The police usually issue a list of lawyers and contact details of available lawyers if state-funded legal assistance is necessary. Requested persons will always have a lawyer in court, whether they wish for it or not.

All interviewed professionals confirm that a lawyer in EAW proceedings provides all legal assistance to requested persons, explains legal procedure in a simple language, communicates with relatives, and helps to avoid the requested person to be detained, if possible:

Explains everything in simple language. Listens to his story, looks at different options so as not to surrender. Also deals with practical matters. Communication with relatives.

*(Prosecutor, Latvia).*

The main thing is that for a person to understand why he or she has been detained, what the process is, what will happen next, what his/her rights are, and to check whether something is being violated during the extradition process. When he or she signs the consent, does he/she understand what he/she is signing the consent for and what his/her rights are. Also, that he/she has the right to his/her own hired lawyer, also in that country.

*(Lawyer, Latvia).*

The lawyer again explains to the requested person his rights, explains what it means to surrender or not. If he or she agrees, then explains how the further procedure will take place. Will it be fast. [...] If he or she disagrees, then explains the next procedure that needs to be done. Make sure everything is clear. The lawyer makes sure that the right to translation/interpretation is respected and that the requested person understands what is written in the documents of the EAW. The lawyer does not explain the nature of the matter, nor ask his opinion, whether he/she pleads guilty or not. It is more about whether he or she agrees to surrender, whether it is clear about what will happen if he or she does or does not agree.

*(Lawyer, Latvia).*

First, it is necessary to monitor that everything happens according to the proceedings, that the prosecutor behaves correctly, that he really explains those rights, that everything is really translated... And yes, if the person has any questions, any confusion, if he wants to consult, then there is that lawyer. There is an opportunity to speak with a lawyer. Then, of course, secondly, there is the issue of detention. To try to ensure that the requested person is not arrested.

*(Lawyer, Latvia).*

**Table 9: Facilitating dual legal representation, interview findings (executing MS)**

Is assistance provided in appointing a lawyer in the issuing Member State when execution proceedings are ongoing? (When your country is an executing State)			
Interviewees	YES	NO	Didn't know/answer/remember
L1	X		
L2			X
L3			X
L4			X
P1	X		
P2	X		
P3			X
P4			X
Total	3	0	5

- Legal assistance in issuing State (access, consultations, lawyer's tasks)

Both prosecutors who work with the issuing of the EAW in Latvia (P3, P4) do not see any problems relating to legal representation in EAW cases and proceedings in Latvia. If requested, authorities provide a list and contact details of all available lawyers. If asked to find a particular lawyer, this is ensured. However, it is the only measure prosecutors provide: if asked to inform about the contacts of lawyers, they provide them. They do not follow how requested persons choose and contact their lawyers. At the same time, when extradition proceedings take place, the prosecutors receive information about the participation of lawyers in this process:

Q: Are requested persons provided with the right to a lawyer in both the executing and issuing countries?

A: I think definitely. When extradition proceedings take place [in foreign country], lawyers participate, we receive information about it. Normative regulations also provide a person with the right to appoint a lawyer in Latvia. The country executing the EAW informs us that the requested person has asked to provide a lawyer in Latvia. Accordingly, the prosecutor, who is in charge of the process, also appoints a lawyer for him or her in Latvia.

*(Prosecutor, Latvia).*

A. [The rights] Are provided. The regulation has been implemented in Latvia. If the detained person in a foreign country requests that he or she should be provided with an attorney in

Latvia at the same time during the extradition process, this is done. We have such requests. [...] We have no problem with that.

*(Prosecutor, Latvia).*

All interviewed professionals confirm that according to the Criminal Procedure Act if a person wants, he or she can conclude a contract with a lawyer. If there is no such possibility to pay for a lawyer, then there is the right to have a lawyer guaranteed by the state.

The only interviewed lawyer who has been involved in the EAW cases as a private lawyer informs that assistance provided by a lawyer in EAW proceedings in the issuing State depends on the stage of the case. There are cases when the investigation is just beginning, then the lawyer participates in all kinds of procedural actions. If the case has already reached the court, then the lawyer participates in the court proceedings and defends a client in court. There are cases where the legality of the EAW as such is challenged because the procedural rights are not fully ensured. For example, these are cases where the case has been proceeded in absentia, without the presence of the accused. As pointed out by the interviewed lawyer the issuing State is the place where the investigation and trial take place. In both these cases, the lawyers, in defending their clients, must try to gather as much evidence as possible, including an alibi. According to the interviewed lawyer a lawyer in the executing State usually cannot collect evidence because the crime took place in the issuing State. A lawyer in the executing State only checks the legality of the extradition request but does not check whether the crime has been committed in the issuing State or not, does not evaluate the evidence as such.

**Table 10: Providing dual legal representation, interview findings (issuing MS)**

Is assistance provided in appointing a lawyer in the issuing Member State when execution proceedings are ongoing in another MS? (When your country is an issuing State)			
Interviewees	YES*	NO	Didn't know/answer/remember
L1	X		
L2			X
L3			X
L4			X
P1	X		
P2	X		
P3	X		
P4	X		
Total	5	0	3

\* If requested, the contact information of lawyers is provided, and a lawyer is appointed.

- Communication between the lawyers in both states

The interviewed prosecutors could not comment on how lawyers communicate with each other. The interviewed private lawyer stated that this is not the duty of the prosecutor in Latvia to inform that a requested person can benefit from the assistance of a lawyer in the Member State that issued the European Arrest Warrant. This is a lawyer's area of responsibility, and it depends on the level of activity of each lawyer on how actively they cooperate with lawyers in another country. At the moment of the interview, the lawyer follows the situation of clients in another country. As a member

of the European Association of Criminal Lawyers, the interviewed lawyer has well-known colleagues in almost all EU Member States. The interviewed private lawyer usually tries to involve a lawyer from another country even before the person is extradited, so that work on the case starts on time. Conversely, colleagues from other countries contact him if the client is extradited to Latvia. Latvian national authorities do not provide any assistance regarding the assistance of a lawyer in the Member State that issued the European Arrest Warrant, only the lawyer. Communication takes place by phone or e-mail.

The interviewed lawyers who have been engaged as state-guaranteed legal aid lawyers do not follow the situation of clients in another country, because state paid legal aid does not provide for this. The state provided lawyers do not receive any information about the situation of clients in another country and do not contact the lawyers in other countries.

- Free of cost access to a lawyer (or legal aid)

According to all interviewed practitioners, free of cost access to a lawyer or legal aid is provided if requested. It is offered when Latvia is acting as an executing State. Latvia does not provide free of cost access to a lawyer or legal aid for the purposes of procedures in the executing the EAW in other Member State when Latvia is an issuing State. This is provided by an executing State. The information obtained in the interviews indicates that it is not a typical practice for a Latvian lawyer to be involved in an EAW executing procedure abroad. At the same time, a lawyer is provided in the subsequent court proceedings, when the requested person has already been extradited and arrived in Latvia, but it no longer applies to the EAW procedure.

**Table 11: Cost-free legal assistance, interview findings**

Free of cost lawyer provided	When your country is an executing State			When your country is an issuing State for the purposes of procedures in the executing MS (e.g. to assist the lawyer in the executing State)		
	YES	NO	Didn't know/answer/remember	YES	NO	Didn't know/answer/remember
L1	X				X	
L2	X				X	
L3	X				X	
L4	X				X	
P1	X				X	
P2	X				X	
P3	X				X	
P4	X				X	
<b>TOTAL</b>	<b>8</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>8</b>	<b>0</b>

### c. Discussion of findings

Generally, all interviewees did not see any problems relating to legal representation in EAW cases and proceedings in Latvia. Both interviewed prosecutors who have experience with execution of the EAW claim that in a case when Latvia acts as the executing State, the requested person receives an extract from the law stating the right to a lawyer and the right to get state-funded legal assistance immediately after the arrest. If a state-funded legal assistance is necessary, the police normally issue a list of lawyers. Requested persons will always have a lawyer in court, even in the cases when the requested person does not wish to be presented by a lawyer. A lawyer in EAW proceedings provides

all legal assistance to requested persons, explains everything the person needs in simple language, communicates with relatives, helps avoid being detained, if possible. Findings from all interviewed professionals confirm that the law is implemented in practice as all practitioners agree that there are no problems relating to legal representation in EAW cases and proceedings.

## 4. Issuing and execution of the EAW

### a. Legal overview

The procedure for adopting a European arrest warrant is described in article 692 CP.<sup>55</sup> The criminal offence committed by the suspect or accused person must be punishable under the Latvian Criminal Law and the sentencing term should be at least for one year. If the person is already sentenced in Latvia, then the sentence should be no less than 4 months.<sup>56</sup> Then the judicial authority should evaluate the proportionality of the surrender, by weighting the seriousness and nature of the offence against the expense of extradition.<sup>57</sup> If the judicial authorities decide that they should issue the EAW, they submit a written proposal to the General Prosecutor's Office for a European arrest warrant.<sup>58</sup> The Prosecutor General's Office examine the proposal within 10 days and inform the proposer of the decision. If the person is detained in a Member State of the European Union, the proposal shall be examined within 24 hours.<sup>59</sup> Where grounds for a European arrest decision have been established, the Prosecutor General's Office adopt a European arrest decision which cannot be subject to appeal.<sup>60</sup> Before sending a request for surrender, the Office of the Prosecutor General may request a foreign State to get the person in a temporary detention.<sup>61</sup>

#### *Possibilities to challenge the issuing of the EAW or request its withdrawal*

The Criminal Procedure Law does not mention the possibility for the requested person to challenge the issuing of the EAW or to request its withdrawal *prior* to the execution. However, after the person is surrendered to Latvia, the criminal proceeding continues as a regular criminal procedure, meaning that at this point the defendant can appeal against procedural decisions in the case.<sup>62</sup> Article 575 CP describes what are considered to be serious violations of the Criminal Procedure Law.<sup>63</sup>

#### *Proportionality concerns, right to a fair trial and conditions of criminal detention*

In the process of issuing the EAW the national judicial authorities are expected to take into consideration the proportionality of the EAW. Section 682(3) of the Criminal Procedure Law provides that "A request for the extradition of a person may not be submitted if the seriousness or nature of a criminal offence does match the expenses of the extradition."<sup>64</sup>

After a court has decided to commute a sentence to custody, it submits a written request to the Prosecutor General's Office to request the surrender of the person from the abroad.<sup>65</sup> The Prosecutor General has the last say on whether the EAW should be issued or not. When assessing the proposal to issue an EAW, the Prosecutor General examines whether the principle of proportionality is applied accurately.<sup>66</sup> It considers whether the courts have assessed elements of the proportionality principle,

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<sup>55</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 692.

<sup>56</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 682 (1) subpara. 1.

<sup>57</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Arts. 682 (1), (3), 692 (1).

<sup>58</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 692 (1).

<sup>59</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 692 (3).

<sup>60</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 693 (6).

<sup>61</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 686 (1).

<sup>62</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 60<sup>2</sup> (1) subpara 9.

<sup>63</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 575.

<sup>64</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 682(3).

<sup>65</sup> Latvia, Criminal Procedure Act (*Kriminālprocesa likums*) 21.04.2005, Art. 683 (1).

<sup>66</sup> Latvia, Prosecutor General's office on the Compliance with the principle of proportionality in the adoption of the European Arrest Warrant (*Proporcionalitātes principa ievērošana, pieņemot Eiropas apcietinājuma*

for instance, if the offence is significantly serious, or if there has been a violence, or harm to the third party.<sup>67</sup> The Prosecutor General considers the caused damage and possible penalty imposed for the offence.<sup>68</sup> Another factor that is analysed is the administrative cost associated with the defendant's surrender, for instance, the translation services and the cost of transportation of the person to the EAW issuing State.<sup>69</sup> The Public Prosecutor noted that in previous years, the judicial authorities did not assess the principle of proportionality in about 20% of cases before submitting the EAW request to the Prosecutor's Office, however, with a special training this has been partially remedied in 2020.<sup>70</sup>

b. Issuing and execution of the EAW in practice

- Factors considered when issuing the EAW

*Proportionality*

Interviewed prosecutors who work closely with the issuing EAW consider that the principle of proportionality has always been taken into account when issuing the EAW. They, claim that proportionality is a key factor that is taken into consideration, when deciding on the issuing of an EAW. As stressed by the one of the prosecutors, when considering issuing of the EAW, the following circumstances are mainly evaluated: the severity and nature of the criminal offense, the method of committing it and the motive; a sign of violence; third-party offending factor; the amount of the damage caused and the circumstances of compensation for the damage; analysis of administrative costs related to extradition (including translation and accompanying of persons); possible penalty; absence of double criminality in the executing State (applicable mainly to criminal offenses provided for in Articles 161 and 262 of the Criminal Act). Each case is evaluated individually, and the expected sentence must be at least one year:

Q. When deciding on the issuing of an EAW, what factors do the Prosecutor's Office of Latvia as an issuing authority take into account before issuing one?

A. It can be seen on the website of the prosecutor's office. There is a section on how we assess this proportionality. [...] We assess whether, in our opinion, a person could be sentenced to a

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*Lēmumu*), available at <http://www.prokuratūra.gov.lv/lv/kontakti/generalprokuratūra/darbības-kontroles-un-starptautiskas-sadarbības-departaments/starptautiska-sadarbība/proporcionalitātes-principa-ievērošana-pieņemot-eiropas-apcietinājuma-lēmumu>

<sup>67</sup> Latvia, Prosecutor General's office on the Compliance with the principle of proportionality in the adoption of the European Arrest Warrant (*Proporcionalitātes principa ievērošana, pieņemot Eiropas apcietinājuma Lēmumu*), available at <http://www.prokuratūra.gov.lv/lv/kontakti/generalprokuratūra/darbības-kontroles-un-starptautiskas-sadarbības-departaments/starptautiska-sadarbība/proporcionalitātes-principa-ievērošana-pieņemot-eiropas-apcietinājuma-lēmumu>

<sup>68</sup> Latvia, Prosecutor General's office on the Compliance with the principle of proportionality in the adoption of the European Arrest Warrant (*Proporcionalitātes principa ievērošana, pieņemot Eiropas apcietinājuma Lēmumu*), available at <http://www.prokuratūra.gov.lv/lv/kontakti/generalprokuratūra/darbības-kontroles-un-starptautiskas-sadarbības-departaments/starptautiska-sadarbība/proporcionalitātes-principa-ievērošana-pieņemot-eiropas-apcietinājuma-lēmumu>

<sup>69</sup> Latvia, Prosecutor General's office on the Compliance with the principle of proportionality in the adoption of the European Arrest Warrant (*Proporcionalitātes principa ievērošana, pieņemot Eiropas apcietinājuma Lēmumu*), available at <http://www.prokuratūra.gov.lv/lv/kontakti/generalprokuratūra/darbības-kontroles-un-starptautiskas-sadarbības-departaments/starptautiska-sadarbība/proporcionalitātes-principa-ievērošana-pieņemot-eiropas-apcietinājuma-lēmumu>

<sup>70</sup> Latvia, Report of the Prosecutor General of the Republic of Latvia on achievements in 2020 and priorities for action in 2021 (*Latvijas Republikas ģenerālprokurora ziņojums par 2020. gadā paveikto un 2021. gada darbības prioritātēm*) 2021, p. 137.

real custodial sentence. If we see that there will not be one, then we do not issue the EAW. It lists violence factor, victims, material losses, extradition-related costs. There is the list. Those are the basic points.

Q. What is listed here is what is always taken into account?

A. This is primary. Each case is evaluated individually. [...] For example, if a person commits 10 petty thefts, where the material loss is very small, for example 200 EUR, but the cost of conveying is around 2000 EUR. But if I see that he still has some cases and has been tried before, and it can be seen that the court will sentence him to at least a year, then maybe I will also issue the EAW.

*(Prosecutor, Latvia).*

Despite the improvements and the fact that at final stage of the decision on issuing the EAW the principle of proportionality is taken into consideration, both interviewed prosecutors who work closely with the issuing EAW consider that compliance with proportionality can be improved among the judicial authorities who submit the EAW request to the International Cooperation Division, Department of Operational Control and International Cooperation of the Prosecutor General's Office of the Republic of Latvia. This is still a problematic area in the practice, and the prosecutors of the International Cooperation Division, Department of Operational Control and International Cooperation of the Prosecutor General's Office of the Republic of Latvia quite often refuses to issue the EAW at the request of national authorities, because of proportionality concerns and the concerns on compliance with procedural rights in cases where there is a conviction in absentia. However, with a special training this has been partially remedied.

#### *Individual situation of a requested person*

According to the interviewed prosecutors who work closely with the issuing EAW the individual situation of a requested person is one aspect of assessing proportionality. Prosecutor's Office of Latvia evaluate each case, each person, each situation individually:

Q: When issuing or executing the EAW, do authorities in your country consider the individual situation of a requested person?

A: Let's start with the fact that the beginning of the case is with the prosecutor who is working with this case. The accused has run away. The investigating judge has made a decision on arrest in Latvia, it is the most severe security measure. [...] When we receive this case, we evaluate it. But if the crime has been serious, then we would not particularly evaluate the individual situation of the person. If the crime is serious, then it is clear that the person should be put on the international wanted list. So, it's more about proportionality. If there is a theft and the person has not been punished before. We are analysing it. But if the crime is serious, then it is not particularly evaluated anymore. The individual situation of a person is one of the aspects when evaluating proportionality.

*(Prosecutor, Latvia).*



### *Challenging the issue*

The interviewed practitioners claim that the EAW is not intended to be open to challenge in Latvia or they do not know anything about this procedure. A person can complain about different aspects, but not challenge this formal procedure. If a person is detained on the basis of an EAW, the person is asked if he or she consent to surrender. If the person does not agree and the prosecutor decides that the person should be extradited, then this decision can be appealed to the Supreme Court within 10 days. Both sides present their arguments before the Supreme Court and the Court makes a decision.

- Factors considered when executing the EAW

According to the interviewed prosecutors who work closely with the executing EAW upon receipt of the EAW decision, prosecutors assess whether there are serious grounds to execute the EAW. If the offense is included in a special list, the prosecutor's office does not check whether it is punishable under Latvian law. These are offenses where the sentence is at least three years. If an assessment is required, this is indicated in E2. section. Then prosecutors look at double criminality. In this case, the Latvian Prosecutor's Office does not assess proportionality, it is assessed in the country that issued the EAW. The Latvian Prosecutor's Office cannot interfere in the jurisdiction of another country, but they request additional information and clarification. The interviewed prosecutor describes a case where there were doubts that such an offense could be punishable under the legislation of both Latvia and the state issuing the EAW. In that case, that state which issued the EAW decided to revoke the EAW, after receiving the request for additional information and clarification.

Based on the proportionality concerns, the EAW can be appealed to the Supreme Court. For example, a person should not be extradited if only a simple interrogation is required, which can be solved by a European Investigation Order.

### *Conditions of detention*

All interviewed professionals confirm that complaints about poor prison conditions are not characteristic for the EU countries, but concern third countries. The countries Latvia work with most often are Germany, Poland, Great Britain, Estonia and Lithuania, and there is no information or complaint that the prison conditions are poor there:

Q: Has the question ever come up about what the detention conditions will be like in that country? Has it been discussed with the requested person?

A: Yes, we have asked the prosecutor which place of detention the requested person will be taken to, what the conditions will be there. In principle, everything is better there than in Latvia. One of the persons said that she/he would probably prefer to stay there and serve the sentence.

*(Lawyer, Latvia).*

Q: Has the question ever come up about what the detention conditions will be like in that country? Has it been discussed with the requested person?

A: No, none of these persons who surrendered had any questions... Such questions were not discussed, except for the case when a Latvian citizen was extradited to Germany. He actually agreed to serve his sentence in Germany, knowing that Germany has better conditions for

serving his sentence. According to the law, he, as a citizen of Latvia, whose permanent residence is here, could request that the sentence be executed here. He deliberately, understanding the conditions in Latvia and Germany, chose to serve his sentence in Germany.

*(Lawyer, Latvia).*

All practitioners, both prosecutors and lawyers, believe that the conditions of Latvian custody among the EU Member States are one of the worst and, conversely, Latvia has been asked how certain standards will be ensured in prison. There are similarly bad conditions in the prisons in Bulgaria and Romania, but there are very few cases when these countries are issuing of an EAW to Latvia. The last case being 8 years ago.

#### *Compliance with procedural rights*

Interviewed prosecutors working with the execution of an EAW confirm that when deciding on the execution of an EAW, the procedural rights of the requested person in the issuing State are considered. For example, if an interpreter is not provided, an explanation is required. However, the prosecutors stress that the prosecutor's office itself does not assess whether the procedural rights of the requested person have been complied with in each case. The situation in the form of correspondence is explained when a person complains about the violation of the procedural rights. The prosecutor's office always scrutinises the specific case:

Q: When deciding on the execution of an EAW, how do your national authorities consider the procedural rights of the requested person in the issuing State?

A: Of course, that is taken into account. If he or she [the requested person] tells us that his or her rights are not respected, for example, he or she did not have an interpreter, of course we will ask the country what happened. But it has to come from a person. In every case, we will not check whether all procedural rights have been observed. There must be some source of information. Then we will clarify, in the form of correspondence.

*(Prosecutor, Latvia).*

One of the interviewed lawyers claims that when deciding on the execution of an EAW and considering the procedural rights of the requested person in the issuing State, the approach of Latvian national authorities is formal, as it is believed that rights are equally respected in all the EU Member States. From the lawyer's point of view, this approach is not correct, because it is more difficult to ensure a person's rights in detention in foreign countries. For example, in foreign countries, they are separated from their family for sometimes even a long time, because many do not have the opportunity to ensure short-term and long-term meetings with family members. Ties with family and relatives are severed, and this problem is not considered enough. There are enough formal moments that the court ignores. For example, the correct way of how EAW protocol should be filled out:

Q: When deciding on the execution of an EAW, how do your national authorities consider the procedural rights of the requested person in the issuing State?

A: In my view, Latvian national authorities approach formally, because it is believed that there is no big difference in the European Union, whether the courts are in Latvia or somewhere else. In my view, this approach is not correct, because when he or she is extradited to foreign countries and serves a sentence abroad, he or she does not have the advantages that he or she has in Latvia. The person is separated from the family very far, and sometimes for a very long time. Ties with family and relatives are severed. This is a major problem that is being

overlooked. There are enough formal moments that the court ignores. For example, how correctly or incorrectly the EAW is filled out, whether or not the person participated in person. One of the aspects on the basis of which a person could not be extradited, but which is not used, is that the case has been heard in court in absentia. The person has not been notified that the case will be heard for his arrest. Although the institution has had all the data on where he is and how he can be reached. That authority has not even tried to inform him.

*(Lawyer, Latvia).*

### *Rights to a fair trial (rule of law)*

The right to a fair trial by an independent court is mainly considered in EAW cases with Poland. There must be certain circumstances in order to suspect that the court may not be fair. This has not been the case so far with Poland or any other EU country.

### *Individual situation*

Interviewed prosecutors working with the execution of an EAW believe that when executing the EAW, authorities always consider the individual situation of a requested person. It depends also on the nature of the crime. There has been a case when the surrender procedure does not take place because it is concluded that the person with a disability will not be provided with the necessary care. There has been another case when a requested person was mother with an infant, and the issuing State (Germany) did not guarantee that they will be able to come both together, even if Latvian law and the Children's Convention allows it. A child had parental rights and Germany could not ensure that the child would be together with mother in prison. The prosecutor decided to suspend extradition for three years. When the requested person is with a disability or with health problems, the case often ends up in the Supreme Court, who must evaluate whether the country to which a person will be extradited will be able to provide the necessary medical care. The Latvian Public Prosecutor's Office does not have the right to revoke the EAW decision, but it can postpone the enforcement of the decision until certain rights have been granted:

Q: When issuing or executing the EAW, do authorities in your country consider the individual situation of a requested person?

A: Of course, it is considered.

Q. For example, is gender, pregnancy, disability, family situation taken into account?

A. It depends on the nature of the crime. But the individual situation is taken into account. For example, it is very important for a person with a disability where he or she will be placed abroad. There was one case when a person was not extradited because it was believed that it would not be possible to provide the necessary care to a person with a disability in a prison in a foreign country.

*(Prosecutor, Latvia).*

### *Execution of a conviction for a person tried in absentia*

In case the EAW concerns the execution of a conviction for a person tried in absentia, interviewed prosecutors working with the execution of an EAW first analyse the information provided, and if in

doubt, request additional information. Additional information is requested quite often, for example, if there is an incomprehensible punishment. The response is usually received quickly. In case the EAW concerns the execution of a conviction for a person tried in absentia, prosecutors also evaluate if a person will have the right to appeal against this decision:

Q: In case the EAW concerns the execution of a conviction for a person tried in absentia, what requirements do your authorities consider?

A: We check if the person has participated. If the person did not participate, then the person must have the right to appeal the decision. That's what we consider.

*(Prosecutor, Latvia).*

The interviewed lawyer who has experience with such a case points out that these situations when a person is tried in absentia should be more scrutinized in court. There are cases where people are simply not informed that their case will proceed, even though the institution has had the person's contact information and the institution has not tried to inform the person about it. The EAW protocol often has a blank space that does not indicate whether the person has been notified of the court process, and it is ignored by the Latvian court. In this sense, the interviewee talks about a formal attitude of the Latvian national authorities. It would be necessary to follow the recommendations included in the EAW manual more precisely. Here, it would be necessary to specify whether the person was or was not informed about the court decision, that took place in absentia. An alternative option is a guarantee that a conviction for a person tried in absentia will be reviewed. However, sometimes it is neither and the person is extradited:

Q: Is the right to a fair trial by an independent court also considered?

A: A fair trial in form is ensured. Substantively, some moments are ignored. These are the cases where the trial has taken place in absentia. I have not come across such a case in Latvia when, despite the fact that a decision was made in absentia, the court do exercise this right not to extradite. [...] When granting extradition requests and when examining the extradition request, the Supreme Court should stick more strictly to those recommending requirements that have been put forward in relation to the form and content of this extradition warrant.

*(Lawyer, Latvia).*

### c. Discussion of findings

Findings demonstrate that proportionality of a requested person is considered when issuing the EAW. Upon receipt of the EAW decision, prosecutors assess whether there are serious grounds to execute the EAW, and the individual situation is considered when executing the EAW. The most problematic cases are when the EAW concerns the execution of a conviction for a person tried in absentia. The evaluation of these situations could be more carefully provided at court.

## 5. Use of digital and technological tools in EAW proceedings

### a. Legal overview

During the spread of Covid-19 infection, court proceedings were mostly done remotely. However, where it was not possible to hear a case either in writing or remotely, the court organized in-person hearing, which was arranged in cases with significant interference with the rights of a person and an objective urgency.<sup>71</sup>

There are legal standards regulating the digital transfer of EAW documents for the cooperation between the Ministry of Justice, the Prosecutor General's Office and the national police.<sup>72</sup> These rules determine the procedure for the maintenance and use of the information system on requests for international criminal justice cooperation, the scope of the information to be included in it, the procedure for the inclusion, use and deletion of information, the time limits for storing information, as well as the institutions to be granted access to the information included in the information system and the scope of the information available to these institutions.<sup>73</sup> The system is administered and maintained by the Ministry of Justice, and it is only a national level information system that is not publicly available.<sup>74</sup> It is not available for the lawyers, and there is no indication of the information systems set up for the cooperation between issuing and executing State lawyers. The national legislation neither defines any other use of legal tools in the EAW proceedings, for instance, the rules on online questioning.

Table 12: Use of technological tools (in law)

National laws providing for:	Conducting EAW hearings (when an executing State)	Facilitating the provision of interpretation	Remote examination of witnesses or the person arrested (when an issuing State).	Communication with involved foreign authorities (both issuing – executing States).	Facilitating transmission of documents (issuing - executing)	Facilitating access to a lawyer in the issuing Member State (when an executing State)	Facilitating access to a lawyer in the executing Member State (when an issuing State)
Country	YES/NO	YES/NO	YES/NO	YES/NO	YES/NO	YES/NO	YES/NO
Latvia	YES	NO	YES	YES	YES	NO	NO
TOTAL							

<sup>71</sup> Latvia, Covid-19 Infection Management Act (*Covid-19 infekcijas izplatības pārvaldības likums*) 10.06.2020. Available at: <https://likumi.lv/ta/id/315278-covid-19-infekcijas-izplatibas-parvaldibas-likums>

<sup>72</sup> Latvia, Information System Rules on the International criminal justice cooperation (*Starptautiskās krimināltiesiskās sadarbības lūgumu informācijas sistēmas noteikumi*) 08.10.2013, Art. 3.

<sup>73</sup> Latvia, Information System Rules on the International criminal justice cooperation (*Starptautiskās krimināltiesiskās sadarbības lūgumu informācijas sistēmas noteikumi*) 08.10.2013, Art. 1.

<sup>74</sup> Latvia, Information System Rules on the International criminal justice cooperation (*Starptautiskās krimināltiesiskās sadarbības lūgumu informācijas sistēmas noteikumi*) 08.10.2013.

## b. Interviews findings

Interviews show that the use of digital and technological tools in the EAW procedure is rather undeveloped. The most important digital tool is e-mail, which is used by all interviewed practitioners and facilitates fast exchange of documents. However, scanned documents in e-mail are duplicated by the exchange of hand-signed original documents by regular mail. The exception in this regard is Lithuania and Estonia, where electronically signed documents are accepted. In this regard, interviewed prosecutors believe that a digital platform containing information about each case would be useful and could reduce the circulation of paper documents, because currently Latvian electronic signatures are not recognized in other EU countries (except Lithuania and Estonia), so hand-signed original documents are required.

Four Latvian practitioners have experience with the use of the video conferencing format in the EAW proceedings during the Covid-19 pandemic. In all cases the video conferencing format was used in court proceedings in Latvia. In one case the requested person participated remotely from the place of imprisonment, the prosecutor also participated remotely, but the interpreter was present at the court. In other cases, the requested person, the prosecutor, the lawyer and the interpreter were in one room, and remotely participated in court proceedings.

When asked about the potential to use a format of videoconference in the EAW proceedings several practitioners were sceptic. One prosecutor mentioned that videoconference format is comparably consuming more time and resources, and there are risks of technical problems (for example, if a lawyer or an interpreter have difficulties to connect, the hearing has to be adjourned). Interviewed lawyers mentioned that when using digital tools in the court process, courts become very formal, and they lack personal contact. Importantly, in some cases it is not possible to know who is next to the detained person in the videoconference format. Therefore, there is also a risk that there is somebody writing the answers, how the person should answer.

The interviewed prosecutors who work with issuing of the EAW do not see the possibility of applicability of the video conferencing format in practice. This is determined by the specifics of their work because the prosecutors who work with issuing of the EAW, and there are only two of them in Latvia, deal only narrowly with the issuing of the EAW, but not with the case itself. Consequently, Latvia's approach assumes that they mostly work with documents, they do not have meetings with the requested persons, their lawyers or interpreters. In a sense, they are mediators between the promoters of the process in Latvia, which is implemented in accordance with the Latvian regulatory framework, and the responsible institutions of foreign countries:

Q: Could you mention what would be the advantages or risks of digitization?

A: I do not use such video conferences in my direct work, but my colleagues do. So I don't see any special risks. I support everything that simplifies the procedure, makes it easier for us. For example, an e-evidence platform. It is welcome. If it is effective and helps, if it does not complicate the work. Sharing information electronically is great. We can exchange documents signed with e-signatures with Estonia and Lithuania, not yet with other countries.

*(Prosecutor, Latvia).*

Regarding the question “Do you think that digitalisation may lead to fewer EAWs being issued, e.g., by allowing interested authorities to question defendants remotely rather than requesting their arrest with an EAW”, the interviewed prosecutors who work with execution of the EAW were sceptic,

because an interrogation is for the most part not the main reason for an EAW. Most often the EAWs are being issued and individuals are required to be extradited because they are wanted and need to be tried and sentenced:

Q: Do you think that digitalisation may lead to fewer EAWs being issued, e.g. by allowing interested authorities to question defendants remotely rather than requesting their arrest with an EAW?

A: Such a possibility already exists. By writing a European Investigation Warrant, it can be secured from court to court. The problem is different. When an EAW is issued, the person is often wanted, their whereabouts unknown. Therefore, when posting information about EAW, a person can be detained in any country.

*(Prosecutor, Latvia).*

Table 13: Use of digital tools, interview findings.

Interviewees per Country	Conducting EAW hearings (when an executing State)	Facilitating the provision of interpretation	Remote examination of witnesses or the person arrested (when an issuing State).	Communication with involved foreign authorities (both executing – issuing States).	Facilitating transmission of documents (issuing - executing)	Facilitating access to a lawyer in the issuing Member State (when an executing State)	Facilitating access to a lawyer in the executing Member State (when an issuing State)
L1	NO	NO	NO	YES*	YES*	NO	NO
L2	YES	NO	NO	NO	YES*	NO	NO
L3	YES	NO	NO	NO	YES*	NO	NO
L4	YES	NO	NO	NO	YES*	NO	NO
P1	NO	NO	NO	YES*	YES*	NO	NO
P2	YES	NO	NO	YES*	YES*	NO	NO
P3	NO	NO	NO	YES*	YES*	NO	NO
P4	NO	NO	NO	YES*	YES*	NO	NO
TOTAL	4/4	0/8	0/8	5/3	8/0	0/8	0/8

\* All practitioners use e-mail to exchange documents, however hand-signed original documents also are exchanged in parallel. No use of video conference format.

### c. Discussion of findings

Latvian practitioners are sceptical that the use of videoconference format in the EAW proceedings could lead to less EAWs being issued, facilitating and speeding up EAW proceedings and facilitating the exercise of defence rights. In some cases, their opinion was the opposite. However, several of them admitted that a digital platform containing information about each case would be useful and could reduce the circulation of paper documents.



## CONCLUSION

The collected information and the subsequent analysis allow to conclude that, generally, Latvia fulfils all the procedural rights granted by the EAW framework decision. The rights in question were right to information, translation and interpretation, and access to a lawyer. However, it was concluded that there is still a room to improve several areas, such as the quality of translation and the procedure of the execution of a conviction for a person tried in absentia.

There is overall good feedback on the EAW procedure realization by the Latvian practitioners, who believe that, formally, all the examined rights are ensured, emphasizing the achievements on the right to interpretation, which is provided daily. The practitioners themselves are often fluent in Russian and English and able to provide that the procedure is in a language the requested person understands. Although the Letter of Rights is a lengthy 4-page long document, the practitioners confirm that the requested persons mostly are well informed about their rights and the reasons why they are being detained. It is ensured by the prosecutor who explains the contents of the EAW against them, and furthermore, a lawyer is always present in these meetings advising them and their best interests.

However, there are places to be improved while carrying out EAW procedure. The opinion expressed by one of the lawyers indicates that more attention should be paid to how the EAW protocol is filled, especially in cases where the EAW concerns the execution of a conviction for a person tried in absentia. There have been cases when the person did not receive information that their case is considered, even though the institution has had the person's contact information. The EAW protocol often has a blank space that does not indicate whether the person has been notified of the court process, but this procedural mistake is often not considered by the Court. It is important also that an opportunity to review the court's decision in issuing State is provided if a person has been tried in absentia, because requested persons would willingly surrender to attend court rather than go to prison.

When executing the EAW in Latvia, upon receipt of the EAW decision, prosecutors assess whether there are serious grounds to execute an EAW. Compared to the situation 10-15 years ago, the decision not to implement the EAW is more often made if the issuing the EAW is not based on a serious offence for which a substantial punishment is expected. The practice of prosecutors reveals that in case serious concerns on the proportionality of the received EAW arise in the executing Member State, the issuing and executing judicial authorities enter into direct communication: questions and clarifications are asked and provided. There have been cases where withdraw of the EAW has been implemented after clarifying questions. The procedural rights of the requested person in the issuing State and the conditions of detention are rarely considered, because Latvia trusts that other EU countries implement good practices regarding procedural rights and there are no complaints about poor prison conditions in countries mostly issuing the EAW to Latvia.

When issuing the EAW in Latvia, interviewed prosecutors who are issuing of the EAW consider whether issuing an EAW is justified in every particular case. Applying the proportionality check before issuing an EAW includes evaluation of the severity and nature of the criminal offense, the method of committing it and the motive; a sign of violence; third-party offending factor; the amount of the damage caused and the circumstances of compensation for the damage; analysis of administrative costs related to extradition (including translation and escorting of persons); possible penalty; absence of double criminality in the executing State (applicable mainly to criminal offenses provided for in Articles 161 and 262 of the Criminal Law). Each case is evaluated individually, and the expected sentence must be at least one year. Despite the improvements, compliance with proportionality can

be improved among the judicial authorities who submit the EAW request to the International Cooperation Division, Department of Operational Control and International Cooperation of the Prosecutor General's Office of the Republic of Latvia. This is still a problematic area in the practice. However, with a special training this has been partially remedied.

An interesting observation is that the language used by practitioners shows that they consider the EAW system as simplified system of extradition between Member States, and not the system of surrender. Namely, the language of practitioners does not reflect the idea that it is a process of surrender rather than extradition, because most of them keep using the term "extradition" rather than "surrender", which could be also explained as simple linguistic misunderstanding since there is no good alternative for the term "surrender" in Latvian. Similarly linguistic confusion could be observed with the terms "arrest" and "detention", namely, because the term "arests" (in Latvian) refers to detention after the final decision of the court, but in case of the EAW deprivation of liberty is called "detention" or in Latvian "aizturēšana." It is important to emphasize these linguistic differences, as a direct translation can create an inaccurate description of the situation.

At the same time, it should be emphasized that Latvian practitioners generally follow the defined requirements and recommendations regarding the EAW procedure very carefully. Compliance with the recommendations is facilitated by the fact that Latvia has a centralized approach regarding the EAW proceedings. Only four prosecutors of Prosecutor General's Office of the Republic of Latvia work with these cases, and these prosecutors work in the International Cooperation Division of the Department of Operational Control and International Cooperation. Two prosecutors work with the issuing of the EAW, and the other two with the execution of the EAW. They are very well specialized in the various EAW procedures and have excellent knowledge of the requirements and the recommendations of the EAW proceedings.

To conclude, generally the EAW procedural rights are well implemented into national law as well as in the legal practice. Particularly good examples are the right to information and the right for interpretation. However, during the research phase, it was discovered that there might be issues relating to the procedural rights with the person's conviction in absentia, this, however, was not in-depths covered by the framework of this study, and therefore is encouraged to be explored separately. Furthermore, the EAW decisions are not publicly available, thus making it challenging to follow up the practice by the judicial authorities. Even when requested for this study, the authorities denied the access to the relevant case-law. All the conclusions on the practice are drawn from interviews exclusively.