

# **Rehabilitation and mutual recognition – practice concerning EU law on transfer of persons sentenced or awaiting trial**

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## **Section A: General information on existing situation: probation measures, alternative sanctions and supervision measures as an alternative to pre-trial detention**

Please add the information required to answer the questions. Provide supporting or explanatory information – highlighting laws, policies and measures which justify the answer.

**Q1.** Please outline the specific probation measures or alternative sanctions that are available at the post-trial stage in the Member State on which you are reporting:

In Belgium, a distinction is made between alternative sanctions as penalty (working penalty, electronic monitoring and system of home detention with voice recognition) and the alternative sanctions as execution of the prison sentence (electronic monitoring, system of home detention with voice recognition and conditional release).<sup>1</sup> Additionally, two probation measures exist: the probationary conditional sentence and the probationary suspended sentence.

### **1) The working penalty (*La peine de travail / Werkstraf*)<sup>2</sup>**

The working penalty, provided by articles 37 quinquies, 37 sexies, 37 septies of the Criminal Code, might be pronounced as a main penalty instead of a custodial sentence and/or a fine since 2002.<sup>3</sup> The working penalty is a sentence pronounced by a judge when the offender has committed acts that could lead to a custodial sentence of a maximum of five years. In its decision, the judge must also foresee a custodial sentence or a fine that can be applicable in case of non-respect of the working penalty (subsidiary penalty).<sup>4</sup> The working penalty might be imposed *ex officio* by the judge, requested by the public prosecutor, or even requested by the condemned person.<sup>5</sup> The length of the working penalty may not be less than 20 hours – or exceed 300 hours.<sup>6</sup> As an exception, it can run up to 600 hours in case of recidivism.

<sup>1</sup> (Official) Ministry of Justice (2011), [LIVRE VERT - Renforcer la confiance mutuelle dans l'espace judiciaire européen – Livre vert sur l'application de la législation de l'UE en matière de justice pénale dans le domaine de la détention](#), Belgium, European Commission (Director-General Justice), and Lemmens, L. (2014), “[La surveillance électronique devient une peine autonome](#)”, *Jura*, 11 March 2014.

<sup>2</sup> Belgium, [Criminal Code amended by the Criminal Law of 17 April 2002 establishing the working penalty as autonomous punishment in minor criminal matters and police matters](#) (*Loi instaurant la peine de travail comme peine autonome en matière correctionnelle et de police modifiant le Code Pénal/Wet tot invoering van de werkstraf als autonome straf in correctionele zaken en in politiezaken*), 8 June 1967, Articles 37 quinquies, sexies, septies.

<sup>3</sup> Belgium, [Criminal Code amended by the Criminal Law of 17 April 2002 establishing the working penalty as autonomous punishment in minor criminal matters and police matters](#) (*Loi instaurant la peine de travail comme peine autonome en matière correctionnelle et de police modifiant le Code Pénal/Wet tot invoering van de werkstraf als autonome straf in correctionele zaken en in politiezaken*), 8 June 1967, Articles 37 quinquies, sexies, septies.

<sup>4</sup> (Official) Ministry of Justice (2011), [LIVRE VERT - Renforcer la confiance mutuelle dans l'espace judiciaire européen – Livre vert sur l'application de la législation de l'UE en matière de justice pénale dans le domaine de la détention](#), Belgium, European Commission (Director-General Justice), p. 4.

<sup>5</sup> Belgium, [Criminal Code](#) (*Code pénal/Strafwetboek*), 8 June 1967, Article 37 quinquies, § 3 and De Rue, M. and Wattier, I. (2002), « [Une nouvelle peine correctionnelle et de police dans le Code pénal : la peine de travail](#) », *Journal du Droit des Jeunes* n°220, December 2002, p.14.

<sup>6</sup> Belgium, [Criminal Code](#) (*Code pénal/Strafwetboek*), 8 June 1967, Article 37 quinquies, § 2.

## **2) Electronic monitoring (*La surveillance électronique / elektronisch toezicht*)<sup>7</sup>**

Belgium has recently adopted a law setting up electronic monitoring as a main penalty.<sup>8</sup> For offences punishable by imprisonment for a maximum of one year, the judge, upon the consent of the condemned person, may pronounce an electronic monitoring instead of the custodial sentence or a working penalty. The length of this autonomous sentence must correspond to the equal length of imprisonment that the judge would have pronounced – but this cannot be less than one month or more than one year.<sup>9</sup>

Electronic monitoring can also be used to execute the prison sentence, whereby, electronic means are used to control the presence of selected offenders outside the prison, and on previously agreed places and times for a fixed period.<sup>10</sup> Therefore, in such cases, custodial imprisonment is the main penalty and electronic monitoring is not an alternative to imprisonment but a form of execution of the prison sentence.<sup>11</sup>

## **3) The system of home detention with voice recognition (*Système de détention à la maison avec reconnaissance vocale/Thuisdetentie via spraakherkenning*)<sup>12</sup>**

The system of home detention with voice recognition is an alternative to custodial sentence, or a form of execution of the prison sentence, which is implemented in Belgium since 2012. This new form of execution of detention is a simplified version of electronic monitoring, although only applicable for penalties not exceeding eight months. One day of house detention with vocal recognition amounts to one day of imprisonment. The condemned person can only leave his/her residence to go to work or attend training. Therefore, he/she has several hours of liberty every day. Vocal recognition is a system that allows the sentenced person to be called at any time on a secure phone line that is installed into his/her home and which verifies his/her presence through vocal recognition technology.<sup>13</sup>

<sup>7</sup> Belgium, [Act establishing the electronic monitoring as an autonomous sentence](#) (*La loi du 7 février 2014 instaurant la surveillance électronique comme peine autonome modifiant le Code Pénal/Loi instaurant la surveillance électronique comme peine autonome*), 7 February 2014, 8 June 1967, Article 37ter and quater.

<sup>8</sup> Belgium, [Act establishing the electronic monitoring as an autonomous sentence](#) (*La loi du 7 février 2014 instaurant la surveillance électronique comme peine autonome/Loi instaurant la surveillance électronique comme peine autonome*), 7 February 2014 amending the [Criminal Code](#) (Code pénal/Strafwetboek), 8 June 1967, Article 37ter and quater.

<sup>9</sup> Belgium, [Criminal Code](#) (Code pénal/Strafwetboek), 8 June 1967, Article 37ter, §1.

<sup>10</sup> Belgium, [Act concerning the legal statute of persons convicted to a prison sentence and the rights accorded to victim in the frame of the modalities of sentences](#) (*Loi du 17 mai 2006 relative au statut juridique des personnes condamnées à une peine privative de liberté et aux droits reconnus à la victime dans le cadre des modalités d'exécution de la peine/Wet betreffende de externe rechtspositie van de veroordeelden tot een vrijheidsstraf en de aan het slachtoffer toegekende rechten in het raam van de strafuitvoeringsmodaliteiten*), 17 May 2006; and (Unofficial) Flore, D., Fievez, S., Honhon, A., Maggio, J. (2012) *Probation Measures and Alternative Sanctions in the European Union*, Brussels, Intersentia, February 2012.

<sup>11</sup> (Unofficial) Flore, D., Fievez, S., Honhon, A., Maggio, J. (2012) *Probation Measures and Alternative Sanctions in the European Union*, Brussels, Intersentia, February 2012.

<sup>12</sup> Belgium, Ministerial Circular n°1771 (*La circulaire ministérielle n°1771*), 17 January 2005.

<sup>13</sup> Belgium, Ministerial Circular n°1771 of 17 January 2005 setting up the release after the execution of part of the imposed sentence (*La circulaire ministérielle 1771 prévoit la mise en liberté après l'écoulement d'une partie prescrite de la peine*), 17 January 2005 ; (Official) Ministry of Justice (2011), [Détentie à domicile – Une version simplifiée de l'actuel système de surveillance électronique](#), Belgium, Ministry of Justice.

#### **4) Conditional release**

Conditional release is a way of enforcing a custodial sentence that enables the sentenced person to serve the sentence outside of prison, depending on the respect of probation measures.<sup>14</sup> Belgian law does not provide an exhaustive list of probation measures that can be imposed by the judge to the sentenced person. Therefore, it is at the sole discretion of the judge to determine any obligations deemed necessary, depending on the facts of the case submitted.<sup>15</sup>

In Belgium, two forms of conditional release are distinguished:

1. Libération provisoire / voorlopige invrijheidstelling (provisional release) – for sentences of which the enforceable part amounts to three years or less;<sup>16</sup>
2. Libération conditionnelle/voorwaardelijke invrijheidstelling (conditional release) - for custodial sentences of which the enforceable part amounts to more than three years.<sup>17</sup>

While the prison manager is generally competent to grant a provisional release,<sup>18</sup> it is the enforcement tribunal (*Tribunal d'application des peines/strafuitvoeringsrechtbank*) that is competent in cases of conditional release.<sup>19</sup>

#### **5) Probationary conditional sentence (*La suspension probatoire/Probatie-opschorting*)<sup>20</sup>**

Probationary conditional sentence is a judicial decision – according to which the imposition of the sentence is suspended with the condition that the person complies with probation measures. Belgian law does not provide an exhaustive list of probation measures that can be imposed by the judge to the sentenced person<sup>21</sup>. Therefore, it is at the sole discretion of the judge to determine any obligation deemed necessary, depending on the facts of the case submitted. Besides probation measures, the offender is supervised by a judicial assistant with the aim to prevent recidivism.<sup>22</sup> This decision effectively stops further

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<sup>14</sup> (Unofficial) Nederlandt, O. (2015), “[La libération provisoire : pour qui, pourquoi, comment ?](#)”, Justice-en-ligne.be, 18 March 2015 ; (Unofficial) Flore, D., Fievez, S., Honhon, A., Maggio, J. (2012) *Probation Measures and Alternative Sanctions in the European Union*, Brussels, Intersentia, February 2012.

<sup>15</sup> (Unofficial) Flore, D., Fievez, S., Honhon, A., Maggio, J. (2012) *Probation Measures and Alternative Sanctions in the European Union*, Brussels, Intersentia, February 2012.

<sup>16</sup> Belgium, Ministerial Circular n°1771 (*La circulaire ministérielle n°1771*), 17 January 2005; Belgium, Ministerial Circular n°1816 (*La circulaire ministérielle n°1816*), 10 January 2014.

<sup>17</sup> Belgium, [Act concerning the external statute of persons convicted to a prison sentence and the rights accorded to victim in the frame of the modalities of sentences](#) (*Loi du 17 mai 2006 relative au statut juridique externe des personnes condamnées à une peine privative de liberté et aux droits reconnus à la victime dans le cadre des modalités d'exécution de la peine/Wet betreffende de externe rechtspositie van de veroordeelden tot een vrijheidsstraf en de aan het slachtoffer toegekende rechten in het raam van de strafuitvoeringsmodaliteiten*), 17 May 2006.

<sup>18</sup> Belgium, Ministerial Circular n°1771 (*La circulaire ministérielle n°1771*), 17 January 2005; Belgium, Ministerial Circular n°1816 (*La circulaire ministérielle n°1816*), 10 January 2014; (Official) Maison de Justice (2015), [Libération conditionnelle](#), Belgium, Fédération Wallonie-Bruxelles.

<sup>19</sup> Belgium, [Act concerning the external statute of persons convicted to a prison sentence and the rights accorded to victim in the frame of the modalities of sentences](#) (*Loi du 17 mai 2006 relative au statut juridique externe des personnes condamnées à une peine privative de liberté et aux droits reconnus à la victime dans le cadre des modalités d'exécution de la peine/Wet betreffende de externe rechtspositie van de veroordeelden tot een vrijheidsstraf en de aan het slachtoffer toegekende rechten in het raam van de strafuitvoeringsmodaliteiten*), 17 May 2006 ; Maison de Justice (2015), [Libération conditionnelle](#), Belgium, Fédération Wallonie-Bruxelles.

<sup>20</sup> Belgium, [Act on suspension, deferment and probation](#) (*Loi du 19 juin 1964 concernant la suspension, le sursis et la probation/Wet betreffende de opschorting, het uitstel en de probatie*), 19 June 1964, Article 3-6.

<sup>21</sup> Among the probation measures existing in Belgium, there is the obligation to receive budgeting assistance, the obligation to undergo a detoxification program, the instruction to undergo training schemes, the prohibition from having contact with the potential victim or from going to certain places.

<sup>22</sup> (Official) De Clerck, S. (2010), [Politique pénale et d'exécution des peines - Aperçu & développement](#), Belgium, February 2010, p. 44.

proceedings – unless it is revoked.<sup>23</sup> The duration of the probationary period is decided by the judge and can run from one to five years from the date of the judicial decision.<sup>24</sup>

#### **6) Probationary suspended sentence (*Le sursis probatoire / Probatieuitstel*)<sup>25</sup>**

Probationary suspended sentence means that the judge pronounces a sentence (a custodial sentence of a maximum of five years, or a working penalty, and/or fines), and that the execution of the whole or a part of this sentence is suspended for a certain period – during which, the person concerned must fulfil certain conditions. This probation measure always includes a social supervision by a judicial assistant.<sup>26</sup> The duration of the probationary period is decided by the judge and can run from one to five years from the date of the judicial decision.<sup>27</sup> Within this period, if the sentenced person commits new offences or violates the probation conditions, the sentence may be executed. At the end of a successful probationary period, the execution of the sentence can no longer be enforced.<sup>28</sup>

#### **Q2. Please outline the specific supervision measures as alternatives to pre-trial detention that are available in the Member State:**

In Belgium, a distinction exists between alternative measures to judicial prosecution which might be initiated by the prosecutor (*i.e. criminal mediation, criminal transaction, or a closure of the case – without further examination*) and alternative measures to pre-trial detention, which are decided by the investigating judge (*i.e. conditional release, release on bail and electronic monitoring*).

##### **1) Criminal mediation (*la médiation pénale/Bemiddeling in strafzaken*)**

For offences that are not punishable with more than two years of imprisonment, the public prosecutor may decide to resolve the conflict without court intervention.<sup>29</sup> This is a process during which the offender and the victim must agree to undertake a criminal mediation via the intervention of a neutral third party, e.g. a judicial assistant mandated by the public prosecutor and, the parties involved in criminal proceedings must attempt to reach an agreement

<sup>23</sup> Belgium, [Act on suspension, deferment and probation \(Loi du 19 juin 1964 concernant la suspension, le sursis et la probation/Wet betreffende de opschorting, het uitstel en de probatie\)](#), 19 June 1964, Article 3.

<sup>24</sup> Belgium, [Act on suspension, deferment and probation \(Loi du 19 juin 1964 concernant la suspension, le sursis et la probation/Wet betreffende de opschorting, het uitstel en de probatie\)](#), 19 June, 1964, Article 3 ; (Official) Maison de Justice (2015), « [Probation](#) », Belgium, Fédération Wallonie-Bruxelles.

<sup>25</sup> Belgium, [Act on suspension, deferment and probation \(Loi du 19 juin 1964 concernant la suspension, le sursis et la probation/Wet betreffende de opschorting, het uitstel en de probatie\)](#), 19 June, 1964, Article 8.

<sup>26</sup> (Unofficial) Flore, D., Fievez, S., Honhon, A., Maggio, J. (2012) *Probation Measures and Alternative Sanctions in the European Union*, Brussels, Intersentia, February 2012 ; (Official) Maison de Justice (2015), « [Probation](#) », Belgium, Fédération Wallonie-Bruxelles ; (Official) De Clerck, S. (2010), [Politique pénale et d'exécution des peines - Aperçu & développement](#), Belgium, February 2010, p. 44.

<sup>27</sup> Belgium, [Act on suspension, deferment and probation \(Loi du 19 juin 1964 concernant la suspension, le sursis et la probation/Wet betreffende de opschorting, het uitstel en de probatie\)](#), 19 June, 1964, Article 8 ; (Official) Ministry of Justice (2007), [Les maisons de justice : un point de rencontre essentiel pour rétablir la confiance du citoyen dans la Justice – La Probation](#), Belgium, Ministry of Justice, July 2007.

<sup>28</sup> Belgium, [Act on suspension, deferment and probation \(Loi du 19 juin 1964 concernant la suspension, le sursis et la probation/Wet betreffende de opschorting, het uitstel en de probatie\)](#), 19 June, 1964, Article 8 ; (Official) Ministry of Justice (2007), [Les maisons de justice : un point de rencontre essentiel pour rétablir la confiance du citoyen dans la Justice – La Probation](#), Belgium, Ministry of Justice, July 2007.

<sup>29</sup> (Official) Ministry of Justice (2015), [Médiation pénale](#), Belgium, SPF Justice ; (Official) Ministry of Justice (2015), [La Médiation Pénale – Les maisons de justice](#), Belgium, Ministry of Justice, p. 4.

to resolve the relational and material damage resulting from the offence.<sup>30</sup> Mediation may also be accompanied with several measures imposed by the public prosecutor on the offender (e.g. community work, an obligation to present an apology to the victim, follow a training program or therapy).<sup>31</sup> Once both parties have reached an agreement and the offender has accepted the measures, the public prosecutor schedules a mediation hearing. The offender signs a report in which the measures are set out and the public prosecutor terminates the criminal proceeding once the measures are adopted.<sup>32</sup>

## 2) Conditional release<sup>33</sup> (*La libération sous condition / voorwaardelijke invrijheidstelling*)

Until 1990, the Belgian legal framework did not provide an alternative to pre-trial detention. Therefore, the investigating judge could either, detain the suspects, or release them unconditionally.<sup>34</sup> The Act of 20 July 1990, on preventive detention, introduced the possibility for conditional release for suspects who have committed criminal offences for which there are penalties of up to one year of imprisonment as prescribed by the law. The investigating judge is competent to decide to release the suspects, subject to compliance with imposed conditions<sup>35</sup> and subject to the discretion of the judge. Such conditions may be to, for example, no longer have contact with the victim, no longer visit with the others involved in the case, must reside at a particular address or attend a programme in a treatment facility for detoxification and rehabilitation.<sup>36</sup> Additionally, the judge may require that a judicial assistant carries out a succinct information report, or a social investigation, on the suspect.<sup>37</sup> This alternative to pre-trial detention is foreseen for a maximum period of three months – which may be renewed.<sup>38</sup> The judge may adapt, suspend or remove the conditions. If the suspect does not respect them, the judge can also order that he/she be in pre-trial detention.<sup>39</sup>

## 3) Release on bail<sup>40</sup> (*La libération sous caution /vrij op borgtocht*)

A second alternative to preventive detention is release in exchange for payment of a sum of money.<sup>41</sup> The amount of bail is ordered by the investigating judge. The bail is deposited into the “*Caisse des Dépôts et Consignations/Deposito - en Consignatiekas*”, and returned to the accused person once he/she has appeared at the proceedings for the enforcement of the judgment.<sup>42</sup>

<sup>30</sup> (Unofficial) ASBL Mediante-Service de médiation entre auteurs et victimes d'infraction (2015), [\*La médiation en matière pénale\*](#), Belgium.

<sup>31</sup> (Official) Ministry of Justice (2015), [\*La Médiation Pénale – Les maisons de justice\*](#), Ministry of Justice, Belgium, p. 6.

<sup>32</sup> (Official) OBFG (2011), [\*Réponse de l'ordre des Barreaux francophones et germanophones de Belgique \(O.B.F.G.\) à la consultation de la Commission « Renforcer la confiance mutuelle dans l'espace judiciaire européen – Livre vert sur l'application de la législation de l'UE en matière de justice pénale dans le domaine de la détention »\*](#), Brussels, OBFG, November 2011, p.2.

<sup>33</sup> Belgium, [\*Act of on preventive detention \(Loi relative à la détention préventive/Wet betreffende de voorlopige hechtenis\)\*](#), 20 July 1990, Article 35.§1.

<sup>34</sup> (Official) De Clerck, S. (2010), [\*Politique pénale et d'exécution des peines - Aperçu & développement\*](#), Brussels, February 2010, p. 9.

<sup>35</sup> (Official) De Clerck, S. (2010), [\*Politique pénale et d'exécution des peines - Aperçu & développement\*](#), Brussels, February 2010, p. 2.

<sup>36</sup> Belgium, [\*Act of on preventive detention \(Loi relative à la détention préventive/Wet betreffende de voorlopige hechtenis\)\*](#), 20 July 1990, Article 35; (Official) Ministry of Justice (2007), [\*Les maisons de justice : un point de rencontre essentiel pour rétablir la confiance du citoyen dans la Justice : L'alternative à la détention préventive\*](#), Brussels, SPF Justice, July 2007, p. 4.

<sup>37</sup> (Official) Maison de Justice (2015), [\*Alternative à la détention préventive\*](#), Brussels, Fédération Wallonie-Bruxelles ; (Official) Maison de Justice (2015), [\*Réalisation d'enquêtes\*](#), Brussels, Fédération Wallonie-Bruxelles.

<sup>38</sup> Belgium, [\*Act of on preventive detention \(Loi relative à la détention préventive/Wet betreffende de voorlopige hechtenis\)\*](#), 20 July 1990, Article 35-36.

<sup>39</sup> Belgium, [\*Act of on preventive detention \(Loi relative à la détention préventive/Wet betreffende de voorlopige hechtenis\)\*](#), 20 July 1990, Article 36, §1 ; (Official) Maison de Justice (2015), [\*Alternative à la détention préventive\*](#), Brussels, Fédération Wallonie-Bruxelles.

<sup>40</sup> Belgium, [\*Act of on preventive detention \(Loi relative à la détention préventive/Wet betreffende de voorlopige hechtenis\)\*](#), 20 July 1990, Article 35,§4.

<sup>41</sup> (Official) De Clerck, S. (2010), [\*Politique pénale et d'exécution des peines - Aperçu & développement\*](#), Brussels, February 2010, p. 3.

<sup>42</sup> Belgium, [\*Act of on preventive detention \(Loi relative à la détention préventive/Wet betreffende de voorlopige hechtenis\)\*](#), 20 July 1990, Article 35,§4.

#### **4) Electronic monitoring<sup>43</sup> (*La surveillance électronique /elektronisch toezicht*)**

Since 2012, the judge may also decide to place the suspect in pre-trial detention under electronic monitoring when the suspect has committed a criminal offence for which there is a penalty of up to one year of imprisonment or a serious penalty as prescribed by the law.<sup>44</sup> This type of electronic monitoring is carried out with a GPS system under the supervision of the National Centre of electronic monitoring (*Centre national de surveillance électronique / Nationaal Centrum voor Elektronisch Toezicht*).<sup>45</sup> The person is obliged to remain permanently at the designated address and he/she may only be absent for authorised journeys, such as those regulated by the royal decree of 26 December 2013.<sup>46</sup> For instance, he/she can leave the designated address for journeys related to judicial proceedings and cases of medical emergency.

**Q3.** Are there any specific legislative or policy developments regarding alternatives to prison (at the pre- and post-trial stage) of **particular suspects/sentenced persons** (such as children, persons with disabilities, persons in need of special treatment or mothers with young children)?

##### **1) Children**

In Belgium, in case of offences or crimes committed by a minor child (below 18 years old), the competence to prosecute and condemn the child belong to Youth Tribunals (*Tribunal de la Jeunesse/Jeugdrechtbank*) rather than to Trial Chambers (*Tribunal de Première Instance/Rechtbank van eerste aanleg*) and Criminal Courts (*Cour d'Assises/Hof van Assisen*) that have competence for offences and crimes committed by adults. Two principles are also important to note in criminal justice matter involving children. First, children will never be condemned to imprisonment and serve their sentence in the same penal facilities than adults, with the exception of the ‘dessaïsissement/uithandengiving’. Second, the judges favour that the child stay in his/her family. By consequent, the placements of the child in a family or in a Child Protection Institution are, in principal, measures of last resort. Besides foster families, we distinguish two main types of foster institution in Belgium:

- The Public Child Protection Institutions (*Institutions publiques de protection de la jeunesse/IPPJ/Gemeenschapsinstellingen voor de jeugd*) where there are two regimes. One is open and applies to children over 12 years, and the other is closed and applies to children over 14 years. The objective of these institutions is to provide to the child accommodation, treatment, education, instruction or professional training.<sup>47</sup>

<sup>43</sup> Belgium, [Act containing various provisions in justice matter, amending the Act of on preventive detention](#) (*Loi relative à la détention préventive/Wet betreffende de voorlopige hechtenis*), 27 December 2012.

<sup>44</sup> Belgium, [Act of 27 December 2012 containing various provisions in justice matter, amending the Act of on preventive detention](#) (*Loi relative à la détention préventive/Wet betreffende de voorlopige hechtenis*), 27 December 2012.

<sup>45</sup> (Official) Maison de Justice (2015), [Alternative à la détention préventive](#), Brussels, Fédération Wallonie-Bruxelles ; Belgium, [Royal Decree implementing the Title II of the Act of 27 December 2012 containing various provisions in justice matter](#) (*Arrêté Royal du 26 décembre 2013 portant exécution du Titre II de la loi du 27 décembre 2012 portant des dispositions diverses en matière de justice/Koninklijk besluit houdende tenuitvoerlegging van Titel II van de wet van 27 december 2012 houdende diverse bepalingen betreffende justitie*), 26 December 2013, Article 1.

<sup>46</sup> Belgium, [Royal Decree implementing the Title II of the Act of 27 December 2012 containing various provisions in justice matter](#) (*Arrêté Royal du 26 décembre 2013 portant exécution du Titre II de la loi du 27 décembre 2012 portant des dispositions diverses en matière de justice/Koninklijk besluit houdende tenuitvoerlegging van Titel II van de wet van 27 december 2012 houdende diverse bepalingen betreffende justitie*), 26 December 2013.

<sup>47</sup> Belgium, [Act of 8 April 1965 on youth protection](#) regarding the care of minors having committed an act qualified as an offence (*Loi relative à la protection de la jeunesse, à la prise en charge des mineurs ayant commis un fait qualifié infraction et à la réparation du dommage causé par ce fait/Wet betreffende de jeugdbescherming, het ten laste nemen van minderjarigen die een als misdrijf omschreven feit hebben gepleegd en het herstel van de door dit feit veroorzaakte schade*), 8 April 1965.

- The Closed Centres (*Centres fermés/Gesloten instellingen*) receive only children who do not have place in Public Child Protection Institutions or in a foster family and who have committed crimes of a serious gravity. By consequent, the objective of this institution is not the protection of the child but the protection of the society.<sup>48</sup>

While there are no new legislative or policy developments regarding alternatives to prison for children, it is worth noting that Belgium has recently adopted an act establishing the family and youth tribunal.<sup>49</sup> Since the implementation of this tribunal, all family litigation are handled by the youth judge and no longer split between different jurisdictions – as was done in the past.<sup>50</sup> Consequently, the youth judge, aware of the family situation, will be in a better position to impose tailored-measures in the case of offences committed by a child.

*At the pre-trial stage*, the public prosecutor might decide to<sup>51</sup>:

1. **close the case with no further action** – on the grounds that the acts are not serious and that it is the first time the child faces justice, or because there are not enough evidences.
2. close the case with no further action and send a **written warning, or convene the child and his/her parents** for the public prosecutor to inform them that he/she has acknowledged the charges against the child and recalls them to respect the law.
3. opt for **criminal mediation** – if there is compelling evidence of guilt and/or if the child acknowledged the acts that he/she committed and, if the child and the victim(s) agree on the mediation.
4. **refer the case to the Youth Tribunal** – for serious offences and strong evidence against the child.

In the case of referral to the Youth Tribunal (*post-trial stage*), the different types of measures adopted will depend on the personality of the child, the maturity of the child, his/her living environment, the seriousness of the offences, the circumstances in which the offences have been committed, the damage to the victim(s), his/her criminal record, the security of the child, and public security.

The Youth Tribunal can adopt the following measures<sup>52</sup>:

1. **dismissal** of the case when there is not enough evidence;

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<sup>48</sup> (Unofficial), ASBL La Code, [Analyse : L'enfermement des mineurs délinquants : état des lieux](#), Brussels, LA CODE, June 2011.

<sup>49</sup> Belgium, [Act of 30 July 2013 establishing the family and youth tribunal](#) (*Loi portant création d'un tribunal de la famille et de la jeunesse/Wet betreffende de invoering van een familie- en jeugdrechtbank*), 30 July 2013.

<sup>50</sup> (Unofficial) Van Gysel, C.-H. (2013) [La loi créant le tribunal de la famille et de la jeunesse vient d'être votée : le fruit d'un long cheminement](#), Brussels, *Justice-en-ligne*, 2 September 2013.

<sup>51</sup> (Unofficial) ASBL Droits des jeunes (2007), [Tu es mineur\(e\), tu as commis une infraction, que va-t-il se passer ?](#), Brussels, Droitsdesjeunes.be, June 2007 ; (Unofficial) Service Droit des Jeunes (2006), [Réforme de la Loi du 8 avril 1965 Loi relative à la protection de la jeunesse, à la prise en charge des mineurs ayant commis un fait qualifié infraction et à la réparation du dommage causé par ce fait](#), JDJ n°258, Brussels, October 2006.

<sup>52</sup> (Unofficial) ASBL Droits des jeunes, [Tu es mineur\(e\), tu as commis une infraction, que va-t-il se passer ?](#), Brussels, Droitsdesjeunes.be, June 2007 ; (Unofficial) Service Droit des Jeunes (2006), [Réforme de la Loi du 8 avril 1965 Loi relative à la protection de la jeunesse, à la prise en charge des mineurs ayant commis un fait qualifié infraction et à la réparation du dommage causé par ce fait](#), JDJ n°258, Brussels, October 2006

2. a **restorative measure**: a written project, e.g. an apology to the victim, commitment to follow a therapy, a program of scholastic reintegration, social or educational monitoring, detoxification treatment, a social follow-up, or a mediation.
3. a **judicial measure**: an appropriate measure to enable the child to remain in the care of his/her living environment (family), with or without conditions –monitored by a social worker who reports to the tribunal. The juvenile judge might also impose a “parental stage” on the parents if they show marked disinterest regarding the juvenile delinquency of their child.<sup>53</sup>
4. an **autonomous measure**: a reprimand, social monitoring by the Judicial Protection Service, intensive educational support by an educator, educative and/or community work, or an ambulatory treatment.
5. the **placement** of a child in a foster family, a Judicial Protection Institution, a closed or open centre, a hospital service, or a detoxification service.
6. the “**dessaississement/uithandengiving**”: children of 16 years old and older, who have committed serious crimes, which are already subject to judicial measures, can be referred to adult criminal jurisdiction, and sentenced to imprisonment in specific circumstances.<sup>54</sup>

## **2) Persons with physical disabilities and in need of special treatment**

Regarding persons with physical disabilities, or needing special treatment, there are no specific legislative or policy developments regarding alternatives to prison. They are subject to the same rules of detention/imprisonment than persons without disabilities and special needs. They are, however, entitled to adequate care when detained.<sup>55</sup> In this perspective, judicial assistants must adapt the execution of the pre or post-detention measure in accordance with the physical disabilities of the person. Furthermore, persons with physical disabilities are entitled to receive financial assistance in case they are unable to work, or if they do not have financial support from their families.<sup>56</sup> It should also be noted that, in accordance with the Federal Masterplan 2008-2012-2016<sup>57</sup>, several new prisons will include specific cells for persons with physical disabilities, by 2016. For example, in Flanders, the prison of Beveren inaugurated four cells for persons with disabilities in 2014.<sup>58</sup>

<sup>53</sup>Belgium, [Youth Protection Act](#) (*Loi relative à la protection de la jeunesse, à la prise en charge des mineurs ayant commis un fait qualifié infraction et à la réparation du dommage causé par ce fait/Wet betreffende de jeugdbescherming, het ten laste nemen van minderjarigen die een als misdrijf omschreven feit hebben gepleegd en het herstel van de door dit feit veroorzaakte schade*), 8 April 1965, Articles 29bis et 45bis.

<sup>54</sup> Belgium, [Youth Protection Act](#) (*Loi relative à la protection de la jeunesse, à la prise en charge des mineurs ayant commis un fait qualifié infraction et à la réparation du dommage causé par ce fait/Wet betreffende de jeugdbescherming, het ten laste nemen van minderjarigen die een als misdrijf omschreven feit hebben gepleegd en het herstel van de door dit feit veroorzaakte schade*), 8 April 1965, Articles 57bis ; (Unofficial) Henrion, T. (2007), *La nouvelle procédure de dessaisissement*, *JDJ* n°268, Brussels, October 2007 ; (Unofficial) Délégué Général des Droits de l’Enfant (2015), [Le Dessaisissement-Avis Du Délégué Général Quant À La Mesure De Dessaisissement](#), Brussels,DGDE.be.

<sup>55</sup> (Official) Ministry of Justice (2010), [Rapport d’Activités - Direction générale des Etablissements pénitentiaires](#), Brussels, Ministry of Justice ; (Official) SPF Justice (2015), [Soins médicaux](#), Brussels, SPF Justice.

<sup>56</sup> (Unofficial) Lemmens, L., Lysy, B. (2013) « Nouveau statut de protection pour les personnes incapables », LegalWorld, 2013.

<sup>57</sup> (Official) SPF Justice (2011), [Masterplan 2008-2012-2016 pour une “infrastructure pénitentiaire dans des conditions humaines](#), Brussels, SPF Justice ; (Official) La Cour des comptes, [Mesures de lutte contre la surpopulation carcérale - Rapport de la Cour des comptes transmis à la Chambre des représentants](#), Brussels, December 2011, pp. 119-135.

<sup>58</sup> (Official) Régie des Bâtiments (2015), [Inauguration de la prison de Beveren](#), Brussels, Régie des Bâtiments.

### 3) Persons with mental disorder

Persons with mental disabilities are subject to specific regimes.

At the pre-trial stage, Belgian law provides that when there are reasons to believe that the suspect is suffering from a mental disorder, the investigating judge can issue an order for placement of the person under **observation in the psychiatric annex of a prison**, instead of putting him/her in detention.<sup>59</sup> This observation can be decided at all stages of the proceedings until the definitive decision.<sup>60</sup> However, the person cannot stay more than six months in observation.<sup>61</sup>

At the pre-trial or post-trial stage, when the person who has committed the offence has a mental disability, the investigating jurisdictions (the Council Chamber and the Court's Indictment Division) or the Magistrate's Courts, can pronounce his/her internment.<sup>62</sup> This **internment** has two objectives: protect society and give the offender the care he/she needs in order for him/her to be released back into society.<sup>63</sup> The Commission for Social Defence (*Commission de Défense Sociale / Commissie tot Bescherming van de Maatschappij*) implements the decision of internment.<sup>64</sup> They transfer the person to a Social Defence Institution or to the psychiatric annex of a prison.<sup>65</sup> When the mental condition of the person has improved and the conditions of social rehabilitation are met, the Commission can decide ‘a test release’ (*une libération à l'essai/ op proef in vrijheid*).<sup>66</sup> This “test release” is subject to conditions, such as finding a job, following training, or following therapy in a Psychiatric Centre<sup>67</sup>, and the person is accompanied with a medico-social guardianship.<sup>68</sup> Internment is a measure of indeterminate duration but the Commission may order the definitive release of the patient in the circumstances prescribed by law. Due to the lack of places in Social Defence Institutions, many offenders with mental disorders stay for years in overcrowded psychiatric annexes of prisons, waiting for their transfer to Social Defence Institutions. In these psychiatric annexes, which are detention centres and not care centres, there are

<sup>59</sup> Belgium, [Act on social protection for defectives and habitual offenders](#) (*Loi de défense sociale à l'égard des anormaux et des délinquants d'habitude/Wet tot bescherming van de maatschappij tegen abnormalen en de gewoontemisdadigers*), 1 July 1964, Article 1.

<sup>60</sup> Belgium, [Act on social protection for defectives and habitual offenders](#) (*Loi de défense sociale à l'égard des anormaux et des délinquants d'habitude/Wet tot bescherming van de maatschappij tegen abnormalen en de gewoontemisdadigers*), 1 July 1964, Article 2.

<sup>61</sup> Belgium, [Act on social protection for defectives and habitual offenders](#) (*Loi de défense sociale à l'égard des anormaux et des délinquants d'habitude/Wet tot bescherming van de maatschappij tegen abnormalen en de gewoontemisdadigers*), 1 July 1964, Article 6.

<sup>62</sup> Belgium, [Act on social protection for defectives and habitual offenders](#) (*Loi de défense sociale à l'égard des anormaux et des délinquants d'habitude/Wet tot bescherming van de maatschappij tegen abnormalen en de gewoontemisdadigers*), 1 July 1964, Article 7.

<sup>63</sup> Maison de Justice (2015), *Libération à l'essai*, Brussels, Fédération Wallonie-Bruxelles.

<sup>64</sup> Belgium, [Act on social protection for defectives and habitual offenders](#) (*Loi de défense sociale à l'égard des anormaux et des délinquants d'habitude/Wet tot bescherming van de maatschappij tegen abnormalen en de gewoontemisdadigers*), 1 July 1964, Article 14.

<sup>65</sup> Maison de Justice (2015), *Libération à l'essai*, Brussels, Fédération Wallonie-Bruxelles.

<sup>66</sup> Belgium, [Act on social protection for defectives and habitual offenders](#) (*Loi de défense sociale à l'égard des anormaux et des délinquants d'habitude/Wet tot bescherming van de maatschappij tegen abnormalen en de gewoontemisdadigers*), 1 July 1964, Article 18.

<sup>67</sup> Belgium, [Act on social protection for defectives and habitual offenders](#) (*Loi de défense sociale à l'égard des anormaux et des délinquants d'habitude/Wet tot bescherming van de maatschappij tegen abnormalen en de gewoontemisdadigers*), 1 July 1964, Article 21 ; (Official) Maison de Justice (2015), *Libération à l'essai*, Brussels, Fédération Wallonie-Bruxelles.

<sup>68</sup> (Official) Maison de Justice (2015), *Libération à l'essai*, Brussels, Fédération Wallonie-Bruxelles.

no individualised approaches to psychiatric disorders. In this respect, it should be recalled that Belgium has been condemned several times by the ECtHR regarding the conditions of internment of persons with mental disorders.<sup>69</sup>

In 2007, a law, which is currently under revision, has been adopted to improve the conditions of internment for persons with mental disorders.<sup>70</sup> For instance, the act provides that any medical care provided to the detained person must be tailored in order to promote his/her social reinsertion. Additionally, the Federal Masterplan 2008-2012-2016<sup>71</sup> set-up different political actions and reforms aimed at improving services and access to specialised psychiatric centres for detainees with mental disorders.<sup>72</sup>

### **3) Mothers with young children**

In Belgium, there are no specific alternatives to imprisonment for pregnant mothers or mother with young children. However, the General Regulation relative to Penitentiary Institutions provides that mothers with young children in detention, or imprisonment can live together in the same room until the child is three years old.<sup>73</sup> The Belgian penitentiary institutions for women are not obliged to arrange specific departments to accommodate pregnant women and women with young children. However, several prisons (e.g. Bruges, Berkendael, Lantin and Mons) have adopted, in agreement with the Federal State and some federated entities, a Protocol which requires that they set up special accommodation for childbirth, kitchens, playrooms and spaces outside cells.<sup>74</sup> Furthermore, some actors from the O.N.E. (birth and early childhood) agency and educator from the Youth Aid will be regularly present in order to assist the mother with her child.

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<sup>69</sup> (Unofficial) Derestiat, P. (2013), « [La Cour européenne des droits de l'homme condamne la Belgique en raison de la situation des internés dans le système carcéral](#) », *Justice en Ligne* ; (Official) Centre Interfédéral pour l'Egalité des Chances (2014), [Les personnes internées : la Belgique condamnée par la Cour européenne des droits de l'homme](#), Brussels ; (Official) Centre Interfédéral pour l'Egalité des Chances, 13 January 2014.

<sup>70</sup> Belgium, [Act of 21 April 2007 on the detention of persons with mental disorders](#) (*Loi relative à l'internement des personnes atteintes d'un trouble mental/ Wet betreffende de internering van personen met een geestestoornis*), 21 April 2007.

<sup>71</sup> (Official) Ministry of Justice (2011), [Masterplan 2008-2012-2016 pour une "infrastructure pénitentiaire dans des conditions humaines"](#), Brussels, SPF Justice.

<sup>72</sup> (Official) La Cour des comptes, [Mesures de lutte contre la surpopulation carcérale - Rapport de la Cour des comptes transmis à la Chambre des représentants](#), Brussels, December 2011, pp. 119-135.

<sup>73</sup> Belgium, [Royal Decree containing the general prison regulation](#) (*Arrêté royal portant règlementation des établissements pénitentiaires*), 21 May 1965 ; (Unofficial) La Code (2012), [Une maternité derrière les barreaux - Analyse](#), Brussels, La Code, September 2012.

<sup>74</sup> (Unofficial) Fonds Houtman (2015), [Les enfants vivant en prison](#), Brussels, fondshoutman.be ; (Official) Délégué Général aux Droits de l'Enfant (2011), [Rapport annuel du Délégué Général aux Droits de l'Enfant 2010-2011 - Maintien des relations personnelles entre les enfants et leur parent détenu](#), Brussels, DGDE, pp. 16-20 ; (Official) Ministère de la Justice, Protocole d'Accord relatif à l'accueil d'enfants en bas âge auprès de leur parent détenu et l'accompagnement des femmes enceintes en détention, May 2014 (source unavailable online).

## Section B: Transfer of suspects/sentenced persons

Please give a response for each of the boxes. If the information is the same in two boxes, duplicate the text. If the question is not applicable, specify why.

As a preliminary remark, it is important to note that, although Belgium has implemented the FD 2008/909 and the FD 2008/947, Belgian laws implementing these Framework-Decisions only provide mutual recognition and transfer of the execution of the judgement of **sentenced persons**. Suspected persons are, therefore, not concerned by Belgian laws.

TOPIC	FD 2008/909	FD 2008/947	FD 2009/829 (ESO)
<b>Q1. AVAILABILITY OF INFORMATION</b>			
Q1.1. Is information publicly available in ‘issuing states’ concerning the following? If yes, please specify.			
• What information is provided (e.g. conditions for early release for FD 909 or the need for a suspect/sentenced person’s consent to a measure for FD 947 and 829)?	Aside from Belgian law implementing the FD 2008/909 <sup>75</sup> , there is no information publicly available in Belgium regarding the mutual recognition and the transfer of judgements imposing custodial sentences or measures involving deprivation of liberty.	Aside from Belgian law implementing the FD 2008/947 <sup>76</sup> , there is no information publicly available in Belgium regarding the mutual recognition and the transfer of judgements imposing probation measures or alternatives to measures involving a deprivation of liberty.	N/A as the FD 2009/829 (ESO) has not been implemented in the Belgian legal framework.
• How is the information made publicly available (tools, or networks used)?			
• In which languages is the information provided?			
Q1.2. Apart from the competent authorities required by the FDs, is there	No. However, it is important to note that the sentenced person	Yes, the Prosecution Office via the enforcement tribunal ( <i>Tribunal</i>	

<sup>75</sup> Belgium, [Act related to the application of the mutual recognition principle to custodial sentence or measure deprivative of liberty pronounced in a European Union Member State](#) (*Loi relative à l'application du principe de reconnaissance mutuelle aux peines ou mesures privatives de liberté prononcées dans un Etat membre de l'Union européenne/ Wet inzake de toepassing van het beginsel van wederzijdse erkenning op de vrijheidsbenemende straffen of maatregelen uitgesproken in een lidstaat van de Europese Unie*), 15 May 2012.

<sup>76</sup> Belgium, [Act related to the application of the mutual recognition principle to judgements and probation decisions for purposes of monitoring of probation measures and alternatives to custodial sentence pronounced in a European Union Member State](#) (*Loi relative à l'application du principe de reconnaissance mutuelle aux jugements et décisions de probation aux fins de la surveillance des mesures de probation et des peines de substitution prononcées dans un Etat membre de l'Union européenne/ Wet inzake de toepassing van het beginsel van de wederzijdse erkenning op vonnissen en probatiebeslissingen met het oog op het toezicht op de probatievoorraarden en de alternatieve straffen uitgesproken in een lidstaat van de Europese unie*), 21 May 2013.

<p>any other national office or point of contact responsible for leading initial discussions about potential transfers (as issuing and executing state)? If yes, please provide brief details.</p>	<p>him/herself can make the request, even if this does not lead to any obligation for the authorities to initiate the procedure.<sup>77</sup></p>	<p><i>d'application des peines / strafuitvoeringsrechtbank).</i><sup>78</sup></p>	
<p>Q1.3. Do the competent authorities collate information about their experience of transfers (such as personal data of the suspect/sentenced person, states involved, and issues raised during the transfer process)? If yes, specify the information gathered.</p>	<p>The information collected by the Ministry of Justice are the:</p> <ul style="list-style-type: none"> <li>• identity of the sentenced person</li> <li>• committed offences</li> <li>• existence or non-existence of consent</li> <li>• The existence or non-existence of prior-agreement.<sup>79</sup></li> </ul>	<p>The information collected by the Ministry Justice are the:</p> <ul style="list-style-type: none"> <li>• identity of the sentenced person</li> <li>• committed offences</li> <li>• existence or non-existence of consent</li> <li>• The existence or non-existence of prior-agreement.</li> </ul> <p>Once the probation measure, or the alternative to detention, is adopted, the probationary services of the federal entities, via their IT system (SIPAR), can identify the number of decisions taken to execute the law. The information exchanged is the identity of the sentenced person, the type of offence committed and the kind of measures adopted.<sup>80</sup></p>	

<sup>77</sup> Representative of the Ministry of Justice (SPF).

<sup>78</sup> Representative of the Ministry of Justice (SPF).

<sup>79</sup> Representative of the Ministry of Justice (SPF).

<sup>80</sup> Representative of the Ministry of Justice (SPF).

## **Q2. INFORMED CONSENT OF THE SUSPECT/SENTENCED PERSON**

Q2.1. Is there a procedure in the issuing state (e.g. some form of mechanism that ensures it is done in all relevant cases) in place to inform the suspect/sentenced person of the option to transfer the judgment or decision to another Member State? If yes, please briefly provide information (e.g. is it an oral or written procedure) and specify who provides this information.	A procedure has been introduced for convicted persons who are detained in Belgium through the adoption of an Information Brochure written by the Central Authority of international cooperation in criminal matters (Ministry of Justice) and communicated via the Collective Letter No. 127 of 20 February 2014 to all Belgian prison facilities. This Letter contains service instructions, which is addressed to the prison directors. According to this procedure, an information booklet – including information about the possibilities of transferring the judgement to another Member State, must be set up by each prison director and given to each sentenced person. The sentenced person must sign to acknowledge having received it and the acknowledgement of receipt is kept in his / her file. <sup>81</sup>	The Minister of Justice and the College of General Attorneys have adopted a Joint Circular of 19 August 2014 implementing Belgian law on the mutual recognition of probation measures, which provides convicted persons with specific information about the transfer of the decision, including the fact that the cost of this transfer will not be borne by the Belgian State. <sup>83</sup>  Regarding the alternatives to pre-trial detention, a similar Collective Letter is in the process of being adopted by the Central Authority of international cooperation in criminal matters of the Ministry of Justice (Ministry of Justice). This Letter will also has for scope to communicate to the prison directors an information booklet related to conditional release, which will include the different possibilities offered by the new law on mutual recognition and transfer	
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<sup>81</sup> Representative of the Ministry of Justice (SPF).

<sup>83</sup> Representative of the Ministry of Justice (SPF).

	In practice, lawyers did not observe the deliverance of this information booklet yet. <sup>82</sup>	of probation measures and alternatives to imprisonment. <sup>84</sup>	
Q2.2. Is there a procedure in place in the issuing state to obtain the informed consent of the suspect/sentenced person before forwarding the judgment or decision to the executing state? (e.g. a pre-prepared written explanation of the process available in a number of languages). If yes, please briefly specify what information the suspect/sentenced person receives (e.g. information on appeal and release possibilities).	<p>Yes. A procedure is in place according to which the consent of the sentenced person is required before forwarding the judgement to the executing state.<sup>85</sup></p> <p>The procedure provides that <u>when the sentenced person is arrested in Belgium</u>, his/her consent is obtained during his/her appearance in front of the public prosecutor. The sentenced person is informed of the transfer of the judgment to the Executing State for the purposes of recognition and enforcement. He/she is notified that consent to the transfer of the judgment entails the renunciation of entitlement to the rule of specialty. In addition, he/she is informed that the custodial sentence, or measure of deprivation of liberty that remained</p>	<p>The law provides two different regimes: with or without prior-agreement of the Executing State.<sup>86</sup></p> <p>In the regime with prior-agreement, the transfer of the decision takes place upon the request of the person sentenced (tacit consent).<sup>87</sup></p> <p>To the contrary, in the regime without prior-agreement from the executing state, the consent of the person sentenced is not required.<sup>88</sup></p>	

<sup>82</sup> Legal counsel and representatives of the Belgian Section of l'Observatoire International des Prisons.

<sup>84</sup> Representative of the Ministry of Justice (SPF).

<sup>85</sup> Belgium, [Act related to the application of the mutual recognition principle to custodial sentence or measure deprivative of liberty pronounced in a European Union Member State](#) (*Loi relative à l'application du principe de reconnaissance mutuelle aux peines ou mesures privatives de liberté prononcées dans un Etat membre de l'Union européenne/ Wet inzake de toepassing van het beginsel van wederzijdse erkenning op de vrijheidsbenemende straffen of maatregelen uitgesproken in een lidstaat van de Europese Unie*), 15 May 2012, Article 6 §1, 33§1-2.

<sup>86</sup> Belgium, [Act related to the application of the mutual recognition principle to judgements and probation decisions for purposes of monitoring of probation measures and alternatives to custodial sentence pronounced in a European Union Member State](#) (*Loi relative à l'application du principe de reconnaissance mutuelle aux jugements et décisions de probation aux fins de la surveillance des mesures de probation et des peines de substitution prononcées dans un Etat membre de l'Union européenne/ Wet inzake de toepassing van het beginsel van de wederzijdse erkenning op vonnissen en probatiebeslissingen met het oog op het toezicht op de probatievoorraarden en de alternatieve straffen uitgesproken in een lidstaat van de Europese unie*), 21 May 2013, Article 5.

<sup>87</sup> Representative of the Ministry of Justice (SPF).

<sup>88</sup> Representative of the Ministry of Justice (SPF).

	<p>outstanding, will be directly and immediately enforceable in the Executing State – since it has been recognised by the Executing State, and that the law of the Executing State will govern the execution of the remainder of the sentence. Finally, the sentenced person is informed that the Executing State has the possibility to adapt the sentence pronounced in Belgium if the duration or nature of this latter is incompatible with the law of the Executing State. The sentenced person's consent is officially given in writing in the form referred to in Annex 2 of the EU Framework-Decision.</p> <p>When the sentenced person is already on the territory of the Executing State, the Minister of Justice requests the Executing State to collect the person's consent when requesting the prior-agreement regarding to the transfer of the judgement.</p>		
Q2.3. Does the suspect/sentenced person have the right to revoke his/her consent to the transfer in the issuing state? If yes, please briefly specify until which stage of the procedure this right exists.	<p><i>"When the person consent to the transfer of the judgement, he/she can revoke his/her consent within 90 days from his/her appearance before the public prosecutor. If the transfer did not take place at the</i></p>	No. <sup>90</sup>	

<sup>90</sup> Representative of the Ministry of Justice (SPF).

	<i>expiration of this period, the sentenced person can revoke his/her consent via a letter addressed to the public prosecutor until the day this latter is notified of the transfer date".<sup>89</sup></i>		
Q2.4. Is there any procedure in place in the issuing state to obtain the opinion of the sentenced person concerning the following: If yes, please briefly specify e.g. is it an oral or a written procedure, are there any checks on actual understanding of the option).			
• When consent is not required)?	Yes. When the person sentenced is on the Belgian territory and his/her consent is not required, he/she can present his/her written or oral observations to the competent authority. <sup>91</sup> These observations will be taken in account to adopt the decision of transfer. They are also transferred to the Executing State. Once obtained, these observations can, in principle, still be modified at the request of the sentenced person until his/her transfer to the Executing State. <sup>92</sup>		

<sup>89</sup> Belgium, [Act related to the application of the mutual recognition principle to custodial sentence or measure deprivative of liberty pronounced in a European Union Member State](#) (*Loi relative à l'application du principe de reconnaissance mutuelle aux peines ou mesures privatives de liberté prononcées dans un Etat membre de l'Union européenne/ Wet inzake de toepassing van het beginsel van wederzijdse erkenning op de vrijheidsbenemende straffen of maatregelen uitgesproken in een lidstaat van de Europese Unie*), 15 May 2012, Article 33§ 3.

<sup>91</sup> Belgium, [Act related to the application of the mutual recognition principle to custodial sentence or measure deprivative of liberty pronounced in a European Union Member State](#) (*Loi relative à l'application du principe de reconnaissance mutuelle aux peines ou mesures privatives de liberté prononcées dans un Etat membre de l'Union européenne/ Wet inzake de toepassing van het beginsel van wederzijdse erkenning op de vrijheidsbenemende straffen of maatregelen uitgesproken in een lidstaat van de Europese Unie*), 15 May 2012, Article 17§2.

<sup>92</sup> Representative of the Ministry of Justice (SPF).

<ul style="list-style-type: none"> <li>When consent is required, Article 6 (3) of FD 2008/909/JHA).</li> </ul>	When consent is required, there is no other procedure to obtain the opinion of the person sentenced. <sup>93</sup>		
Q2.5. Does the suspect/sentenced person have the right to change his/her opinion on the transfer? If yes, please briefly specify until which stage of the procedure this right exists and how this is implemented in practice.	<p><u>When consent is not required</u>, and once the observations are obtained, those can, in principle, still be modified at the request of the sentenced person until his/her transfer to the Executing State.<sup>94</sup></p> <p><u>When consent is required</u>, there is no procedure in place in Belgium to obtain the opinion of the sentenced person.</p>		
Q2.6. Is the suspect/sentenced person assisted by a legal counsel in the issuing state? If yes, please provide details (e.g. is this legal advice provided face-to-face or over the telephone)	Yes. Sentenced persons in detention always have the right to be assisted by legal counsel at their request. <sup>95</sup> Legal advice is provided face-to-face and the legal counsel is also present during their appearance in front of the public prosecutor. <sup>96</sup>	Yes. Sentenced persons can be assisted by legal counsel of their choice, can request legal aid if they are in detention, or, if they meet the requirements to obtain legal aid (e.g. insufficient resources). <sup>97</sup>	
Q2.7. Is there a procedure in place to ascertain that the legal counsel speaks and understands the suspect/sentenced	There is no official procedure in place but legal counsel can hire interpreters to assist him/her when	There is no procedure in place but counsel can take an interpreter with him/her when he/she visits the	

<sup>93</sup> Representative of the Ministry of Justice (SPF).

<sup>94</sup> Representative of the Ministry of Justice (SPF).

<sup>95</sup> Belgium, [Act related to the application of the mutual recognition principle to custodial sentence or measure deprivative of liberty pronounced in a European Union Member State](#) (*Loi relative à l'application du principe de reconnaissance mutuelle aux peines ou mesures privatives de liberté prononcées dans un Etat membre de l'Union européenne/ Wet inzake de toepassing van het beginsel van wederzijdse erkenning op de vrijheidsbenemende straffen of maatregelen uitgesproken in een lidstaat van de Europese Unie*), 15 May 2012, Article 33§ 1, 4.

<sup>96</sup> Representative of the Ministry of Justice (SPF).

<sup>97</sup> Belgium, [Constitution](#) (*Constitution/ Grondwet*), 17 February 1994, Article 23, 2° ; Belgium, [Judicial Code](#) (*Code Judiciaire/ Gerechtelijk Wetboek*), 10 October 1967, Chapter IV, Article 664 and foll. ; Belgium, [Royal Decree setting up the conditions to obtain for free \(entirely or partially\) the legal aid](#) (*A.R. du 18 décembre 2003 déterminant les conditions de la gratuité totale ou partielle du bénéfice de l'aide juridique de deuxième ligne et de l'assistance judiciaire/ Koninklijk besluit tot vaststelling van de voorwaarden van de volledige of gedeeltelijke kosteloosheid van de juridische tweedelijnsbijstand en de rechtsbijstand*), 18 December 2003.

person's language in the issuing state? If yes, please specify.	<p>he/she visits the prisoner – but it is not an obligation.<sup>98</sup> If the suspect, or sentenced person, qualifies for legal aid, the legal aid service will assign a legal counsel speaking either the native language of the suspect/ accused person, or another language that the person speaks. If no legal counsel who speaks the person's native language or another language that the person speaks, can be assigned, the legal aid service will instead assign an interpreter.<sup>99</sup> However, the legal aid system only covers the services of an interpreter for three hours. Furthermore, when it is necessary, the Court can provide an interpreter when the legal counsel and the detainee appear before the public prosecutor.<sup>100</sup></p>	<p>prisoner – although it is not an obligation.<sup>101</sup> If the suspect or sentenced person qualifies for legal aid, the legal aid service will assign a legal counsel speaking either the native language of the suspected/accused person, or another language that the person speaks. If no legal counsel who speaks the person's native language or another language that the person speaks, can be assigned, the legal aid service will assign an interpreter.<sup>102</sup> However, the legal aid system only covers the services of an interpreter for three hours.</p>	
Q2.8. Does the suspect/sentenced person have the right to legal aid in the issuing state?	<p>Yes, Belgium provides legal aid to persons in detention or in need (e.g. insufficient resources).<sup>103</sup> The sentenced person must meet the specific requirements provided by the Royal Decree of 18 December</p>	<p>Yes, Belgium provides legal aid to person in detention or in need (insufficient resources).<sup>105</sup> The sentenced person must meet the specific requirements provided by the Royal Decree of 18 December</p>	

<sup>98</sup> Legal counsel in criminal law.

<sup>99</sup> Code of Criminal Procedure (*Code d'instruction criminelle / Wetboek van strafvordering*), Art. 184 bis.

<sup>100</sup> Representative of the Ministry of Justice (SPF).

<sup>101</sup> Legal counsel in criminal law.

<sup>102</sup> Code of Criminal Procedure (*Code d'instruction criminelle / Wetboek van strafvordering*), Art. 184 bis.

<sup>103</sup> Belgium, [Constitution](#) (*Constitution/ Grondwet*), 17 February 1994, Article 23, 2° ; Belgium, [Judicial Code](#) (*Code Judiciaire/ Gerechtelijk Wetboek*), 10 October 1967, Chapter IV, Article 664 and foll.

<sup>105</sup> Belgium, [Constitution](#) (*Constitution/ Grondwet*), 17 February 1994, Article 23, 2° ; Belgium, [Judicial Code](#) (*Code Judiciaire/ Gerechtelijk Wetboek*), 10 October 1967, Chapter IV, Article 664 and foll.

	2003 determining the conditions for obtaining entirely, or partially, free legal aid. <sup>104</sup>	2003 determining the conditions for obtaining entirely, or partially, free legal aid. <sup>106</sup>	
Q2.9. Is the suspect/sentenced person assisted by an interpreter in the issuing state, if required:			
• While consenting to the transfer?	As mentioned above, there is no official procedure in place but, legal counsel can be assisted by an interpreter when he/she visits the prisoner – although it is not an obligation. <sup>107</sup> Furthermore, when it is necessary, the Court can provide an interpreter when the counsel and the detainee appear before the public prosecutor. <sup>108</sup> The interpreter's intervention costs may be borne by the State if the person does not have sufficient resources. <sup>109</sup>	There is no procedure in place but, legal counsel can be assisted by an interpreter when he/she visits the prisoner– although it is not an obligation. <sup>110</sup> As mentioned above, the interpreter's intervention costs may be borne by the State if the person does not have sufficient resources. <sup>111</sup>	
• While requesting the transfer?	Same as above.	Same as above.	

<sup>104</sup> Belgium, [Royal Decree setting up the conditions to obtain for free \(entirely or partially\) the legal aid](#) (A.R. du 18 décembre 2003 déterminant les conditions de la gratuité totale ou partielle du bénéfice de l'aide juridique de deuxième ligne et de l'assistance judiciaire/ Koninklijk besluit tot vaststelling van de voorwaarden van de volledige of gedeeltelijke kosteloosheid van de juridische tweedelijnsbijstand en de rechtsbijstand), 18 December 2003.

<sup>106</sup> Belgium, [Royal Decree setting up the conditions to obtain for free \(entirely or partially\) the legal aid](#) (A.R. du 18 décembre 2003 déterminant les conditions de la gratuité totale ou partielle du bénéfice de l'aide juridique de deuxième ligne et de l'assistance judiciaire/ Koninklijk besluit tot vaststelling van de voorwaarden van de volledige of gedeeltelijke kosteloosheid van de juridische tweedelijnsbijstand en de rechtsbijstand), 18 December 2003.

<sup>107</sup> Legal counsel in criminal law.

<sup>108</sup> Representative of the Ministry of Justice (SPF).

<sup>109</sup> Representatives of Legalia, for the Belgian Section of l'Observatoire International des Prisons.

<sup>109</sup> Representative of the Ministry of Justice (SPF).

<sup>110</sup> Legal counsel in criminal law.

<sup>111</sup> Representatives of Legalia, for the Belgian Section of l'Observatoire International des Prisons.

<sup>111</sup> Representative of the Ministry of Justice (SPF).

Q2.10. Are these interpretation or translation services provided during a face-to-face consultation? Please provide brief information.	There is no official procedure in place. It is up to the legal counsel to request the assistance of an interpreter during the face-to-face consultation with the sentenced person. <sup>112</sup> Otherwise, an information booklet available in different languages is given to each sentenced person by the Prison Director. <sup>113</sup>	There is no official procedure in place. It is up to the legal counsel to request the assistance of an interpreter during the face-to-face consultation with the sentenced person. <sup>114</sup>	
Q2.11. Is the suspect/sentenced person's full understanding of the transfer checked on a case by case basis in the issuing state? Please provide brief information.	No. <sup>115</sup>	No. <sup>116</sup>	
Q2.12. If the executing state adapts, before the transfer, the sentence or measure imposed by the issuing state (as authorised by Article 8.3 of FD 909, Article 9 of FD 947 and Article 13 of FD 829), does the suspect/sentenced person receive any updated information?	The sentenced person is informed as soon as the decision of recognition and enforcement is adopted by the public prosecutor, or when he/she is heard by the public prosecutor upon arrival on the Belgian territory. <sup>117</sup> The sentenced person has a right to appeal the decision of the public prosecutor before the enforcement	The decision of adjustment of the measures decided by the public prosecutor is formally delivered to the sentenced person who can contest it in front of the Council Chamber. <sup>120</sup> The decision of Council Chamber is also subject to cassation according to the Belgian criminal proceeding rules. <sup>121</sup>	

<sup>112</sup> Legal counsel in criminal law.

<sup>113</sup> Representative of the Ministry of Justice (SPF).

<sup>114</sup> Legal counsel in criminal law.

<sup>115</sup> Legal counsel in criminal law.

<sup>116</sup> Legal counsel in criminal law.

<sup>117</sup> Representative of the Ministry of Justice (SPF).

<sup>120</sup> Belgium, [Act related to the application of the mutual recognition principle to judgements and probation decisions for purposes of monitoring of probation measures and alternatives to custodial sentence pronounced in a European Union Member State \(Loi relative à l'application du principe de reconnaissance mutuelle aux jugements et décisions de probation aux fins de la surveillance des mesures de probation et des peines de substitution prononcées dans un Etat membre de l'Union européenne/Wet inzake de toepassing van het beginsel van de wederzijdse erkenning op vonnissen en probatiebeslissingen met het oog op het toezicht op de probatievoorraarden en de alternatieve straffen uitgesproken in een lidstaat van de Europese unie\)](#), 21 May 2013, Article 18§2.

<sup>121</sup> Representative of the Ministry of Justice (SPF).

	tribunal ( <i>Tribunal d'application des peines/strafuitvoeringsrechtbank</i> ) within 15 days following the date the sentenced person has been informed about the adjustment, if he/she considered that the adjustment aggravates the penalty, or the initial measure, in terms of its nature or duration. <sup>118</sup> The decision of the enforcement tribunal ( <i>Tribunal d'application des peines/strafuitvoeringsrechtbank</i> ) is also subject to cassation according to the Belgian criminal proceeding rules. <sup>119</sup>		
Q2.13. Is there a right to appeal the forwarding of the judgment/decision in the issuing state? If yes, please briefly provide information (e.g. how the suspect is made aware of his/her right to appeal and what support is made available to him/her)	No. <sup>122</sup>	No. <sup>123</sup>	
Q2.14. Does the suspect/sentenced person have a right to a regular review of the decision on the transfer in the issuing state? If yes, please briefly provide	No. <sup>124</sup>	No. <sup>125</sup>	

<sup>118</sup> Belgium, [Act related to the application of the mutual recognition principle to custodial sentence or measure deprivative of liberty pronounced in a European Union Member State](#) (*Loi relative à l'application du principe de reconnaissance mutuelle aux peines ou mesures privatives de liberté prononcées dans un Etat membre de l'Union européenne/Wet inzake de toepassing van het beginsel van wederzijdse erkenning op de vrijheidsbenemende straffen of maatregelen uitgesproken in een lidstaat van de Europese Unie*), 15 May 2012, article 18 §4.

<sup>119</sup> Representative of the Ministry of Justice (SPF).

<sup>122</sup> Legal counsel in criminal law; Representative of the Ministry of Justice (SPF).

<sup>123</sup> Legal counsel in criminal law; Representative of the Ministry of Justice (SPF).

<sup>124</sup> Legal counsel in criminal law; Representative of the Ministry of Justice (SPF).

<sup>125</sup> Legal counsel in criminal law; Representative of the Ministry of Justice (SPF).

information (e.g. how often he/she can exercise this right)			
Q2.15. Is the suspect/sentenced person assisted by legal counsel in the executing state? If yes, please provide details (e.g. is this legal advice provided face-to-face or over the telephone?)	Yes. The suspect/sentenced person is assisted by legal counsel after his/her transfer in Belgium, to assist him/her in the following procedures (e.g. before the enforcement tribunal). This legal advice is usually provided face-to-face. <sup>126</sup>	Yes. The suspect/sentenced person is assisted by legal counsel after his/her transfer in Belgium to assist him/her in the following procedures (e.g. before the enforcement tribunal). This legal advice is usually provided face-to-face. <sup>127</sup>	
Q2.16. Have there been instances where the Member State has refused a transfer based on a pre-determined ground of refusal, as permitted to a varying extent under each FD? If so, please briefly provide details.	<p>Belgium, as the Issuing State, has refused some transfers based on a pre-determined ground of refusal.<sup>128</sup></p> <p>However, in practice, Belgium as the Executing State has systematically refused a transfer when it has considered that the objective of the law was subverted (e.g. in order to benefit from a more flexible regime). Additionally, in a couple of cases, Belgium also refused transfer when there was a lack of reinsertion prospects for the person concerned.</p>	No information available.	
Q.2.17. Are there any specific legislative or policy developments regarding the informed consent to the transfer of particular suspects/sentenced persons (such as children or persons with	In case of minority or mental disorder, the public prosecutor expressly requires that the	In case of minority or mental disorder, the public prosecutor expressly requires that the	

<sup>126</sup> Legal counsel in criminal law.

<sup>127</sup> Legal counsel in criminal law.

<sup>128</sup> Representatives of Legalia, for the Belgian Section of l'Observatoire International des Prisons.

disabilities) in the issuing state? (e.g. the use of healthcare professionals)	sentenced person is assisted by a legal representative. <sup>129</sup>	sentenced person is assisted by a legal representative. <sup>130</sup>	
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### Q3. DECISION ON TRANSFER

Q3.1. Are the following factors considered while deciding on forwarding a judgment or decision in the issuing state?

<ul style="list-style-type: none"> <li>• The likely impact on the social rehabilitation of the suspect/sentenced person?</li> <li>• Fundamental rights implications (such as the right to family life, right to education)?</li> <li>• Others? Please specify.</li> </ul>	<p>Yes, they are. A social survey is carried out by the <i>Maison de Justice/Justitiehuis</i> before Belgium gives its prior-agreement to the transfer. This social survey examines the sentenced person's personal situation, their prospects for rehabilitation and includes interviews with different family members/members within his/her living environment and with whom the sentenced person is related.<sup>131</sup></p>	<p>Yes, they are. A social survey is carried out by the <i>Maison de Justice/Justitiehuis</i> before Belgium gives its prior-agreement to the transfer.<sup>132</sup> This social survey examines the sentenced person's personal situation, their prospects for rehabilitation and includes interviews with different family members/members of his/her living environment and with whom the sentenced person is related.</p> <p>This social survey can also be requested by the public prosecutor, upon the request of the Issuing State, or on his/her own motion.<sup>133</sup></p>	
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<sup>129</sup> Belgium, [Act related to the application of the mutual recognition principle to custodial sentence or measure deprivative of liberty pronounced in a European Union Member State](#) (*Loi relative à l'application du principe de reconnaissance mutuelle aux peines ou mesures privatives de liberté prononcées dans un Etat membre de l'Union européenne/Wet inzake de toepassing van het beginsel van wederzijdse erkenning op de vrijheidsbenemende straffen of maatregelen uitgesproken in een lidstaat van de Europese Unie*), 15 May 2012, Article 33§1, 4 ; Representatives of Legalia, for the Belgian Section of l'Observatoire International des Prisons.

<sup>130</sup> Representative of the Ministry of Justice (SPF) and of Legalia, for the Belgian Section of l'Observatoire International des Prisons.

<sup>131</sup> Belgium, [Act related to the application of the mutual recognition principle to custodial sentence or measure deprivative of liberty pronounced in a European Union Member State](#) (*Loi relative à l'application du principe de reconnaissance mutuelle aux peines ou mesures privatives de liberté prononcées dans un Etat membre de l'Union européenne/Wet inzake de toepassing van het beginsel van wederzijdse erkenning op de vrijheidsbenemende straffen of maatregelen uitgesproken in een lidstaat van de Europese Unie*), 15 May 2012, article 32§1 ; Representative of the Ministry of Justice (SPF).

<sup>132</sup> Belgium, [Act related to the application of the mutual recognition principle to judgements and probation decisions for purposes of monitoring of probation measures and alternatives to custodial sentence pronounced in a European Union Member State](#) (*Loi relative à l'application du principe de reconnaissance mutuelle aux jugements et décisions de probation aux fins de la surveillance des mesures de probation et des peines de substitution prononcées dans un Etat membre de l'Union européenne/Wet inzake de toepassing van het beginsel van de wederzijdse erkenning op vonnissen en probatiebeslissingen met het oog op het toezicht op de probatievoorraarden en de alternatieve straffen uitgesproken in een lidstaat van de Europese unie*), 21 May 2013, Article 9§2, 4°,§3.

<sup>133</sup> Belgium, [Act related to the application of the mutual recognition principle to judgements and probation decisions for purposes of monitoring of probation measures and alternatives to custodial sentence pronounced in a European Union Member State](#) (*Loi relative à l'application du principe de reconnaissance mutuelle aux jugements et décisions de probation aux fins de la surveillance des mesures de probation et des peines de*

<p>Q3.2: While deciding on the transfer, are there any specific criteria/guidelines on the factors considered to be relevant for the purposes of (social) rehabilitation in the issuing state? Please provide any document containing those criteria/guidelines and specify whether the following factors are considered:</p> <ul style="list-style-type: none"> <li>• Family and social ties (e.g. accommodation, employment or other economic ties, linguistic and cultural links)?</li> <li>• Criminal history and criminal ties?</li> <li>• Humanitarian concerns (i.e. terminal illness of suspect/sentenced person or family members)?</li> </ul>	<p>No. There is no specific criteria/guidelines on the factors considered to be relevant for the purposes of (social) rehabilitation.</p>	<p>The law encourages preliminary consultations with the Executing State.<sup>137</sup> The family and social relations of the sentenced person and, more generally, his/her possible rehabilitation, are examined before the transfer.<sup>138</sup></p>	
<ul style="list-style-type: none"> <li>• Detention conditions (e.g. issues of overcrowding or availability of courses, such as the <i>Modulos</i> in Spain which has separate units to</li> </ul>			

*substitution prononcées dans un Etat membre de l'Union européenne/Wet inzake de toepassing van het beginsel van de wederzijdse erkenning op vonnissen en probatiebeslissingen met het oog op het toezicht op de probatievooraarden en de alternatieve straffen uitgesproken in een lidstaat van de Europese unie), 21 May 2013, article 9§3 ; Representative of the Ministry of Justice (SPF).*

<sup>134</sup> Representative of the Ministry of Justice (SPF).

<sup>135</sup> Representative of the Ministry of Justice (SPF).

<sup>136</sup> Representatives of Legalia, for the Belgian Section of l'Observatoire International des Prisons.

<sup>137</sup> Belgium, [Act related to the application of the mutual recognition principle to judgements and probation decisions for purposes of monitoring of probation measures and alternatives to custodial sentence pronounced in a European Union Member State](#) (*Loi relative à l'application du principe de reconnaissance mutuelle aux jugements et décisions de probation aux fins de la surveillance des mesures de probation et des peines de substitution prononcées dans un Etat membre de l'Union européenne/Wet inzake de toepassing van het beginsel van de wederzijdse erkenning op vonnissen en probatiebeslissingen met het oog op het toezicht op de probatievooraarden en de alternatieve straffen uitgesproken in een lidstaat van de Europese unie), 21 May 2013, article 16§1.*

<sup>138</sup> Representative of the Ministry of Justice (SPF).

promote a progressive accountability of inmates)			
• Others?			
Q.3.3. Are the following persons/entities consulted in the evaluation of the likelihood of social rehabilitation by the issuing state:			
• Probation agencies or similar entities in the issuing state?	The probation authorities are consulted. <sup>139</sup>	The probation authorities are consulted. <sup>140</sup>	
• The competent authorities in the executing state?	Yes. <sup>141</sup>	Yes. <sup>142</sup>	
• The suspect/sentenced person?	No. <sup>143</sup>	No. <sup>144</sup>	
• The family of the suspect/sentenced persons, especially with regard to child offenders?	No. <sup>145</sup>	No. <sup>146</sup>	
• Any other person/entity?		The Joint Circular of 19 August 2014 orders particular attention to the situation of the victim. <sup>147</sup>	
Q3.4. Are there any specific legislative or policy developments regarding the evaluation of the likelihood of social rehabilitation of particular suspects/sentenced persons (such as children or persons with disabilities) by the issuing state?	No. <sup>148</sup>	No. <sup>149</sup>	

<sup>139</sup> Representative of the Ministry of Justice (SPF).

<sup>140</sup> Representative of the Ministry of Justice (SPF).

<sup>141</sup> Representative of the Ministry of Justice (SPF).

<sup>142</sup> Representative of the Ministry of Justice (SPF).

<sup>143</sup> Representative of the Ministry of Justice (SPF).

<sup>144</sup> Representative of the Ministry of Justice (SPF).

<sup>145</sup> Representative of the Ministry of Justice (SPF).

<sup>146</sup> Representative of the Ministry of Justice (SPF).

<sup>147</sup> Representative of the Ministry of Justice (SPF).

<sup>148</sup> Representative of the Ministry of Justice (SPF).

<sup>149</sup> Representative of the Ministry of Justice (SPF).

<p>Q3.5. Is additional information, other than that required in the certificate (for which the standard form is given in Annex I of the three FDs), provided to the competent authorities of the executing state while forwarding the judgment or decision? If yes, please specify if pre-sentence reports are forwarded.</p>	<p>Belgian certificates are identical to the standard form given in Annex I of the Framework-Decision. Under Belgian law, no additional information has to be provided to the competent authority of the Executing State.</p> <p>However, in practice, if there are psychological or medical reports relating to the sentenced person, Belgium will forward them to the Executing State.<sup>150</sup> Additional information might be forwarded upon request of the Executing State, such as the calculation of the remainder of the sentence that was imposed in Belgium, when there are several judgments of condemnation.<sup>151</sup></p>	<p>Belgian certificates are identical to the standard form given in Annex I of the Framework-Decision. Under Belgian law, no additional information is required to be provided to the competent authority of the Executing State.</p> <p>However, in practice, if there are psychological or medical reports relating to the sentenced person, Belgium will forward them to the Executing State.<sup>152</sup></p>	
<p>Q3.6. If pre-sentence reports are forwarded by the issuing state, are they translated to the language of the executing state?</p>	<p>N/A as no pre-sentence reports are forwarded by Belgium to the Executing State.</p>	<p>N/A as no pre-sentence reports are forwarded by Belgium to the Executing State.</p>	
<p>Q3.7. Are there specific measures, as required by Article 4 (6) FD 909, which constitute the basis on which the competent authorities in the executing State have to take their decisions whether</p>	<p>In order to take its decision whether or not to consent to the forwarding of the judgement and the certificate, the Minister of Justice evaluates the objective of reintegration and social</p>		

<sup>150</sup> Representative of the Ministry of Justice (SPF).

<sup>151</sup> Representative of the Ministry of Justice (SPF).

<sup>152</sup> Representative of the Ministry of Justice (SPF).

or not to consent to the forwarding of the judgement and the certificate (where required)?	rehabilitation on Belgian territory on the basis of the social survey results. (see Q.3.1.). <sup>153</sup>		
Q3.8. Are there formal and clear rules regarding data protection in the information exchange between:			
<ul style="list-style-type: none"> <li>• National authorities (consulted in the evaluation of the likelihood of social rehabilitation) in the issuing state?</li> </ul>	In Belgium, the personal data of the sentenced person is considered to be “sensitive data” and, therefore, its treatment by the national authorities is subject to specific rules according to Belgian Privacy Law of 8 December 1992. <sup>154</sup>	In Belgium, the personal data of the sentenced person is considered to be “sensitive data” and, therefore, its treatment by the national authorities is subject to specific rules according to Belgian Privacy Law of 8 December 1992. <sup>155</sup>	
<ul style="list-style-type: none"> <li>• Authorities in the issuing and executing state?</li> </ul>	Belgium did not adopt any specific data protection rules applying to the exchange of personal data of a sentenced person with the authorities of another Member State. Therefore, these transfers of data are subject to the European legal framework on data protection law. <sup>156</sup>	Belgium did not adopt any specific data protection rules applying to the exchange of personal data of a sentenced person with the authorities of another Member State. Therefore, these transfers of data are subject to the European legal framework on data protection law.	

<sup>153</sup> Belgium, [Act related to the application of the mutual recognition principle to custodial sentence or measure deprivative of liberty pronounced in a European Union Member State](#) (*Loi relative à l'application du principe de reconnaissance mutuelle aux peines ou mesures privatives de liberté prononcées dans un Etat membre de l'Union européenne/Wet inzake de toepassing van het beginsel van wederzijdse erkenning op de vrijheidsbenemende straffen of maatregelen uitgesproken in een lidstaat van de Europese Unie*), 15 May 2012, article 9.

<sup>154</sup> Belgium, [Law of 8 December 1992 on the protection of privacy with regard to the processing of personal data](#) (*Loi relative à la protection de la vie privée à l'égard des traitements de données à caractère personnel/Wet tot bescherming van de persoonlijke levensfeer ten opzichte van de verwerking van persoonsgegevens*), 8 December 1992, article 3§5-6.

<sup>155</sup> Belgium, [Law of 8 December 1992 on the protection of privacy with regard to the processing of personal data](#) (*Loi relative à la protection de la vie privée à l'égard des traitements de données à caractère personnel/Wet tot bescherming van de persoonlijke levensfeer ten opzichte van de verwerking van persoonsgegevens*), 8 December 1992, article 3§5-6.

<sup>156</sup> European Parliament and Council of Europe, [Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data](#), O.J. L 281, 23 November 1995; [Council of Europe, Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters](#), O.J. L 350/71, 30 December 2008.

#### Q4. VICTIMS

Q4.1. Do the victims have the right to receive the following information regarding the transfer from the issuing state:

• The decision to transfer	Yes. Upon the victim's request, the judge in charge of the case can inform him/her about the decision to transfer. <sup>157</sup>	Yes. Upon the victim's request, the judge in charge of the case can inform him/her about the decision to transfer. <sup>158</sup>	
• The status of the transfer	Yes. Upon the victim's request, the judge in charge of the case can inform him/her about the status of the transfer. <sup>159</sup>	Yes. Upon the victim's request, the judge in charge of the case can inform him/her about the status of the transfer. <sup>160</sup>	
• Other? Please specify.	No. <sup>161</sup>	No. <sup>162</sup>	
Q4.2. Is there any procedure in place to provide this information as issuing or executing state? If yes, please specify:			

<sup>157</sup> Representative of the Ministry of Justice (SPF).

<sup>158</sup> Representative of the Ministry of Justice (SPF).

<sup>159</sup> Representative of the Ministry of Justice (SPF).

<sup>160</sup> Representative of the Ministry of Justice (SPF).

<sup>161</sup> Representative of the Ministry of Justice (SPF).

<sup>162</sup> Representative of the Ministry of Justice (SPF).

<sup>163</sup> Representative of the Ministry of Justice (SPF).

<sup>164</sup> Representative of the Ministry of Justice (SPF).

<ul style="list-style-type: none"> <li>• Is the information provided upon request of the victim?</li> </ul>	Yes. Only upon his/her request. <sup>165</sup>	Yes. Only upon his/her request. <sup>166</sup>	
<ul style="list-style-type: none"> <li>• Who is responsible for providing this information?</li> </ul>	The judge in charge of the case can request the assistance of the <i>Maisons de Justice</i> (services for the reception of the victims). <sup>167</sup>	The judge in charge of the case can request the assistance of the <i>Maisons de Justice</i> (services for the reception of the victims). <sup>168</sup>	
<ul style="list-style-type: none"> <li>• Is it a verbal or written communication?</li> </ul>	The information can be provided orally or in writing. <sup>169</sup>	The information can be provided orally or in writing. <sup>170</sup>	
Q4.3. Do the victims have the right to be heard concerning the transfer (in the state you are describing, as issuing or executing state)? (e.g. through submitting an oral or written response)	Nothing is legally provided. <sup>171</sup> In practice, the opinion of the victim may exceptionally be requested when the competent authority deemed it useful to adopt a decision. <sup>172</sup>	Nothing is legally provided. <sup>173</sup> In practice, the opinion of the victim may exceptionally be requested when the competent authority deemed it useful to adopt a decision. <sup>174</sup> Furthermore, the Joint Circular of 19 August 2014 provides that before transferring the judgment to another Member State, the public prosecutor must pay attention to the situation of the victim. <sup>175</sup>	
Q4.4. Do the victims have any other rights concerning the transfer (in the state you	No. <sup>176</sup>	No. <sup>177</sup>	

<sup>165</sup> Representative of the Ministry of Justice (SPF).

<sup>166</sup> Representative of the Ministry of Justice (SPF).

<sup>167</sup> Representative of the Ministry of Justice (SPF).

<sup>168</sup> Representative of the Ministry of Justice (SPF).

<sup>169</sup> Representative of the Ministry of Justice (SPF).

<sup>170</sup> Representative of the Ministry of Justice (SPF).

<sup>171</sup> Legal counsel in criminal law; Representative of the Ministry of Justice (SPF).

<sup>172</sup> Representative of the Ministry of Justice (SPF).

<sup>173</sup> Legal counsel in criminal law; Representative of the Ministry of Justice (SPF).

<sup>174</sup> Representative of the Ministry of Justice (SPF).

<sup>175</sup> Representative of the Ministry of Justice (SPF).

<sup>176</sup> Legal counsel in criminal law.

<sup>177</sup> Legal counsel in criminal law.

are describing, as issuing or executing state)? Please specify.			
Q4.5. Do the victims have access to translators/interpreter in order to be kept fully informed of the transfer (in the state you are describing, as issuing or executing state)?	No. <sup>178</sup> Currently, this is not foreseen. <sup>179</sup>	No. <sup>180</sup> Currently, this is not foreseen. <sup>181</sup>	
Q4.6. Do the victims have the right to be informed of the suspect/sentenced person's release (in the state you are describing, as issuing or executing state)?	<u>When Belgium is the Executing State</u> , the victims have the right to be informed of the sentenced person's release, only upon his/her request via a specific declaration that attests him/her as a victim. <sup>182</sup>	<u>When Belgium is the Executing State</u> , the victims have the right to be informed of the sentenced person's release, only upon his/her request via a specific declaration that attests him/her as a victim. <sup>183</sup>	

<sup>178</sup> Legal counsel in criminal law.

<sup>179</sup> Representative of the Ministry of Justice (SPF).

<sup>180</sup> Legal counsel in criminal law.

<sup>181</sup> Representative of the Ministry of Justice (SPF).

<sup>182</sup> Representative of the Ministry of Justice (SPF).

<sup>183</sup> Representative of the Ministry of Justice (SPF).