

# 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:

### **Suspension of sanction** (*Strafaussetzung zur Bewährung*)<sup>1</sup>

According to Section 56 German Criminal Code (*Strafgesetzbuch*, StGB), if a person is sentenced to a term of imprisonment not exceeding one year the court shall suspend the enforcement of the sentence for a probationary period if there are reasons to believe that the sentence will serve as sufficient warning to the convicted person and that he will commit no further offences without having to serve the sentence. Under certain circumstances, the court may also suspend the enforcement of a term of imprisonment not exceeding two years for a probationary period. The probationary period determined by the court must regularly not exceed five years and never be less than two years (Section 56a StGB). The court may impose following conditions (exhaustive list<sup>2</sup>) (Section 56b (2):

orders to:

1. to make restitution to the best of her/his ability for the harm caused by the offence;
2. to pay a sum of money to a charitable organisation;
3. to perform community service; or
4. to pay a sum of money to the public treasury.

In order to assist a person to abstain from committing offences the court may, according to Section 56c StGB, for the time of the probationary period, direct the convicted person (not exhaustive list<sup>3</sup>):

1. to follow instructions which relate to his residence, education, work or leisure, or to the ordering of his financial affairs;
2. to report at certain times to the court or another authority;
3. not to make or maintain contact with the victim, or certain persons or persons from a certain group who may induce him to commit further offences, nor to employ, train or harbour them;
4. not to possess, carry or entrust to another for safekeeping, particular objects which could induce him to commit further offences; or

<sup>1</sup> German Criminal Code (*Strafgesetzbuch*), Art. 56 et seq., available at: [www.gesetze-im-internet.de/englisch\\_stgb/index.html](http://www.gesetze-im-internet.de/englisch_stgb/index.html) (23.05.2015).

<sup>2</sup> Fischer, T. (2015) *Kommentar zum Strafgesetzbuch*, München, C.H. Beck, p. 508, No. 5.

<sup>3</sup> Fischer, T. (2015) *Kommentar zum Strafgesetzbuch*, München, C.H. Beck, p. 512, No. 5.

5. to meet maintenance obligations.

Following direction may only be given with the consent of the convicted person:

1. to undergo medical treatment of an invasive nature or treatment for addiction; or
2. to reside in a suitable home or institution.

To assist the convicted person and monitor compliance with the directions, court shall typically issue a supervision order if it suspends a sentence of imprisonment of more than nine months and the convicted person is less than twenty-seven years of age (Section 56d StGB).

**Conditional early release** (*Aussetzung des Strafrests*)<sup>4</sup>

According to Section 57 StGB, the court shall grant conditional early release from a fixed-term sentence of imprisonment under an operational period of probation, if two thirds of the imposed sentence, but not less than two months, have been served; and the release is appropriate considering public security interests; and the convicted person consents. Under certain circumstances, early release is possible after serving one half of a fixed-term sentence of imprisonment. The early release is conditional and directions must be followed. According to Section 57 (3) StGB, sections 56a to 56g shall apply *mutatis mutandis*, e.g. the same directions as for suspension of sanctions may be imposed. If a person has served at least one year before being conditionally released, a probation officer is appointed (Section 57 (3) StGB).

The court shall grant conditional early release from a sentence of imprisonment for life under an operational period of probation, if fifteen years of the sentence have been served; the particular seriousness of the convicted person's guilt does not require its continued enforcement; and the release is appropriate considering public security interests; and the convicted person consents.

**Warning combined with deferment of sentence** (*Verwarnung mit Strafvorbehalt*)<sup>5</sup>

Section 59 StGB provides for the option of the court to issue a warning combined with deferment of sentence if a person has incurred a fine not exceeding one hundred and eighty daily units. The court may warn him at the time of conviction, indicate the sentence and defer its imposition. The length of the operational period is determined by the court and may not exceed two years nor be less than one year. According to Section 59a StGB the court may direct the convicted person:

1. to make efforts at reconciliation with the victim or otherwise make restitution for the harm caused by the offence;
2. to meet his maintenance obligations;
3. to pay a sum of money to a charitable organisation or the public treasury;
4. to undergo outpatient medical treatment or outpatient treatment for addiction; or
5. to participate in road traffic training

<sup>4</sup> German Criminal Code (*Strafgesetzbuch*), Art. 57, available at: [www.gesetze-im-internet.de/englisch\\_stgb/index.html](http://www.gesetze-im-internet.de/englisch_stgb/index.html) (11.06.2015).

<sup>5</sup> German Criminal Code (*Strafgesetzbuch*), Art. 59, available at: [www.gesetze-im-internet.de/englisch\\_stgb/index.html](http://www.gesetze-im-internet.de/englisch_stgb/index.html) (11.05.2015).

In addition, Section 56c (3) and (4) apply and allow for the direction not to make or maintain contact with the victim, or certain persons or persons from a certain group who may induce him to commit further offences, nor to employ, train or harbour them; and not to possess, carry or entrust to another for safekeeping, particular objects which could induce him to commit further offences;

**Measures of rehabilitation and incapacitation** (*Maßregeln der Besserung und Sicherung*)<sup>6</sup>

A measure of rehabilitation and incapacitation can be ordered by a court. According to Article 62 StGB, they must not be ordered if its use is disproportionate to the seriousness of the offence committed by or expected to be committed by the convicted person and to the degree of danger he/she poses to society.

The measures of rehabilitation and incapacitation are

1. mental hospital orders (Article 64 StGB);
2. custodial addiction treatment orders (Article 65 StGB);
3. detention for the purpose of incapacitation (Article 66 StGB);
4. supervision orders (Article 68 StGB et seq.);
5. disqualification from driving (Article 69 StGB et seq.);
6. disqualification from exercising a profession (Article 70 StGB et seq.).

**Q2.** Please outline the specific supervision measures as alternatives to pre-trial detention that are available in the Member State (200 words)

**Suspension of Execution** (*Aussetzung des Vollzugs des Haftbefehls*)<sup>7</sup>

According to Section 116 Criminal Procedure Code (*Strafprozessordnung, StPO*):

(1) the judge shall suspend execution of a warrant of arrest which is justified merely by a risk of flight if the expectation is sufficiently substantiated that the purpose of remand detention may also be achieved by less severe measures. The following measures, in particular, may be considered:

1. an instruction to report at certain times to the judge, the criminal prosecuting authority, or to a specific office to be designated by them;
2. an instruction not to leave his place of residence, or wherever he happens to be, or a certain area, without the permission of the judge or the criminal prosecuting authority;
3. an instruction not to leave his private premises except under the supervision of a designated person;
4. the furnishing of adequate security by the accused or another person.

<sup>6</sup> German Criminal Code (*Strafgesetzbuch*), Art. 61 et seq., available at: [www.gesetze-im-internet.de/englisch\\_stgb/index.html](http://www.gesetze-im-internet.de/englisch_stgb/index.html) (23.05.2015).

<sup>7</sup> German Criminal Code (*Strafgesetzbuch*), Art. 116, available at: [www.gesetze-im-internet.de/englisch\\_stgb/index.html](http://www.gesetze-im-internet.de/englisch_stgb/index.html) (23.05.2015).

(2) The judge may also suspend execution of a warrant of arrest which is justified for risk of tampering with evidence, if less severe measures sufficiently substantiate the expectation that they will considerably reduce the risk of tampering with evidence. In particular, an instruction not to have contact with co-accused persons, witnesses, or experts may be considered. (...)

Electronic surveillance instead of execution of warrant of arrest is not explicitly provided for by current law. However, in practice, it is sometimes applied if the concerned person consents.<sup>8</sup> Since 2000 the federal state Hesse, is using electronic devices to monitor the house arrest of a person as alternative to pre-trial sentence.<sup>9</sup>

**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)?**

Adolescences/ young adults: Article §116 StPO (Suspension of Execution) also applies to under-aged adolescences, but is limited by the special provisions for this group in Article 72 Youth Court Law (*Jugendgerichtsgesetz*, JGG), which stipulates, that pre-trial detention may be imposed and enforced only if its purpose cannot be achieved by a preliminary supervision order or by other measures.<sup>10</sup> Article 72 (4) allows for temporary placement in a youth welfare service home (section 71(2)) also be ordered under the same conditions for issuing a custody order.

Young adults aged 18-20 do not fall within the scope of the JGG, nevertheless, age and age-related living situation must be considered by the court when applying Article 116 StPO.<sup>11</sup> The supervision measure under Section 116 (3) Criminal Procedure Code (instruction not to leave his private premises except under the supervision of a designated person) is considered in the case of adolescences whose parents are trustworthy and willing to take on the supervision.<sup>12</sup>

Generally, in any case of imposing pre-trial detention, proportionality must be considered. *Inter alia*, the impact on the suspect's private life must be taken in consideration, including the suspect's health condition.<sup>13</sup> Also regarding the suspension of sanction, the personal life circumstances, including family life must be considered.<sup>14</sup>

<sup>8</sup> Germany, Federal Parliament (*Bundestag*) (2015) BT-Drs. 18/4894, 13 May 2015, p. 23, available at: <http://dip21.bundestag.de/dip21/btd/18/048/1804894.pdf>.

<sup>9</sup> Fünfsinn, H. (2009) 'Elektronische Fußfessel und Prävention - ein Widerspruch?' in: Kerner, H.-J. u. Marks, E. (eds.), *Internetdokumentation des Deutschen Präventionstages*, S.3, available at: [www.praeventionstag.de/html/GetDokumentation.cms?XID=554](http://www.praeventionstag.de/html/GetDokumentation.cms?XID=554) (22.05.2015).

<sup>10</sup> Youth Court Law (*Jugendgerichtsgesetz*, JGG), Art. 72, available at: [www.gesetze-im-internet.de/englisch\\_jgg/englisch\\_jgg.html#p0349](http://www.gesetze-im-internet.de/englisch_jgg/englisch_jgg.html#p0349) (22.05.2015).

<sup>11</sup> Germany, Federal Parliament (*Bundestag*) (2015) BT-Drs. 18/4894, 13 May 2015, p. 15, available at: <http://dip21.bundestag.de/dip21/btd/18/048/1804894.pdf> (21.05.2015).

<sup>12</sup> Meyer-Goßner, L. (2012) *Kommentar zur Strafprozessordnung*, München, C.H. Beck, p. 541, No. 9.

<sup>13</sup> Meyer-Goßner, L. (2012) *Kommentar zur Strafprozessordnung*, München, C.H. Beck, p. 513, No. 11.

<sup>14</sup> Fischer, T. (2015) *Kommentar zum Strafgesetzbuch*, München, C.H. Beck, p. 502, No. 10.

## Section B: Transfer of suspects/sentenced persons

### Preface

As of 9<sup>th</sup> July 2015, Germany has not transposed any of the three Framework decisions in question. A law aiming to transpose the Framework Decision on transfer of prisoners 2008/909/JHA and the Framework Decision on alternative sanctions 2008/947/JHA has been adopted by the Federal Parliament (*Entwurf eines Gesetzes zur Verbesserung der internationalen Rechtshilfe bei der Vollstreckung von freiheitsentziehender Sanktionen und bei der Überwachung von Bewährungsmaßnahmen*)<sup>15</sup> but has not passed Federal Council yet and is not in force yet.<sup>16</sup> The report will refer to planned changes wherever this seems relevant.

Additionally, a law to transpose Framework Decision 2009/829/JHA has been adopted by the Federal Parliament<sup>17</sup> (*Entwurf eines... Gesetzes zur Änderung des Gesetzes über die internationale Rechtshilfe in Strafsachen*)<sup>18</sup>. Again, this law has not passed Federal Council yet and has not entered into force so far. The law had been controversially debated.<sup>19</sup>

As requested, in lack of transposition of the Framework Decisions, the report will provide information on the transfer of sentenced persons under current German legislation. Germany has ratified the Council of Europe Convention on the transfer of sentenced persons (CETS No. 112) and Additional Protocol to the Convention on the Transfer of Sentenced Persons (CETS No. 167). Due to the fact, that German law on international cooperation on criminal matters is a very complex issue,<sup>20</sup> the basic procedure and applicable provisions are explained prior to going into detailed answers (where available) in the tables below.

### **1. Transfer of judgments imposing custodial sentences**

The relations with foreign States regarding legal cooperation in criminal matters, including the procedure on the transfer of sentenced persons, is regulated in the German Law on International Assistance in Criminal Matters (*Gesetz über die Internationale Rechtshilfe in Strafsachen*, IRG).<sup>21</sup> Assistance through enforcement of foreign judgments in Germany is regulated in Articles 48 - 58; Article 71 IRG applies to requests for enforcement of German judgment abroad. According to Article 1 (3), German Law on International Assistance in Criminal Matters applies under the condition that: provisions of international treaties shall take precedence before the provisions of this law to the extent that they have become directly applicable national law.

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<sup>15</sup> Germany, Federal Parliament (*Bundestag*) (2015), BT-Drs. 18/4347, 18 March 2015, available at: <http://dip21.bundestag.de/dip21/btd/18/043/1804347.pdf> (03.05.2015).

<sup>16</sup> Germany, Federal Parliament (*Bundestag*) (2015), BT-Plenarprotokoll 18/112, 108040 D, 18 June 2015, available at: <http://dipbt.bundestag.de/dip21/btp/18/18112.pdf#P.10840> (02.07.2017).

<sup>17</sup> Germany, Federal Parliament (*Bundestag*) (2015), BT-Plenarprotokoll 18/112, 108040 B, 18 June 2015, available at: <http://dipbt.bundestag.de/dip21/btp/18/18112.pdf#P.10840> (02.07.2017).

<sup>18</sup> Germany, Federal Parliament (*Bundestag*) (2015), BT-Drs. 18/4894, 13 May 2015, available at: <http://dip21.bundestag.de/dip21/btd/18/048/1804894.pdf> (21.05.2015).

<sup>19</sup> See for example legal commentaries criticising the proposal: Federal Bar Association (*Bundesrechtsanwaltskammer*) (2014): [www.brak.de/w/files/newsletter\\_archiv/berlin/2014/482anlage2.pdf](http://www.brak.de/w/files/newsletter_archiv/berlin/2014/482anlage2.pdf); Federal Council (*Bundesrat*) BR-Drs. 125/1/15, 28 April 2015, Recommendations of the Committees (*Empfehlungen der Ausschüsse*): [www.bundesrat.de/SharedDocs/drucksachen/2015/0101-0200/125-1-15.pdf?\\_\\_blob=publicationFile&v=1](http://www.bundesrat.de/SharedDocs/drucksachen/2015/0101-0200/125-1-15.pdf?__blob=publicationFile&v=1).

<sup>20</sup> This view was expressed by all experts contacted as well as commentary literature consulted.

<sup>21</sup> German Law on International Assistance in Criminal Matters (*Gesetz über die Internationale Rechtshilfe in Strafsachen*) available at: [www.gesetze-im-internet.de/englisch\\_irg/index.html](http://www.gesetze-im-internet.de/englisch_irg/index.html) (03.05.2015).

Germany has ratified a number of bi- and multilateral treaties which include more specific rules and can take precedence before Articles 48 et seq. and 71 IRG. Most importantly these treaties are:

- Council of Europe Convention of the transfers of sentenced persons (CETS No. 112)
- Additional Protocol to the Convention on the Transfer of Sentenced Persons (CETS No. 167)
- Convention Implementing the Schengen Agreement

The Implementing Statute of the Council of Europe Convention of 21 March 1983 on the transfer of sentenced persons<sup>22</sup> (*Gesetz zur Ausführung des Übereinkommens vom 21. März 1983 über die Überstellung verurteilter Personen (Überstellungsausführungsgesetz, ÜAG)*) is applicable to requests for enforcement of a sentence falling within the scope of the Council of Europe Convention of the transfers of sentenced persons, the Additional Protocol to the Convention on the Transfer of Sentenced Persons and the Convention Implementing the Schengen Agreement and contains deviating provisions relevant in the context of the present report. The core content of the ÜAG is the non-applicability of certain provisions when issuing a request within the scope of any of these three instruments. It allows for exceptions to the prerequisite that an enforcement request must be declared admissible by a court as well as the necessary consent of the person concerned and thereby introduces limits to Article 71 German Law on International Assistance in Criminal Matters.<sup>23</sup>

According to Article 48 IRG, in principle, a request can be made for enforcement of any final judgment on detention. Detention includes a prison sentence (Article 38 German Criminal Code) as well as any measures of rehabilitation and incapacitation (Articles 61 et seq. Criminal Code).<sup>24</sup> In addition, in some instances the Convention between Member States of the European Communities on enforcement of foreign criminal sentences of 13 November 1991 must be considered<sup>25</sup>, or bilateral agreements such as, for example, the agreement between Germany and Thailand on the transfer of prisoners<sup>26</sup>. Which bi- or multilateral agreement is applicable is to be determined on a case by case basis.<sup>27</sup> As treaties refer to national law regarding procedural law, provisions of the German Law on International Assistance in Criminal Matters always apply supplementary.

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<sup>22</sup> Implementing Statute of the Council of Europe Convention of 21 March 1983 on the transfer of sentenced persons (*Gesetz zur Ausführung des Übereinkommens vom 21. März 1983 über die Überstellung verurteilter Personen (Überstellungsausführungsgesetz, ÜAG)*), available at: [www.gesetze-im-internet.de/bundesrecht/ag/gesamt.pdf](http://www.gesetze-im-internet.de/bundesrecht/ag/gesamt.pdf) (21.05.2015).

<sup>23</sup> German Law on International Assistance in Criminal Matters (*Gesetz über die Internationale Rechtshilfe in Strafsachen*) available at: [www.gesetze-im-internet.de/englisch\\_irg/index.html](http://www.gesetze-im-internet.de/englisch_irg/index.html) (03. 05. 2015).

<sup>24</sup> Germany, Federal Parliament (*Bundestag*) (2015), BT-Drs. 18/4347, 18 March 2015, p.51, available at: <http://dip21.bundestag.de/dip21/btd/18/043/1804347.pdf> (03. 05. 2015).

<sup>25</sup> Only ratified by a limited number of states; the German transposition law's central provision is the non-applicability of Art. 71 (3) und (4) and corresponds to Art. 2 (1) ÜAG, see: [www.gesetze-im-internet.de/vollstrastvegbkg/BJNR135020997.html](http://www.gesetze-im-internet.de/vollstrastvegbkg/BJNR135020997.html) (23.05. 2015).

<sup>26</sup> Germany, Vertrag vom 26. Mai 1993 zwischen der Bundesrepublik Deutschland und dem Königreich Thailand über die Überstellung von Straftätern und über die Zusammenarbeit bei der Vollstreckung von Strafurteilen (BGBl. 1995 II S. 1010, 1996 II 1S. 220); corresponding information sheet: [www.bangkok.diplo.de/contentblob/441380/Daten/254849/RechtsverfolgungUeberstellung.pdf](http://www.bangkok.diplo.de/contentblob/441380/Daten/254849/RechtsverfolgungUeberstellung.pdf) (22.05.2015).

<sup>27</sup> Lists compiling applicable provisions for each country can be accessed here: [www.bmjv.de/DE/Service/StatistikenFachinformationenPublikationen/Fachinformationen/RiVAST/\\_node.html](http://www.bmjv.de/DE/Service/StatistikenFachinformationenPublikationen/Fachinformationen/RiVAST/_node.html)

Generally, for all requests for enforcement of a sentence falling within the scope of the Council of Europe Convention of the transfers of sentenced persons, responsibility has been transferred by the German Federal government to the governments of the states.<sup>28</sup>

## **2. Supervision of probation measures and alternative sanctions**

Regarding the Council Framework Decision on probation measures and alternative sanctions (2008/947/JHA), no legal basis exists so far in Germany. Currently, the only international instrument of cross-border supervision of probation orders is the 1964 European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders, which Germany has signed but not ratified. No further bi- or multilateral agreements have been concluded in this regard. Legal assistance in way of cross-border cooperation supervising of probation measures or alternative sanctions between Germany and other states cannot be carried out on a specific contractual basis. The German Law on International Assistance in Criminal Matters does not contain special rules on the supervision of probation measures. No legal provisions explicitly regulate the supervision of probation measures to the extent described by the Framework Decision. At most, cooperation to this end can be conducted by way of other legal assistance (*sonstige Rechtshilfe*). Into consideration come instances, for example, where a German authority supervised single supervision orders issued by another state and informs the other state if necessary about infringements of the convicted person against the orders. Legal basis are Article 3b Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, Article 49(f) Convention Implementing the Schengen Agreement or Article 59 German Law on International Assistance in Criminal Matters, depending on which contracting state or not contracting state is to be assisted. According to the Federal Ministry of Justice, very few cases of such legal assistance have become known.<sup>29</sup>

Requests for enforcement of foreign alternative sanction according to Article 2 (4) FD in Germany can only be granted on non-contractual basis according to Article 49 (3) IRG if the sanctions are equivalent to sanctions provided for under German law. Alternative sanctions as listed in Article 4 (1) FD are known in German law only within juvenile criminal law. Enforcement of foreign alternative sanctions in Germany is therefore very seldom. Official statistics are not available; the Ministry of Justice assumes very few, if not zero cases. The draft law states, that even though German law knows alternative sanctions in the meaning of the Framework Decision in the Juvenile criminal law (§13 and § 15 Youth Courts Law (*Jugendgerichtsgesetz*, JGG) the transposition of the FD will not extend to requests for enforcement of German alternative sanctions abroad. The main reason given is that juvenile law differs greatly between the EU member states.<sup>30</sup>

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<sup>28</sup> Germany, Agreement between the Federal government and the state governments regarding responsibility for international assistance in criminal matters (*Vereinbarung zwischen der Bundesregierung und den Landesregierungen über die Zuständigkeit im Rechtshilfeverkehr mit dem Ausland in strafrechtlichen Angelegenheiten*, Zuständigkeitsvereinbarung) (2004), available at: [www.verwaltungsvorschriften-im-internet.de/bsvwbund\\_28042004\\_935021713162004.htm](http://www.verwaltungsvorschriften-im-internet.de/bsvwbund_28042004_935021713162004.htm) (21.05.2015).

<sup>29</sup> Germany, Federal Parliament (*Bundestag*) (2015), BT-Drs. 18/4347, 18 March 2015, p. 76, available at: <http://dip21.bundestag.de/dip21/btd/18/043/1804347.pdf> (03.05. 2015).

<sup>30</sup> Germany, Federal Parliament (*Bundestag*) (2015), BT-Drs. 18/4347, 18 March 2015, p. 62, available at: <http://dip21.bundestag.de/dip21/btd/18/043/1804347.pdf> (03.05. 2015).

### 3. Alternative to provisional detention

Up until now, no provisions exist in German law regulating the transfer of supervision measures, issued by foreign states as an alternative to provisional detention to Germany. According to the Federal Ministry of Justice, at most, this is currently conceivable to be conducted by way of other legal assistance (*sonstige Rechtshilfe*) on the basis of Article 3 (b) Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters or Article 49 (f) Convention Implementing the Schengen Agreement.<sup>31</sup>

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.

TOPIC	FD 2008/909	FD 2008/947	FD 2009/829 (ESO)
	This column is used to provide information on the transposition of the Council of Europe Convention	As no legal basis exists so far in Germany, information from the draft laws is provided where applicable	As no legal basis exists so far in Germany, information from the draft laws is provided where applicable
<b>Q1. AVAILABILITY OF INFORMATION</b>			
Q1.1. Is information publicly available in ‘issuing states’ concerning the following:? If yes, please specify.			
<ul style="list-style-type: none"> <li>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)?</li> </ul>	An information sheet <sup>32</sup> used in all German states is handed out to foreign national prisoners at the beginning of their sentence (see also Q 2.1), informing the person about: <ol style="list-style-type: none"> <li>The possibility of the sentenced person to be transferred to serve the remainder of his/her sentence to the State of nationality if the country of origin has ratified the Convention. There is no legal right to such a transfer.</li> <li>Preconditions:</li> </ol>		

<sup>31</sup> Germany, Federal Parliament (*Bundestag*) (2015) BT-Drs. 18/4894, 13 May 2015, p. 38, available at: <http://dip21.bundestag.de/dip21/btd/18/048/1804894.pdf> (21.05.2015).

<sup>32</sup> This information sheet has been made available by the Federal Office for Justice provided by the Bavarian Ministry of Justice.

	<ul style="list-style-type: none"> <li>• approval of the issuing as well as executing country;</li> <li>• at least 6 months of the custodial sentences still to be served;</li> <li>• Consent of the person concerned - this consent cannot be revoked.</li> </ul> <p>3. Legal consequences: The law of the executing state applies; The executing state may recognize the sentence or adapt according to national law. The adaptation may not aggravate the sentence and shall not be converted into a pecuniary punishment. The issuing state is solely responsible for resumption of the case. If the sentenced person is found in the territory of the Federal Republic of Germany before the expiry of half of the time remaining to be served under the sentence imposed or converted in the administering State and the person cannot provide explanatory documents, he/she can be arrested for up to 18 days.</p> <p>4. A request for transferal can be made to the prison the person is currently confined or the competent authority. An address in the home country and documents on nationality should be provided.</p>		
<ul style="list-style-type: none"> <li>• How is the information made publically available (tools, or networks used)?</li> </ul>	<p>The German information sheet is available online but difficult to find.<sup>33</sup></p>	n/a	n/a
<ul style="list-style-type: none"> <li>• In which languages is the information provided?</li> </ul>	<p>The information sheet has been translated at least into following languages:</p>		

<sup>33</sup> See: [www.sta-muenster.nrw.de/infos/Formulare/Formulare/Merkblatt\\_Transfer.pdf](http://www.sta-muenster.nrw.de/infos/Formulare/Formulare/Merkblatt_Transfer.pdf).

	Bulgarian, Danish, English, Estonian, Finnish, French, Greek, Croatian, Italian, Latvian, Lithuanian, Dutch, Norwegian, Polish, Portuguese, Rumanian, Russian, Swedish, Slovakian, Slovenian, Spanish, Czech, Turkish and Hungarian. According to the Ministry of Justice Brandenburg, the information sheet is translated if the person concerned speaks a different language. <sup>34</sup>		
Q1.2. Apart from the competent authorities required by the FDs, is there 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>No. The German Federal Government, as permitted by Article 74 (2) IRG, has transferred the competency for all issues of international assistance in criminal matters involving EU states and requests based on the Council of Europe Convention to the governments of the states<sup>35</sup>, who in turn have designated the competent authorities in their states, such as the public prosecutors at the regional courts or respectively the local courts.<sup>36</sup></p> <p>Regarding cases of international legal assistance beyond the scope of the Council Convention in which the competency has not been transferred to the federal states, the Federal Office of Justice (<i>Bundesamt für Justiz</i>) decides in consultation with the Foreign Office (<i>Auswärtiges Amt</i>).<sup>37</sup></p> <p>The draft law implementing FD 909 names the public prosecutors of the regional courts as competent authorities, or the local court if a juvenile judge is responsible.<sup>38</sup></p>		

<sup>34</sup> Representative of the Ministry for Justice, Europe and Consumer Protection Brandenburg (*Ministerium der Justiz für Europa und Verbraucherschutz*).

<sup>35</sup> Germany, Agreement between the Federal government and the state governments regarding responsibility for international assistance in criminal matters (*Vereinbarung zwischen der Bundesregierung und den Landesregierungen über die Zuständigkeit im Rechtshilfeverkehr mit dem Ausland in strafrechtlichen Angelegenheiten, Zuständigkeitsvereinbarung*) (2004), available at: [www.verwaltungsvorschriften-im-internet.de/bsvwbund\\_28042004\\_935021713162004.htm](http://www.verwaltungsvorschriften-im-internet.de/bsvwbund_28042004_935021713162004.htm) (21.05.2015).

<sup>36</sup> For Brandenburg, responsibilities are listed in the regulatory provisions from 30 March 2012, available at: <http://bravors.brandenburg.de/verwaltungsvorschriften/rhstraf2012> (05.06.2015).

<sup>37</sup> Federal Office of Justice (*Bundesamt für Justiz*) International cooperation in criminal matters: [www.bundesjustizamt.de/DE/Themen/Gerichte\\_Behoerden/IRS\\_Rechtshilfe\\_node.html](http://www.bundesjustizamt.de/DE/Themen/Gerichte_Behoerden/IRS_Rechtshilfe_node.html) (05.06.2015).

<sup>38</sup> Germany, Federal Parliament (*Bundestag*) (2015), BT-Drs. 18/4347, 18 March 2015, p. 35, available at: <http://dip21.bundestag.de/dip21/btd/18/043/1804347.pdf> (03.05.2015).

<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, issues raised during the transfer process)? If yes, specify the information gathered.</p>	<p>Yes. According to the Agreement of the Federal government and the states regulating the competency regarding international assistance in criminal matters the states inform the Federal government on:</p> <ul style="list-style-type: none"> <li>- Incoming and outgoing requests on extradition, passage in transit and requests for enforcement</li> <li>- Court decisions on admissibility of the international assistance as well as decisions on fundamental questions in this matter</li> <li>- Approvals / rejections of requests<sup>39</sup></li> </ul> <p>The competent authorities of the federal states send the decision and a form to the Federal Office of Justice.<sup>40</sup> The Federal Office of Justice annually publicizes comprehensive statistics listing requests on extradition, passage in transit and requests for enforcement showing nationality of the person, crimes as well as the numbers of approvals/rejections.<sup>41</sup> Additional information is not publically available.<sup>42</sup></p> <p>The draft law implementing FD 909 plans to implement the obligation (FD 909 Article 29 (4)) of the member states to inform the Council and the Commission of repeating difficulties with a particular member state regarding the application of Article 25 FD 909 in the Guidelines on international cooperation</p>	<p>Not specified</p>	<p>Not specified</p>
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<sup>39</sup> Germany, Agreement between the Federal government and the state governments regarding responsibility for international assistance in criminal matters (*Vereinbarung zwischen der Bundesregierung und den Landesregierungen über die Zuständigkeit im Rechtshilfeverkehr mit dem Ausland in strafrechtlichen Angelegenheiten, Zuständigkeitsvereinbarung*) (2004), available at: [www.verwaltungsvorschriften-im-internet.de/bsvwbund\\_28042004\\_935021713162004.htm](http://www.verwaltungsvorschriften-im-internet.de/bsvwbund_28042004_935021713162004.htm) (21.05.2015).

<sup>40</sup> Federal Ministry of Justice and Consumer Protection (*Bundesministerium der Justiz und Verbraucherschutz*), Standard form 15 (*Muster Nr.15: Mitteilung an das Bundeszentralregister von der Vollstreckbarkeitsentscheidung*), available at: [www.verwaltungsvorschriften-im-internet.de/pdf/BMJ-IIB6-20121205-SF-Muster15.pdf](http://www.verwaltungsvorschriften-im-internet.de/pdf/BMJ-IIB6-20121205-SF-Muster15.pdf) (08.06.2015).

<sup>41</sup> Federal Ministry of Justice and Consumer Protection (*Bundesministerium der Justiz und Verbraucherschutz*), Statistics on extraditions (*Auslieferungsstatistik*), available at: [www.bmju.de/DE/Service/StatistikenFachinformationenPublikationen/Statistiken/Auslieferungsstatistik/\\_node.html](http://www.bmju.de/DE/Service/StatistikenFachinformationenPublikationen/Statistiken/Auslieferungsstatistik/_node.html) (05.06.2015).

<sup>42</sup> Representative of the Federal Office of Justice (*Bundesamt für Justiz*).

	in criminal matters ( <i>Richtlinien für den Verkehr mit dem Ausland in strafrechtlichen Angelegenheiten</i> , RiVSt). <sup>43</sup>		
<b>Q2. INFORMED CONSENT OF THE SUSPECT/SENTENCED PERSON</b>			
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.	The right of the sentenced person to be informed by the prosecution authority ( <i>Strafvollstreckungs- und Strafvollzugsbehörden</i> ) is based on the authorities' duty in respect of care and supervision ( <i>Fürsorgepflicht</i> ). <sup>44</sup> States provide in their regulatory provisions that the information sheet must be handed out by the prison authority to foreign national prisoners at the beginning of their sentence. <sup>45</sup> (See also question 1.1).		
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	The information sheet explains that one of the preconditions for transferal is the consent of the person concerned and that this consent, once given, cannot be revoked (See Q. 1.1). In addition, the person must be informed by a judge before giving formal consent (see Q. 2.4)  The draft law does not explain the procedure of obtaining informed consent. In the reasoning it is only explained that the person or		

<sup>43</sup> Germany, Federal Parliament (*Bundestag*) (2015), BT-Drs. 18/4347, 18 March 2015, p. 51, available at: <http://dip21.bundestag.de/dip21/btd/18/043/1804347.pdf> (03.05. 2015).

<sup>44</sup> Schomburg, W., Lagodny, O. *et al.* (2006) *Kurz-Kommentar International Rechtshilfe in Strafsachen*, München, C.H. Beck, p. 219.

<sup>45</sup> Brandenburg, Regulatory provisions on implementing the Council of Europe Convention of 21 March 1983 on the transfer of sentenced persons and the additional protocol (*Erlass des Ministeriums für Justiz vom 03. Juli 2008: Ausführung des Übereinkommens vom 21. März 1983 über die Überstellung verurteilter Personen und des Zusatzprotokolls vom 18. Dezember 1997*), No. II.2., available at: <http://bravors.brandenburg.de/de/verwaltungsvorschriften-220098> (05.06.2015).

suspect/sentenced person receives (e.g. information on appeal and release possibilities).	his/her legal representative must be heard before court if he/she did not submit the request. <sup>46</sup>		
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.	No. Once formal consent declared on protocol in court, this consent cannot be revoked. <sup>47</sup>		
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).			
<ul style="list-style-type: none"> <li>When consent is not required?</li> </ul>	Consent is not required for transfers under the Additional Protocol (Article 3 ÜAG). The public prosecutor may select persons to whom the Protocol is applicable and who fulfill the criteria for transfer. The person is then informed and questioned whether he/she agrees to a transferal. If he/she agrees, the regular procedure (see below) applies and the person must be heard before court.		

<sup>46</sup> Germany, Federal Parliament (*Bundestag*) (2015), BT-Drs. 18/4347, 18 March 2015, p. 58, available at: <http://dip21.bundestag.de/dip21/btd/18/043/1804347.pdf> (03 May 2015).

<sup>47</sup> Implementing Statute of the Council of Europe Convention of 21 March 1983 on the transfer of sentenced persons (*Gesetz zur Ausführung des Übereinkommens vom 21. März 1983 über die Überstellung verurteilter Personen (Überstellungsausführungsgesetz, ÜAG)*, Art. 3 (1), available at: [www.gesetze-im-internet.de/bundesrecht/ag/gesamt.pdf](http://www.gesetze-im-internet.de/bundesrecht/ag/gesamt.pdf) (21.05.2015).

	<p>If the person does not agree with a transfer, the higher regional court must decide on the admissibility of the transfer.<sup>48</sup></p> <p>In practice, however, an ex officio initiation of a request for transfer is very seldom.<sup>49</sup></p>		
<ul style="list-style-type: none"> <li>• When consent is required, Article 6 (3) of FD 2008/909/JHA).</li> </ul>	<p>Consent is required for transfers under the Council of Europe Convention. The procedure can be initiated by the person concerned or the public prosecutor. According to the Guidelines on International Cooperation (RiVAST), a person must be given the possibility to comment informally on the intended request if he/she has not requested the transfer her/himself.<sup>50</sup> This informal request is to be submitted in writing.<sup>51</sup> Part of the documents that have to be submitted to the decision making authority is a statement of the person concerned.<sup>52</sup> If the request is approved by the competent authority, the person concerned must consent before a judge on protocol (see Q 2.2).<sup>53</sup> The person concerned must be informed by the judge of the competent local court (Art. 77 IRG and Art. 157 GVG) and the consent be declared in court. Minutes of the instructions given to the person concerned by the court as well as the person's statement must be taken.<sup>54</sup></p>		

<sup>48</sup> Brandenburg, Regulatory provisions on implementing the Council of Europe Convention of 21 March 1983 on the transfer of sentenced persons and the additional protocol (*Erlass des Ministeriums für Justiz vom 03. Juli 2008: Ausführung des Übereinkommens vom 21. März 1983 über die Überstellung verurteilter Personen und des Zusatzprotokolls vom 18. Dezember 1997*), No. II.5.7., available at: <http://bravors.brandenburg.de/de/verwaltungsvorschriften-220098> (05.06.2015).

<sup>49</sup> Representative of the State Prosecutor's Office Potsdam.

<sup>50</sup> Germany, Guidelines on international cooperation in criminal matters (*Richtlinien für den Verkehr mit dem Ausland in strafrechtlichen Angelegenheiten*) No. 106, available at: [www.bmj.de/SharedDocs/Downloads/DE/pdfs/RiVaSt\\_Textfassung.html?nn=1608470](http://www.bmj.de/SharedDocs/Downloads/DE/pdfs/RiVaSt_Textfassung.html?nn=1608470) (08.06.2015).

<sup>51</sup> Representative of the State Prosecutor's Office Potsdam.

<sup>52</sup> Germany, Guidelines on international cooperation in criminal matters (*Richtlinien für den Verkehr mit dem Ausland in strafrechtlichen Angelegenheiten*), No. 105; corresponding Standard form 24 (*Muster Nr. 24: Bericht vor Stellung eines Vollstreckungshilfersuchens*), available at: [www.verwaltungsvorschriften-im-internet.de/pdf/BMJ-IIB6-20121205-SF-Muster24.pdf](http://www.verwaltungsvorschriften-im-internet.de/pdf/BMJ-IIB6-20121205-SF-Muster24.pdf) (08.06.2015).

<sup>53</sup> Germany, Guidelines on international cooperation in criminal matters (*Richtlinien für den Verkehr mit dem Ausland in strafrechtlichen Angelegenheiten*) No. 106.

<sup>54</sup> Implementing Statute of the Council of Europe Convention of 21 March 1983 on the transfer of sentenced persons (*Gesetz zur Ausführung des Übereinkommens vom 21. März 1983 über die Überstellung verurteilter Personen (Überstellungsausführungsgesetz, ÜAG)*), Art. 3 (1), available at: [www.gesetze-im-internet.de/bundesrecht/\\_ag/gesamt.pdf](http://www.gesetze-im-internet.de/bundesrecht/_ag/gesamt.pdf) (21.05.2015);

Lagodny, O. in Schomburg, W., Lagodny, O. et al. (2006) *Kurz-Kommentar International Rechtshilfe in Strafsachen*, München, C.H. Beck, p. 197, No. 19.

	<p>The person concerned must be informed of:</p> <ul style="list-style-type: none"> <li>- he/she may refer to the merits of the case</li> <li>- the request for transferal can be filed if his/her consents is put down in a judicial protocol</li> <li>- this consent cannot be revoked</li> <li>- exclusively the law of the foreign state is applicable further execution of the penalty<sup>55</sup></li> </ul>		
<p>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>	<p>Yes, the person concerned can change her/his opinion on the transfer. At the stage of informal consent, the request for transfer can be revoked or filed at any time as long as the transfer is still possible (e.g. at least 6 months of the custodial sentences still to be served). At the stage of formal consent, the refusal to consent can be revoked but not the consent given (see Q.2.3)</p>		
<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)</p>	<p>Yes. According to Article 53 IRG the sentenced person may have the assistance of defence counsel at any stage of the proceedings analog to the provisions in Article 137 Criminal Procedure Code (<i>Strafprozessordnung, StPO</i>). Article 53 (2) IRG corresponds to Article 140 StPO (mandatory defense). Whether or not legal counsel is appointed as a rule could not be determined with certainty and may differ between courts. According to some practical experience, due to the complexity of the law on international cooperation, legal counsel is appointed as a rule.<sup>56</sup> Other experts, however, did not see an appointment as a rule.<sup>57</sup> Legal commentary literature criticized the difficulty to find specialized legal counsel.<sup>58</sup> If a mandatory defense</p>		

<sup>55</sup> Federal Ministry of Justice and Consumer Protection (*Bundesministerium der Justiz und Verbraucherschutz*), Standard form 25 (*Muster Nr. 25: Antrag auf Anhörung der verurteilten Person zu einem Vollstreckungshilfeersuchen*), available at: [www.verwaltungsvorschriften-im-internet.de/pdf/BMJ-IIB6-20121205-SF-Muster25.pdf](http://www.verwaltungsvorschriften-im-internet.de/pdf/BMJ-IIB6-20121205-SF-Muster25.pdf) (08.06.2015).

<sup>56</sup> This is expressed in the draft law transposing FD 909, BT-Drs. 18/4347, p. 94; Representative of the State Prosecutor's Office Potsdam.

<sup>57</sup> Representative of the Ministry for Justice of North Rhine Westphalia (*Justizministerium des Landes Nordrhein-Westfalen*).

<sup>58</sup> Ambos, K., König, S. *et al.* (2015) *Rechtshilferecht in Strafsachen*, Baden-Baden, Nomos, p. 579, No. 61.

	<p>is appointed, expenses for the counsel and the interpreter are paid for by the state.<sup>59</sup></p> <p>As Article 53 refers to Chapter 11 Criminal Procedure Code, Article 148 StPO is also applicable, which regulates defense-counsel - client communication and states: “(1) The accused shall be entitled to communicate with defence counsel in writing as well as orally even when he is not at liberty.”<sup>60</sup> Oral communication includes face-to-face as well as phone conversations.<sup>61</sup></p> <p>The draft law transposing FD 909, states that no explicit transposition of the right to legal assistance is necessary as this is already anchored in Article 53 (1).<sup>62</sup></p>		
<p>Q2.7. Is there a procedure in place to ascertain that the legal counsel speaks and understands the suspect/sentenced person’s language in the issuing state? If yes, please specify.</p>	<p>When appointing legal counsel, the focus is put on specific expertise on international cooperation in criminal matters, rather than language skills.<sup>63</sup> However, if the person has a mandatory counsel assigned, an interpreter has to be made available if necessary.<sup>64</sup></p>		
<p>Q2.8. Does the suspect/sentenced person have the right to legal aid in the issuing state?</p>	<p>According to practical experience, as a rule legal counsel is appointed, which is paid for by the state.<sup>65</sup></p>		

<sup>59</sup> Hackner, T., Schierholt, C. *Internationale Rechtshilfe in Strafsachen* (2012), München, C.H. Beck, p. 52.

<sup>60</sup> German Criminal Procedure Code (*Strafprozessordnung*, StPO), available at: [www.gesetze-im-internet.de/englisch\\_stpo/englisch\\_stpo.html#p1126](http://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html#p1126) (05.05.2015).

<sup>61</sup> Meyer-Goßner, L. (2012) *Kommentar zur Strafprozessordnung*, München, C.H. Beck, p. 700 et seq.

<sup>62</sup> Germany, Federal Parliament (*Bundestag*) (2015), BT-Drs. 18/4347, 18 March 2015, p. 46, available at: <http://dip21.bundestag.de/dip21/btd/18/043/1804347.pdf> (03.06. 2015).

<sup>63</sup> This is expressed in the draft law transposing FD 909, BT-Drs. 18/4347, p. 94

<sup>64</sup> Representative of the State Prosecutor’s Office Potsdam; Hackner, T, Schierholt, C. *Internationale Rechtshilfe in Strafsachen* (2012), München, C.H. Beck, p. 52.

<sup>65</sup> Representative of the State Prosecutor’s Office Potsdam.

Q2.9. Is the suspect/sentenced person assisted by an interpreter in the issuing state, if required:			
<ul style="list-style-type: none"> <li>• While consenting to the transfer?</li> </ul>	Yes. When consenting to the transfer in court, the sentenced person has a right to be assisted by an interpreter. <sup>66</sup>		
<ul style="list-style-type: none"> <li>• While requesting the transfer?</li> </ul>	If the person has a mandatory counsel assigned (which is the rule, see 2.6), an interpreter has to be made available if necessary. <sup>67</sup>		
Q2.10. Are these interpretation or translation services provided during a face-to-face consultation? Please provide brief information.	According to Article 185 (1) GVG, the interpreter is called in for the court session. The judge may also permit the use of simultaneous audio-visual transmission if the interpreter remains in another place. If the person has a mandatory counsel assigned, an interpreter has to be made available if necessary. <sup>68</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 information could be obtained (see evaluation sheet)		
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	Could not be determined.		

<sup>66</sup> German Courts Constitution Act (*Gerichtsverfassungsgesetz*, GVG), Art. 185, available at: [www.gesetze-im-internet.de/englisch\\_gvg/englisch\\_gvg.html#p0836](http://www.gesetze-im-internet.de/englisch_gvg/englisch_gvg.html#p0836) (07.06.2014).

<sup>67</sup> Hackner, T., Schierholt, C. *Internationale Rechtshilfe in Strafsachen* (2012), München, C.H. Beck, p. 52.

<sup>68</sup> Hackner, T., Schierholt, C. *Internationale Rechtshilfe in Strafsachen* (2012), München, C.H. Beck, p. 52.

suspect/sentenced person receive any updated information?			
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)	<p>No legal basis for appealing the decision of the decision making authority exists. In most cases, the person concerned has consented the transfer and if all preconditions are fulfilled, the decision making authority will follow the suggestion of the public prosecutor's office.<sup>69</sup> Only in cases according to Article 3 ÜAG (see above) no consent is necessary. The executing authority may dispense with execution of a prison sentence, if the convicted person is to be expelled from Germany.<sup>70</sup> An appeal has to be directed against the expulsion decision and is a residence law matter.<sup>71</sup> The IRG does not contain any regulations regarding a right to appeal and the question is disputed.<sup>72</sup></p> <p>If the public prosecutor decides not to suggest a request for transfer to the competent authority or issues a negative decision (with the approval of the competent authority), the person has a right to judiciary review of this decision according to Articles 23 et seq. Introductory Act to the Courts Constitution Act (<i>Einführungsgesetz zum Gerichtsverfassungsgesetz</i>, EGGVG).<sup>73</sup></p> <p>In cases within the scope of the Additional Protocol where no consent is required but an admissibility examination is to be carried out by the higher regional court, a decision on admissibility is not contestable Article 13 (1) IRG).</p>		

<sup>69</sup> Representative of the Ministry for Justice, Europe and Consumer Protection Brandenburg (*Ministerium der Justiz für Europa und Verbraucherschutz*).

<sup>70</sup> Criminal Procedure Code (*Strafprozessordnung*, StPO), Art. 456a, available at: [www.gesetze-im-internet.de/englisch\\_stpo/englisch\\_stpo.html#p2586](http://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html#p2586) (15.06.2015).

<sup>71</sup> Representative of the Ministry for Justice of North Rhine Westphalia (*Justizministerium des Landes Nordrhein-Westfalen*).

<sup>72</sup> Hackner, T., Schierholt, C. *Internationale Rechthilfe in Strafsachen* (2012), München, C.H. Beck, p. 54-55.

<sup>73</sup> Ambos, K., König, S. *et al.* (2015) *Rechtshilfe in Strafsachen*, Baden-Baden, Nomos, p. 319, No. 14c; Hackner, T., Schierholt, C. *Internationale Rechthilfe in Strafsachen* (2012), München, C.H. Beck, p. 154.

<p>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 information (e.g. how often he/she can exercise this right)</p>	<p>No.</p>		
<p>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?)</p>	<p>If a person is transferred to Germany, the sentenced person may have the assistance of defence counsel at any stage of the proceedings (Article 53 IRG). In the opposite case, this lies within the national law of the executing state.<sup>74</sup></p>		
<p>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>	<p>The Federal Office of Justice statistics on extradition (see 1.3) listing <i>inter alia</i> international requests for enforcement only show the numbers of rejections but no reasons.<sup>75</sup> Additional information is not publicly available.<sup>76</sup></p> <p>According to the draft law, the German government will issue a declaration according to Article 7 (4) FD 909 and only allow the execution of a foreign sentence, if the crime is also punishable under German law.<sup>77</sup> Further the draft law stipulates that the supervision of an electronically surveilled house arrest cannot be transferred to Germany, as German law does not know this as a custodial sentence. Adapting the sentence into a prison sentence would aggravate the sentence passed in the issuing state therefore violate Article 8 (4) FD</p>		

<sup>74</sup> Representative of the State Prosecutors Office Potsdam.

<sup>75</sup> Federal Ministry for Justice and Consumer Protection (*Bundesministerium für Justiz und Verbraucherschutz*) Statistics on extraditions (*Auslieferungsstatistik*), available at: [www.bmju.de/DE/Service/StatistikenFachinformationenPublikationen/Statistiken/Auslieferungsstatistik/ node.html](http://www.bmju.de/DE/Service/StatistikenFachinformationenPublikationen/Statistiken/Auslieferungsstatistik/node.html) (05.06.2015).

<sup>76</sup> Representative of the Federal Office of Justice (*Bundesamt für Justiz*).

<sup>77</sup> Germany, Federal Parliament (*Bundestag*) (2015), BT-Drs. 18/4347, 18 March 2015, p. 41, available at: <http://dip21.bundestag.de/dip21/btd/18/043/1804347.pdf> (03.05.2015).

	909. In the case of transferring a person from Germany to another state, it is to be expected, that other states may refuse a transfer in cases of a commitment to an institution of protective custody ( <i>Sicherungsverwahrung</i> ) as their law may not provide for this measure the same way the German legal system does. <sup>78</sup>		
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 disabilities) in the issuing state? (e.g. the use of healthcare professionals)	No developments could be identified.		
<b>Q3. DECISION ON TRANSFER</b>			
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> </ul>	The public prosecutor's report on which a decision to transfer is based must include a number of documents, <sup>79</sup> including a statement of the prison authorities which includes information on the social ties of the person concerned <sup>80</sup> and may comment on the likely impact.		

<sup>78</sup> Germany, Federal Parliament (*Bundestag*) (2015), BT-Drs. 18/4347, 18 March 2015, p. 43, available at: <http://dip21.bundestag.de/dip21/btd/18/043/1804347.pdf> (03.05.2015).

<sup>79</sup> Federal Ministry of Justice and Consumer Protection (*Bundesministerium der Justiz und Verbraucherschutz*), Standard form 24 (*Muster Nr. 24: Bericht vor Stellung eines Vollstreckungshilfeersuchens*), available at: [www.verwaltungsvorschriften-im-internet.de/pdf/BMJ-IIB6-20121205-SF-Muster24.pdf](http://www.verwaltungsvorschriften-im-internet.de/pdf/BMJ-IIB6-20121205-SF-Muster24.pdf) (08.06.2015).

<sup>80</sup> Brandenburg, Regulatory provisions on implementing the Council of Europe Convention of 21 March 1983 on the transfer of sentenced persons and the additional protocol (*Erlass des Ministeriums für Justiz vom 03. Juli 2008: Ausführung des Übereinkommens vom 21. März 1983 über die Überstellung verurteilter Personen und des Zusatzprotokolls vom 18. Dezember 1997*), No. II.3.1, available at: <http://bravors.brandenburg.de/de/verwaltungsvorschriften-220098> (05.06.2015).

	According to the regulatory provisions of Brandenburg, the prison authority's statement shall determine whether a transfer of the person is advisable considering general preventative aspects and specific deterrence of the individual offender. <sup>81</sup>		
<ul style="list-style-type: none"> <li>Fundamental rights implications (such as the right to family life, right to education)?</li> </ul>	The report must also include information on the marital status, number of children and place of residence of family members.		
<ul style="list-style-type: none"> <li>Others? Please specify.</li> </ul>	The report must also include the request of the person concerned, or if the request was initiated by the public prosecutor a statement of the person, which may also elaborate on social reintegration.		
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:	No formal catalogue exists, but according to the Ministry for Justice Brandenburg all the following factors are considered when weighing the justification of the individual's right to social rehabilitation against the interest of the state to punish the crime. <sup>82</sup> Information is obtained through the statements submitted as well as individual information requests on a case by case basis if necessary.		

<sup>81</sup> Brandenburg, Regulatory provisions on implementing the Council of Europe Convention of 21 March 1983 on the transfer of sentenced persons and the additional protocol (*Erlass des Ministeriums für Justiz vom 03. Juli 2008: Ausführung des Übereinkommens vom 21. März 1983 über die Überstellung verurteilter Personen und des Zusatzprotokolls vom 18. Dezember 1997*), No. II.3.3.1, available at: <http://bravors.brandenburg.de/de/verwaltungsvorschriften-220098> (05.06.2015).

<sup>82</sup> Representative of the Ministry for Justice, Europe and Consumer Protection Brandenburg (*Ministerium der Justiz für Europa und Verbraucherschutz*).

<ul style="list-style-type: none"> <li>Family and social ties (e.g. accommodation, employment or other economic ties, linguistic and cultural links)?</li> </ul>	Yes.		
<ul style="list-style-type: none"> <li>Criminal history and criminal ties?</li> </ul>	Yes.		
<ul style="list-style-type: none"> <li>Humanitarian concerns (i.e. terminal illness of suspect/sentenced person or family members)?</li> </ul>	Yes.		
<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 promote a progressive accountability of inmates)</li> </ul>	Yes.		
<ul style="list-style-type: none"> <li>Others?</li> </ul>			
Q.3.3. Are the following persons/entities consulted in the evaluation of the likelihood of social rehabilitation by the issuing state:			
<ul style="list-style-type: none"> <li>Probation agencies or similar entities in the issuing state?</li> </ul>	If the statements on which the decision is based give rise to further questions, these agencies can be contacted on a case by case basis. <sup>83</sup>		

<sup>83</sup> Representative of the Ministry for Justice, Europe and Consumer Protection Brandenburg (*Ministerium der Justiz für Europa und Verbraucherschutz*).

<ul style="list-style-type: none"> <li>The competent authorities in the executing state?</li> </ul>	<p>If required, not on a regular basis. The draft law transposing FD 909 anticipates that contacting the competent authorities in the executing state when evaluating the likelihood of social rehabilitation shall be included in the RiVAST (Guidelines on international cooperation in criminal matters).<sup>84</sup></p>		
<ul style="list-style-type: none"> <li>The suspect/sentenced person?</li> </ul>	No.		
<ul style="list-style-type: none"> <li>The family of the suspect/sentenced persons, especially with regard to child offenders?</li> </ul>	No; in individual cases the family may have submitted a statement.		
<ul style="list-style-type: none"> <li>Any other person/entity?</li> </ul>	No.		
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 information can be provided.		
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	When requesting a transfer, where applicable the request to the executing state shall include reports of social workers or doctors,		

<sup>84</sup> Germany, Federal Parliament (*Bundestag*) (2015), BT-Drs. 18/4347, 18 March 2015, p.36, available at: <http://dip21.bundestag.de/dip21/btd/18/043/1804347.pdf> (03.05. 2015).

<p>competent authorities of the executing state while forwarding the judgment or decision? If yes, please specify if pre-sentence reports are forwarded.</p>	<p>comments on medical treatment in the issuing state and recommendations for further treatment in the executing state.<sup>85</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>Whether or not documents will be translated depends on the agreement with the executing state. (For the applying provisions, see country lists to the Guidelines on international cooperation in criminal matters (<i>Richtlinien für den Verkehr mit dem Ausland in strafrechtlichen Angelegenheiten</i>).<sup>86</sup></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 or not to consent to the forwarding of the judgement and the certificate (where required)?</p>	<p>So far measures constituting the basis on which the competent authorities take their decisions do not exist; the draft law transposing FD 909 anticipates that this can be included in the RiVAST (Guidelines on international cooperation in criminal matters).<sup>87</sup></p>		
<p>Q3.8. Are there formal and clear rules regarding data protection in</p>			

<sup>85</sup> Brandenburg, Regulatory provisions on implementing the Council of Europe Convention of 21 March 1983 on the transfer of sentenced persons and the additional protocol (*Erlass des Ministeriums für Justiz vom 03. Juli 2008: Ausführung des Übereinkommens vom 21. März 1983 über die Überstellung verurteilter Personen und des Zusatzprotokolls vom 18. Dezember 1997*), No. II.4.1, available at: <http://bravors.brandenburg.de/de/verwaltungsvorschriften-220098> (05.06.2015).

<sup>86</sup> Germany, Country list to the Guidelines on international cooperation in criminal matters (*Richtlinien für den Verkehr mit dem Ausland in strafrechtlichen Angelegenheiten*), available at: [www.bmjv.de/SiteGlobals/Functions/ThemenIndex/themenIndex\\_RiVAST.html;jsessionid=568A25B0F0BDCF6DB731D943B1A027FC.1\\_cid324?isOverview=true&letter=A#themeA](http://www.bmjv.de/SiteGlobals/Functions/ThemenIndex/themenIndex_RiVAST.html;jsessionid=568A25B0F0BDCF6DB731D943B1A027FC.1_cid324?isOverview=true&letter=A#themeA) (15.06.2015).

<sup>87</sup> Germany, Federal Parliament (*Bundestag*) (2015), BT-Drs. 18/4347, 18 March 2015, p.37, available at: <http://dip21.bundestag.de/dip21/btd/18/043/1804347.pdf> (03.05. 2015).

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>	No specific rules exist, but the transfer of personal data between the state prosecutor's office, the prison authority and the ministry of justice as decision making body is provided for by the Convention of the transfer of prisoners. <sup>88</sup>		
<ul style="list-style-type: none"> <li>Authorities in the issuing and executing state?</li> </ul>	No. According to the Ministry of Justice Brandenburg, if authorities in the executing state were to be contacted and personal data submitted this would be done with the prior consent of the person concerned. <sup>89</sup>		
<b>Q4. VICTIMS</b>			
Q4.1. Do the victims have the right to receive the following information regarding the transfer from the issuing state:			
<ul style="list-style-type: none"> <li>The decision to transfer</li> </ul>	According to the Federal Bar Association, no right to information exists. <sup>90</sup> However, according to the Public Prosecutor's office Aachen, victims do have the right to be informed upon request according to section 406d StPO <sup>91</sup> , if they have can show a legitimate interest. Though, very few such requests are made in cases of transferal. <sup>92</sup>		
<ul style="list-style-type: none"> <li>The status of the transfer</li> </ul>	See above		
<ul style="list-style-type: none"> <li>Other? Please specify.</li> </ul>	See above		

<sup>88</sup> Representative of the Ministry for Justice, Europe and Consumer Protection Brandenburg (*Ministerium der Justiz für Europa und Verbraucherschutz*).

<sup>89</sup> Representative of the Ministry for Justice, Europe and Consumer Protection Brandenburg (*Ministerium der Justiz für Europa und Verbraucherschutz*).

<sup>90</sup> Representative of the Federal Bar Association (*Bundesrechtsanwaltskammer, BRAK*); Representative of the Ministry for Justice of North Rhine Westphalia (*Justizministerium des Landes Nordrhein-Westfalen*).

<sup>91</sup> Criminal Procedure Code (*Strafprozessordnung*), Art. 406d, available at: [www.gesetze-im-internet.de/englisch\\_stpo/englisch\\_stpo.html#p2345](http://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html#p2345).

<sup>92</sup> Representative of the Ministry for Justice of North Rhine Westphalia (*Justizministerium des Landes Nordrhein-Westfalen*).

Q4.2. Is there any procedure in place to provide this information as issuing or executing state? If yes, please specify:	No procedure appears to be in place.		
• Is the information provided upon request of the victim?			
• Who responsible for providing this information?			
• Is it a verbal or written communication?			
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)	No. <sup>93</sup> According to the Federal Ministry of Justice, victims are not consulted in the transfer process as the transfer serves primarily the purpose of social rehabilitation of the sentenced person and including the victim in the process appears not necessary. <sup>94</sup>		
Q4.4. Do the victims have any other rights concerning the transfer (in the state you are describing, as issuing or executing state)? Please specify.	No, see above		
Q4.5. Do the victims have access to translators/interpreter in order to be kept fully informed of the	No, see above		

<sup>93</sup> Representative of the Ministry for Justice, Europe and Consumer Protection Brandenburg (*Ministerium der Justiz für Europa und Verbraucherschutz*); Representative of the Ministry for Justice of North Rhine Westphalia (*Justizministerium des Landes Nordrhein-Westfalen*).

<sup>94</sup> Representative of the Federal Ministry for Justice and Consumer Protection (*Bundesministerium für Justiz und Verbraucherschutz*).

transfer (in the state you are describing, as issuing or executing state)?			
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)?	<p>Whether a victim has a right to be informed of the transfer or (early) release etc. could not be determined with certainty. According to the Federal Bar Association, no right to information exists.<sup>95</sup></p> <p>Others assume that the right to be informed for victims of violent crime according to Article 406d StPO (Criminal Procedure Code) would apply and allow victims to be informed of the transfer upon request. However, once transferred the victim would have to request the information from the authorities in the executing state and foreign law applies.<sup>96</sup> (see also Q4.1.) According to the Federal Ministry of Justice, the right to be informed of an early release etc. according to §406d StPO does not apply, if the sentence is executed by a foreign state.<sup>97</sup></p>		

<sup>95</sup> Representative of the Federal Bar Association (*Bundesrechtsanwaltskammer, BRAK*).

<sup>96</sup> Representative of the Ministry for Justice of North Rhine Westphalia (*Justizministerium des Landes Nordrhein-Westfalen*).

<sup>97</sup> Representative of the Federal Ministry for Justice and Consumer Protection (*Bundesministerium für Justiz und Verbraucherschutz*).