

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

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Author(s) name: Katarzyna Wiśniewska, Marcin Wolny

Reviewed by (on contractor's side): Adam Bodnar, Ph.D.

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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:

Under Polish law (the Criminal Code¹, *Ustawa z dnia 6 czerwca 1997 r. Kodeks karny*, hereinafter: CC), the catalogue of penalties includes:

- 1) fine,
- 2) restriction of liberty,
- 3) deprivation of liberty,
- 4) deprivation of liberty for 25 years,
- 5) deprivation of liberty for life.

However, it should be mentioned that the above mentioned penalties can be imposed by the court in the final judgement.

Electronic monitoring system

At a post-trial stage, a penitentiary court may allow the offender sentenced to up to a one-year prison term to serve the sentence in the electronic monitoring system. The basis for such decision is contained in Article 6 (1) of the Act on the execution of custodial sentences outside a prison facility under the electronic monitoring system². The person should have a specified place of permanent stay and a consent of adults residing with him or her. Moreover, this measure must be sufficient to satisfy the purposes of the penalty, whereas security reasons and the degree of demoralisation and other special circumstances do not

¹ Poland, Criminal Code, (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny*), 6 June 1997.

² Poland, Act on the execution of custodial sentences outside a prison facility under the electronic monitoring system (*Ustawa z dnia 7 września 2007 r. o wykonywaniu kary pozbawienia wolności poza zakładem karnym w systemie dozoru elektronicznego*), 7 September 2007.

call for placing the offender in a prison facility. In addition, the housing conditions of the offender should be sufficient for the operation of the monitoring device. This means that the authorised supervising body should have technical and organisational capabilities to carry out the monitoring ('technical conditions' are met). If the convicted person has already started to serve the sentence in a prison, the person's behaviour during the execution of the penalty in prison ought to also be taken into account.

However, it should be mentioned that this regulation expired on June 30, 2015. According to the new law at the post trial stage, it is not possible to change the manner in which the penalty of deprivation of liberty is executed.

According to art. 14 of the Amendment to the Criminal Code³ the electronic surveillance system might be imposed in respect to the convicts who were sentenced to imprisonment before 1 July 2015 and who fulfilled the conditions laid down by previous regulations.

Amendment to the Criminal Code

The fundamental amendment to the Criminal Code entered into force on July 1, 2015. The intention of the reform was to increase the frequency of using fines and penalties to restrict liberty by the Courts by reducing imprisonment (custodial) sentences. For example, the new art. 37a creates a possibility to use non-custodial penalties in these cases where the act provides for a prison sentence of maximum eight years.

The intention of the reform was also the introduction of the new model of the electronic surveillance system (tagging). According to the new law, the electronic surveillance can be used as:

- element of the restriction of liberty
- preventive measure
- penal measure connected with restraining orders to certain persons.

According to the new model, the penalty of the restriction of liberty can be based on four key elements from art. 34 § 1a which, can be pronounced separately or together in any configuration. The penalty of the restriction of liberty can consist of:

- the obligation of supervised work without remuneration and for community purposes designated by the court
- the obligation to stay in the place of residence supervised by the electronic surveillance system
- the obligation established by art. 72 § 1 pkt 4-7a
- the deduction of 10 and 25% of the remuneration for the community purpose so designated by the court.

³ Poland Amendment to the Criminal Code and other Acts, (*Ustawa z dnia 20 lutego 2015 r. o zmianie ustawy - Kodeks karny oraz niektórych innych ustaw*), 20 February 2015.

The amendment introduced also the new institution defined by some author as “mixed punishment”. However, some representatives of Polish lawyers defined it as a “*sequence of the penalties*”. *As i tis stated in legal literature*, it was found that short-term imprisonment and a restriction of liberty ordered at the same time on the basis of art. 37b C.C. should be the real equivalent of criminal reactions involving the sentencing of imprisonment with a conditional suspension of its implementation⁴.

According to the art. 37b C.C. in the case of a misdemeanor punishable by imprisonment, the court may order both a penalty of imprisonment not exceeding three months (if the upper statutory limit is at least 10 years - six months) and the restriction of liberty up to 2 years.

However, at the post trial stage, it will not be possible to change the manner in which the penalty of deprivation of liberty is not executed.

Probation measures that can be imposed at the post-trial stage:

Conditional release

According to the Criminal Code, the sentenced person may be conditionally released after serving at least half of the sentence, with a minimum of 6 months (Article 78 of CC). The sentenced person specified in Article 64 § 1 of CC (a recidivist in the meaning of CC) may be conditionally released after serving two-thirds of the sentence. The sentenced person specified in Article 64 § 2 of CC (a multi-recidivist) may be conditionally released after serving three-quarters of the sentence. Conditional release cannot occur before the lapse of one year. The person sentenced to 25 years of deprivation of liberty may be conditionally released after serving 15 years of the sentence, and the person sentenced to deprivation of liberty for life, after serving 25 years of the sentence.

The decision in the case of “conditional release” is ordered by a penitentiary court at a post-trial stage. The procedure governing “*conditional release*” is regulated by the Code of Execution of Criminal Sentences (hereinafter: CEC)⁵.

Conditional suspension of sentence execution

According to the Article 152 of CEC, if the postponement of a sentence not exceeding one year of imprisonment has lasted for at least one year, the court may conditionally suspend the execution of a sentence under the terms indicated in Articles 69 – 75 of CC. An application for a conditional suspension of imprisonment may also be submitted by a professional judicial probation officer.

Pursuant to Article 69 § 2 of CC, when suspending the execution of a penalty, the court shall primarily take into consideration the attitude of the perpetrator, his personal characteristics and conditions, his way of life to-date and his conduct after the commission of the offence. Suspension of the execution of the penalty shall not be applied to the recidivist described in Article 64 § 2 of CC.

Suspension of the execution of a penalty shall be granted for a probation period which runs from the time the sentence becomes valid and final, and is for 2 to 5 years (in the case of a conditional suspension of the execution of a penalty of deprivation of liberty) or 1 year to 3 years – in the case of a

⁴ Poland: M. Małecki, Sequence of short term imprisonment and restriction of liberty (art. 37b of Criminal Code) - basic issues (Sekwencja krótkoterminowej kary pozbawienia wolności i kary ograniczenia wolności (art. 37b kk) – zagadnienia podstawowe, Palestra 7-8/2015

⁵ Poland, Code of Execution of Criminal Sentences (*Ustawa z dnia 6 czerwca 1997 r. Kodeks karny wykonawczy*), 6 June 1997.

conditional suspension of the execution of a fine or a penalty of restriction of liberty. In the case of the conditional suspension of the execution of a penalty with respect to a perpetrator who is a young offender or recidivist specified in Article 64 § 2, the probation period is from 3 to 5 years.

When suspending the execution of a penalty, the court may oblige the sentenced person to several actions, such as: inform the court or the probation officer about the progress of the probation period; apologise to the victim; carry out a duty incumbent upon him in order to provide support for another person; perform remunerated work; pursue an educational activity or train himself for an occupation; refrain from abusing alcohol or using narcotics; participate in medical treatment, particularly drug withdrawal or rehabilitation programmes; refrain from frequenting specified community circles or places; engage in other appropriate conduct in the probation period, if it may prevent the commission of another offence. The court may also oblige the perpetrator to redress the damage in whole or in part. Pursuant to Article 73 of CC, when suspending the execution of a penalty, the court may, within the probation period, place the perpetrator under supervision of a probation officer or a person of public trust, association, or a community organisation whose activities include educational care, preventing demoralisation of or providing assistance to sentenced persons. Placing under supervision is mandatory with respect to a young perpetrator of an intentional offence, and with respect to the recidivist specified in Article 64 § 2 of CC.

The time and manner of execution of the imposed obligations shall be determined by the court after the hearing of a sentenced person.

The court shall order the execution of the penalty if the sentenced person during the probation period committed an intentional offence similar to the previous one for which he has been validly and finally sentenced for a penalty of deprivation of liberty. The court may order the execution of the penalty, if the sentenced person in the probation period has flagrantly breached the legal order and, in particular, if he has committed other offence, not paid the fine, evaded supervision, or failed to fulfil the obligations or penal measures imposed. The order to execute the penalty may not be issued any later than 6 months after the end of the probation period.

The interruption of penalty

Moreover, it should also be mentioned that Polish law recognizes „*the institution of the interruption of penalty*”. It cannot be treated as a probation measure, but it influences the execution of the deprivation of liberty sentence at the post-trial stage. The penitentiary court decides about its application at the post-trial stage. According to Article 150 § 1 of CEC, the court is obliged to grant a stay or interruption in the event of a mental illness of the convict or other serious illness which prevents him from being incarcerated. Granting interruption in the execution of a penalty is optional if there are important family or personal matters in favor of the decision (Article 153 § 2 ECC).

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

Alternatives to the pre-trial detention are regulated in the Code of Criminal Procedure (hereinafter: CCP).⁶

Polish law provides for the following alternatives to pre-trial detention:

I. Guaranty:

- **Bail Bond** – a submission of an amount of money, securities or other property rights specified in the court’s or public prosecutor’s decision. It can be posted by the accused or by another person (Article 266 § 1 CCP).

It should also be mentioned at this point that Polish law recognized a specific measures that, in legal literature, is defined as “*conditional detention on remand*”. According to Article 257 § 2, the court may decide that pre-trial detention is changed if the required bail is posted within a time limit.

- **Social** – a statement that the suspect shall appear whenever summoned and shall not obstruct the course of the proceedings; the statement may be submitted by an institution related to the suspect, for example school, employment institution, university, social organization (Article 271 §1 CCP).
- **Individual** – a submission by a person of public trust who guarantees that the suspect shall refrain from illegal actions aimed at obstruction of criminal proceedings and that the suspect will appear whenever summoned (Article 272 CCP).

II. Police supervision – a person under this measure is obliged to comply with the requirements of a court’s or public prosecutor’s decision. The obligations may consist of: a prohibition of leaving a specific place of stay; an obligation to report to the supervising authority in specified intervals or to notify the authority of an intended trip and the date of return; a prohibition of contacting the victim or other persons and other restrictions that are necessary for the execution of supervision (Article 275 CCP).

When the accused is a soldier they may be placed under the supervision of his commanding officer.

III. Order for the accused to leave premises – can be used in a case of a charge of a violent offence committed against a member of his/her household if there is a justified threat that this person may again commit a violent offence against this person (Article 275a §3 CCP).

IV. Prohibition to leave the country – may be combined with a seizure of a document authorizing a person to leave the territory of the Reapublic of Poland or with the refusal to issue such a document (Article 277 CCP).

V. Orders of and bans on specific behavior:

- **Ban on performance of a profession** – (Article 276 CCP);
- **Order to refrain from performing a specific activity** (Article 276 CCP);

⁶ Poland, Code of Criminal Procedure, (*Ustawa z dnia 6 lipca 1997 r. Kodeks postępowania karnego*), 6 June 1997.

- **Order to refrain from driving a particular type of vehicles** – (Article 276 CCP).

It should be mentioned that if it is established that the suspect committed the act in a state of insanity and there are ground to apply protective measures, the public prosecutor, after closing the investigation, refers the case to the court with a motion to discontinue proceedings and apply a preventive measure.

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)?

As of 1 July 2015, the amendments to the Criminal Code, the Code of Criminal Procedure and the Code of Execution of Criminal Sentence came into force. They changed the rules governing probation measures and the execution of a sentence and introduced into the Polish criminal law the most profound changes since the adoption of the criminal codification in 1997.

Conditional suspension of sentence execution

According to the new version of Article 152 of CEC, if the postponement of a sentence not exceeding one year imprisonment has lasted for at least one year, the court may conditionally suspend the execution of a sentence under the terms indicated in Article 69-75 of CC. The application for a conditional suspension of imprisonment may also be submitted by a professional judicial probation officer. However, it should also be mentioned that the conditions under Articles 69-75 also has been changed. The main changes in probation measures concern the new meaning of Article 72 of CC. According to the new version, the court have to impose an obligation on a sentenced person when suspending the execution of his or her penalty. The amendments to CC have also changed the probation period. Pursuant to the new meaning of Article 70 of CC, the probation period last from 1 to 3 years. En exception to this rule has been done in case of domestic violence petreptrators. In such situation the probation period lasts form 2 to 5 years.

New solutions were also introduced in Article 75. According to § 3a, when ordering the execution of a sentence, the court have a possibility to reduce the sentence imposed on a convict. The obligatory condition is that the probation period should pass satisfactorily.

New catalogue of protective measures

The reform of the Criminal Code also introduced new solutions with respect to protective measures. The new catalogue includes new measures such as the electronic monitoring system, therapy, addiction therapy and detention in a psychiatric center. Some penal measures, such as interdiction preventing the occupation of specific posts, the exercise of specific professions or engagement in specific economic activities, interdiction on driving vehicles might be imposed on a convicted person as protective measures.

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.

TOPIC	FD 2008/909	FD 2008/947	FD 2009/829 (ESO)
Q1. AVAILABILITY OF INFORMATION			
Q1.1. Is information publicly available in ‘issuing states’ concerning the following:? If yes, please specify.			
<ul style="list-style-type: none"> • 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)? 	<p>The framework decision 2008/909 was implemented in chapters 66f and 66g in the Code of Criminal Procedure.</p> <p>Those chapters describe the procedure of forwarding the execution of a judgement to another EU member state and the situation when the EU member state is asking for the execution of a judgement to be forwarded to that country. Particular articles of chapters 66f and 66g are related to issues such as:</p> <ul style="list-style-type: none"> - Consent of the convict, - Certificate, - Suspension of executive proceedings, - Deadline for the convict’s extradition, - The procedure of appeal, - Determination of the legal qualification of a crime and type of penalty, 	<p>The framework decision 2008/947 was implemented in chapters 66f and 66g in the Code of Criminal Procedure.</p> <p>Those chapters describe the procedure of enforcement of imprisonment with conditional suspension, restriction of liberty, punitive measures, as well as the decision on conditional release and conditional discontinuation of criminal proceedings in another EU member state.</p> <p>They also describe situations when an EU member state is asking for enforcement of a judgement connected with probation measures.</p> <p>Particular Articles of chapters 66h and 66i are related to issues, such as:</p> <ul style="list-style-type: none"> - Procedure of forwarding the execution of a judgement, - Effects of the judgement’s execution forwarded to another 	<p>The framework decision 2009/829 was implemented in chapters 65c and 65d in the Code of Criminal Procedure.</p> <p>Particular Articles of chapters 65c and 65d are related to issues, such as:</p> <ul style="list-style-type: none"> - Procedure, - Deadline, - Cost of the proceedings.

	<ul style="list-style-type: none"> - Reasons for the refusal of the judgment's execution, - Pre – trial detention of a convict who might be extradited, - Costs of the proceedings. 	<p>EU member state (suspension of executive proceedings in the issuing state),</p> <ul style="list-style-type: none"> - Consequences of the annulment of a judgement that was forwarded to another EU member state, - Determination of the legal qualification of a crime and type of penalty, - Right of the parties to attend the court sessions, - Types of judgements that might be executed in the executing state, - The procedure of appeal, - Reasons for the refusal of the judgment's execution, - Duty to inform the executing state, - Costs of the proceedings. 	
<ul style="list-style-type: none"> • How is the information made publically available (tools, or networks used)? 	<p>The Polish translation of the Framework Decision, notifications of states and information on the implementation process are available on the website of the Ministry of Justice:</p> <p>http://bip.ms.gov.pl/pl/ministerstwo/wspolpraca-miedzynarodowa/prawo-unii-</p>	<p>The Polish translation of the Framework Decision, notifications of states and information on the implementation process are available on the website of the Ministry of Justice:</p> <p>http://bip.ms.gov.pl/pl/ministerstwo/wspolpraca-miedzynarodowa/prawo-unii-</p>	<p>The Polish translation of the Framework Decision, notifications of states and information on the implementation process are available on the website of the Ministry of Justice:</p> <p>http://bip.ms.gov.pl/pl/ministerstwo/wspolpraca-miedzynarodowa/prawo-</p>

	<p>europejskiej/wspolpraca-sadowa-w-sprawach-karnych/</p> <p>The regulation of the procedure established under the Framework Decision is included in the Code of Criminal Procedure. The Code of Criminal Procedure is available in the online system of legal acts operated by the Polish Parliament.⁷ The Code was also published in the Journal of Laws.</p> <p>Practical information regarding this procedure is available on the website of the Prison Service:</p> <p>http://www.sw.gov.pl/Data/Files/kunickim/informatory-dla-cudzoziemcow/polski_2014.pdf.</p> <p>Information on the possibility of transferring is included in the “Compendium for foreign nationals on remand, convicted or punished”.⁸ One chapter entitled „Transfer of prison sentences to be enforced abroad“ presents this issue.</p>	<p>europejskiej/wspolpraca-sadowa-w-sprawach-karnych/</p> <p>The regulation of the procedure established under the Framework Decision is included in the Code of Criminal Procedure. The Code of Criminal Procedure is available in the online system of legal acts operated by the Polish Parliament.¹⁰ The Code was also published in the Journal of Laws.</p> <p>Practical information regarding this procedure is not available on the website of a court or a prosecutor’s office.</p>	<p>unii-europejskiej/wspolpraca-sadowa-w-sprawach-karnych/</p> <p>The regulation of the procedure established under the Framework Decision is included in the Code of Criminal Procedure. The Code of Criminal Procedure is available in the online system of legal acts operated by the Polish Parliament.¹¹ The Code was also published in the Journal of Laws.</p> <p>Practical information regarding this procedure is not available on the website of a court or a prosecutor’s office.</p>
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⁷ Poland, the online system of legal acts is available at: <http://isap.sejm.gov.pl/>

⁸ Poland, Compendium for foreign nationals on remand, convicted or punished, (*Informator dla tymczasowo aresztowanych, skazanych, ukaranych oraz cudzoziemców*), available at: http://www.sw.gov.pl/Data/Files/kunickim/informatory-dla-cudzoziemcow/angielski_2014.pdf.

¹⁰ Poland, the online system of legal acts is available at: <http://isap.sejm.gov.pl/>

¹¹ Poland, the online system of legal acts is available at: <http://isap.sejm.gov.pl/>

	<p>The representatives of the Ministry of Justice informed us that despite the fact there is no legal obligation, the Ministry provides applicants and their families (on their request) with necessary information on the conditions of the transfer.⁹</p>		
<ul style="list-style-type: none"> • In which languages is the information provided? 	<p>Information is provided in eight languages (Polish, English, German, French, Russian, Arabic, Bulgarian and Romanian).</p>		
<p>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>	<p>According to the CCP, the Minister of Justice grants permission for the transport of the offender through the territory of the Republic of Poland, within seven days of the receipt of the motion (Article 61 ltp).</p> <p>It is essential to add that the representatives of the Ministry of Justice informed us that the FD 2008/909 lacks in specific regulations regarding the transport of the offender through the territory of Poland. Due to that fact Polish Ministry of Justice is informed about the transfer too late.¹²</p>	<p>The court is the only competent body in this procedure.</p>	<p>The motion for the execution of a decision concerning a preventive measure is transferred by the Polish authorities directly to the court or another authorized authority of an EU Member State. Communication between them is maintained without the mediation of the Minister of Justice.</p> <p>In case of difficulties in establishing a competent court or a different authority, bearing in mind the necessity to provide the executing State with all necessary information enabling it to take the correct decision</p>

⁹ Poland, data obtained from the representatives of the Ministry of Justice.

¹¹ Information from representatives of the Ministry of Justice.

	<p>Despite the fact that the Court is the only competent body to issue a decision on transport, the representatives of the Ministry of Justice noticed that in some situations the motions are submitted by the Courts to the Ministry of Justice. In their opinion, it is a consequence of the lack of adequate practice in that matter.¹³</p> <p>However, on 7 July 2015 the new Minister of Justice's Regulation on the rules of common courts¹⁴ entered into force. It contains the section number 7 that describes the courts' obligation to inform the Ministry of Justice about decisions issued in connection with FD 2008/909.</p>		<p>with respect to the enforcement of the judgment.</p>
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¹² Poland, data obtained representatives of the Ministry of Justice.

¹³ Poland Minister of Justice's Regulation on the rules of common courts (*Rozporządzenie Ministra Sprawiedliwości z dnia 25 czerwca 2015 r. Regulamin urzędowania sądów powszechnych*), 25 June 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>The data regarding the number of motions submitted to other countries for the execution of measures are collected by the Ministry of Justice. The information is available on the website: http://isws.ms.gov.pl/Data/Files/_public/isws/jednoroczne/2014/spr_zbior_2014/ms-s5o_2014.pdf</p> <p>According to the information provided on the website, in 2014 Polish authorities received 59 motions for execution of the penalty of deprivation of liberty. Polish courts submitted 82 motions to executing states.</p> <p>According to the information obtained from the Ministry of Justice, in 2013 there were 46 motions from other EU countries to execute deprivation of liberty in Poland. In 9 cases Poland denied the execution of deprivation of liberty. 36 motions were issued by Austria only.¹⁵</p> <p>In the same year, Polish courts submitted 5 motions to other EU countries (1 to</p>	<p>The data regarding the number of motions submitted to other countries for the execution of measures are collected by the Ministry of Justice. Such conclusion is based on the information available on the website: http://isws.ms.gov.pl/Data/Files/_public/isws/jednoroczne/2014/spr_zbior_2014/ms-s5o_2014.pdf</p> <p>According to the information provided on the website in 2014, Polish courts submitted 7 motions to executing states.</p> <p>Nie dostaliśmy informacji</p>	<p>The data regarding the number of motions submitted to other countries for the execution of measures are collected by the Ministry of Justice. Such conclusion is based on the information available on the website: http://isws.ms.gov.pl/Data/Files/_public/isws/jednoroczne/2014/spr_zbior_2014/ms-s5o_2014.pdf</p> <p>According to the information provided on the website in 2014, Polish courts submitted 1 motion to executing states</p> <p>The prosecutors from a District Prosecutors Office informed us that prosecutors confirmed that they have no practice in that matter. However, they predict that this situation may change in near future, as it has changed with the European Arrest Warrant. In their opinion there might be a problem with implementation of some measures applied by Courts in the common law system.²²</p>
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¹⁴ Poland, data obtained from representatives of the Ministry of Justice.

¹⁸ Information from representatives of the District Prosecutors Office.

	<p>Sweden, 1 to the Netherlands, 3 to Germany).¹⁶</p> <p>In 2014, 25 motions from other EU countries were submitted to execute deprivation of liberty in Poland. In 10 cases Poland denied the execution of deprivation of liberty. Again most of the motions were submitted by Austria (12).¹⁷</p> <p>The same year Polish courts submitted 5 motions to other EU countries (3 to</p>		
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¹⁵ Poland, data obtained from representatives of the Ministry of Justice.

¹⁶ Poland, data obtained from representatives of the Ministry of Justice.

	<p>Romania, 1 to the Czech Republic, 1 to the Netherlands).¹⁸</p> <p>In 2015, 12 motions from other EU countries were submitted to execute deprivation of liberty in Poland. In 3 cases Poland denied the execution of liberty. Most of the motions were submitted by Austria.¹⁹</p>		
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¹⁷ Poland, data obtained from representatives of the Ministry of Justice.

¹⁹ Poland, data obtained from representatives of the Ministry of Justice.

	<p>In the same year, Polish courts submitted only 1 motion to the Czech Republic.²⁰</p> <p>However, the representatives of the Ministry of Justice pointed out that aforementioned data might be seen as incomplete as it was based on a request submitted to the Courts. Unfortunately only some of the Courts responded to this request.²¹</p>		
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²⁰ Poland, data obtained from representatives of the Ministry of Justice.

²¹ Poland, data obtained from representatives of the Ministry of Justice.

TOPIC	FD 2008/909	FD 2008/947	FD 2009/829 (ESO)
Q2. INFORMED CONSENT OF THE SUSPECT/SENTENCED PERSON			
<p>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.</p>	<p>There is no special informative obligation in this procedure expressed by law. As it was mentioned above, such information is provided in a special compendium for foreigners. The compendium should be available in a penitentiary unit. However, according to the Report of the National Preventive Mechanism on activities in 2013, it is not available in all penitentiary facilities.²³</p> <p>However, under Article 16 of CCP, the authority conducting the proceedings, if the need occurs, informs the parties to the proceedings of their rights and duties, even if it is not explicitly required by the law. If in view of the circumstances, the instruction was indispensable and the authority failed to give such an instruction or gave incorrect instruction, the provisions of par. 1 apply. That means that the lack of such instruction or an incorrect instruction may not result in any adverse consequences either to the participant or any other person concerned with the proceedings. This regulation should also apply to the procedure of the execution of a sentence.</p>	<p>There is no special informative obligation connected with this procedure.</p> <p>However, under Article 16 of CCP, the authority conducting the proceedings, if the need occurs, informs the parties to the proceedings of their rights and duties, even if it is not explicitly required by the law. If in view of the circumstances, the instruction was indispensable and the authority failed to give such an instruction or gave incorrect instruction, the provision of par. 1 apply. That means that the lack of such instruction or an incorrect instruction may not result in any adverse consequences either to the participant or any other person concerned with the proceedings. This regulation should also apply to the procedure of the execution of a sentence.</p>	<p>There is no special informative obligation connected with this procedure.</p> <p>However, under Article 16 of CCP, the authority conducting the proceedings, if the need occurs, informs the parties to the proceedings of their rights and duties, even if it is not explicitly required by the law. If in view of the circumstances, the instruction was indispensable and the authority failed to give such an instruction or gave incorrect instruction, the provision of par. 1 apply. That means that the lack of such instruction or an incorrect instruction may not result in any adverse consequences either to the participant or any other person concerned with the proceedings.</p>

²² Poland, Human Rights Defender (*Rzecznik Praw Obywatelskich*), Raport Rzecznika Praw Obywatelskich z działalności w Polsce Krajowego Mechanizmu Prewencji w roku 2013, available at: www.rpo.gov.pl/sites/default/files/Raport_RPO_z_dzialalnosci_KMP_w_2013_r.pdf.

<p>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>	<p><u>The requirement of obtaining the consent</u></p> <p>According to Article 611t 1 if a Polish court has sentenced a Polish citizen or foreigner to a penalty of imprisonment liable to execution, the court may file a motion to enforce this judgement, but only with the consent of the offender. However, there are exceptions specified by law in which the consent is not required. Under Article 611t § 5 of CCP, the offender's consent for surrender is not required if the motion is submitted to:</p> <ol style="list-style-type: none"> 1) the executing State of which the offender is a citizen and where he resides permanently or temporarily, 2) the executing State to which the offender will be extradited on the basis of a final and binding judicial decision, after the execution of the penalty or release from a penal institution, 3) the executing State to which the offender has fled for fear of criminal proceedings pending in the Republic of Poland and obligation to serve the penalty imposed. 	<p>Polish law does not establish a formal requirement to obtain the consent of the sentenced person. However, the procedure includes the participation of the sentenced person in the procedure of transfer to some extent. First of all, the court may file a motion to enforce the judgement in an EU Member State in which the offender has lawful residence, if he is staying in this country or declares the intention of returning.</p> <p>Moreover, the motion may also be submitted at a motion of the accused.</p>	<p>There is no requirement to obtain the consent of the suspect. The decision is based only of the facts connected with the suspect's place of stay. However, the legal experts state that in order to ensure effective implementation of the preventive measure in another Member State, it is appropriate that the court or the prosecutor before taking a decision on the transfer is aware of the opinion of the accused.²⁷</p> <p>However, the motion may be also submitted on a motion of the accused.</p>
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²³ Poland, Steinborn S. in: Paprzycki L. (ed.), The Code of Criminal Procedure. Updated version of the Commentary, (*Komentarz aktualizowany do art. 425-673 ustawy z dnia 6 czerwca 1997 r. Kodeks postępowania karnego.*

Poland, Buczma S., Kierzyńska R., Zapobieganie konfliktom jurysdykcyjnym i wzajemne uznawanie nieizolacyjnych środków zapobiegawczych - uwagi do nowelizacji Kodeksu postępowania karnego z 31.08.2012 r., *Europejski Przegląd Sądowy* 2013, No.1, p. 32.

	<p>As a consequence, it can be concluded that the requirement of obtaining the consent of the sentenced person should be treated as an exception, and the principle is to forward the decision regardless of the existence of the consent.²⁴</p> <p>It is essential to present the statement of the Court of Appeals in Wrocław that excluding a citizen of a foreign state from an opportunity to express his opinion before the court's decision on the transfer of the execution of punishment to the territory of the Member State, should be considered a violation of the right to defense and fair trial standards established by Article 6 of CCP and Article 6 paragraph. 3 point c of ECHR.²⁵</p> <p><u>Obligation to inform</u></p> <p>There is no special informative obligations of the court under this procedure. As a consequence, the general rules of CCP should be applied. Under CCP, the authority conducting the proceedings, if the need occurs, informs the parties to the proceedings of their rights and duties. Such obligation exists even if it is not explicitly required by the law.</p>		
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²⁴ Poland, Steinborn S. in: Paprzycki L. (ed.), The Code of Criminal Procedure. Updated version of the Commentary, (*Komentarz aktualizowany do art. 425-673 ustawy z dnia 6 czerwca 1997 r. Kodeks postępowania karnego*).

²⁵ Poland, Decision of the Court of Appeal in Wrocław, 17 June 2010 (case no. II AKZ 340/10).

	<p>The legal experts pay special attention to the role of the information provided to the sentences by the authority, especially about the consequences of the consent for transfer.</p> <p><u>The procedure of obtaining the consent</u></p> <p>The court enables an offender staying in the territory of the Republic of Poland to present his position with respect to the motion orally or in writing. If the consent of the accused for surrender is required, the court accepts the declaration in this respect from the accused staying in the territory on the Republic of Poland. (Article 611tb § 2 of CCP)</p> <p>According to the information obtained from the Ministry of Justice's representatives some of the convicts complained to the Ministry of Justice on the fact that they were transferred without their consent. However, it might be considered as a consequence of the convicts' lack of awareness that not in all cases such consent is required.²⁶</p>		
<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</p>	<p>There is no special regulation guaranteeing the right to revoke the consent for transfer. However, legal experts claim that as a consequence of the general rule of revocability of declarations of will the consent may be</p>	<p>Because of the regulation presented above there is no such procedure.</p>	<p>There is no requirement to obtain the consent.</p>

²⁶ Poland, data obtained from representatives of the Ministry of Justice.

<p>specify until which stage of the procedure this right exists.</p>	<p>withdrawn by the sentenced person. It seems that because of the far-reaching consequences of the consent the inadmissibility of withdrawal should be provided explicitly in the CCP. Due to the lack of such restrictions the right to change an opinion on the transfer should be recognized by the courts.²⁸ Legal experts also concluded that because of the fact that the Code of Criminal Procedure contains special provisions which exclude the possibility of withdrawing declarations by the parties if there is no such prohibition, it should be possible to revoke the consent until the final conclusion of proceedings. As a consequence, it should be concluded that the consent is revocable.²⁹</p> <p>Moreover, in the opinion of legal experts, one of the reasons for renouncement of the motion's submission is the withdrawal of the consent by the sentenced person.³⁰</p>		
<p>Q2.4. Is there any procedure in place in the issuing state to obtain the opinion of the sentenced</p>	<p>The court enables an offender staying in the territory of the Republic of Poland to present his position with respect to the motion orally or in writing. If the consent</p>		

²⁷ Poland, Steinborn S. in: Paprzycki L. (ed.) The Code of Criminal Procedure. Updated version of the Commentary, (*Komentarz aktualizowany do art. 425-673 ustawy z dnia 6 czerwca 1997 r. Kodeks postępowania karnego.*)

²⁸ Poland, Nita B., in: Skorupka R. (ed.) The Code of Criminal Procedure. Commentary, (*Kodeks postępowania karnego. Komentarz.*), 2015, edition 17.

²⁹ Poland, Steinborn S., in: Paprzycki L. (ed.) The Code of Criminal Procedure. Updated version of the Commentary, (*Komentarz aktualizowany do art. 425-673 ustawy z dnia 6 czerwca 1997 r. Kodeks postępowania karnego.*)

<p>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).</p>	<p>of the accused for surrender is required, the court accepts a declaration in this respect from the accused staying in the territory on the Republic of Poland (Article 611tb § 2 of CCP).</p>		
<ul style="list-style-type: none"> When consent is not required)? 	<p>Under Article 611t § 5 of CCP the consent of the offender for surrender is not required if the motion is submitted to:</p> <ol style="list-style-type: none"> 1) the executing State of which the offender is a citizen and where he resides permanently or temporarily, 2) the executing State to which the offender will be extradited on the basis of a final and binding judicial decision, after the execution of the penalty or a release from a penal institution, 3) the executing State to which the offender has fled for fear of criminal proceedings pending in the Republic of Poland and the obligation to serve the penalty imposed. <p>According to Article 611tb the court enables an offender staying in the territory of Poland to present his position with respect to the motion of executing state. The meaning of art. 611tb suggest that it is an obligatory procedure. The offender opinion might be presented orally or in writing.</p>		

	<p>If the offender is not deprived of liberty and as well as whenever he is incarcerated, but the court does not intend to bring him to the court session, the court should instruct him about its right to present opinion in writing. Whenever the offender will participate in courts hearing it is sufficient to enable him or her to make oral presentation.</p>		
<ul style="list-style-type: none"> • When consent is required, Article 6 (3) of FD 2008/909/JHA). 	<p>According to Article 611t § 1, if a Polish court has sentenced a Polish citizen or a foreigner to a penalty of imprisonment liable to execution, the court may file a motion to enforce this judgement, but only with the consent of the offender.</p>		
<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>There is no special regulation regarding the right to change the opinion on the transfer. However, legal experts claim that as a consequence of the general rule of revocability of statements the consent may be withdrawn by the convicted person. It seems that because of the far-reaching consequences of the consent, the inadmissibility of withdrawal should be provided explicitly in the CCP. Due to the lack of such restrictions, the right to change opinion on the transfer should be recognized by the courts.³¹</p>		

³⁰ Poland, Steinborn S. in: Paprzycki L. (ed.), The Code of Criminal Procedure. Updated version of the Commentary, (*Komentarz aktualizowany do art. 425-673 ustawy z dnia 6 czerwca 1997 r. Kodeks postępowania karnego.*)

	<p>Moreover, in the opinion of legal experts, one of the reasons for renouncement of the motion's submission is the withdrawal of the consent by the sentenced person.³²</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>According to Polish law, the court examines the matter of the motion at a hearing. The defence counsel, if he appears, may participate in the hearing (Article 611tb § 1). It should be concluded that the court is obliged to inform the defence lawyer about the hearing, however a failure to appear by a defence counsel who has been properly notified of the date shall not prevent the examination of the case.</p> <p>It should be mentioned that there is no specific regulation regarding the appointment of a legal counsel in the issuing state. As a consequence, the general rules of the criminal procedure should apply. According to Polish law, the accused who does not have a defence counsel of his own choice may request the appointment of a defence counsel ex officio. However, only if he can prove that</p>	<p>According to the Article 611uc, the court examines the matter of the motion at a hearing. The public prosecutor, the victim and the offender, if he is staying in the territory of the Republic of Poland, and his defence counsel, if he appears, may participate in the hearing. In the opinion of B. Nita-Światłowska Article 117 of CCP³³ does not apply in this procedure.³⁴ As a consequence, in her opinion the court is not obliged to inform a defence lawyer about the time and place of the hearing. However, S. Steinborn and P. Hofmański present the opposite opinion.³⁵ It should be concluded that the court is obliged to inform a defence lawyer about the hearing, however a failure to appear by the defence counsel who has been properly notified of the date shall not prevent the examination of the case.</p>	<p>There is no specific regulation regarding assistance of the legal counsel in the issuing state. As a consequence, the general rules of the criminal procedure should apply. According to Polish law, the accused who does not have a defence counsel of his own choice may request the appointment of a defence counsel ex officio. However, only if he can prove that he is unable to bear the costs of defence without prejudice to the necessary maintenance of himself or his family. The law also recognizes cases of obligatory defence. The accused must be assisted by a defence counsel if he is underage, deaf, mute or blind, or there is a reasonable doubt as to his sanity. Moreover, the accused must have a defence counsel in proceedings before a Regional Court as</p>

³¹ Poland, Steinborn S., in: Paprzycki L. (ed.), The Code of Criminal Procedure. Updated version of the Commentary, (*Komentarz aktualizowany do art. 425-673 ustawy z dnia 6 czerwca 1997 r. Kodeks postępowania karnego.*)

³² Poland, Article 117 of CCP states: *A person entitled to participation in a trial procedure is notified of its time and place, unless the law provides otherwise.*

³³ Poland, Nita B., in: Skorupka R., The Code of Criminal Procedure. Commentary, (*Kodeks postępowania karnego. Komentarz.*), 2015, edition 17, Legalis.

³⁴ Poland, Steinborn S., in: Paprzycki L. (ed.) The Code of Criminal Procedure. Updated version of the Commentary, (*Komentarz aktualizowany do art. 425-673 ustawy z dnia 6 czerwca 1997 r. Kodeks postępowania karnego.*)

	<p>he is unable to bear the costs of defence without prejudice to the necessary maintenance of himself or his family.</p> <p>The law also provides cases of obligatory defence. The accused must be assisted by a defence counsel if he is underage, deaf, mute or blind, or there is a reasonable doubt as to his sanity.</p>	<p>It should be mentioned that there is no specific regulation regarding the appointment of the legal counsel in the issuing state. As a consequence, the general rules of the criminal procedure should apply. According to Polish law, the accused who does not have a defence counsel of his own choice may request the appointment of a defence counsel ex officio. However, only if he can prove that he is unable to bear the costs of defence without prejudice to the necessary maintenance of himself or his family.</p>	<p>a court of first instance, if he is accused of a felony or deprived of his liberty.</p> <p>In Poland as the executing state, if the offender who is not staying in the territory of the Republic of Poland is not assisted by a defence counsel, the president of the court competent to hear the case, may appoint a defence counsel ex officio for him.</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>This issue is not regulated by CCP. However, the general rules of the criminal procedure apply. As a consequence, an accused who does not have a sufficient command of Polish is entitled to the free help of an interpreter.</p>	<p>This issue is not regulated by CCP. However, the general rules of the criminal procedure apply. As a consequence, an accused who does not have a sufficient command of Polish, is entitled to the free help of an interpreter.</p>	<p>This issue is not regulated by CCP. However, the general rules of the criminal procedure apply. As a consequence, an accused who does not have a sufficient command of Polish, is entitled to the free help of an interpreter.</p>
<p>Q2.8. Does the suspect/sentenced person have the right to legal aid in the issuing state?</p>	<p>According to Polish law, the court examines the matter of the motion at a hearing. The defence counsel, if he appears, may participate in the hearing (Article 611tb § 1). It should be concluded that the court is obliged to inform the defence lawyer about the hearing, however a failure to appear by a defence counsel who has been properly notified of the date shall not prevent the examination of the case.</p>	<p>According to the Article 611luc, the court examines the matter of the motion at a hearing. The public prosecutor, the victim and the offender, if he is staying in the territory of the Republic of Poland, and his defence counsel, if he appears, may participate in the hearing. In the opinion of B. Nita-Światłowska Article</p>	<p>There is no specific regulation regarding assistance of the legal counsel in the issuing state. As a consequence, the general rules of the criminal procedure should apply. According to Polish law, the accused who does not have a defence counsel of his own choice may request the appointment of a defence counsel ex officio. However, only if he can prove that he is unable to bear the costs of</p>

	<p>It should be mentioned that there is no specific regulation regarding the appointment of a legal counsel in the issuing state. As a consequence, the general rules of the criminal procedure should apply. According to Polish law, the accused who does not have a defence counsel of his own choice may request the appointment of a defence counsel ex officio. However, only if he can prove that he is unable to bear the costs of defence without prejudice to the necessary maintenance of himself or his family.</p> <p>The law also provides cases of obligatory defence. The accused must be assisted by a defence counsel if he is underage, deaf, mute or blind, or there is a reasonable doubt as to his sanity.</p>	<p>117 of CCP³⁶ does not apply in this procedure.³⁷ As a consequence, in her opinion the court is not obliged to inform a defence lawyer about the time and place of the hearing. However, S. Steinborn and P. Hofmański present the opposite opinion.³⁸ It should be concluded that the court is obliged to inform a defence lawyer about the hearing, however a failure to appear by the defence counsel who has been properly notified of the date shall not prevent the examination of the case.</p> <p>It should be mentioned that there is no specific regulation regarding the appointment of the legal counsel in the issuing state. As a consequence, the general rules of the criminal procedure should apply. According to Polish law, the accused who does not have a defence counsel of his own choice may request the appointment of a defence counsel ex officio. However, only if he can prove that he is unable to bear the costs of defence without prejudice to the necessary maintenance of himself or his family.</p>	<p>defence without prejudice to the necessary maintenance of himself or his family. The law also recognizes cases of obligatory defence. The accused must be assisted by a defence counsel if he is underage, deaf, mute or blind, or there is a reasonable doubt as to his sanity. Moreover, the accused must have a defence counsel in proceedings before a Regional Court as a court of first instance, if he is accused of a felony or deprived of his liberty.</p> <p>In Poland as the executing state, if the offender who is not staying in the territory of the Republic of Poland is not assisted by a defence counsel, the president of the court competent to hear the case, may appoint a defence counsel ex officio for him.</p>
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³⁵ Poland, Article 117 of CCP states: *A person entitled to participation in a trial procedure is notified of its time and place, unless the law provides otherwise.*

³⁶ Poland, Nita B., in: Skorupka R., *The Code of Criminal Procedure. Commentary, (Kodeks postępowania karnego. Komentarz.)*, 2015, edition 17, Legalis.

³⁷ Poland, Steinborn S., in: Paprzycki L. (ed.) *The Code of Criminal Procedure. Updated version of the Commentary, (Komentarz aktualizowany do art. 425-673 ustawy z dnia 6 czerwca 1997 r. Kodeks postępowania karnego.)*

Q2.9. Is the suspect/sentenced person assisted by an interpreter in the issuing state, if required:	This issue is not regulated by CCP. However, the general rules of the criminal procedure apply. As a consequence, an accused who does not have a sufficient command of Polish, is entitled to the free help of an interpreter.	This issue is not regulated by CCP. However, the general rules of the criminal procedure apply. As a consequence, an accused who does not have a sufficient command of Polish, is entitled to the free help of an interpreter.	This issue is not regulated by CCP. However, the general rules of the criminal procedure apply. As a consequence, an accused who does not have a sufficient command of Polish, is entitled to the free help of an interpreter.
<ul style="list-style-type: none"> While consenting to the transfer? 	This issue is not regulated by CCP. However, the general rules of the criminal procedure apply. As a consequence, an accused who does not have a sufficient command of Polish is entitled to free help of an interpreter.	This issue is not regulated by CCP. However, the general rules of the criminal procedure apply. As a consequence, an accused who does not have a sufficient command of Polish, is entitled to the free help of an interpreter.	This issue is not regulated by CCP. However, the general rules of the criminal procedure apply. As a consequence, an accused who does not have a sufficient command of Polish, is entitled to the free help of an interpreter.
<ul style="list-style-type: none"> While requesting the transfer? 	This issue is not regulated by CCP. However, the general rules of the criminal procedure apply. As a consequence, an accused who does not have a sufficient command of Polish, is entitled to the free help of an interpreter.	This issue is not regulated by CCP. However, the general rules of the criminal procedure apply. As a consequence, an accused who does not have a sufficient command of Polish, is entitled to the free help of an interpreter.	This issue is not regulated by CCP. However, the general rules of the criminal procedure apply. As a consequence, an accused who does not have a sufficient command of Polish, is entitled to the free help of an interpreter.
Q2.10. Are these interpretation or translation services provided during a face-to-face consultation? Please provide brief information.	<p>As it was mentioned above, a sentenced person who does not have a sufficient command of Polish is entitled to free help of an interpreter.</p> <p>According to Article 72 of CCP, the interpreter should be summoned to assist the accused during his conversation with a defence lawyer at his own motion or the motion of the lawyer in any case</p>	<p>As it was mentioned above, a sentenced person who does not have a sufficient command of Polish is entitled to free help of an interpreter.</p> <p>According to Article 72 of CCP, the interpreter should be summoned to assist the accused during his conversation with a defence lawyer at his own motion or the motion of the lawyer in any case</p>	<p>As it was mentioned above, a sentenced person who does not have a sufficient command of Polish is entitled to free help of an interpreter.</p> <p>According to Article 72 of CCP, the interpreter should be summoned to assist the accused during his conversation with a defence lawyer at his own motion or the motion of the</p>

	<p>connected with those activities in which the accused can participate. Legal experts³⁹ and the Supreme Court claim that the right to defence must be understood not only formally, but rather materially, in the sense of a right to effective contact with a legal counsel. It is, therefore, clear that the accused who is a foreigner and does not have a sufficient command of Polish has the right to use the assistance of an interpreter also in order to communicate with the counsel who does not speak his language.⁴⁰</p>	<p>connected with those activities in which the accused can participate. Legal experts⁴¹ and the Supreme Court claim that the right to defence must be understood not only formally, but rather materially, in the sense of a right to effective contact with a legal counsel. It is, therefore, clear that the accused who is a foreigner and does not have a sufficient command of Polish has the right to use the assistance of an interpreter also in order to communicate with the counsel who does not speak his language.⁴²</p>	<p>lawyer in any case connected with those activities in which the accused can participate. Legal experts⁴³ and the Supreme Court claim that the right to defence must be understood not only formally, but rather materially, in the sense of a right to effective contact with a legal counsel. It is, therefore, clear that the accused who is a foreigner and does not have a sufficient command of Polish has the right to use the assistance of an interpreter also in order to communicate with the counsel who does not speak his language.⁴⁴</p>
<p>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.</p>	<p>There is no such procedure.</p>	<p>There is no such procedure.</p>	<p>There is no such procedure.</p>

³⁸ Poland, Zygmunt B., 'Prawo do korzystania z bezpłatnej pomocy tłumacza w postępowaniu karnym w świetle standardów europejskich', *Państwo i Prawo*, 2004, No. 7.

³⁹ Poland, Decision of the Supreme Court, 4 April 2012 (case no III KK 133/11).

⁴⁰ Poland, Zygmunt B., 'Prawo do korzystania z bezpłatnej pomocy tłumacza w postępowaniu karnym w świetle standardów europejskich', *Państwo i Prawo*, 2004, No. 7.

⁴¹ Poland, Decision of the Supreme Court, 4 April 2012 (case no III KK 133/11).

⁴² Poland, Zygmunt B., 'Prawo do korzystania z bezpłatnej pomocy tłumacza w postępowaniu karnym w świetle standardów europejskich', *Państwo i Prawo*, 2004, No. 7.

⁴³ Poland, Decision of the Supreme Court, 4 April 2012 (case no III KK 133/11).

<p>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?</p>	<p><u>The situation in Poland as the executing state</u></p> <p>When ruling on the enforcement of a penalty of imprisonment, the court determines the legal classification of the offence according to Polish law. The duration of the effective deprivation of liberty in the executing State is credited against the penalty of imprisonment imposed or served (Article 611tl § 1).</p> <p>If the kind of penalty consisting in the deprivation of liberty is unknown in the law, the court determines that the penalty to be enforced will be the penalty of imprisonment. If the offence, in accordance with the legal classification adopted in Poland, is not punishable with a penalty of imprisonment, the penalty imposed by the issuing State is enforced, but its duration may not exceed six months.</p> <p>The decision about the adaption is an element of the decision on enforcement. There is no additional decision concerning this issue. As a consequence, there is no special obligation established by law to inform the sentenced person, but according to the general rule the decision containing the statement on adaption should be sent to the sentenced person.</p>	<p><u>The situation in Poland as the executing state</u></p> <p>When ruling on the enforcement of the penalty or measure, the court determines the legal classification of the offence according to Polish law. If the kind of penalty or measure or manner of fulfilling duties imposed is unknown to Polish law, the court determines the penalty, the measure or duty pursuant to Polish law.</p> <p>The decision about the adaption is an element of the decision on enforcement. There is no additional decision concerning this issue. As a consequence, there is no special obligation established by law to inform the sentenced person, but according to the general rule the decision that includes the statement of adaption should be sent to the sentenced person.</p>	<p><u>The situation in Poland as the executing state</u></p> <p>If the manner of fulfilment of duties imposed is unknown to the law, the public prosecutor determines the measure or duty pursuant to Polish law, with differences being considered in favour of the person against whom proceedings are conducted in the issuing State.</p> <p>The decision about the adaption is an element of the decision on enforcement. There is no additional decision concerning this issue. As a consequence, there is no special obligation established by law to inform the sentenced person, but according to the general rule the decision that includes the statement of adaption should be sent to the sentenced person.</p>
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<p>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>	<p>CCP explicitly states that the decision of the court is not subject to an interlocutory appeal in the issuing state.</p> <p>However, experts claim that there is a possibility of submitting a cassation appeal by the Prosecutor General and the Ombudsman, but only in the case of a decision on discontinuation of the procedure or a negative decision in the case of transferring the judgment.⁴⁵</p> <p>It should be noted that in Poland, as an executing state, the decision of the court on enforcement of the judgement is the subject of an interlocutory appeal (Article 611tj).</p> <p>The representatives of the Ministry of Justice informed us that some of the convicts complained to the Ministry of Justice on their transfer to another EU state. In the opinion of the Ministry of Justice's representatives it is connected with the lack of convicts' legal awareness.⁴⁶</p>	<p>In the issuing state there is no such possibility. CCP explicitly states that the decision of the court is not subject to an interlocutory appeal. This restriction applies both to a positive and negative decision in the subject of the motion for enforcement of a judgment imposing probation measures. However, B. Nita, a legal expert in the field of criminal procedure, claims that this solution may not be compatible with the Article 78 of the Polish Constitution.⁴⁷ S. Steinborn, another expert, presents the opposite opinion. He claims that this solution is fully acceptable because it is sufficient that the decision which is being enforced may be challenged by ordinary remedies during the main trial. He also states that, in some Member States, the decision on enforcement may be subject of control in the executing State (in Poland, according to the Article 611uf, the decision of the court on enforcement of the judgment is subject to an interlocutory appeal). In the opinion of A. Sakowicz, this regulation is compatible with constitutional standards</p>	<p>Under Polish law, the decision of the court or public prosecutor to submit a motion to a competent court or other authority of the executing State is not subject to an interlocutory appeal (Article 607zg of CCP). B. Nita, a legal expert in the field of criminal procedure, claims that this solution may not be compatible with the Article 78 of the Polish Constitution.⁴⁹ However, it should be also explained that a decision concerning a preventive measure is subject to an appeal in accordance with general principles of the criminal procedure (Article 252 of CCP).</p> <p>According to Polish law, in Poland as an executing state, the decision of the public prosecutor is subject to an interlocutory appeal.</p>
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⁴⁴ Poland, Steinborn S., in: Paprzycki L. The Code of Criminal Procedure. Updated version of the Commentary, (*Komentarz aktualizowany do art. 425-673 ustawy z dnia 6 czerwca 1997 r. Kodeks postępowania karnego.*)

⁴⁷ Poland, data obtained from representatives of the Ministry of Justice.

⁴⁵ Poland, Nita B., in: Skorupka R. (ed.) The Code of Criminal Procedure. Commentary, (*Kodeks postępowania karnego. Komentarz.*), 2015, edition 17.

⁴⁶ Poland, Nita B., in: Skorupka R. (ed.) The Code of Criminal Procedure. Commentary, (*Kodeks postępowania karnego. Komentarz.*), 2015, edition 17.

		<p>because the motion for transfer of the execution depends only on the activity of the sentenced person – his change of the place of residence ⁴⁸.</p> <p>However, S. Steinborn claims that there is a possibility of submitting a cassation appeal in the issuing state by the Prosecutor General and the Ombudsman in the case of a decision on discontinuation of the procedure or a negative decision in the case of transferring the enforcement of the judgement imposing a probation measure.</p>	
<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>There is no procedure of regular review of a decision on transfer in the issuing state. However, until the commencement of the execution of the penalty in the executing State, the court may renounce the submission of the motion or withdraw it if special obstacles have occurred. In the opinion of legal experts, personal circumstances of the sentenced person that influence the process of the execution of the imprisonment sentence can be treated as such obstacles.⁵⁰</p>	<p>There is no procedure of regular review of a decision on transfer. If the motion for enforcement of a judgment is submitted, enforcement proceedings are suspended.</p> <p>However, if notification is received that the judgment was adopted to the law of the executing State and before the enforcement of the judgment is commenced, the court may withdraw the motion within 10 days, bearing in mind the objectives of the penalty.</p>	<p>There is no procedure of regular review of a decision on transfer. However, according to Polish law, the application of a preventive measure is reviewed on a regular basis. As a consequence, the accused may each time submit an application for repealing or changing of a preventive measure. His application shall be considered by a public prosecutor within 3 days, and after the indictment is filed with the court – the court before which the proceedings are pending. A judicial</p>

⁴⁸ Poland, Sakowicz A. In: Boratyńska K., The Code of Criminal Procedure. Commentary, (*Kodeks postępowania karnego. Komentarz.*)

⁴⁹ Poland, Steinborn S. in: Paprzycki L. (ed.), *Komentarz aktualizowany do art. 425-673 ustawy z dnia 6 czerwca 1997 r. Kodeks postępowania karnego.*

	<p>According to Polish law, after receiving information that the offender has begun to serve the sentence in the executing state, enforcement proceedings are suspended in Poland.</p>		<p>decision concerning the application of the accused may only be appealed against if the application was submitted after at least 3 months from the date of issuing the judicial decision on pre-trial detention with respect to the same accused. Interlocutory appeal against the judicial decision of the court shall be examined by the same court sitting in the panel of three judges (Article 254 CCP).</p> <p>In the event of a change or annulment of a preventive measure or change of duties imposed on the accused, the court or public prosecutor immediately notifies the competent court or other authority.</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>The sentenced person may be assisted by a legal counsel in Poland as in the executing state. However, there is no general obligation to appoint a defence counsel for him ex officio.</p> <p>There is only one exception, according to the Article 611ti if an offender who is not staying in the territory of the Republic of Poland is not assisted by a defence counsel, the president of the court competent in the case, may appoint a defence counsel ex officio for him. The above-mentioned regulation creates a separate basis for establishing a defender only for the purposes of proceedings in</p>	<p>The sentenced person may be assisted by a legal counsel in Poland as in the executing state. However, there is no general obligation to appoint a defence counsel for him ex officio.</p> <p>There is only one exception, according to the Article 611ue § 1, if an offender who is not staying in the territory of the Republic of Poland is not assisted by a defence counsel, the president of the court competent to hear the case, may appoint a defence counsel ex officio for him. The above-mentioned regulation creates a separate basis for establishing a defender only for the purposes of</p>	<p>According to the Article 607zj § 2 of CCP, if an accused who is not staying in the territory of the Republic of Poland is not assisted by a defence counsel during the appeal procedure, the president of the court competent to hear the case in the second instance may appoint a defence counsel ex officio for him.</p>

	<p>the executing state. The reason for such regulation is the opinion that staying abroad makes it difficult to protect his rights during proceedings.⁵¹ Legal experts claim that under this regulation, a defence lawyer is obliged to participate in the hearing. Without his participation, the protection of the sentenced person's rights should be considered illusory.⁵²</p> <p>Moreover, the general rules should apply.⁵³ As a consequence, a sentenced person who does not have a defence counsel of his own choice may request the appointment of a defence counsel ex officio. However, only if he can prove that he is unable to bear the costs of defence without prejudice to the necessary maintenance of himself or his family. The sentenced person should be informed about this possibility under Article 16 of CCP⁵⁴.</p>	<p>proceedings in the executing state. The reason for such regulation is the opinion that staying abroad makes it difficult to protect his rights during proceedings.⁵⁵ Legal experts claim that under this regulation, a defence lawyer is obliged to participate in the hearing. Without his participation, the protection of the sentenced person's rights should be considered illusory.⁵⁶</p> <p>Moreover, the general rules should apply.⁵⁷ As a consequence, a sentenced person who does not have a defence counsel of his own choice may request the appointment of a defence counsel ex officio. However, only if he can prove that he is unable to bear the costs of defence without prejudice to the necessary maintenance of himself or his family.</p>	
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⁵⁰ Poland, Decision of the Supreme Court, 1 October 1997 r., (case no. II KKN 334/97)

⁵¹ Poland: Nita B., in: Skorupka r. (ed.) The Code of Criminal Procedure. Commentary, (*Kodeks postępowania karnego. Komentarz.*), 2015, edition 17.

⁵⁴ Poland: Hofmański P., The Code of Criminal Procedure. Commentary, (*Kodeks postępowania karnego. Komentarz.*), 2012.

⁵⁵ Poland: Hofmański P., The Code of Criminal Procedure. Commentary, (*Kodeks postępowania karnego. Komentarz.*), 2012.

⁵² Poland, Decision of the Supreme Court, 1 October 1997 r., (case no. II KKN 334/97)

⁵³ Poland: Nita B., in: Skorupka r. (ed.) The Code of Criminal Procedure. Commentary, (*Kodeks postępowania karnego. Komentarz.*), 2015, edition 17.

⁵⁶ Poland: Hofmański P., The Code of Criminal Procedure. Commentary, (*Kodeks postępowania karnego. Komentarz.*) 2012.

<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>According to the opinion of the Ministry of Justice' representatives, not all Courts are aware about the implementation status in other EU countries. The Ministry of Justice points out that some of the Courts have been submitting motions to countries that had not implemented the EU framework decisions yet (especially motions were filled to German Courts).</p>		
<p>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)</p>	<p>No</p>	<p>There are only some editorial changes.</p>	<p>From 8 April 2015, the judgment is subject to enforcement by the public prosecutor of the public prosecutor's office where this person has lawful residence. CCP does not specify that the competent authority is the district prosecutor, as it was in the previous version of the regulation.</p>

TOPIC	FD 2008/909	FD 2008/947	FD 2009/829 (ESO)
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"> The likely impact on the social rehabilitation of the suspect/sentenced person? 	<p>According to the Article 611t § 1, the court may file a motion to enforce the judgment in the executing State if the transfer guarantees the realization of educational and preventive objectives of the penalty to a higher extent.</p> <p>If circumstances are disclosed indicating that the transmission of the judgment to the executing State for the purpose of enforcement would not allow the educational and preventive objectives of the penalty to be realised to a greater extent, the court may renounce the submission of the motion or withdraw it (Article 611ta).</p>	<p>In this procedure, in contrast to the procedure of transfer of the execution of an imprisonment penalty, educational and preventive purposes of punishment are not obligatorily taken into account.</p> <p>However, in the opinion of legal experts Article 1 § 1 of the Framework Decision 2008/947/JHA which states that the intention of the Framework Decision is to facilitate the social rehabilitation of sentenced persons, improving the protection of victims and the general public, and facilitating the application of suitable probation measures and alternative sanctions should be treated as the instruction for the issuing State. They emphasize that the purpose of the institution of transfer of the enforcement of a judgment imposing a conditionally suspended penalty,</p>	<p>No, the main factor taken into account is to ensure the proper course of proceedings.⁵⁹ Legal experts claim that the court should analyse the impact of the motion and transfer of enforcement on the proceedings.</p>

⁵⁷ Poland: Buczma S., Kierzyńska R., *Zapobieganie konfliktom jurysdykcyjnym i wzajemne uznawanie nieizolacyjnych środków zapobiegawczych - uwagi do nowelizacji kodeksu postępowania karnego z 31.08.2012 r.*, Europejski Przegląd Sądowy 2013, No 1, p. 26.

		<p>a penalty of restriction of liberty, an autonomous penal measure and decision on conditional release is similar to the purpose of the transfer of the enforcement of the penalty of imprisonment.⁵⁸</p>	
<ul style="list-style-type: none"> • Fundamental rights implications (such as the right to family life, right to education)? 	<p>There is no special guarantee that the factors such as the right to family life or the right to education will be considered while deciding on forwarding a judgment or decision in the issuing state. There is only a regulation stating that the motion is submitted by the court to a competent court or other authority of which the offender is a citizen and where he resides permanently or temporarily.</p> <p>However, according to legal experts, the assessment of the realization of educational and preventive objectives of the penalty should be based on the sentenced person's command of the language and culture of the executing state as</p>	<p>In this procedure, in contrast to the procedure of transfer of the execution of an imprisonment penalty, educational and preventive purposes of punishment are not obligatorily taken into account.</p> <p>However, in the opinion of legal experts Article 1 § 1 of the Framework Decision 2008/947/JHA which states that the intention of the Framework Decision is to facilitate the social rehabilitation of sentenced persons, improving the protection of victims and the general public, and facilitating the application of suitable probation measures and alternative sanctions should be</p>	<p>No</p>

⁵⁸ Poland: Nita B. in: R. Skorupka (ed.) The Code of Criminal Procedure. Commentary, (*Kodeks postępowania karnego. Komentarz.*), 2015, edition 17.

	<p>well as his family and social bonds.⁶⁰</p>	<p>treated as the instruction for the issuing State. They emphasize that the purpose of the institution of transfer of the enforcement of a judgment imposing a conditionally suspended penalty, a penalty of restriction of liberty, an autonomous penal measure and decision on conditional release is similar to the purpose of the transfer of the enforcement of the penalty of imprisonment.⁶¹</p>	
<ul style="list-style-type: none"> • Others? Please specify. 	<p>CCP specifies that the court may address a competent court or other authority to provide information on the content of foreign law applicable to conditional release. After it is obtained, the court may renounce the motion or withdraw, or reserve in the agreement with a competent court or other authority that the decision on conditional release should be governed by Polish law. This regulation may be treated as an additional factor taken into account by Polish courts during this procedure.</p>	<p>The court may file a motion to enforce the judgment in an EU Member State in which the offender has lawful residence, if he is staying in this country or declares the intention of returning. Moreover, the motion may also be submitted at the motion of the accused.</p> <p>According to legal literature, the submission of a motion is optional, and the court may resign from this procedure even if all the conditions are met, if it considers that the transfer is undesirable or unreasonable, e.g. due to the</p>	<p>No</p>

⁵⁹ Poland: Hofmański P. The Code of Criminal Procedure. Commentary, (*Kodeks postępowania karnego. Komentarz*), Volume III, p. 983

⁶⁰ Poland: Nita B. in: R. Skorupka (ed.) The Code of Criminal Procedure. Commentary, (*Kodeks postępowania karnego. Komentarz.*), 2015, edition 17.

		nature of the case, a short period of the measure. Legal experts emphasize the necessity of applying the principle of proportionality in this procedure. ⁶²	
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:	Pursuant to Article 611 CCP the circuit court may file a motion to enforce a judgment in another EU member state, if the transfer of the judgement for the purpose of enforcement will allow a higher extent the educational and preventive objectives of penalty.	No	No
• Family and social ties (e.g. accommodation, employment or other economic ties, linguistic and cultural links)?	No specific information available	Information on these issues is present in the certificate.	No
• Criminal history and criminal ties?	No specific information available	No	No
• Humanitarian concerns (i.e. terminal illness of suspect/sentenced person or family members)?	No specific information available	No	No

⁶¹ Poland: Steinborn S. in: L. Paprzycki (ed), The Code of Criminal Procedure. Updated version of the Commentary, (*Komentarz aktualizowany do art. 425-673 ustawy z dnia 6 czerwca 1997 r. Kodeks postępowania karnego*);

Hofmański P., Sadzik E., Zgryzek K. , The Code of Criminal Procedure. Commentary, (*Kodeks postępowania karnego. Komentarz*). 2011, p. 1041.

<ul style="list-style-type: none"> • 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) 	No specific information available	No	No
<ul style="list-style-type: none"> • Others? 	No	No	No
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"> • Probation agencies or similar entities in the issuing state? 	There is no specific regulation related to this issue.	No	There is no such obligation expressed in law.
<ul style="list-style-type: none"> • The competent authorities in the executing state? 	<p>The court may address a competent court or other authority to provide information on the content of foreign law applicable to conditional release. After it is obtained, the court may renounce the motion or withdraw it, or reserve in the agreement with a competent court or other authority that the decision on conditional release should be governed by Polish law.</p> <p>The court may submit a motion to a competent court or competent authority of the executing State for an opinion on the transmission of the judgement.</p> <p>According to the CPC commentary the court should file such a motion to avoid refusal of enforcement and save efforts and costs associated with applying for punishment's</p>	No	There is no such obligation expressed in law.

	<p>enforcement. Obtaining the executing state's opinion might be especially essential also whenever the court in the issuing state has doubts about the positive impact of the transfer on the offender's social reintegration.</p> <p>The opinion of the competent court or authority is not binding for Polish courts, however, it should be carefully considered and taken into account when deciding about the transfer.</p>		
<ul style="list-style-type: none"> • The suspect/sentenced person? 	<p>According to Article 611t § 1, if a Polish court has sentenced a Polish citizen or a foreigner to a penalty of imprisonment liable to execution, the court may file a motion to enforce this judgement, but only with the consent of the offender. The motion mentioned above may be also submitted at the request of the offender. As a consequence, the opinion of the sentenced person is the main factor taken into account by the issuing state.</p>	No	There is no such obligation expressed in law.
<ul style="list-style-type: none"> • The family of the suspect/sentenced persons, especially with regard to child offenders? 	No	No	There is no such obligation expressed in law.

<ul style="list-style-type: none"> Any other person/entity? 	No	No	There is no such obligation expressed in law.
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	No	No
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>The certificate is almost identical with the standard form given in Annex I. There is only one missing information regarding the kind of executed penalty.</p> <p>The representatives of the Ministry of Justice pointed out that the practice on providing the executing state with other materials varies depending on the country. For example Romania requires all necessary documents to be translated to Romanian while some of the countries translate the documents on their own.⁶³</p>	<p>The certificate is identical with the standard form given in Annex I.</p> <p>The certificate includes more detailed information in section H (regarding information about the judgment). It contains data about information provided to the sentenced person about the decision in case of his/her absence at the hearing.</p> <p>There is a possibility of specifying the reports concerning the suspension of the penalty in the certificate (Section k).</p>	<p>The certificate is identical with the standard form given in Annex I.</p>

⁶² Poland, data obtained from representatives of the Ministry of Justice.

<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>There is no information about such procedure.</p>	<p>According to the certificate, the issuing State is not obliged to translate pre-sentence reports. (Section K <i>in fine</i>).</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>According to the Article 611tg CPC, if such circumstances are disclosed that indicate that the transfer of the penalty will not allow its educational and preventive objectives to be realised to a greater extent, the court notifies a competent court or other authority of the issuing State thereof.</p>		
<p>Q3.8. Are there formal and clear rules regarding data protection in the information exchange between:</p>			
<ul style="list-style-type: none"> National authorities (consulted in the evaluation of the likelihood of social rehabilitation) in the issuing state? 	<p>The issue of data protection is regulated by the Act of August 29 1997 on the Protection of Personal Data.⁶⁴ According to this act any person has a right to have his/her personal data protected. Within the meaning of the Act, personal data</p>	<p>The issue of data protection is regulated by the Act of August 29 1997 on the Protection of Personal Data.⁶⁵ According to this act any person has a right to have his/her personal data protected. Within the meaning of the Act, personal</p>	<p>The issue of data protection is regulated by the Act of August 29 1997 on the Protection of Personal Data.⁶⁶ According to this act any person has a right to have his/her personal data protected. Within the meaning of the Act, personal data</p>

⁶³ Poland, Act on the protection of personal data (*Ustawa z dnia 29 sierpnia 1997 r. o ochronie danych osobowych*), 29 August 1997.

⁶⁴ Poland, Act on the protection of personal data (*Ustawa z dnia 29 sierpnia 1997 r. o ochronie danych osobowych*), 29 August 1997.

⁶⁵ Poland, Act on the protection of personal data (*Ustawa z dnia 29 sierpnia 1997 r. o ochronie danych osobowych*), 29 August 1997.

	shall mean any information relating to an identified or identifiable natural person.	data shall mean any information relating to an identified or identifiable natural person.	shall mean any information relating to an identified or identifiable natural person.
<ul style="list-style-type: none"> • Authorities in the issuing and executing state? 	<p>There is no specific regulation concerning data protection.</p> <p>CCP only regulates the manner for sending documents. A copy of the judgment and certificate may also be transmitted by any means of electronic data transmission allowing the authenticity of these documents to be established. At a motion of a competent court or other authority of the executing State, the court or public prosecutor transmits a copy of the judgement and the original of the certificate 611t § 8.</p>	<p>There is no specific regulation concerning data protection.</p> <p>CCP only regulates the manner for sending documents.. A copy of the judgment and certificate may also be transmitted by any means of electronic data transmission allowing the authenticity of these documents to be established. At a motion of a competent court or other authority of the executing State, the court or public prosecutor transmits a copy of the judgement and the original of the certificate.</p>	<p>There is no specific regulation concerning data protection.</p> <p>CCP only regulates the manner for sending documents. A copy of the judgment may also be transmitted by any means of electronic data transmission allowing the authenticity of these documents to be established.</p>

TOPIC	FD 2008/909	FD 2008/947	FD 2009/829 (ESO)
Q4. VICTIMS			
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"> The decision to transfer 	There is no such regulation.	There is no such regulation.	There is no such regulation. However, according to the Article 253 of CCP, the court or public prosecutor immediately notifies the victim, his legal representative or guardian of the annulment, failure to extend or change of the detention on remand into another preventive measure or escape from the penitentiary unit, unless the victim declares that he waives the right. As a consequence, the victim will be informed about the change of the preventive measure.
<ul style="list-style-type: none"> The status of the transfer 	No	No specific regulation	There is no such regulation.
<ul style="list-style-type: none"> Other? Please specify. 	The court examines the matter of the motion at a hearing. A public prosecutor, the offender if he is staying in the territory of the Republic of Poland, and his defence counsel, if he appears, may participate in the hearing. (Article 611tb § 1). In contrast to Article 611uc of CCP, there is no information about the possibility of the victim's presence at a hearing	According to the Article 611uc, the court examines the matter of the motion at a hearing. The public prosecutor, the victim and the offender if he is staying in the territory of the Republic of Poland and his defence counsel, if he appears, may participate in the hearing. The victim's right to participate in the hearing is a general rule. This	There is no such regulation.

	<p>and his right to hear the final decision.</p> <p>According to the general rules established in Article 100 § 2 of CCP, decisions not issued at a trial must be served upon the public prosecutor, the party and a person who is not a party, if these persons are entitled to file an appeal and did not participate in the hearing or were not present at the announcement of the decision. As a consequence, there is also no basis for sending the decision to the victim.</p>	<p>right is not limited to situations where a probation measure imposed on the sentenced person includes some obligations connected with the victim. As a consequence, the court is always obliged to inform the victim of the date and place of the hearing.⁶⁷</p> <p>The above-mentioned regulations determine the status of the victim in Poland as the executing state.</p>	
<p>Q4.2. Is there any procedure in place to provide this information as issuing or executing state? If yes, please specify:</p>			
<ul style="list-style-type: none"> Is the information provided upon request of the victim? 	<p>According to general rules parties as well as their defence counsels, attorneys, legal representatives and statutory agents may be granted access to case files and given the possibility of making copies. These records may also be made accessible to other persons with the consent of the president of the court (Article 156 § 1 of the CCP). The</p>	<p>According to general rules parties as well as their defence counsels, attorneys, legal representatives and statutory agents may be granted access to case files and given the possibility of making copies. These records may also be made accessible to other persons with the consent of the president of the court (Article 156 § 1 of the</p>	<p>According to general rules parties as well as their defence counsels, attorneys, legal representatives and statutory agents may be granted access to case files and given the possibility of making copies. These records may also be made accessible to other persons with the consent of the president of the court (Article 156 § 1 of the CCP).</p>

⁶⁶ Poland: Steinborn S. in: Paprzycki L/ (ed.), The Code of Criminal Procedure. Updated version of the Commentary (*Komentarz aktualizowany do art. 425-673 ustawy z dnia 6 czerwca 1997 r. Kodeks postępowania karnego*).

	case file includes the information about the transfer.	CCP). The case file includes the information about the transfer.	The case file includes the information about the transfer.
<ul style="list-style-type: none"> • Who responsible for providing this information? 	The president of the court. (Article 156 § 1 of the CCP). The victim is informed about that right in the “instruction on the aggrieved party’s principal rights and duties”. The instruction is accessible in different languages.	The president of the court. (Article 156 § 1 of the CCP). The victim is informed about that right in the “instruction on the aggrieved party’s principal rights and duties”. The instruction is accessible in different languages.	The prosecutor, the competent judge or the president of the court. (It depends on the stage of the proceedings and the formal status of the victim during the trial. In preparatory proceedings, the victim is considered as a party to proceedings. During the main part of the proceedings, the status of the victim depends on her/his formal motion.)
<ul style="list-style-type: none"> • Is it a verbal or written communication? 	It is possible to get access to case files.	It is possible to get access to case files.	It is possible to get access to case files.
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)	As mentioned above, there is no basis for the victim’s participation in the hearing. As a consequence, there is no basis for the right to be heard.	According to the general rule from the statement that „ <i>the victim has the right to participate in a hearing</i> ” it may be concluded that he/she may present his/her statement during the hearing.	There is no such regulation.
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	No	No
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)?	As mentioned above, there is no basis for the victim’s participation in the hearing.	There is no specific regulation related to the access to translators/interpreters in order to be kept fully informed by the victim of the transfer. According to general rules, an interpreter is	As mentioned above, there is no basis for the victim’s participation in the hearing.

		<p>summoned if there is a need for the examination of a person who has no command of Polish or if there is a need to translate a document drawn up in a foreign language into Polish (Article 204 of CCP).</p>	
<p>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>	<p>According to Article 168a of CES, at the motion of the victim, respectively – a penitentiary judge or a director of a prison shall immediately notify the victim, his statutory representative or the person under whose custody the victim remains about the release of the offender from prison after serving the sentence, the escape of the offender from prison, as well as about a decision on temporary permission to leave the prison without supervision or without a prison escort officer or an assist of another trustworthy person or the conditional release. The court shall instruct the injured person on the right to file the indicated motion, following the decision to perform.</p> <p>Legal experts claim that because of the fact that the law does not specify any period in which the victim may submit an application, this can be done throughout the</p>	<p>It is not regulated by CCP.</p>	<p>It is not regulated by CCP. According to the Article 253 of CCP, the court or the public prosecutor immediately notifies the victim, his legal representative or guardian of the annulment, failure to extend or change of the detention on remand into another preventive measure or escape from the penitentiary unit, unless the victim declares that he waives the right. As a consequence, such an obligation does not exist in the situation of the annulment of the alternative measures.</p>

	<p>course of enforcement proceedings.⁶⁸ At the request of the victim, such notification shall be made by fax, phone or email. In case of a reasonable doubt as to the effectiveness of the notification made by fax, telephone or e-mail, it should be also sent by post. The notification shall be sent no later than the first working day after the occurrence of the event.⁶⁹</p> <p>The above-mentioned regulation should apply in Poland as the executing state.</p>		
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⁶⁷ Poland, Postulski K., The Executive Penal Code. Commentary, (*Kodeks karny wykonawczy. Komentarz*), 2014, II edition.

⁶⁸ Poland, Rozporządzenie Ministra Sprawiedliwości W Sprawie Czynności Administracyjnych Związanych Z Wykonywaniem Tymczasowego Aresztowania Oraz Kar I Środków Przymusu Skutkujących Pozbawienie Wolności Oraz Dokumentowania Tych Czynności z dnia 2 października 2012 r.