

Applying of theoretical and practical
considerations regarding Council of the European
Union Decision 2008/909/TI

BELGIUM

LEGAL FRAMEWORK

- Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union
- BE → *the law of 15 May 2012 on the application of the principle of mutual recognition of custodial sentences or measures imposed by a judicial decision in a Member State of the European Union*

WHEN BELGIUM IS THE ISSUING STATE

1. Competent issuing authority

- Sentenced person detained on Belgian territory: the Minister of Justice cfr. Central Authority for International Co-operation in Criminal Matters (voluntary and compulsory transfers)

NB : before transmitting the judgement, the Ministry of Justice has to consult the public prosecutor of the district where the sentenced person is detained (contraindications resulting from ongoing investigations or legal proceedings).

- Sentenced person not detained on Belgian territory: the Public Prosecutor of the district where the judgement was pronounced.

Belgium is the issuing state

2. Existence of arrangements enabling the length of the sentence handed down to be reduced

- **No sentence reduction mechanism (cfr. France)** for custodial sentences imposed by Belgian courts.
- Mechanisms of early release from prison : provisional and conditional release
 - 1) Provisional release in light of expulsion (for foreign detainees, after 1/3rd of the sentence and after 2/3rd if repeated offender)
 - 2) Conditional release (for Belgian detainees and residents, after 1/3rd of the sentence and after 2/3rd if repeated offender)

Belgium is the issuing state

3. Existence of a dedicated information system for sentenced persons in custody about the procedure

- Through **information brochure** in Dutch or French (recommendations EU) on the possibility of enforcement of the sentence in another Member State received by the sentenced person as soon as the sentence pronounced by a Belgian court is final (an acknowledgment of receipt is signed and kept in the prison file).
- The Central Authority can start the procedure for a **compulsory transfer** for sentenced persons not having a permit stay in Belgium (deportation order)

Belgium is the issuing state

4. Other possible specific features

- Specialty rule

- if the sentenced person is located in Belgium and his or her consent is required, the sentenced person is heard by the public prosecutor within the jurisdiction of the place of detention **who informs the sentenced person** about forwarding the judgement to the other Member State for the purpose of recognition and enforcement of the sentence **and on the consequences on the rule of specialty**. NB : In the Dutch speaking region, this information is usually given in written form and through the director of the prison.

5. Pratical information on the certificate

- translation of the complete certificate**
- 1 certificate in cases of multiple sentences**

WHEN BELGIUM IS THE EXECUTING STATE

I. PROCEDURE FOR THE MUTUAL RECOGNITION OF CUSTODIAL SENTENCES

1. Competent receiving authority

- The Public Prosecutor of the district of Brussels

NB if the prior consent of the authority of the executing Member State is required, the competent Belgian authority to give consent to the forwarding of a judgment is the Minister of Justice.

Belgium is the executing state

I. PROCEDURE FOR THE MUTUAL RECOGNITION OF CUSTODIAL SENTENCES

2. Translation of the conviction decision and certificate

- Certificate
- Judgement and legal provisions

Belgium is the executing state

I. PROCEDURE FOR THE MUTUAL RECOGNITION OF CUSTODIAL SENTENCES

2. Translation of the conviction decision and certificate

➤ Certificate

- French, Dutch, German or English
- Also to the language of the proceedings
 - in the Flemish part of the country - Dutch
 - in the French speaking part - French
 - in the German speaking part - German
 - In Brussels, both Dutch and French are accepted.

Translation provided by either :

- directly by issuing MS (consultations between authorities prior to forwarding the certificate are encouraged in order to save time and avoid unnecessary procedures)
- by the Belgian executing authority if the translation provided by issuing MS does not comply with the language of the proceedings

Belgium is the executing state

I. PROCEDURE FOR THE MUTUAL RECOGNITION OF CUSTODIAL SENTENCES

2. Translation of the conviction decision and certificate

➤ Judgement and its provisions

- Declaration made by Belgium under Article 23(3) of the FD 2008/909/JHA

I. PROCEDURE FOR THE MUTUAL RECOGNITION OF CUSTODIAL SENTENCES

3. Sentence adjustment procedure

- The possibility of the adaptation :
 - if the sentence pronounced in the issuing Member State exceeds the sentence for the offences of the same nature under Belgian law
 - OR if the nature of the sentence pronounced in the issuing Member State is incompatible with the sentence for the same offence under Belgian law.
- Generates many difficulties

3. Other specific features

- In practice, the specialty rule applies unless the sentenced person, after his or her transfer, has expressly renounced entitlement to the specialty rule with regard to specific offences preceding his or her transfer before the competent judicial authorities. (recommendations EU).

Belgium is the executing state

II. CRITERIA RELATING TO THE SENTENCE AND THE SENTENCED PERSON IN THE EXECUTING STATE

1. Criteria relating to the sentence

- 1) Double criminality check
- 2) Time bar
- 3) Compliance of the sentence with Belgian law
- 4) Final and contradictory character of the sentence

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1. Criteria relating to the sentence

1) Double criminality check

- ❖ except for the 32 offences listed under art. 11, § 2 of the law of 15 May 2012 (art. 7 of the FD 909) if punishable in the issuing State by a custodial sentence or a measure involving deprivation of liberty for a maximum period of at least three years

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1. Criteria relating to the sentence

2) Time bar

- Starting point
- Calculation
- Grounds for interruption
- Grounds for suspension

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1. Criteria relating to the sentence

3) Compliance of the sentence with Belgian law

- Duration
- Nature

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1. Criteria relating to the sentence

- 4) Final and contradictory character of the sentence
 - Final sentence no longer subject to appeal
 - Contradictory nature of the judgement

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II. CRITERIA RELATING TO THE SENTENCE AND THE SENTENCED PERSON IN THE EXECUTING STATE

2. Criteria relating to the sentenced person

- 1) Overall assessment of objective elements characterizing the situation of the sentenced person :
 - Residence, duration, the nature and the conditions of the stay of the person;
 - language spoken by the sentenced person ;
 - social, economic, cultural, linguistic, family and other links maintained with the executing Member State;
 - prospects of social rehabilitation in the executing MS
- 2) If the sentenced person is not Belgian national
 - a brief information report or a social inquiry from the competent services in matters of community probation may be requested by the Minister of Justice
- 3) Age of the sentenced person
 - Mandatory ground for refusal for minors

III. ARRANGEMENTS FOR THE ENFORCEMENT AND APPLICATION OF SENTENCES

1. Existence of arrangements enabling the length of the sentence handed down to be reduced

- The public prosecutor of the district of Brussels takes the sentence reduction mechanism of the issuing Member State (often with France) into account when this is specified in the certificate.

2. Existence of sentence management mechanisms

- Two mechanisms of early release depending on the duration of the sentence :
 - 1) Provisional release in light of expulsion (for foreign detainees, after 1/3rd of the sentence and after 2/3rd if repeated offender)
 - 2) Conditional release (for Belgian detainees and residents, after 1/3rd of the sentence and after 2/3rd if repeated offender)

III. ARRANGEMENTS FOR THE ENFORCEMENT AND APPLICATION OF SENTENCES

2. Existence of sentence management mechanisms

➤ Provisional release

- Enforceable part of the custodial sentence amounts to three years
- Granted by :
 - the prison manager is competent for granting a provisional release
 - The Ministry of Justice (The Department Detention Management) competent for persons without lawful residence, for sexual offenders or for persons sentenced for acts of terrorism
- Automatically granted for sentences < 1 year
- Conditions to be examined for sentences > 1 but < 3 years, but in practice, the provisional release is almost always automatically granted
 - ❖ with the exception for sex offenders and for persons sentenced for terrorism offences where there is a more thorough examination of specific conditions
- The justice assistant is in charge of the social guidance and regular supervision

Belgium is the executing state

III. ARRANGEMENTS FOR THE ENFORCEMENT AND APPLICATION OF SENTENCES

2. Existence of sentence management mechanisms

➤ Provisional release

- *NB change of procedure from 1st April 2021 concerning the provisional release applicable for sentences of which the enforceable part amounts to three years or less*
 - *The sentence enforcement court/judge will be designated as the competent authority for the execution of short sentences (sentences of which the enforceable part amounts to three years or less)*

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III. ARRANGEMENTS FOR THE ENFORCEMENT AND APPLICATION OF SENTENCES

2. Existence of sentence management mechanisms

➤ Conditional release

- Enforceable part of the custodial sentence amounts to more than three years
- Granted by :
 - The Sentence Enforcement Court
- Conditions to be examined
- Contraindications to be examined
- The justice assistant is in charge of the social guidance and regular supervision

III. ARRANGEMENTS FOR THE ENFORCEMENT AND APPLICATION OF SENTENCES

2. Existence of sentence management mechanisms

➤ Conditional release

○ Conditions to be examined :

- either, served one third of these sentences;
- or, when the judgment or decision of conviction establishes that the person is a recidivist, served two thirds of these sentences, without exceeding a period of fourteen years;
- special provisions concerning specific cases of recidivism provides that the minimum time to be accessible for conditional release is increased to 15 years, 19 years or 23 years.
- For specific convictions, a security period ('période de sûreté') can be imposed which has his effect on the date of admissibility to request a conditional release

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III. ARRANGEMENTS FOR THE ENFORCEMENT AND APPLICATION OF SENTENCES

2. Existence of sentence management mechanisms

➤ Conditional release

○ Contraindications to be examined

- the lack of prospects concerning the social rehabilitation of the sentenced person;
- the risk of new serious offences to be committed;
- the risk that the sentenced person would harass the victims;
- the behavior of the sentenced person towards the victims;
- the efforts of the sentenced person to pay the compensation to the victims, taking also into account actions the sentenced person may have undertaken to change his financial situation

TO	2013	2014	2015	2016	2017	2018	2019	2020	2021
AT (Austria)									
BG (Bulgaria)	2		1	2	3	5	2	1	
CZ (Czech Rep.)							1		
CY (Cyprus)									
DE (Germany)						1			
DK (Denmark)									
EE (Estonia)									
EL (Greece)									
ES (Spain)			1	2		2	1	1	
FI (Finland)									
FR (France)	6	5	10	7	16	13	20	13	3
HR (Croatia)									
HU (Hungary)			1						
IE (Ireland)									
IT (Italy)	2		1	4	3	2			
LT (Lithuania)				2		1	1		
LU (Luxembourg)									
LV (Latvia)									
MT (Malta)									
NL (Netherlands)	10	13	18	24	19	27	21	11	8
PL (Poland)						3	5	1	1
PT (Portugal)									
RO (Romania)	4	12	10	4	10	12	35	2	
SE (Sweden)									
SI (Slovenia)									
SK (Slovakia)		1	1	1					
UK (U. Kingdom)	3							2	
Turkey	2			1				1	
Morocco	15				3				
Georgia			1						
Kosovo						2			
Albania						1			
North-Macedonia								1	
Moldova								1	
Total year	44	31	44	47	54	69	86	34	12
Total									421

Source : Federal Public Service Justice – Central Authority for International Co-operation in Criminal Matters

Thank you for your attention!

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