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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	EVALUATION REPORT FOR THE NINTH ROUND OF MUTUAL EVALUATIONS **Ninth round of mutual evaluations on mutual recognition legal instruments in the field of deprivation or restriction of liberty -** **REPORT ON BELGIUM**

Delegations will find attached the report ST12996/20 REV2 in English.

This document should become PUBLIC.

The following text (page 108) was missing from the previous version:

3.1 – ANNEX C

IMPACT OF COVID-19

Summary of the measures taken by the competent authorities of the Kingdom of Belgium to ensure the functioning of the legal instruments covered by the evaluation while coping with the COVID-19 crisis

Introduction

After the coronavirus outbreak, as many other Member States, the Belgian government has adopted a series of measures in order to limit the spread of the COVID-19. The processing of international cooperation cases in criminal matters has also been influenced by these measures.

This Annex illustrates the approach followed by the Belgian competent authorities to cope with the difficulties arising from the impact of the COVID-19 crisis on the practical implementation of the legal instruments covered by the ninth round of mutual evaluations.

I. GENERAL PRECAUTIONARY MEASURES (INSIDE PRISONS, FOR SURRENDER, EXTRADITION AND TRANSFER)

Attention was drawn to the need for a good flow of information in order to be able to react accurately to rapidly changing situations. Direct contacts between competent authorities were prioritized and encouraged. If not possible or in case of urgency, the national focal point (Office of the Federal Public Prosecutor) was available 24/7. Attention was also drawn to the role of Eurojust and EJN : the national desk at Eurojust was encouraged to be involved as far as possible in order to ensure proper coordination with other Member States and EJN contact points were encouraged to be used complementarily to exchange practical information and best practices.

ANNEX

EVALUATION REPORT FOR THE NINTH ROUND OF MUTUAL EVALUATIONS

Ninth round of mutual evaluations on mutual recognition legal instruments in the field of deprivation or restriction of liberty

REPORT ON BELGIUM

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1. EXECUTIVE SUMMARY

The evaluation visit to Belgium took place before the COVID-19 crisis, and therefore before there had been any impact on the application of the instruments covered by the ninth round of evaluations. The visit went very well, thanks to the Belgian authorities' excellent preparation and organisation. The evaluation team was able to meet with representatives of the judicial authorities and of all the national bodies that could potentially be involved in the application of the mutual recognition instruments covered by the ninth round of evaluations. The evaluation team particularly appreciated the spirit of openness and cooperation that characterised the meetings.

During the visit, the presentations given by the various authorities competent for applying mutual recognition instruments showed their serious commitment to, and clear enthusiasm for, making use of those instruments in the best conditions possible. The evaluation team was also very pleased to note that the Belgian authorities viewed the evaluation process as a useful opportunity to reflect on the strengths and weaknesses of their system in order to explore improving it if necessary.

The information they provided on the application of the four framework decisions in question was detailed, precise and comprehensive. This gave rise to in-depth discussions on highly specialised aspects of a technical legal nature, an account of which is given in this report.

Belgium has transposed the four framework decisions covered by this evaluation into four separate laws. However, the evaluation team noted that certain provisions of those laws may not be entirely in line with the provisions of the framework decisions (e.g. as regards the calculation for deducting the period of detention already served in the issuing Member State).

The Belgian authorities have also issued and circulated instructions and circulars on some of the instruments in order to facilitate their application by practitioners. Nevertheless, the legislator's intent was to give the laws a number of common features so as to allow for a coherent relationship between the four mutual recognition instruments.

The features common to the four laws are as follows:

- The public prosecution service is the main contact point for the implementation of the four instruments. The independence of Belgian prosecutors and public prosecutor's offices was not called into question in 2019 by the judgment of the Court of Justice of the European Union (judgment of 27 May 2019, case C-508/18).

- The execution procedure (passive requests) is decentralised, except for the execution of requests under Framework Decision 2008/909/JHA ('FD 909'), which is centralised through the Brussels public prosecutor's office; the Belgian authorities say that this helps reduce the time needed to complete the procedures and encourages direct contacts between the Belgian courts and the courts in other Member States.

- The federal public prosecutor's office and its international cooperation section play a pivotal role in international cooperation. The office is competent at national level, and cases or requests may be referred to it if there is a need for coordination, if the matter is urgent or if a request cannot be assigned to a specific location.

- As a rule, requests are always sent directly, from judicial authority to judicial authority.

- The Ministry of Justice, i.e. the Justice Federal Public Service (*Service Public Fédéral Justice/Federale Overheidsdienst Justitie*, 'Justice FPS') is not involved in the transmission of requests, apart from requests for prior consent under FDs 909, 947 and 829 and for the issue of certificates under FD 909, and where the person is detained in Belgium. However, it provides back-up, support and advice to the courts and may play, on an entirely residual basis, a procedural role in the implementation of some of the instruments covered by this evaluation.

- As regards appeals, the system is well structured and the Belgian legislator has provided for similar procedures and arrangements for each of the four instruments.

- For all four of the instruments, failure to respect fundamental rights is expressly mentioned as a ground for refusal to execute under Belgian legislation.

As both issuing and executing authority, the Belgian authorities are proactive in forwarding information and regularly consulting other Member States in the context of the procedures followed in applying the mutual recognition instruments in question. In contrast, they note that there are some shortcomings in this area in other Member States and that the forms/certificates provided for in the framework decisions are often not completed in full or appropriately.

The evaluation team identified some examples of good practice by the Belgian authorities:

As issuing state, Belgium attaches great importance to respect for requested persons' fundamental rights at all stages of the judicial proceedings implemented in application of mutual recognition instruments, in particular Framework Decision 2002/584/JHA ('FD 584') and Framework Decision 2008/909/JHA ('FD 909'). Based on that same principle of mutual trust, Belgium assumes that other issuing Member States respect fundamental rights.

- The Belgian authorities indicated that they do their utmost to avoid situations of impunity, for example in cases where surrender is refused due to the detention conditions in the issuing state.

- Training of specialist criminal magistrates is on the whole appropriate, varied and well organised. In addition, an information and support network, provided partly by the coordinating magistrates and by the federal public prosecutor's office, efficiently communicates relevant information to practitioners. As regards case-law of the Court of Justice of the European Union, most Belgian practitioners appear to be quite familiar with it.

- Belgium has established forms of bilateral cooperation with other Member States, in particular those with which it shares a border.

In addition, the principle of proportionality is expressly enshrined in Belgian law and the competent authorities – when acting as authorities issuing a European arrest warrant – generally apply it at all stages of the relevant judicial proceedings. They indicated that where the person's place of residence is known and is located in another Member State, they prefer to implement a mutual recognition procedure in respect of the judgment instead of issuing a European arrest warrant for the purpose of executing the sentence.

In this context, certain aspects of the Belgian system need to be reviewed – for example, the lack of reliable and detailed statistics, which is in fact an issue common to all four instruments covered by this evaluation. The evaluation team wish to expressly highlight this issue because the lack of statistical data in this field in Belgium was already noted during the fourth round of evaluations, and the Belgian authorities did not indicate how or when they would take steps to improve the situation.

Based on the information provided by the Belgian authorities during the evaluation visit, the amount of human resources involved in implementing the four mutual recognition instruments is not sufficient in view of the volume of cases to be dealt with and the quantity of exchanges. The Belgian authorities have called for a significant increase in staff numbers.

During the evaluation visit, the Belgian judicial authorities frequently stressed that there are recurring problems with EAW procedures and FD 909 (mutual recognition of judgments) procedures in cases where the decision in question has been rendered in absentia because there is no common definition of a decision 'rendered in absentia' in the EU nor is there any easily accessible information on what is covered by the concept of a decision 'rendered in absentia' under the law of each Member State. The evaluation team considers that discussions should be held at EU level in order to resolve this issue, as suggested by the Belgian authorities.

The procedure for implementing FD 909 in Belgium is a mixed (administrative and judicial) procedure which varies depending on whether Belgium is the issuing or executing state, whether the consent of the sentenced person is required and whether the sentenced person is in Belgium or in the executing state.

The evaluation team cannot but query the practice whereby the consent of the sentenced person is not sought in cases where it is the sentenced person who requests that Belgium initiate proceedings to forward the certificate to another Member State.

In the Law of 15 May 2012, the Belgian legislator laid down provisions on the relationship between FD 584 on the European arrest warrant and FD 909 on custodial sentences.

The evaluation team sees a need for reflection and discussion on certain aspects of Belgian practice in this regard. One such aspect is the process, as issuing authority, of systematically checking, before issuing a European arrest warrant for the purpose of executing a sentence, whether a procedure provided for under FD 909 would be more appropriate and, de facto, very frequently giving precedence to FD 909 over FD 584.

Another is the practice, as executing authority, of refusing surrender under Article 4(6) of FD 584 before the decision on mutual recognition of the decision or order imposing a sentence (FD 909) has become final, and without enforcement of the sentence being guaranteed at the time of refusing surrender; the evaluation team considers that this practice should be changed in light of Article 25 of FD 909, as interpreted by the Court of Justice of the EU. This does not preclude the need to include the issue in a debate at EU level on the practical consequences of this case-law.

One further, final aspect is the practice whereby surrender in the cases provided for in Article 5(3) of FD 584 is carried out without even waiting for the guarantees of return to be provided by the state issuing the EAW.

Moreover, with regard to cases where the procedure provided for in FD 909 is given precedence over the EAW procedure, a certificate of recognition is required for that procedure under Belgian law but this is not always reflected in practice. When applying Article 4(6) of FD 584, it can happen that the Belgian authorities enforce the sentence even though the issuing Member State has not forwarded the certificate provided for under FD 909. In the opinion of the evaluation team, this matter ought to be addressed and clarified at EU level because practice in this regard varies between Member States, leading to a lack of clarity for practitioners and legal uncertainty for sentenced persons.

Generally speaking, Framework Decisions 2008/947/JHA ('FD 947') and 2009/829/JHA ('FD 829') are rarely used in Belgium, but the evaluation team would note that this is not specific to Belgium, as the situation is similar in the majority of Member States. The Belgian authorities say that the very limited use of these two instruments is due to the fact that they are highly complex and practitioners are not very familiar with them. In addition, they consider that using them requires the involvement of a large number of national authorities, and that there are significant differences between national systems in terms of the applicable probation, substitution and control measures, which is a major impediment to their use.

Having noted this, the Belgian authorities proposed some solutions aimed at promoting the use of these two framework decisions, which the evaluation team also deems useful, including: increasing familiarity with these instruments, ensuring the exchange of information and good practices among practitioners at both national and EU level, and having access to an up-to-date database on the European Judicial Network (EJN) website on non-custodial measures in the legal systems of each of the 27 Member States.

In any event, training in Belgium on the implementation of mutual recognition instruments – currently primarily centred on FD 584 and partly on FD 909 – is of good quality, but it must be noted that only trainee magistrates (undergoing initial training) are obliged to attend it. The evaluation team considers that the main work in this area could be geared towards creating training on the two other framework decisions, establishing mandatory continuous training on mutual recognition for serving magistrates, and strengthening training for registry staff and for administrative staff and police working with these instruments.

In light of the above, the evaluation team concluded that in Belgium, the mutual recognition legal instruments covered by the ninth round of mutual evaluations, and in particular the framework decisions on the European arrest warrant and on mutual recognition of judgments within the European Union, are generally applied in an appropriate and effective manner.

As mentioned above, the evaluation team particularly appreciated the fact that the Belgian authorities have identified the precise reasons why FD 947 and FD 829 on non-custodial measures are used only on a very limited basis and that they made proposals for rectifying this situation, which is replicated in almost all the Member States of the EU.

Against this backdrop, it was clear to the evaluation team throughout its visit that the Belgian authorities have a good handle on the practical and technical problems involved in implementing these framework decisions, whether Belgium is the issuing or executing state.

Overall, the general impression of the evaluation team as to the functioning of mutual recognition instruments in Belgium can be said to be very positive.

Thus, the aim of the recommendations below is merely to complement, support and, where necessary, improve practices which are already very efficient and solutions which are always devised with a view to promoting mutual trust within the EU and avoiding impunity.

2. INTRODUCTION

The adoption of Joint Action 97/827/JHA of 5 December 1997 established a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime.

In line with Article 2 of Joint Action 97/827/JHA of 5 December 1997, the Coordinating Committee in the area of police and judicial cooperation in criminal matters (CATS) decided at its meeting on 21 November 2018 that the ninth round of mutual evaluations would be devoted to the principle of mutual recognition.

Due to the broad range of legal instruments in the field of mutual recognition and their wide scope, it was agreed at the CATS meeting on 12 February 2019 that the evaluation would focus on the following mutual recognition instruments:

- Framework Decision 2002/584/JHA on the European Arrest Warrant and the surrender procedures between Member States ('EAW'),

- Framework Decision 2008/909/JHA 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 ('custodial sentences'),

- Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions ('probation and alternative measures'),

- Framework Decision 2009/829/JHA on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention ('ESO').

At the above CATS meeting it was also agreed that the evaluation would focus only on those specific aspects of such instruments which Member States felt warranted particular attention, as set out in detail in 6333/19, and on the legal and operational links between FD 2002/584/JHA on the EAW and FD 2008/909/JHA on custodial sentences.

Referring to FD 2008/947/JHA on probation and alternative measures and FD 2009/829/JHA on the ESO, it was decided that the evaluation would be of a rather general nature and would endeavour to establish the reasons that have led to those two Framework Decisions being applied only infrequently.

The aim of the ninth mutual evaluation round is to provide real added value by offering the opportunity, via on-the-spot visits, to consider not only the legal issues but also – and in particular – relevant practical and operational aspects linked to the implementation of those instruments by practitioners in the context of criminal proceedings. This would allow both shortcomings and areas for improvement to be identified, together with best practices to be shared among Member States, thus contributing towards ensuring a more effective and coherent application of the principle of mutual recognition at all stages of criminal proceedings throughout the EU.

More generally, promoting the coherent and effective implementation of this package of legal instruments at its full potential could make a significant contribution towards enhancing mutual trust among the Member States' judicial authorities and ensuring a better functioning of cross-border judicial cooperation in criminal matters within the area of freedom, security and justice.

Furthermore, the current process of evaluation could provide useful input to Member States which may not have implemented all aspects of the various instruments.

Belgium was the fifth Member State to be evaluated during this round of evaluations, as provided for in the order of visits to the Member States adopted by CATS on 13 May 2019 and subsequently amended on the proposal of certain Member States and in the absence of any objections (9278/2/19 REV 2).

In accordance with Article 3 of the Joint Action, the Presidency has drawn up a list of experts for the evaluations to be carried out. Member States have nominated experts with in-depth practical knowledge in the field pursuant to a written request sent to delegations by the General Secretariat of the Council of European Union on Friday 17 May 2019.

The evaluation team consists of three national experts, supported by one or more members of staff from the General Secretariat of the Council and observers. For the ninth round of mutual evaluations, it was agreed that the European Commission, Eurojust and EJN should be invited as observers.

The experts entrusted with the task of evaluating Belgium were Ms Lise Chipault (France), Ms Marjorie Bonn (Netherlands) and Ms Charlotte Rieger (Germany). The following observers were also present:
Mr Olivier Lenert (Eurojust) and Ms Jesca Beneder (Commission), together with Ms Giovanna Giglio and Ms Maria Bacova from the General Secretariat of the Council.

This report was prepared by the team of experts with the assistance of the General Secretariat of the Council, based on findings arising from the evaluation visit that took place in Belgium between 21 and 24 January 2020 (before the COVID-19 crisis), and on Belgium's detailed replies to the evaluation questionnaire, together with its detailed answers to the ensuing follow-up questions.

3. FRAMEWORK DECISION 2002/584/JHA ON THE EUROPEAN ARREST WARRANT (EAW)

Framework Decision 2002/584/JHA ('FD 584') has been implemented in Belgium by the Law of 19 December 2003 on the European arrest warrant and amendments thereto. In addition, the Ministerial Circular of 8 August 2005 on the European arrest warrant (C-2005/09675) was adopted to facilitate the application of this Framework Decision by practitioners.

3.1 Authorities competent for the European arrest warrant (EAW)

In accordance with Article 7(1) of FD 584, the Justice Federal Public Service (*Service Public Fédéral Justice/Federale Overheidsdienst Justitie*, 'Justice FPS'), located in Brussels, is the central authority responsible for assisting the national competent judicial authorities upon request (Article 43(1) of the Law of 19 December 2003 on the European arrest warrant).

For example, the Justice FPS may be contacted to identify the foreign competent authority to which the EAW must be sent and, generally, to establish the necessary contacts for the warrant's execution. It may also provide advice on the interpretation of the law and of Belgian case-law and the case-law of the Court of Justice of the European Union (CJEU), or help resolve problems relating to aspects of a technical legal nature.

The Justice FPS is also informed of any difficulties encountered in the application of the abovementioned Law, either when executing a foreign EAW in Belgium or when another Member State is executing an EAW issued by a Belgian judicial authority (Article 43(2) of the Law on the European arrest warrant). The Justice FPS will undertake the appropriate contacts in order to resolve the difficulties encountered.

The Justice FPS also has a part to play in the procedure for enforcing the guarantee that Belgian nationals or residents are returned to Belgium to serve their sentence there.

The Minister for Justice is also the authority competent to decide what to do when an EAW is in competition with an extradition request (Article 30 of the Law on the European arrest warrant).

The Justice FPS is also the authority responsible for receiving transit requests and the necessary documents, as well as any other official correspondence relating to transit requests (Article 25(2) of FD 584 and Article 40 of the Law on the European arrest warrant).

In addition, the Justice FPS is tasked with compiling statistics on the application of the Law on the European arrest warrant. In this context and in accordance with the circular, the competent judicial authorities must inform the Justice FPS of all EAW execution and issue procedures in Belgium. Following the evaluation visit, the only statistics the evaluation team was provided with were the data recorded by the public prosecutor's offices: there were 1 081 EAWs in 2019, of which 448 were active and 633 were passive. These statistics are therefore very patchy and incomplete.

Given that there is no centralisation, the Federal Prosecutor and the Ghent Prosecutor-General, who has a specific remit for international relations, play an essential role in assisting the local public prosecutor's offices in international judicial cooperation.

In addition, the Federal Public Prosecutor's office, which is in Brussels, plays an important role in terms of support and coordination in matters relating to all of the mutual legal assistance instruments. However, the Federal Public Prosecutor's Office is not the 'central authority' for the execution of EAWs. Rather, the international cooperation section of the Federal Public Prosecutor's Office provides support for the general process relating to Belgian and foreign EAWs. It gives practical advice to the national judicial authorities, for example concerning the content of the EAW certificates. The Federal Public Prosecutor's Office also helps facilitate communication with foreign parties, in particular assisting the local public prosecutor's offices to facilitate contacts with other Member States' judicial authorities. The Federal Public Prosecutor's Office is an EJN contact point and the requisite intermediary for cooperation with Eurojust.

Competence to issue and execute EAWs is decentralised at the level of the local public prosecutor's offices in each district. In particular, pursuant to Article 6(3) of FD 584, the competent issuing judicial authority is the investigating judge for an EAW for the purpose of prosecution or the public prosecution service, if the person has been detained abroad, in order to give them the opportunity to be attend their trial, or in the case of minors aged 16 or over in respect of whom a provisional measure has been imposed placing them in a closed educational facility, and the public prosecution service for an EAW for the purpose of enforcing a sentence or a detention order, whereas the competent executing judicial authorities are the investigating judge, the council chamber and the indictments chamber.

Where appropriate, the Belgian judicial authorities, more specifically the public prosecution service and the investigating judges, contact the judicial authorities of the other Member States directly (e.g. by telephone or email).

The police are responsible for the transmission of EAWs, usually through the SIRENE Bureau and SIS II.

3.1.1. When Belgium is the issuing Member State

EAWs issued for the purpose of prosecution

The investigating judge, who issues the national arrest warrant, has exclusive competence to issue an EAW (Article 32(1) of the Law of 19 December 2003).

The EAW is therefore based on a national arrest warrant issued in absentia, if the person is not present, under the conditions laid down in the Law of 20 July 1990 on preventive detention, whereas if the person is present before the investigating judge, the latter will issue an ordinary national arrest warrant.

Under Article 16 of this Law, an EAW may be issued if three conditions are met:

- there is strong evidence of guilt;
- the offence is punishable by a prison sentence of at least one year;
- there are public security imperatives.

The public prosecutor's office is also competent to issue EAWs in two specific scenarios (EAWs for minors aged 16 or over and EAWs for the purpose of attendance at trial), which are based on the national arrest warrant issued by the juvenile court or the investigating or trial court.

EAWs issued for the purpose of enforcing a sentence

The competent public prosecutor is responsible for issuing EAWs for the purpose of enforcing a sentence or a detention order, in accordance with Article 32(1) of the Law of 19 December 2003.

Belgian law requires three cumulative conditions to be met in order for such EAWs to be issued:

- the requested person has absconded;
- the person's domicile or place of residence are not known or the person's location is known and it is in another Member State;
- the prison sentence for which enforcement is requested is longer than four months.

3.1.2. When Belgium is the executing Member State

If the requested person is arrested on Belgian territory, the procedure is identical regardless of whether the warrant has been issued for the purpose of prosecution or for the purpose of enforcing a sentence, but it may be different depending on whether the person has given consent or there are clear grounds for refusal.

Once the police have made the arrest on the instructions of the public prosecutor, the person concerned receives a written statement setting out their rights, which include the right to the assistance of a lawyer in the executing state, as well as the assistance of an interpreter and a lawyer in the issuing Member State.

In the 48 hours following arrest, the person must be brought before an investigating judge, who decides whether the person should be placed in provisional detention or released if the risk of absconding can be eliminated by means of appropriate measures, such as bail or other conditions. This assumes that the person is domiciled in Belgium or has a stable and actual residence there. The investigating judge must also check whether there are clear grounds for mandatory refusal which would prevent the execution of the EAW.

– *If there are clear grounds for mandatory refusal*

If the investigating judge considers that there are clear grounds for mandatory refusal, he or she issues a reasoned non-execution decision, after obtaining the opinion of the person concerned and the person's lawyer. The investigating judge may also find on his or her own motion that there are grounds for mandatory refusal, even where neither party has made such a claim. The public prosecution service may file an appeal against the investigating judge's decision with the indictments chamber and, where appropriate, an appeal in cassation.

A flow chart setting out the execution procedures in cases where the investigating judge finds that there are clear grounds for refusing to execute is attached to this report (Annex B).

– *If there are no clear grounds for mandatory refusal*

The procedure is different depending on whether or not the person has consented to their surrender to the state seeking them.

– If the person has not consented to their surrender

If the person does not consent to their surrender, the case is sent to the council chamber. If the council chamber decides to refuse the execution, it is possible for both the person concerned and the public prosecution service to appeal the council chamber's decision. This appeal is brought before the indictments chamber. If the council chamber decides to surrender on the basis of the EAW and no appeal is filed against that decision, the person is surrendered within 10 days. However, the person may file an appeal against the council chamber's decision to surrender with the indictments chamber. If the indictments chamber upholds the council chamber's decision, the person concerned may file an appeal in cassation. That appeal is only admissible if a point of law has not been properly interpreted. If the Court of Cassation upholds the decision to execute, the person is surrendered within 10 days. If the indictments chamber's decision is overturned, that chamber gives a ruling within 15 days. If the Court of Cassation upholds the decision not to execute, the person is released and the procedure is concluded.

– If the person has consented to their surrender

If the person indicates to the investigating judge that they consent to their surrender, they must appear before the public prosecutor, who will obtain their consent. This double appearance offers the person concerned the necessary time to reflect in order to give informed consent.

A flow chart setting out the execution procedures in cases where the investigating judge does not find that there are clear grounds for refusing to execute is attached to this report (Annex A).

Belgian law therefore provides for the right of appeal, albeit with strict time limits for filing an appeal in order to comply with the time limits laid down in Article 17(3) of FD 584. In the event of an appeal, this procedure takes a total of 45 days from the arrest by the police if a surrender does not take place, while it can take longer if a surrender does take place. The Belgian practitioners indicated that the time limit of 60 days was complied with in the majority of cases.

3.2. The principle of proportionality

The principle of proportionality is taken into account in Belgian legislation at all stages of the procedure, whether it concerns an EAW issued for the purpose of prosecution or an EAW issued for the purpose of enforcing a sentence.

It should be noted that before issuing an EAW, the Belgian judicial authorities first make every effort at national level to locate the person concerned, and it is only if the person cannot be located in Belgium that an EAW is issued. During the evaluation visit the Belgian authorities emphasised on several occasions that the procedures for mutual recognition of judgments within the European Union were preferred over EAW procedures when the person's place of residence was known and located in another Member State.

Implementation of the principle of proportionality during the investigation phase

During the investigation phase, the investigating judge may issue an EAW for the purpose of criminal prosecution, which must always be preceded by a national arrest warrant, if necessary in absentia.

In accordance with the Law of 20 July 1990 on preventive detention, an investigating judge may issue a national arrest warrant only if:

1. there is strong evidence of guilt in relation to an offence;

2. the arrest is absolutely necessary for public security;

3. the offence is punishable by one year in prison as the principal sentence or by a heavier sentence;

4. for offences which carry a sentence of less than 15 years' imprisonment, if there are strong reasons to fear that if the accused person were allowed to remain at large they would commit further crimes or offences, evade justice, attempt to dispose of evidence, or conspire with third parties.

It should be noted that these conditions are not applicable in cases of terrorism where the sentence to which the person is liable is more than five years' imprisonment.

Where an investigating judge issues an EAW during the investigation phase, the proportionality is assessed completely independently by that same judge.

It should also be noted that the investigating judge may revoke the national warrant and the EAW at any point during the procedure up until the day on which the surrender takes place.

With the same aim of compliance with the principle of proportionality, Belgian legislation (Law of 11 July 2018) provides for specific arrangements for issuing an EAW for a minor who had reached the age of 16 at the time of the offence and who has been ordered to be placed in a closed educational facility. The juvenile court or judge will order a measure involving deprivation of liberty in respect of the minor in accordance with national law and on the basis of a certain number of factors, such as the seriousness of the offence, the (regular or current) living environment, and the personality and maturity of the person concerned. The public prosecution service will then enforce the decision of the juvenile court or judge by issuing an EAW.

In such cases, proportionality is assessed as follows:

– The public prosecutor's office is not strictly speaking a judicial authority, but participates in the administration of justice and as such is guaranteed independence of action by the Constitution in its individual decision-making, including in the issuing of an EAW, the proportionality of which will therefore always be examined by the public prosecutor's office on the basis of the principle of prosecutorial discretion.

– Such EAWs are always based on a national arrest warrant previously issued, in absentia, by a judge (in this case the juvenile judge) who, at the time the warrant is issued, is aware that the intention is to issue an EAW.

– There is a right of appeal against the national warrant, in the context of which it will also be possible to examine compliance with the principle of proportionality.

Implementation of the principle of proportionality following completion of the investigation phase

When the investigation has been completed, the Law of 11 July 2018 provides for a two-phase procedure with a view to issuing an EAW. If the person concerned is not (or ceases to be) under arrest in Belgium during the trial phase, but is detained abroad and therefore cannot, despite wishing to, effectively exercise their fundamental right to attend their own trial, and in particular to be represented by a lawyer with an appropriate mandate, the trial court may issue an arrest warrant. The public prosecutor will then be in charge of executing it and will disseminate it without delay in the form of an EAW. This competence as regards the issuing of an EAW has been deliberately granted to the public prosecution service because it is a key partner in judicial cooperation and moreover is competent to enforce judicial decisions. Here again, the principle of proportionality is taken into account by means of the following criteria:

- an EAW is issued at the request of the person concerned;
- a national arrest warrant must have been issued by the trial court.

The Belgian authorities provided the following clarifications in this regard. Belgian law was amended in 2018 to fill a gap and make it possible to issue an EAW after the investigation has been completed, in order to enable a suspect detained in another Member State to attend their own trial in Belgium. In these situations, FD 584 is the only applicable legal basis for the person's transfer to the Member State in which the trial is held.

It is therefore in the person's interest that the EAW be issued (in order to be able to fully exercise their right of defence during the trial), and this cannot be done against the person's wishes, hence the requirement that the EAW be issued by the public prosecutor's office at the request of the person concerned and on the basis of the arrest warrant issued by the trial court.

Implementation of the principle of proportionality when enforcing the sentence

As mentioned above, it is the public prosecutor who is competent to issue an EAW for the purpose of enforcing judgments handed down by a judge or court. Given the limited margin of discretion following an effective conviction and in the interests of legal certainty and uniformity of practices throughout Belgium, the College of Prosecutors-General (*Collège des procureurs généraux*/*College van procureurs-generaal*) has drawn up guidelines (COL 2013/11) setting out the conditions governing the issuing of such an EAW. In principle, this type of EAW can be issued only for one or more prison sentences as principal sentence totalling at least three years. However, the guidelines adapt this principle and include three categories of exceptions:

1. The nature of the offence: if the person concerned has been convicted of an offence defined as a priority in accordance with the criminal policy guidelines. This includes terrorism, hostage-taking, organised crime, murder, torture or sex crimes, for example.

2. Special circumstances: if the person concerned has escaped from a prison facility. An escape will mean that all sentences of at least four months still to be served will be the subject of an EAW.

3. Special circumstances relating to the person concerned: if the person is dangerous or violent, a repeat or chronic offender. An EAW is not automatically issued in such situations, but rather a specific check must be carried out on the basis of the data available.

In addition to these general exceptions, exceptions can always be made in individual cases, particularly in view of the specific nature of the offences and where conclusive reasons have been given. Exceptions may also be made when issuing an EAW to a neighbouring country. The magistrate competent to issue the EAW is obliged to give reasons for the above exceptions (although the reasons are not included in the EAW).

An EAW for the purpose of enforcing a sentence of at least four months – the legal minimum – is still a possibility.

However, this procedure is set to change in the very near future. In fact, the Law of 17 May 2006 establishing a judge for the enforcement of sentences ('JES') was due to enter into force on 1 October 2020. The JES will have jurisdiction to rule on applications for the adjustment of sentences of up to three years' imprisonment, while jurisdiction to adjust sentences of more than three years remains in the hands of the court for the enforcement of sentences ('CES').

The creation of the JES is an important reform, for which preparations have been ongoing for some time and which has required intense efforts by practitioners (courts, the public prosecution service, the prison administration, the Communities). The Belgian authorities, which were consulted after the visit as regards possible delays to the JES due to the consequences of the COVID-19 crisis, stated that consideration was being given to postponing the entry into force by up to six months. At the time of drafting the report, the Belgian authorities informed the evaluation team that the Belgian parliament had officially postponed the date of entry into force to 1 April 2021. In view of the COVID-19 crisis, on the basis of a draft law, the entry into force of the JES is likely to be further postponed until 1 December 2021.

The JES has been granted powers hitherto conferred on the prison administration. He or she will rule on applications for adjustment in the presence of the public prosecution service and after having obtained the opinion of the person concerned and, where appropriate, the person's legal counsel. This brings about a significant change in the rules governing the adjustment and enforcement of sentences, which will necessarily have an impact on the guidelines and practices relating to the minimum sentence for which an EAW can be issued.

The practitioners interviewed on this subject during the evaluation visit unanimously agreed that this was a far-reaching reform that will have a significant impact on the arrangements and rules for issuing EAWs in Belgium.

The Commission's 'Handbook on how to issue and execute a European arrest warrant', and the revised version thereof, has been circulated to prosecutors specialising in international cooperation in criminal matters and to investigating judges. Furthermore, specific memos have been drawn up by the senior coordinator for the network of specialists in this field (standing in for the prosecutor-general, whose responsibilities include international relations).

The Belgian authorities noted that other instruments, such as the European investigation order, are rarely used in this context as they generally cannot be considered a genuine alternative to the EAW. However, in certain situations, an EAW has been issued where a European investigation order could have been used (e.g. hearing a person via video conference).

It should also be noted that investigating judges are not bound by the guidelines of the public prosecution service and therefore decide independently on the international instrument to be used.

The evaluation team would highlight that it is regular practice not to carry out checks on the principle of proportionality when Belgium is the executing Member State for an EAW.

3.3. Exchange of information

The exchange of information between judicial authorities is of vital importance in the context of EAW procedures.

The Belgian authorities pointed out that a significant number of EAWs issued by other Member States and received by Belgium for execution had certain shortcomings, which often resulted in one or more requests for supplementary information being sent to the judicial authorities of the issuing state, in the majority of cases for the following purposes:

- to obtain a clear, detailed and precise statement of the facts referred to in the EAW;

- to obtain clarification of the facts liable to prosecution in the framework of one of the offences indicated in the list of 32 offences;

- to obtain precise information on the rules governing the statutes of limitation for the sentence;

- to obtain reliable information on the length of the sentence, where several sentences are grouped together.

This issue of information exchange does not end with the surrender of the person. In that regard, the Belgian authorities indicated that, as executing state and once the person has been surrendered, they may encounter difficulties in obtaining information on the length of time for which the person was detained in the issuing state in the context of the EAW procedure.

The Belgian authorities indicated that in the case of EAWs issued on the basis of a judgment in absentia, the information contained in Part D of the form is very often incomplete or even contradictory. This difficulty arises in particular in those Member States where the court can overturn previous judgments and impose an overall penalty for all of the offences (old and new). In such cases, each judgment requires a description of the facts and an explanation of the procedure in absentia. The Belgian authorities consider that these problems should be addressed at EU level in order to establish common practices in these complex cases.

However, the Belgian authorities consider that in the vast majority of cases this lack of information can be addressed by applying Article 15(2) of FD 584. If the missing information is necessary for a hearing, the date of the hearing is communicated to the authorities so that it can be taken into account by the issuing authority. If information is intended to clarify the EAW prior to arrest, and if the person concerned has not yet been located, no time limit is set. The intention is that replies to requests for clarification and supplementary information should be provided as soon as possible.

Questions are addressed to the issuing state either directly (from court to court), through the Federal Police (International Cooperation Service) or through Interpol. If the matter is particularly urgent, Eurojust is called upon. The Belgian authorities have not identified any particular difficulties in using these different channels of information exchange.

As issuing authorities, the Belgian judicial authorities have already identified situations, in particular concerning Germany and the United Kingdom, in which the requested information has not been deemed necessary, such as:

- requests for supplementary information:

    not related to the facts or the current procedure;

    regarding the entire national procedure preceding the issue of the EAW;

- requests for the person concerned to be heard in the context of a supplementary EAW for the purpose of extending the EAW when the person is already in Belgium.

The Belgian authorities explained that, for their part, they limit their requests for supplementary information to that which is strictly necessary. In general, short and reasonable time limits are set for the issuing state to produce the missing elements, thereby making it possible to respect the deadlines laid down in Article 17 of FD 584.

As **issuing authorities**, the Belgian authorities request the necessary follow-up information after a decision on the EAW has been issued if that information has not been transmitted ex officio by the executing state. Contacts are sometimes difficult after the person concerned has been surrendered, especially when those contacts were established via Interpol.

As **executing authorities**, the Belgian authorities provide this information to the issuing state ex officio and, if they have neglected to do so, upon request. The Belgian judicial authorities do, however, encounter certain difficulties in following up information, in particular with regard to the enforcement of the guarantee of return by the issuing state.

3.4. Grounds for refusal

3.4.1 . Refusal in the event of a potential risk of violation of fundamental rights in relation to detention

As **issuing authorities**, the Belgian authorities state that they have received requests for supplementary information concerning detention conditions in Belgium, roughly 40 of which have been received since 2016. The Belgian judicial authorities point out that they reply systematically and within the prescribed period to these requests for supplementary information. They note, however, that they have already encountered a refusal to surrender because of a failure to provide supplementary information on detention conditions in Belgium. They point out that, in this isolated case, the Italian judicial authority had issued a decision requesting additional information within a certain period and at the same time fixing a subsequent hearing for a decision on the substance of the case, but that they had never forwarded the decision, with the result that the Belgian authorities were not given the opportunity to reply to the request.

As **executing authorities**, given decentralisation on the one hand and the principle of direct contact between judicial authorities on the other hand, the Belgian authorities are not in a position to provide exhaustive data on possible requests for supplementary information on detention conditions in the issuing Member State. The data provided are as follows:

- no refusals in 2017;

- 3 refusals in 2018 (2 concerning the same person but for the enforcement of different sentences and regarding which the refusal decision was taken at the same time by the same court);

- 1 deferment, but the procedure was completed and the person was surrendered within the time limits laid down in the Framework Decision.

The Belgian authorities point out that, with some Member States, these requests for supplementary information lead to additional delays in the execution of an EAW.

As executing authorities, the Belgian authorities assess the potential risk of a violation of fundamental rights in line with the case-law of the CJEU, and more specifically the judgment in *Aranyosi and Căldăraru*, which provides for a two-step procedure:

1. Where the executing judicial authority is in possession of evidence of a risk of inhuman or degrading treatment of individuals detained in the issuing State, it is bound to assess that risk before deciding on the surrender of the person concerned.

   Firstly, the executing judicial authority must rely on information that is objective, reliable, specific and properly updated on the detention conditions prevailing in the issuing state, and that demonstrates that there are deficiencies, which may be systemic or generalised, or which may affect certain groups of people or certain places of detention.

2. Where the executing judicial authority has identified the existence of such a risk, it must request information from the issuing state, under Article 15(2) of the EAW Framework Decision, to determine whether, in the particular circumstances of the case, there are real and substantial grounds to believe that the person concerned will in fact run such a risk because of the conditions of detention imposed upon them.

The questions asked vary according to the information regarding the identified risk and depending on which judicial authority makes the request for supplementary information. As a general rule, the Belgian authorities set a deadline for the issuing authority. If the missing information is required for a hearing, the date of the hearing is communicated so that it can be taken into account by the issuing authority. The type of information received and the time taken to send it vary from one Member State to another. If the information is incomplete or it is not provided in due time, surrender will be refused.

The Belgian authorities rely on the case-law of the European Court of Human Rights and on the specific situation of the person concerned (e. g. a detainee belonging to the Albanian community in Greece). In the majority of cases, the risk is raised by the person concerned or their lawyer.

If the risk of a violation of fundamental rights due to detention conditions is confirmed, enforcement must be refused on the basis of the ground for refusal relating to fundamental rights laid down in Belgian law (Article 4(5) of the Law of 19 December 2003). In accordance with the Belgian case-law which has developed in this regard, this ground for refusal requires a most circumspect approach. In this context, the Belgian authorities point out that since the EAW procedure is based on mutual trust, there is a presumption of respect for human rights by the issuing state.

The Belgian authorities consider that a possible refusal can only take place if, due to the circumstances of the case concerned, there is real, concrete and individual evidence suggesting that the surrender would entail serious risks of a violation of fundamental rights. Belgian case-law has clarified that the executing judicial authorities cannot be tasked with conducting a political assessment of the situation in the issuing state, nor are they required to carry out a systematic examination of the degree of protection in that state (Cass., 27 June 2007, P.07.0867.F). The Court of Cassation has stated that there must be serious grounds for fearing a manifest danger to the rights of the person and detailed evidence that could rebut the presumption of respect for those rights enjoyed by the issuing state (Cass., 7 December 2011, P.11.1954.F). In its judgment of 15 April 2015 (P.14.0616.F), the Court of Cassation stressed once again that the mechanism of the EAW is based on a high degree of trust between the Member States of the European Union, which implies a presumption of respect by the issuing state for the fundamental rights referred to in Article 4(5) of the said law.

In other words, the Belgian judicial authorities do not have a list of Member States for which they request further information on detention conditions in all situations.

From the Belgian point of view, the person's consent is not relevant to the checks to be carried out regarding the risk of a violation of fundamental rights in relation to detention conditions. In practice, however, since in many cases the risk of a violation of fundamental rights is raised by the person concerned or their lawyer, if the person concerned gives their unqualified consent to his or her surrender, verification of a possible risk of violation of fundamental rights will be rare.

In cases where Belgium is the issuing state, in order to ensure the proper follow-up of requests for additional information on detention conditions in accordance with the judgment in *Aryanosi* and *Căldăraru*, a note has been drawn up by the Justice FPS to explain to magistrates the procedure to be followed in these situations. This note had not yet been circulated to the magistrates during the evaluation visit, but the Belgian authorities indicated that it should be circulated in the near future.

Any request for additional information on detention conditions in Belgium must be sent to the Justice FPS. This request for follow-up by the Justice FPS must be accompanied by the following information:

- If the EAW is issued for the purpose of prosecution, the determination of the place of detention, which falls within the discretion of the investigating judge.

- The name (and contact details) of the investigating judge in charge of the case and, where appropriate, the place where the investigating judge intends to have the person concerned detained.

- If the EAW is issued for the purpose of enforcing a sentence, the place of detention, which is determined by the Justice FPS (Directorate-General for Prisons).

The Justice FPS will draw up an official letter containing the additional information required and forward it to the competent public prosecutor. At the level of the Justice FPS, a note containing general information on the main questions regularly addressed to Belgium has been drawn up and is used on a case-by-case basis depending on the specific questions raised by the executing judicial authority. It should be noted that the Belgian authorities never provide general diplomatic guarantees and always provide individualised answers to questions asked.

The Justice FPS plays a role because it is competent for the management of prisons, including prison conditions. Only the Directorate-General for Prisons of the Justice FPS possesses this information regarding the assigned prison. This makes it possible to ensure that the information and guarantees are not hypothetical and that they will be applied in practice.

However, in accordance with the principle of direct contact between judicial authorities and the case-law of the CJEU, the letter from the Justice FPS is forwarded to the national issuing authority. The latter is responsible for the direct transmission of the assurances and information to be provided to the executing judicial authority of the other Member State.

During the evaluation visit, the Belgian authorities particularly emphasised that they were committed to avoiding situations of impunity in cases where the application of the Aranyosi-Căldăraru two-step assessment of detention conditions resulted in a decision to bring the surrender procedure to an end. Thus, if enforcement is refused, in the opinion of the Belgian authorities the EAW for the purpose of **enforcing sentences** may be replaced by a request for transfer under Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to custodial sentences or by a request for probation under Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to probation measures and alternative sanctions.

When a refusal to execute is issued concerning an EAW for the purpose of prosecution, the Belgian authorities have indicated that they may consider three options in order to avoid impunity:

1) surrender on the basis of the EAW, subject to a guarantee of return;

2) the implementation of Framework Decision 2009/829/JHA on the application of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention; or

3) in accordance with the law of the other Member State, denunciation for the purpose of prosecution under Article 21 of the (Council of Europe) European Convention on Mutual Assistance in Criminal Matters of 21 May 1959.

3.4.2. Refusal in the event of a judgment in absentia

The issues of judgments in absentia and, more specifically, the finality of sentences are the most complex for the Belgian authorities. They encounter numerous difficulties in this area as executing state when confronted with EAWs based on judgments handed down in the absence of the person concerned, and have been known to refuse surrender in cases where the EAW followed a sentence in absentia.

These difficulties arise from problems associated with:

- the use and interpretation of Part D of the EAW form, namely the use of the version prior to the entry into force of Framework Decision 2009/299/JHA, or incorrect or incomplete information;

- differences in the interpretation of the concept of judgment in absentia and its characteristics: adversarial judgment, final judgment, the possibility of appeal, etc.;

- the differences in the transposition by the Member States of Framework Decision 2009/299/JHA and, more particularly, the mandatory or optional nature of the grounds for refusal.

After the entry into force of Framework Decision 2009/299/JHA, the current form provides for additional explanations (headings 3.1a, 3.1b, 3.3), which should have made appropriate improvements to its use.

According to the Belgian authorities, cases in which a decision was issued following a trial at which the person concerned did not appear in person at first instance do not pose any particular problems. Various issues do, however, arise when the final decision on culpability follows proceedings which have been through several levels of the courts and the person was not present at each stage of the criminal judicial proceedings.

The Belgian authorities have indicated that, in order to guarantee respect for the rights of the defence, and in order to determine whether a judgment was rendered in absentia, they take into account the appearance in person of the accused at the hearing where the substance of the case was examined. In the event of an appeal, the authorities take into account the presence of the person and, where appropriate, the fact that the person did not contest their guilt in the appeal proceedings, even if the person was not present at first instance.

The evaluation team recalls that, in the light of the case-law of the European Court of Justice on judgments in absentia (**Tupikas[1], Zdziaszek[2] and Ardic[3] judgments**), it is important to take into account the appearance of the accused at all instances of the criminal proceedings.

On the Belgian side, practitioners note that these judgments have so far had little effect on the procedures dealt with by the national authorities. They fear that these judgments, when they are better known to practitioners, will lead to an increase in requests for additional information in order to ensure that the guarantees are actually fulfilled and, therefore, difficulties in complying with the time limit laid down in Article 17.

At the same time, those practitioners consider that the said judgments would require the revision of Part D of the EAW form, as it is no longer appropriate. At the very least, the Belgian authorities consider that this part of the EAW form should be filled in correctly by the issuing authority using the additional information required by the abovementioned judgments.

Article 4a of FD 584 provides for an optional ground for refusal in the event of a judgment rendered in absentia. This case-law specifies four exceptions under which an EAW may not be refused. There is, however, a difference in interpretation as to the scope of this provision and the case-law of the Court of Justice. According to some Member States, Article 4a is a mandatory ground for refusal under which the surrender of the person concerned is refused if the person was not present at their trial, unless one of the four exceptions applies.

1Judgment of 10 August 2017, *Openbaar Ministerie* v *Tadas Tupikas*, C-270/17 PPU, EU:C:2017:628.

2Judgment of 10 August 2017, *Openbaar Ministerie v Sławomir Andrzej Zdziaszek*, C-271/17 PPU, EU:C:2017:629.

3 Judgment of 22 December 2017, *Samet Ardic*, C-571/17PPU, EU:C:2017:1026.

In addition, the Belgian authorities note recurrent difficulties with the EAWs issued by Italy following a conviction in absentia where the person was represented by a lawyer assigned directly by the State. Since the person concerned was represented by a lawyer at their trial, even if the person concerned did not appoint the lawyer themselves, the judgment is considered to be final. According to the Belgian interpretation, under Article 4a of FD 584 and Article 8 of Directive (EU) 2016/343 on the strengthening of the presumption of innocence and the right to be present at the trial, the person must have given a mandate to a lawyer, who may be appointed by that person or by the state. In the absence of a mandate from the person concerned, the Belgian judicial authorities have already refused a surrender based on an EAW issued by the Italian authorities.

Following this finding, the Belgian authorities proposed solutions to this issue, indicating in particular that it would be useful to have access to an updated database on the EJN website on Member States' laws on judgements in absentia in Member States, and proposed to initiate a discussion at EU level on that topic.

3.4.3 Other grounds for refusal

In general, the Belgian judicial authorities do not encounter any particular difficulties with respect to other grounds for refusal. In a few cases, however, they have been confronted with requests for information (from the Netherlands and Germany) or refusals to surrender (Italy) when investigations were carried out in parallel (the Netherlands). In addition, a difficulty was raised concerning the application of the principle of territoriality and the refusal, in this case by Italy, to surrender the person concerned, because some of the acts had been committed in Italy. After the final conviction in Belgium, Italy maintained its refusal to surrender, for the same reasons.

3.5. Further challenges

Transits of requested persons are infrequent, and in the few cases known in practice, no practical or legal problems or difficulties have been encountered in organising the transit of the requested person (Article 25 of FD 584).

Belgium has not yet introduced legislative amendments to the Law on the European arrest warrant following the case-law of the Court of Justice of the EU on the EAW. Nevertheless, the Belgian authorities clarified that the text of the Belgian law is very close to the text of the Framework Decision, to an extent such that the interpretations in the Court's case-law on FD 584 can be applied without legislative change.

According to the Belgian authorities, EAWs issued on the basis of several sentences and thus cumulating different sentences pose significant legal problems. As provided for in Article 4.2.1 of the Ministerial Circular of 8 August 2005 on the European arrest warrant, where several offences with which an accused is charged, if it is found that the person concerned is being prosecuted or has been convicted in other cases, whether in the same judicial district or in another, two or more EAWs must be drawn up and sent jointly. In the event that several EAWs are issued by different public prosecutor's offices, the Belgian authorities stress that effective coordination is required in order to obtain the surrender of the person to Belgium at the same time under all EAWs issued against that person. Belgian practice is therefore intended, in the interests of efficiency and consistency, to transmit to the executing judicial authority all EAWs concerning that same person together and at the same time. However, each EAW corresponds to one procedure, and where a person is subject to more than one procedure in one and the same jurisdiction, an EAW is usually issued procedure by procedure and there is no single 'comprehensive' EAW containing all of the proceedings.

During the fourth evaluation round, the experts noted that difficulties may arise with regard to the surrender of persons left at liberty by the investigating judge at the first hearing, in particular because there is a risk that the person will not appear at the meeting set for his or her surrender.

In this respect, noting that these cases remain frequent in Belgium, the evaluation team shares the concerns expressed in the context of the fourth evaluation round, and considers that solutions, including technical ones, should be found for this problem.

The evaluation team has noted that Belgian law lacks clear provisions concerning the subsequent surrender of a person to a Member State other than the executing state under an EAW issued for an offence committed prior to their surrender, in the cases set out in Article 28 of FD 584.

3.6. Conclusions

- The evaluation team noted that in Belgium, at all levels of judicial authorities, great efforts are being made to implement FD 584 in an appropriate and effective manner.

- A good information and support network, for example by coordinating magistrates and the Federal Prosecutor's Office, helps practitioners to obtain information and carry out their tasks in this area. The appeal system is well structured, and the case-law of the European Court of Justice is known to practitioners. Thus, the evaluation team had the impression that the practical challenges that have been (and continue to be) experienced in daily work in this have been carefully managed.

- Belgium attaches great importance to respect for the fundamental rights of the persons concerned. As executing authorities, the Belgian authorities address issues related to detention conditions in the issuing Member State in accordance with the case law of the CJEU.

- On the basis of the principle of mutual trust, Belgium assumes that the state issuing an EAW respects these rights. Consequently, based on the information provided by the Belgian authorities, a refusal to surrender would only occur, in a specific situation, in the event of serious and significant doubts suggesting that detention conditions may constitute a real risk for the person concerned.

- The evaluation team noted that the Belgian authorities are also committed to avoiding situations of impunity in cases where, in the light of the case-law of the CJEU on detention

conditions, they decide to terminate the surrender procedure and adopt pragmatic solutions for this purpose.

- In certain cases, surrender to the issuing state fails because the persons concerned had not been arrested before surrender, but had been left at liberty. The evaluation team considers that this practice could have negative consequences for the other Member States. A change should be considered, as this situation entails risks undermining the effectiveness of the entire EAW system.

- As issuing state, Belgium pays particular attention to respecting the principle of proportionality in legislation and in all stages of judicial proceedings linked to an EAW.

- The Belgian judicial authorities note numerous difficulties with regard to EAWs based on convictions in absentia, mainly due to differences in the criteria under which a judgment is classified as 'in absentia' or not in different national systems, even though, in the Belgian authorities' view, these are autonomous concepts of EU law which must be interpreted uniformly in all Member States.

- The Belgian authorities indicate that it might be useful to have access to an updated database on the EJN website on the laws of the Member States in the area of judgments in absentia.

- The other issues raised with the Belgian authorities concern cases where several EAWs are issued for the same person by different prosecutor's offices, with effective coordination being required not only for the purpose of issuing these EAWs but also for obtaining the surrender of the person to Belgium at the same time on the basis of all EAWs.

- The evaluation team encourages the introduction into Belgian law of clear provisions concerning the subsequent surrender of a person to a Member State other than the executing state under an EAW issued for an offence committed prior to their surrender, in the cases set out in Article 28 of FD 584.

4. FRAMEWORK DECISION 2008/909/JHA 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

Framework Decision 2008/909/JHA ('FD 909') has been implemented in Belgium by means of the Law of 15 May 2012 on the application of the principle of mutual recognition to custodial sentences or measures involving deprivation of liberty ('Law of 15 May 2012'). In addition, the joint circular from the Minister for Justice and the College of Prosecutors-General on the same topic (COL3.2013) and memo 361/2012 on the transfer of sentenced persons and the taking over of sentences within the European Union – Law of 15 May 2012 - were issued with a view to clarifying the Law of 15 May 2012 and facilitating its application by the competent authorities.

4.1. Authorities competent for the recognition of the judgment and enforcement of the sentence

The Law of 15 May 2012 provides for a mixed (administrative and judicial) procedure for the implementation of FD 909 in Belgium.

When Belgium is the **issuing state**, competence to forward a judgment, accompanied by a certificate, to another Member State depends on where the sentenced person is located, and in particular on whether or not they are detained in Belgium.

When the sentenced person is detained in Belgium, the Minister for Justice is competent to forward the judgment for the purpose of recognition and enforcement to another Member State. Before forwarding it, the minister must consult the public prosecutor for the judicial district in which the place of detention is located in order to verify that there is no reason the transfer cannot take place, such as an ongoing investigation or prosecution for other offences.

When the sentenced person is not detained in Belgium, it is the public prosecutor for the judicial district in which the sentence was handed down who is competent to forward the judgment, because in such cases the Minister for Justice, as the central authority, is not aware of the sentence.

The competent authority for giving Belgium's prior consent for a judgment to be forwarded, pursuant to Article 4(1) of FD 909, is the Minister for Justice.

When Belgium is the **executing state**, the public prosecutor for Brussels is designated as the only authority competent to make a decision on the recognition and enforcement of judgments forwarded by another Member State.

Belgian law provides that the competent national authorities are to consult the other Member State's competent authorities where the situation so requires. Regular and informal consultations between competent authorities are encouraged and are conducted by all available means (email, telephone, post). Where necessary, the EJN website is used to establish such contacts. This saves time, avoids unnecessary procedures and ensures the information is complete (e.g. the certificate is not incomplete).

As issuing authorities, the Belgian authorities prefer to carry out these consultations prior to sending the judgment and the certificate, and they consistently do so.

As executing authorities, when consulted by the issuing authority the Belgian authorities send information concerning Belgian policy on the enforcement of sentences, and in particular the applicable provisions on conditional release.

Belgium has designated a central authority. The central authority assists the judicial authorities in issuing certificates and translating pertinent documents as provided for in Article 23 of FD 909, and gives advice on the proper use of the EJN website.

In addition, the central authority, on behalf of the Minister for Justice as the issuing authority, issues transfer requests when the person is detained in Belgium.

4.2. Documents required for recognising the judgment and enforcing the sentence

As the executing state, Belgium requires certificates addressed to a Belgian authority to be translated into French, Dutch, German or English. Where applicable, certificates received will need be translated into the language of the proceedings, in accordance with the Law of 15 June 1935 concerning the use of languages in judicial matters. The Belgian authorities will be responsible for arranging this translation.

Belgium has made a declaration as provided for in Article 23(3) of FD 909 and, as the executing state, is prepared to receive translations of the judgment or the essential parts of it in Dutch, French or German. However, Belgium's experience in recent years is that it facilitates recognition if the issuing state provides a translation of the full judgment. When the judgment received is translated only in part, the Belgian authorities translate the sentence in its entirety wherever the content of the full judgment is necessary to understand the certificate and make decisions on an adaptation of the sentence.

A request for translation has the effect of postponing the decision to recognise and enforce the judgment in accordance with Article 20(2) of the Belgian Law of 15 May 2012.

The judgment accompanying the certificate does not have to be translated if the information on the certificate is sufficient to be able to make a decision.

As the issuing state, Belgium has not encountered any situations in which additional documents have regularly been requested.

When Belgium is the issuing state and would like another Member State to recognise several sentences handed down to the same person, different public prosecutors may issue separate certificates for each judgment. This requires appropriate attention to be paid to the timing with which certificates are sent to the executing state, coordination of which is generally difficult, especially if the certificates are issued by different public prosecutors. The Belgian authorities consider that it is better to avoid the executing state receiving the certificates separately, because it would complicate recognition.

As the executing state, it is Belgium's experience that certificates containing several judgments are not always completed in a transparent manner, which is problematic for the executing authority. In such cases, Belgium would prefer a separate certificate to be issued for each judgment, where applicable, in accordance with its own practice.

4.3. Criteria for assessing the facilitation of social rehabilitation

4.3.1 Exchange of information between the issuing state and executing state

When Belgium is the issuing state, the competent authorities (the Minister for Justice or the competent public prosecutor depending on whether or not the person is detained in Belgium) must verify, before issuing a certificate, that transferring enforcement of the sentence to another Member State will serve the purpose of facilitating the social rehabilitation of the person concerned.

In this respect, Belgian law assumes that social rehabilitation of sentenced persons will usually be easier in their country of origin or the country in which they have chosen to settle. Other factors may be relevant for determining whether, in a specific situation, the sentenced person has ties with the executing Member State which would be conducive to their social rehabilitation and reintegration. An overall assessment must be carried out of several objective factors characterising the person's situation, including the duration, nature and conditions of the person's residence, the language spoken by the person, and the social, economic, cultural, linguistic, family and other ties that the person has with the executing Member State.

When Belgium is the executing state, the Brussels public prosecutor assesses whether recognition will enable the objective of rehabilitation to be met. The assessment will be based on the information provided in the certificate or on the public prosecutor's own research. In practice, the Brussels public prosecutor often finds that the information in the certificate is too incomplete to be able to make a decision, or the information is simply missing because the foreign authority does not have any information about the person concerned.

The Brussels public prosecutor seeks to contact the competent authority of the issuing state directly only if the certificate contains information that cannot be confirmed (e.g. non-existent address, family members who cannot be located).

In such circumstances, the Justice FPS may, with prior agreement, instruct the competent services of the Communities to draw up a brief information report or to conduct a social investigation.

In practice, the assessment carried out in the context of these social investigations, referred to as 'inter-state transfer' investigations, is not limited to whether the convicted person's family or close acquaintances are legally present in Belgium. It involves acquiring an overview of the family/close acquaintances, their relationship with the sentenced person, their knowledge of and attitude towards the offences committed by the sentenced person, their attitude towards the transfer and how they view a return to a Belgian prison and possible release and rehabilitation in Belgium. The social investigation also specifies whether the family/close acquaintances are still in contact with the sentenced person and whether the head of the household would be able to accommodate the sentenced person in the event of release arrangements, and includes an assessment of the family's/close acquaintances' commitment to the sentenced person in the event of future arrangements for the enforcement of sentences.

If the person concerned is not a Belgian national, and therefore the prior consent of the Minister for Justice is required, the Communities' probation services will be asked to provide a brief information report or conduct a social investigation, on the basis of previous operating agreements between those services and the Justice FPS.

If the person concerned is a Belgian national, it is not within the public prosecutor's remit to ask the Communities' probation services for a brief information report or a social investigation. However, in such situations, the competent authorities have little room for manoeuvre as regards the recognition decision.

In addition, in order to verify that the transfer request serves the purpose of social rehabilitation and reintegration, the executing national authority may also ask the police to make neighbourhood enquiries regarding the residence of the person concerned and/or of the person's family.

However, the Belgian Law of 15 May 2012 does not provide a legal framework for these requests for the Communities' competent services to draft a report or conduct a social investigation. According to the Belgian authorities, an amendment to the legislation would establish a clear legal framework for cooperation between the Communities' probation services, the Justice FPS and the public prosecution service.

When Belgium is the issuing state, Belgian law encourages prior consultation with the executing state. In practice, on the basis of Article 4(3) of FD 909, contacts are established with the executing state prior to issuing a transfer request in order to ensure that the transfer will effectively serve the purpose of the sentenced person's social rehabilitation and reintegration. This is a priority for the Belgian competent authorities, despite the limited human resources available to actually carry out an in-depth verification regarding this objective. With that in mind, the Belgian authorities consult the executing authority on:

- the sentenced person's social and family ties with that state;
- the prospects for release and rehabilitation in that state more generally, before the judgment is forwarded together with the certificate;
- the person's health, even if this does not in itself constitute an obstacle to forwarding the judgment.

However, it is often the case that a transfer request is made, despite there being certain ties with Belgium (family, etc.), but the sentenced person does not have/no longer has the right to reside there.

In addition, this prior consultation and the abovementioned verifications occur more rarely in practice when the person is not detained in Belgium and/or is a national of the executing state.

In general, it is the experience of the competent authorities in Belgium that consulting other Member States' competent authorities prior to forwarding or receiving the certificate and judgment, as provided for in Article 4(3) of FD 909, facilitates the application of the Framework Decision, not just in terms of social rehabilitation but also in relation to other issues. The Belgian authorities indicated that they would like to encourage this practice.

As issuing authorities, the Belgian authorities have received very few opinions from the executing state on the basis of Article 4(4) and (5) of FD 909. In these few cases, the opinion has been taken into account and in principle has meant the withdrawal of the certificate. However, the fact that the transfer procedure is already under way is also taken into account in the examination.

As executing authorities, the Belgian competent authorities systematically forward a copy of the decision to the issuing state. In addition, some limited information is provided on an ad hoc basis, generally when a request for additional information is made. Some Member States regularly submit such requests for additional information, particularly in relation to the period of conditional release, in accordance with Article 21(g). In certain cases such requests may lead to the certificate being withdrawn. A standard formula to clarify the Belgian national system concerning the practical arrangements for conditional release for sentences of more than three years, and early release for sentences of less than three years, would facilitate the rapid communication of clear information. However, the Belgian authorities indicated that they consider proactive follow-up to be unfeasible in practice. The evaluation team would point out that Article 21 of FD 909 obliges the executing state to communicate the information in question to the issuing state without delay.

As **issuing authorities**, the Belgian authorities experience difficulties with certain Member States, particularly France, because of the lack of information provided in accordance with Article 21 of FD 909.

With a view to facilitating the application of FD 909, the Belgian authorities have agreed with several Member States, including France, Spain and the Netherlands, to send transfer requests and any follow-up (relevant documents, recognition decisions, additional information) electronically.

In order to facilitate secure exchanges between the authorities responsible for the application of FD 909, Belgium is also involved in the development of the e-Codex project for this instrument.

Finally, a meeting between the Belgian and French central authorities was also held in January 2019 in order to improve mutual understanding of the criminal justice systems and to pool experience in

implementing the Framework Decisions on mutual recognition of custodial sentences (FD 909) and on probation (FD 947).

4.3.2 Opinion and notification of the sentenced person

Under Article 6 of FD 909, the sentenced person must consent to the judgment being forwarded, together with the certificate, to the executing state (paragraph 1); however, paragraph 2 lays down some exceptions. Even in cases where consent is not required, sentenced persons who are still in the issuing state must be given the opportunity to give their opinion orally or in writing (paragraph 3). Finally, the issuing state must inform the sentenced person of its decision to forward the judgment and the certificate using the form set out in Annex II to FD 909 (paragraph 4).

When Belgium is the issuing state, the procedure provided for by law varies depending on whether the sentenced person's consent is required and whether they are in Belgium or in the executing state.

If consent is required and the sentenced person is still in Belgium, they will be heard by the public prosecutor for the district in which they are detained or reside. The sentenced person will be informed of the intention to transfer enforcement of the sentence and the legal consequences of consenting, such as the fact that the speciality rule will not apply. The sentenced person may be assisted by legal counsel if they request it, or if the public prosecutor deems it necessary.

If consent is required and the sentenced person is not in Belgium, the Minister for Justice, when consulting the competent authority in the executing state regarding the transfer, will ask that authority to obtain the sentenced person's consent.

It appears that in practice a derogation is made and the sentenced person's consent is not obtained in cases where the sentenced person requests that Belgium start the procedure of forwarding the certificate to another Member State, in accordance with Article 4(5) of FD 909, since consent to the transfer is presumed to be inherent in such a request. In the evaluation team's view, however, this practice seems to disregard the fact that FD 909 requires sentenced persons to have given their consent and to have been informed of the legal consequences, and provides for the assistance of legal counsel for that purpose.

If no consent is required and the sentenced person is in Belgium, they are informed of the decision to transfer enforcement of the judgment to another Member State by way of standardised information. In the French-speaking part of Belgium, the sentenced person will always be heard before the intended transfer. In the Dutch-speaking part of Belgium, there is no such hearing. The sentenced person may give their opinion in writing. The only reason that these procedures differ seems to be that they are a continuation of the situation that existed before the entry into force of the Law of 15 May 2012, at which time sentenced persons were transferred on the basis of the relevant applicable treaties.

If no consent is required and the sentenced person is not in Belgium, a standard form containing information on the decision to transfer enforcement of the sentence is sent directly to the sentenced person. In practice, the sentenced person has the opportunity to state their opinion in writing to the competent authority in Belgium with their opinion in writing, even if their consent is not required.

Once consent has been given, it cannot be revoked for 90 days from the date on which the sentenced person appeared before the public prosecutor for the place of detention or residence. If after this period the transfer has not taken place, the sentenced person may freely revoke their consent, in a letter addressed to the public prosecutor, up until the day on which they are notified of the transfer date.

The decision to forward the certificate and the judgment to the executing state, even in cases where the sentenced person's consent is not sought, must be made after the person is heard and must take into account the opinion expressed by the sentenced person or their legal counsel. These opinions are therefore systematically examined on a case-by-case basis, and also forwarded to the executing state. In principle, these opinions can always be changed at the request of the sentenced person up until the person's transfer to the executing state. The sentenced person's hearing and oral opinion must be transcribed, and are then forwarded to the executing state.

In addition, a specific procedure has been established for sentenced persons who are detained in Belgium, independently of the requirement to obtain consent, by means of service instructions set out in Joint Letter No 127 of 20 February 2014, drafted by the Justice FPS's Directorate-General for Prisons and sent to prison directors. On that basis, it is current practice for prisoners, once their sentence is final, to receive a leaflet giving information on the possibility of transferring enforcement; they are required to sign an acknowledgement of receipt, which is kept in their file. This leaflet is available in *Dutch* and *French*.

When the sentenced person is detained in Belgium, the general rules of Belgian law on prisoners' rights apply, in particular the right to a lawyer and to consular assistance[4].

When Belgium is the **issuing state**, the sentenced person does not have the right to appeal or request a specific review of the transfer decision. However, there is an appeal procedure available, as is the case with any ministerial decision (appeal lodged in cases of extreme urgency with the Council of State, which has suspensory effect).

When Belgium is the **executing state** and the person concerned by a transfer decision is in Belgium, that person is informed of the rights of sentenced persons.

[4] Article 69 of the Law of 12 January 2005 on the principles of prison administration and the legal status of prisoners.

Article 18 of the Law of 15 May 2012 provides for an appeal against the public prosecutor's decision to adapt the sentence or measure only in cases where that decision makes the sentence or measure harsher. The appeal must be lodged with the CES within 15 days of the date on which the public prosecutor informs the person concerned of the adaptation, which occurs either just after the decision is made to recognise and enforce the sentence (Article 19(2)), or when the person is heard by the public prosecutor upon arrival in Belgium (second paragraph of Article 24).

Ordinary criminal procedure law applies to the channels of appeal available against the decision of the CES.

Article 19 provides for an appeals procedure for persons who are in Belgium, whether they are free or in custody serving another sentence.

The appeals procedure enables the person to challenge the public prosecutor's application of Article 16(2) of the Law of 15 May 2012 on the application of the principle of mutual recognition to custodial sentences or measures involving deprivation of liberty imposed in a Member State of the European Union.

As with EAWs, and given the time constraints, the appeal is lodged with the council chamber, and the council chamber's decision may be appealed in cassation, in accordance with the rules of ordinary criminal procedure law.

4.4. Adaptation of the sentence

As **executing state,** the Belgian authorities have encountered many cases where the sentence needs to be adapted due to incompatibility of the sentence duration. The Belgian authorities have found that problems often arise when calculating the remainder of the sentence to be served and that not being able to make this calculation in a particular case may lead to recognition being refused. Despite the difficulties that arise during calculation of the sentence, cases in which recognition is refused on these grounds nevertheless remain exceptional (only one to date).

The problems in calculating the remainder of the sentence can be due to insufficient information. However, the Belgian authorities pointed out that even if the information is available, point 2.l. of the certificate requires the calculation of the length of the sentence to be made in days, whereas judgments usually state sentences in years and months. In day-to-day practice, this difference makes it more difficult to calculate the exact duration of the sentence or of the remaining part. Furthermore, Belgium has found that determining the remainder of the sentence to be served after recognition causes legal uncertainty where the rules for calculating the remainder of a sentence under Belgian national law give a different result to that arrived at on the basis of the calculation made by the issuing State.

It is possible to bring an appeal before the CES if the adaptation constitutes an aggravation of the sentence. In this respect the Belgian authorities have noted an increase in the number of applications to the CES relating to the classification of sentences, in particular where the application of aggravating circumstances affects the classification of the offence under Belgian law although this is not provided for as such under the law of the country concerned or in the judgment.

As **issuing authorities,** the Belgian authorities have not encountered any cases where a sentence has been adapted because it was incompatible with the law of the executing state in terms of its duration or nature. The only situations encountered relate to different arrangements for the enforcement of sentences. Thus, in cases in which it is the issuing state, Belgium has not experienced any problems concerning adaptation of sentences by the executing state.

In cases where Belgium is the **executing state**, the adaptation of a sentence is only carried out after the sentenced person has been surrendered to Belgium, as it is thought that the hearing of the sentenced person may have an impact on the adaptation decision. This practice is not required by Article 12 of FD 909. According to the Belgian authorities, this fact is all the more relevant since, in Belgium, adaptation causes problems in practice. At this stage, however, the issuing authority is no longer able to withdraw the certificate.

According to the Belgian authorities, the notion of 'similar offence' in Article 8(2) of FD 909 causes difficulties where the information pertaining to the offence contained in the certificate (point h) is not consistent with the judgement. Difficulties can also arise when there are aggravating circumstances that affect the classification of the offence under Belgian law, for example if the person concerned has been convicted of an offence such as theft and the description of the circumstances of the offence contained in the judgment reveals that the theft was committed during the night, in view of the fact that, under Belgian law, theft committed at night is considered to be a separate offence that is punishable by a more severe penalty than the offence of theft.

The Belgian authorities indicated that, when Belgium is the **issuing state**, problems often arise concerning the nature of the sentence (Article 8(3) of FD 909), particularly in connection with the Belgian penalty of confinement in a psychiatric facility ('*internement*'), as a result of differences between national systems in terms of the competent authorities (in several Member States, this measure would not fall within the remit of the criminal justice system but rather that of the health authorities), the compulsory nature of the psychiatric treatment, the duration of the confinement, etc. Consequently, requests for supplementary information are frequently sent, especially concerning terminology used, and in most cases problems are resolved as a result.

As far as the compulsory nature of the psychiatric treatment is concerned, the Belgian authorities mentioned the following difficulties by way of example:

- The Netherlands provides for the possibility of semi-responsibility (conviction *and* non-responsibility) and the imposition of a measure called '*terbeschikkingstelling*' (confinement to a custodial clinic), whereas in Belgium this approach is not possible: either a person is convicted or they are found not criminally responsible. A problem of this nature has been resolved recently. However, it should be recognised that cases involving this type of measure will require extensive consultation to find a solution on a case-by-case basis.

- The Belgian authorities have already encountered a case where a person subject to confinement in a psychiatric hospital in Belgium had absconded and was convicted of other offences in France. The French authorities submitted a request for recognition of the new sentence. In Belgium, the person concerned is therefore required to serve both a prison sentence and a measure of confinement to a psychiatric facility ('*internement*'). Pursuant to Articles 76 and 77 of the Law of 5 May 2014 on confinement in a psychiatric facility ('*internement*'), enforcement of the confinement measure will take priority.

An examination of this concept of 'similar offence' requires a description of the facts which are set out in detail in the judgment. A translation of the judgment should therefore be transmitted systematically to enable the sentence to be processed by the prisons and the CES.

Where Belgium is the **executing state**, the sentenced person is informed either as soon as the decision on recognition and enforcement is taken by the public prosecutor or when the sentenced person is heard by the public prosecutor on arrival on Belgian territory. They receive a copy of the record drawn up by the public prosecutor.

If the sentenced person considers that the adaptation decided upon aggravates the original sentence or measure in terms of its nature or duration, they can submit an appeal to the CES within fifteen days of being informed of the adaptation by the public prosecutor (Article 18(4) of the Law). In practice, the CES issues its decision within six months. The CES's decision may in turn be appealed in cassation in accordance with the rules of Belgian criminal procedure. The evaluation team considers that the post-transfer adaptation procedure, including the appeals system, is not in line with FD 909, as this practice creates uncertainty at the time of surrender regarding the duration of the sentence still to be served in the executing Member State. It also denies the issuing authority the possibility of withdrawing the certificate if it considers that the adaptation of the sentence is not appropriate.

Where Belgium is the **issuing state**, the sentenced person receives the information by means of the notification provided for in Annex 2 to FD 909.

4.5. Grounds for non-recognition or non-enforcement

Where Belgium is the **issuing state**, cases of non-recognition or non-enforcement (Article 9 of FD 909) are usually connected to the fact that the sentenced person has no family ties in the executing state or that enforcement of the sentence in that Member State could jeopardise the compensation of victims following the transfer of the person concerned to the executing state. However, the Belgian authorities have clarified that grounds for refusal in connection with the victims are rare.

The Belgian authorities also mentioned that when Belgium is the issuing state, the question of notification of the victim about decisions taken in respect of the sentenced person when that person has been transferred to another Member State (e.g. provisional release) had also arisen.

Where Belgium is the **executing state**, it frequently conducts prior consultations with the competent authorities of the issuing state before a formal request is made in order to facilitate recognition, specifically with the aim of pre-empting any difficulties that may arise and, if relevant, of informing the issuing state in advance that a certificate would be impossible to enforce were it to be issued. This enables Belgium to identify cases where recognition would not be possible at a very early stage. The number of formal refusals is therefore low.

Refusals are most often in connection with:

- the absence of prior authorisation by the Minister for Justice, where this is required (Article 4(1) of FD 909). This is one of the most frequently invoked grounds for refusal;

- the sentence is statute-barred according to Belgian law (Article 9(1)(e));

- the duration of the sentence. A refusal was recently issued by the Belgian authorities on the ground for refusal in connection with fundamental rights, since it was impossible for them to calculate the period that still had to be served in custody. This problem was not an isolated case, and such cases are likely to recur.

Finally, Belgium has not encountered any situations where a transfer has not been completed or has not been launched due to unsatisfactory detention conditions in the executing state.

The Belgian authorities indicated that they had already encountered difficulties in recognising a judgment rendered in absentia due to differing interpretations of the concept of judgment in absentia and of its finality.

In this regard, the Belgian authorities, as issuing state, have already met with refusals because a judgment rendered in absentia has been deemed not final even though all the guarantees required by the certificate had been met and the judgment could be deemed final. Details of these guarantees are regularly requested.

Where Belgium is the executing state, the Belgian authorities have also found that the relevant information included in the certificate is often incomplete or that the most recent version of the certificate has not been used.

In cases concerning judgments which have been rendered in absentia but that are open to a challenge by the person concerned, the Belgian judicial authorities prefer an EAW to be issued. If the person is resident in the executing Member State, a guarantee of return may be granted, and the legal framework governing the link between the two instruments is laid down in Article 38 of the Law of 15 May 2012 on the application of the principle of mutual recognition to custodial sentences, which makes it possible to avoid having two separate procedures.

Lastly, the problems referred to above (under point 3.4.2.) in respect of EAWs based on a judgement rendered in absentia may also arise in connection with the application of FD 909. Therefore, the discussions envisaged by the Belgian authorities concerning judgements rendered in absentia should be extended to the practice followed in applying FD 909.

4.6. Partial recognition

Both as executing and issuing state, Belgium has encountered very few cases of partial recognition of a judgement as provided for in Article 10 of FD 909.

Where a certificate relates to more than one judgement, it may occur that, **as executing state**, Belgium does not recognise all of the judgements, in particular because one of them is statute-barred, but this does not constitute partial recognition within the meaning of Article 10 of FD 909.

As **issuing state**, Belgium has experienced rare cases (one or two) of partial recognition of judgments.

Consultation undertaken prior to the forwarding of a certificate, as provided for in Article 4(3) of FD 909, does indeed facilitate mutual recognition in specific cases. However, Belgium has also experienced situations where it has taken more than one year to obtain a response to its efforts to start a consultation.

The Belgian authorities regularly conduct consultations in accordance with Article 10(1) of FD 909 without any particular difficulties, apart from language-related issues, which entail significant additional delays.

As partial recognition of a judgment is especially rare in Belgium, the Belgian authorities do not have specific criteria (other than those arising from the application of the law, such as the incompatibility of some sentences with Belgian law, e.g. a monitoring measure after the prison sentence has been served in full, or the fact that part of the sentence is not final, e.g. where the issuing state requests enforcement of the secondary sentence for non-payment of a fine without providing proof of non-payment) for deciding whether or not to recognise a judgment and enforce only part of the sentence.

4.7. Challenges relating to compliance with the deadline for recognition and enforcement

As a result of the practice of prior consultation, in most cases Belgium complies with the 90-day period laid down in Article 12(2) of FD 909 for a final decision to be taken on the recognition of the judgment and the enforcement of the sentence, both as an issuing state and as an executing state.

However, in complex cases, especially in cases which have an international dimension or are also subject to an EAW, the Belgian authorities consider this deadline to be particularly tight when surrender is refused on the basis of Article 4(6) of the Framework Decision on the EAW (see chapter 5 of this report). In these cases there can be delays. There can also be delays if a certificate is incomplete or as a result of the workload of the competent authorities.

The Belgian authorities have indicated that, as executing authorities, they inform the issuing authority as soon as possible about any potential delay and when they expect to send a reply notifying it of the final decision on the recognition of the judgment and the enforcement of the sentence.

4.8. Law governing the enforcement of the sentence

The conditional release system in place in Belgium applies to prison sentences of more than three years.

Where Belgium is the issuing state, executing states may have difficulty understanding the Belgian system of granting provisional release in the case of prison sentences of between six months and three years, which has been in place since 2017 due to prison capacity issues. If the sentenced person lives in Belgium, instead of serving the sentence in prison, they are placed under electronic surveillance for a period that is considerably shorter than the prison sentence handed down. Electronic surveillance cannot be carried out on sentenced persons who are not in Belgium. In such cases, a certificate is issued for the Member State of residence.

The Belgian authorities have had cases where, in accordance with Article 17(4) of FD 909, the executing state – particularly the Netherlands – has applied the Belgian conditional release system, i.e. the possibility of releasing the sentenced person after one-third of the sentence has been served, with the result that the person is released immediately after being transferred.

Where Belgium is the issuing state, the Belgian authorities have not had any cases in which the certificate has been withdrawn because of provisions on early or conditional release applicable in the executing state.

Where Belgium is the executing state, it has happened that a certificate has been withdrawn because of provisions on conditional release applicable under Belgian law, which is in general more favourable to the sentenced person, given the theoretical possibility under Belgian law of being granted conditional release after serving one-third of the sentence (except in the case of repeat offenders), which is a lower threshold than in most other Member States.

The Belgian authorities highlighted that the national authority competent for recognising the judgment would not be responsible for determining the arrangements for enforcing the sentence. For sentences of more than three years, for example, the decision to apply foreign law can only be taken by the CES, which means not until after enforcement of the sentence has been ordered.

As already mentioned, Belgium has indicated that a change in its legislation will enter into force on 1 April 2021, after which the JES will be designated as the competent authority for the enforcement of short sentences. In view of the COVID-19 crisis, on the basis of a draft law, the entry into force of the JES is likely to be further postponed until 1 December 2021.

It is not yet known how this reform will impact the use of the provisional release system and FD 909.

The Belgian authorities have met with several problems related to deducting periods of deprivation of liberty already served in the issuing Member State, and they cited the following examples:

- In Italy and France, there is the right to a remission of sentence on a three-month basis. Problems have arisen where the person was entitled to such a remission of sentence but this information had not been provided. This issue is often due to the time lag between the certificate being issued and the transfer actually taking place, which requires updated information, which is not systematically sent, and will entail a recalculation of the sentence.

- Problems can also arise in relation to calculating the period of deprivation of liberty for multiple sentences, in particular where one of the sentences is enforced in the issuing state.

- Problems have also arisen due to the certificate being unclear as to the period of detention provided for and, more specifically, as to when the period of deprivation of liberty starts. For example, the period of deprivation of liberty by the police is not taken into account in some Member States, but it is relevant under Belgian law.

4.9. Further challenges

The transit of sentenced persons is organised in cooperation with the police on the basis of operational cooperation, but there is no specific legal framework. In practice, the Belgian authorities note that in certain cases, contact is established directly with the police even though a request needs to be submitted to the judicial authorities.

The Belgian authorities acknowledge that in Belgium, like in other Member States where the application of FD 909 is not centralised, the dedicated competent authorities' knowledge of the mutual recognition procedure provided for in that Framework Decision could be improved.

In the opinion of the Belgian authorities, the standard form for the certificate as set out in FD 909 is not suitable in practice and its contents should be revised, as experience has shown that some of the information it requires is unnecessary while other information which could be essential for the recognition process is not included.

The Belgian authorities provided the following concrete examples of this:

– Calculation of sentences.

- On the certificate, the sentence is converted into days, but the definition of 'days' differs from one Member State to the next. It is therefore suggested that only the sentence handed down in the judgment be indicated, allowing the executing state to convert that sentence according to its national system. This would help avoid many errors on the certificates.

- It would also be useful if issuing Member States were always to expressly indicate the date of arrest as well as the date on which the person was taken into custody, as the former is not always understood as provisional detention sensu stricto. In several countries, the date of arrest and the days spent in police custody or under other measures are not taken into account in the calculation, but in Belgium they must be deducted.

– Judgments in absentia:

- Finality of the judgment: despite the certificate's various fields on the finality of the judgment and its adversarial – or at least 'deemed adversarial' – nature, the Belgian authorities have noted on several occasions that avenues of appeal have still been available. The judgment was therefore not truly final in the sense that no further appeal was possible and, consequently, the judgment could not or should not have been enforced in Belgium. The certificate should therefore contain a very clear and entirely unambiguous statement in this regard.

- Adversarial nature of the judgment: regarding cases where the person concerned did not appear at the trial and was represented by a lawyer, the certificate does not specify whether the lawyer was chosen by that person or assigned to them. In light of developments in the EAW, the Belgian authorities feel that they can probably no longer consider judgments to be adversarial in cases where the lawyer was assigned ex officio.

- Consent and the rule of speciality:

- The difference between requesting that the certificate be forwarded and consenting to it being forwarded is blurred. Sometimes one box is ticked, sometimes both. The problem here lies mainly in the consequences, and particularly the rule of speciality.

- Is someone who requests the transfer themselves deemed to accept all of the consequences and, therefore, forfeit the protection offered by the rule of speciality?

- If they consent to the certificate being forwarded at the authorities' initiative, are they deemed to consent only in respect of the sentence for which they have consented to the certificate being forwarded, and not the sentences yet to be enforced in the executing state? The latter interpretation is preferred in Belgium.

The matter of speciality should therefore be defined in a much simpler and clearer manner, specifying the consequences in the different scenarios provided for in relation to transfers, in the interests of both the person concerned and the services responsible for enforcement, and in relation to persons who are already on the territory of the executing state.

Lastly, and more generally, it would be useful to review the certificate after it has been in use for a few years, in order to simplify it in terms of the fields which, in practice, are never filled in or are of no importance.

The consultations before forwarding the certificate, provided for in Article 4(3) of FD 909, genuinely facilitate mutual recognition in concrete cases. However, there have also been cases where Belgium has tried to launch consultations and has had to wait for more than a year for a response.

The Belgian authorities also note that there can be particularly long delays in the context of prior consent – in some cases, more than a year. These problems mainly arise in dealings with France owing to non-compliance with Article 21 of FD 909, with no information being sent on the action to be taken upon the certificate being forwarded.

The Belgian authorities made the following suggestions for improving cross-border cooperation and the procedure for forwarding the certificate and recognising and enforcing the judgment:

- The exchange of good practices between Member States could boost cross-border cooperation and use of this instrument.
- It is also essential to encourage prior consultations in order to deal with practical difficulties that may be encountered prior to issuing the certificate.
- Lastly, electronic means should be preferred for forwarding certificates in order to save time and comply with the deadlines laid down in the Framework Decision.

4.10. Statistics

Belgium does not have complete statistics on the application of FD 909. The Belgian authorities say that this is due to the multi-layer structure involved in applying FD 909 as executing state. Each competent authority at national level keeps statistics on requests based on FD 909. This is to be expected insofar as a similar situation with the collection of data on the application of the Framework Decision on the EAW already led to a recommendation on improving the situation in 2011.

In this context, the evaluation team wish to expressly highlight the lack of reliable and detailed statistics, which is in fact an issue common to all four instruments covered by this evaluation, because the lack of statistical data in this area in Belgium was already noted during the fourth round of evaluations, and the Belgian authorities have not indicated how or when they would take steps to improve the situation in this regard.

The (incomplete) data provided were as follows:

Year	Transfers with Belgium as executing state	Transfers with Belgium as issuing state
2016	24	47
2017	21	54
2018	21	69

In addition, the Belgian authorities provided the following statistics:

Belgium = executing state

National statistics (national authority: Brussels public prosecutor's office)

Total number of open cases

2012-2019 378

including 47 involving certificates relating to persons already on Belgian territory

Effective transfers of persons located abroad

2013-2019 125

including transfers from the following countries:

Germany 12

Austria 8

Denmark 11

Spain 16

Finland 2

France 13

Italy 16

Luxembourg 1

Malta 1

Netherlands 10

Portugal 2

Romania 1

United Kingdom 24

Sweden 7

for the following offences:

Narcotics 95

Theft 5

Murder 12

Sexual offences 5

Other 8

Effective enforcement of sentences relating to persons already on Belgian territory

2012 -2019 36

4.11. Conclusions

- The Belgian authorities make active, concrete efforts to allow efficient use to be made of FD 909, which has been transposed in Belgium by the Law of 15 May 2012, supplemented by a circular and instructions aimed at facilitating the job of practitioners.

- The procedure for implementing this Framework Decision in Belgium is a mixed (administrative and judicial) procedure which varies - both when Belgium is the issuing state and when it is the executing state - depending on whether the consent of the sentenced person is required and whether the sentenced person is in Belgium or in the executing state.

- In the evaluation team's opinion, the practice whereby a derogation is made and the sentenced person's consent is not obtained in cases where the sentenced person requests that Belgium start a procedure for forwarding the certificate to another Member State seems to disregard the fact that pursuant to FD 909, the sentenced person must give their consent having been informed of the legal consequences.

- The Belgian authorities carry out regular, informal consultations with the competent authorities in other Member States before the certificate and judgment are forwarded or received. The evaluation team agrees with the Belgian authorities that such consultations facilitate the application of FD 909, not only in terms of assessing the possibility of social rehabilitation but also in relation to other issues, and that this practice should be promoted.

- Belgium encounters problems in cases requiring adaptation of the judgment as regards the length of the sentence, as executing state, and as regards the nature of the sentence, in particular in relation to the Belgian measure of confinement in a psychiatric facility ('internement'), as issuing state. The Belgian authorities also highlighted problems in relation to the interpretation of the concept of 'similar offence' within the meaning of Article 8 of FD 909. The evaluation team would point out that similar problems have also arisen in other Member States, as a result of differences between national systems.

- The Belgian authorities indicated that they had met with problems in relation to the recognition of a judgment rendered in absentia, due to differences between Member States' interpretations of the concept of a 'judgment in absentia' and its finality, and that, as issuing authorities, they have had requests refused. The evaluation team would highlight the need for an in-depth discussion on this issue at EU level.

- There have been very few cases involving partial recognition of a judgment, as provided for under Article 10 of FD 909, in Belgium, whether as issuing or executing state.

- The Belgian authorities provided the evaluation team with some statistics on transfers of sentenced persons under FD 909, both into and out of Belgium, but the statistics were incomplete. While the evaluation team accepts that collecting data can be complicated in a decentralised system, it nevertheless considers that the Belgian authorities should take steps to establish an efficient and reliable statistics system.

5. LINK BETWEEN FRAMEWORK DECISION 2002/584/JHA ON THE EAW AND FRAMEWORK DECISION 2008/909/JHA ON CUSTODIAL SENTENCES

Article 25 of Framework Decision 2008/909/JHA ('FD 909') on enforcement of sentences following a refusal to surrender based on Article 4(6) of Framework Decision 2002/584/JHA ('FD 584') has been implemented by Article 38 of the Law of 15 May 2012, which reads as follows:

'1. When the council chamber applies Article 6(4) of the Law of 19 December 2003 on the European arrest warrant, its decision shall entail the recognition and enforcement of the custodial sentence or measure involving deprivation of liberty referred to in the judicial decision which is the subject of the European arrest warrant. The sentence shall then be enforced in accordance with the provisions of this law. The public prosecutor with territorial jurisdiction shall request the judgment, accompanied by the certificate, from the authority issuing the European arrest warrant, and shall adapt the sentence if necessary in accordance with Article 18.

2. When another Member State of the European Union has refused a surrender requested by the Belgian authorities because that Member State undertakes to enforce the sentence, the competent Belgian authority shall forward the judgment, together with the certificate, to that Member State for the purpose of enforcement of the custodial sentence or measure involving deprivation of liberty.'

The evaluation team notes that this provision has been interpreted by the Court of Justice of the European Union (CJEU) in its important Popławski judgment (C-579/15). The CJEU ruled that the executing judicial authority may not rely on the grounds for refusal referred to in Article 4(6) of FD 584 where, 'on the date of the refusal to surrender, the execution has not in fact been taken over and where, furthermore, in the event that taking over that execution subsequently proves to be impossible, such a refusal may not be challenged'.

5.1. Problems relating to the link between Framework Decision 2002/584/JHA on the EAW and Framework Decision 2008/909/JHA on custodial sentences

Article 4(6) of FD 584

Belgium has introduced optional grounds for refusal in accordance with Article 4(6) of FD 584. In accordance with Article 6(4) of the Law of 19 December 2003 on the European arrest warrant, an EAW may be refused if it has been 'issued for the purpose of enforcing a sentence or detention order, where the person concerned is Belgian, is staying or resident in Belgium, and the Belgian competent authorities undertake to enforce that sentence or detention order in accordance with Belgian law'. These grounds for refusal will be applied at the request of the person concerned and only if the sentence can be enforced in Belgium.

Generally speaking, Belgium's practice as the executing Member State can be described as follows. Before issuing its refusal decision, the national authority competent for executing the EAW examines the possibility of enforcing the sentence in Belgium on the basis of the grounds for refusal provided for in the 2012 Law:

– If it concludes that the sentence cannot be enforced in Belgium, the EAW will be accepted, even if the person concerned is a Belgian national or resident.

– On the contrary, if the sentence can actually be enforced, the grounds for refusal provided for in Article 6(4) of the Belgian Law on the EAW will be applied. In such cases, the refusal decision entails recognition and enforcement of the sentence in Belgium.

When the public prosecutor determines that the grounds for refusal provided for in FD 584 are applicable in the case in question, he or she informs the issuing authority and asks for the certificate to be forwarded in accordance with FD 909 in order to take over enforcement of the sentence. In these situations, the public prosecutor is limited to examining the following factors:

- whether the sentence for which enforcement is sought is still active (the sentence is not statute-barred under Belgian law);
- whether an adaptation of the sentence may be required. The council chamber does not have the power to adapt the sentence.

In accordance with Article 38(1) of the Law of 15 May 2012, the council chamber's decision to refuse surrender on the basis of Article 4(6) of FD 584 (Article 6(4) of the Law of 19 December 2003) entails recognition and enforcement of the sentence or measure. Pursuant to Article 16(1) of the Law of 19 December 2003, the council chamber issues a reasoned decision within 15 days of the arrest on whether to execute the EAW. In such cases, the council chamber – or the indictments chamber on appeal – is the only decision-making authority which rules on the recognition and enforcement of the foreign sentence (thus precluding the public prosecutor's jurisdiction) and the foreign penalty becomes immediately and directly enforceable in Belgium (see in particular the judgment of the Belgian Court of Cassation of 12 June 2018). Even though, pursuant to the last sentence of Article 38(1) of the Law of 15 May 2012, the public prosecutor with territorial jurisdiction must request the judgment, together with the certificate, from the issuing authority and, where necessary, adapt the sentence in accordance with Article 18 of the Law of 15 May 2012, it is possible that the person concerned may already be serving the sentence (and therefore no longer be able to apply for release; see the judgment of the Belgian Court of Cassation of 17 December 2019). The public prosecutor's assessment is therefore limited and does not constitute a decision to recognise and enforce the judgment, which has already been rendered enforceable by the council chamber's decision to execute the EAW.

Before making its decision, the council chamber will examine whether it is actually possible to enforce the sentence or measure in Belgium. If it concludes that the sentence cannot be enforced in Belgium, the surrender will be authorised, even if the person concerned is a Belgian national or resident.

There is therefore a clear difference between this scenario and situations in which judgments are forwarded under FD 909, where it is the public prosecutor who decides whether to recognise and enforce the judgment (Article 19(1) of the Law of 15 May 2012). In that case, the council chamber merely serves as an appeal body for challenging the decision of the public prosecutor (Article 19(2)). The council chamber's decision can itself be subject to an appeal in cassation.

As the **issuing** Member State, residence is the first criterion the Belgian authorities take into account in order to decide whether to issue an EAW or a certificate for recognition of a judgment and enforcement of a sentence under FD 909 in cases where a person is staying in, or is a national or a resident of the executing state. If the Belgian authorities are certain of residence in another Member State, they will issue a transfer request under FD 909.

A second important criterion for this type of decision is the sentence: a transfer request will be issued for sentences of a minimum of one year.

On the other hand, if the offence is serious, i.e. an offence punishable by imprisonment of three years or more, or if the person's residence is not known, the Belgian authorities will opt to issue an EAW.

As the **executing** Member State, refusal to surrender on the basis of an EAW, pursuant to Article 4(6) of FD 584, results in the immediate application of the foreign sentence under Belgian law. If the person concerned is in custody, they will be kept in custody.

In its judgment in *Popławski* (C-579/15), the CJEU ruled that if an executing judicial authority intends to make use of the grounds for refusal provided for in Article 4(6) of FD 584, it may not do so where, 'on the date of the refusal to surrender, the execution has not in fact been taken over and where, furthermore, in the event that taking over that execution subsequently proves to be impossible, such a refusal may not be challenged'. In its decision, the CJEU did not rule on the procedure to be followed. The evaluation team points out that in this respect the case-law of the CJEU is very clear and if, at the time of surrender, there are still outstanding decisions to be adopted concerning enforcement, enforcement is consequently not guaranteed.

Bearing this in mind, the evaluation team is of the view that Belgium's practice of refusing surrender on the basis of Article 4(6) of FD 584 even before the decision on transfer pursuant to FD 909 has become final should be modified in the light of Article 25 of FD 909, as interpreted by the CJEU, which does not provide for such exceptions. In this regard, the evaluation team stresses that the decision to enforce the sentence should be irrevocable before the decision to refuse the EAW is made. This does not preclude the need to include the issue in a debate at EU level on the practical consequences of this case-law.

The first question that arises is what will happen if the Member State that issued the EAW does not send the certificate provided for in FD 909. In this regard, it should be noted that when Belgium is the issuing state, the Belgian legislator encourages the use of a certificate as the basis for recognising and enforcing the sentence for which surrender has been refused by the executing Member State; in such cases, Article 38(2) of the Law of 15 May 2012 makes it mandatory for the public prosecutor to forward a certificate.

Although as the executing state Belgium also prefers to receive a separate certificate pursuant to FD 909 for the purpose of enforcing a sentence on the basis of an EAW, in their day-to-day work Belgian practitioners do not consider that the absence of such a certificate constitutes an insurmountable obstacle to refusing surrender on the basis of Article 4(6). In such cases, the sentence is enforced in Belgium on the basis of the information in the EAW.

The evaluation team notes that it is technically possible to enforce a sentence handed down in another Member State merely on the basis of the information in the EAW, but it lacks the legal framework of FD 909. In this regard, Article 25 of FD 909 would mean that the procedure for recognising a sentence on the basis of a certificate would be followed, but also that the legal guarantees accompanying the recognition and subsequent enforcement of the sentence would apply in the event of a refusal based on Article 4(6) of FD 909.

However, in reality, the practice of applying Article 4(6) of FD 584, with or without a certificate, differs between Member States and sometimes within the same Member State. The implementation of the Popławski ruling would therefore require further discussion at EU level among practitioners in order to clarify the situation and improve legal certainty.

The second issue worth highlighting is the timeline for adapting the sentence. As already noted in section 4.4, general practice in Belgium is for the sentence to be adapted after the person is transferred, which is not in accordance with Article 12 of FD 909. Moreover, in the Popławski judgment, the CJEU ruled very explicitly on the time at which the decision to refuse is made, stating '<u>on the date of the refusal to surrender</u>, the execution has … in fact <u>been taken over</u>'. The mere fact that the sentence was adapted subsequent to the refusal indicates that, at the time the surrender was refused, enforcement of the sentence was not guaranteed.

<u>Article 5(3) of FD 584</u>

Where the surrender is accepted pursuant to Article 5(3) of FD 584, execution and the person's return to the executing Member State are ensured on the basis of a guarantee of return; to that end, as both the issuing and executing state, Belgium considers that a certificate under FD 909 is necessary. This procedure is governed in law by Article 38 of the Law of 15 May 2012 on the application of the principle of mutual recognition to custodial sentences.

When Belgium is the executing state for a transfer request, in principle all the public prosecutor's offices must inform the Brussels public prosecutor of a guarantee of return together with a request for follow-up of this procedure. However, in practice the Belgian authorities recognise that there is little awareness and acknowledgement of the need to forward the information to the Brussels public prosecutor's office for follow-up.

This situation can pose problems at national level where the Belgian authorities, i.e. the council chamber, undertake to have the sentence enforced in Belgium, and national legislation nevertheless requires a separate certificate to be issued for the recognition and enforcement of the judgment. The Belgian authority competent to make this decision on the basis of the certificate is the Brussels public prosecutor.

5.2. Conclusions

- In the cases referred to in Article 25 of FD 909 on the enforcement of sentences following a refusal to surrender on the basis of Article 4(6) of FD 584, Belgium adopts a different practice depending on the severity of the prison sentence which has been handed down in Belgium. Belgium issues a certificate and a judgment which it forwards to the executing Member State on the basis of FD 909 for sentences of one year or more when the person concerned is a resident of another Member State, while it issues an EAW for sentences of three years or more when the sentenced person's place of residence is not known.

- Given the complexity of a decision to refuse based on Article 4(6) of FD 584, the evaluation team is of the view that, before issuing an EAW for the purpose of enforcing a sentence, the Belgian issuing authorities should consider very carefully whether it would be better to apply FD 909.

- The evaluation team would also point out that, when a requested person is under arrest in the Member State of which they are a national, that Member State should verify or conduct consultations in order to determine whether the surrender of the person concerned is the most appropriate procedure, or whether a certificate issued on the basis of FD 909 would be more suitable.

  In addition, the Belgian authorities should modify their practice of refusing surrender on the basis of Article 4(6) of FD 584 even before the transfer decision pursuant to FD 909 has become final, in the light of Article 25 of FD 909. This does not preclude the need to include the issue in a debate at EU level on the practical consequences of this case-law.

- The implementation of Article 25 of FD 909 and the Popławski judgment is complicated by the fact that it involves conducting two procedures in parallel, with a specific timeline for each of the two decisions. Consequently, the evaluation team considers that further discussions among EU practitioners are needed to establish more consistency in Member States' practices.

- Belgian law also provides for the link between EAW procedures for the purposes of prosecution and enforcement of a foreign custodial sentence or measure involving deprivation of liberty referred to in Article 5(3) of FD 584, and the procedures provided for in FD 909, which makes it possible to avoid two separate procedures. However, in practice there are situations where the Belgian authorities, as the executing authority for an EAW, effect the surrender even if the guarantee of return has not been formalised by the issuing Member State.

- In the cases referred to in both Article 4(6) and Article 5(3) of FD 584, Belgium, as the issuing or executing state, considers that a certificate pursuant to FD 909 is necessary. However, in practice, in the application of Article 4(6) of FD 584 the Belgian authorities follow the procedures for implementing the abovementioned provisions even if this certificate has not been sent by the other Member State concerned. In other words, they enforce the judgment without waiting to receive the certificate, thus depriving the authorities of the issuing state of the possibility of assessing whether or not it is appropriate for the sentence to be enforced in Belgium. The evaluation team considers that this practice is not in accordance with Article 25 of FD 909.

6. FRAMEWORK DECISION 2008/947/JHA ON PROBATION AND ALTERNATIVE SANCTIONS

Framework Decision 2008/947/JHA on non-custodial measures ('FD 947') was implemented by the Law of 21 May 2013 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions imposed in a Member State of the European Union ('Law of 21 May 2013'). This legislation is supported by an implementing circular from the Minister for Justice and the College of Prosecutors-General (COL 18.2014). In addition, a FAQ was created after a few years' practical experience had been gained, in order to clarify the content of the Law and the practical arrangements. At the time of the evaluation visit, this FAQ was set to be approved by the College of Prosecutors-General before being distributed to the coordinating magistrates.

The Belgian authorities clarified that, in practice, the enforcement rules are applied in conjunction with the existing procedures for the enforcement of sentences as provided for in national law.

The sections in this chapter describe the experience that the Belgian authorities shared with the expert team to contribute to this evaluation, and the solutions they propose to further promote the use of this Framework Decision.

The evaluation team would emphasise that practical use of this legal instrument is currently quite limited, which makes it difficult, as things stand, to offer general conclusions on its application by the Member States' competent authorities.

6.1. Authorities competent for Framework Decision 2008/947/JHA

On the basis of Article 3(2) of FD 947, when Belgium is the issuing state the competent authority is the public prosecutor for the district in which the sentenced person's lawful or ordinary residence is located or, in the absence of residence, the public prosecutor for the district in which the judgment was handed down.

When Belgium is the executing state, the competent authority is the public prosecutor for the district in which the sentenced person's lawful or ordinary residence is located or in which the sentenced person would like to establish their residence.

In cases involving prior consent, i.e. when the sentenced person is not lawfully and ordinarily resident in Belgium, the Minister for Justice is competent to consent to the forwarding of a judgment and, where applicable, a decision on probation for the purposes of recognition and supervision of the sanction or measure. If prior consent is given, the issuing state may forward the judgment, together with the certificate, to the public prosecution service with territorial jurisdiction to decide on recognition and supervision of the measures imposed.

The Belgian competent authorities are in direct contact with the competent authorities of other Member States as regards the issuing and execution of requests for recognition and supervision, but also for the purpose of carrying out consultations prior to making such requests. As with the other mutual recognition instruments, the Belgian legislation transposing this Framework Decision, as well as FD 829, provide that the Belgian competent authorities are to consult the competent authorities of the other Member State concerned where the situation so requires. These consultations may be carried out by any means (telephone, fax, email or post). The Belgian authorities particularly encourage regular and informal consultations between authorities so as to save time and to avoid unnecessary procedures being launched and any interruption in the monitoring of the supervision measures.

It should be noted that a particular feature of this instrument, and of FD 829, is the essential role that the Communities' probation services play in the practical supervision of alternative measures to detention.

In 1999, Justice Centres (*Maisons de Justice*/*Justitiehuizen*) were created in each of Belgium's judicial districts. They bring together all of the social services that work under a judicial mandate, and are competent to provide guidance to suspected or convicted offenders in the framework of, for instance, alternatives to preventive detention, community service, electronic monitoring, probation, release arrangements and detention or surveillance at the discretion of the CES; it is also competent to draw up reports and social investigations for the administrative and judicial authorities.

Consequently, in addition to the prosecution service and the Minister for Justice, which are designated as competent authorities in accordance with the legislation transposing the two instruments, direct contacts are undertaken by all of the competent authorities within the context of the national criminal justice procedure which have an interest in consulting the competent authorities of the other Member State, including the Communities' probation services (e.g. contacts between Justice Centres and the foreign probation service for the purpose of sending reports following recognition).

It can be complicated to identify the foreign competent authority, as the atlas available on the EJN website does not specify the authorities competent for the enforcement of measures and sanctions.

Belgium has not designated a central authority, as either the issuing or executing authority, in the procedure for recognition and supervision of measures and sanctions as alternatives to detention. However, in practice Justice FPS is the authority competent to give prior consent and, more generally, assists the competent authorities in the application of the Belgian legislation transposing these Framework Decisions.

6.2. Problems relating to the failure to apply Framework Decision 2008/947/JHA

The Belgian legislation implementing FD 947 largely reproduces the provisions intended to establish the system of mutual recognition of judgments and probation measures. As for the practical supervision of such measures, this national legislation refers to the procedures provided for in ordinary legislation governing the enforcement of sentences. The Belgian authorities consider that this relationship between the system of mutual recognition and the reference to national law poses certain difficulties and may, in part, explain the limited application of FD 947, due to a combination of the following factors:

- The complexity of the legislation. All legislation on mutual recognition is complex and requires a high level of knowledge.

- Practitioners' lack of knowledge of this instrument. This problem can lead to complex and unworkable situations. For example, a Belgian judicial authority imposed an obligation to reside abroad while requesting that the person concerned respond to summons from the Communities' probation services.

- The multiple national authorities involved in the application of this mutual recognition instrument and, in particular, the essential role of the Communities' probation services. The fact that multiple authorities are involved causes numerous problems, in particular in identifying which authority must be contacted at which time, and in ensuring that information is followed up at each level of competence. For example, the French authorities have in the past sent a request for recognition and supervision of alternative measures to detention directly to the Communities' probation services.

The Belgian authorities consider that the involvement of multiple authorities also means greater efforts are required to ensure that all the authorities that may play a part in applying this instrument have sufficient knowledge of it. For example, in Belgium the CESes also play an essential role in the application of FD 947. However, they are not well informed about this new legislation and have already refused to recognise and supervise a conditional release ordered by a foreign court because they were not aware of the instrument.

The Belgian authorities also consider that differences in the national systems for non-custodial measures are a general problem at EU level, since FD 947 is rather vague in taking such differences into account; this makes it difficult for a Member State to recognise a measure adopted by another Member State if the measure is not provided for in its national system. By way of example, the Belgian authorities stated that Belgium considers community service to be a penalty in its own right, and not a probation measure as other Member States do, which makes mutual recognition of this measure difficult.

The implementation of FD 947 has not required any changes in Belgium's institutional organisation; as mentioned above, practical supervision of non-custodial measures and sanctions is carried out in accordance with ordinary legislation governing the enforcement of sentences.

The Belgian authorities stated that because the Belgian judicial system is decentralised, involving a multiplicity of actors competent at national level, they do not have statistical data on the application of FD 947.

However, they note that numerous requests have been made on the basis of this instrument, in particular by France, Spain, Germany and the Netherlands. Once the Belgian law of 21 May 2013 had been in force for a number of years, this experience revealed certain problems that arose regularly and required a uniform solution throughout Belgium. A working group comprising representatives of the Justice FPS, the public prosecution service and the Communities' probation services met on several occasions to analyse the various issues and the options available in such situations.

The difficulties reported by the Belgian authorities in the application of FD 947 related mainly to the following five points:

- Prison sentences of three years or less. The procedure for enforcing sentences differs depending on the length of the sentence. The CES is competent for the enforcement sentences of more than three years. For prison sentences of three years or less, the Law of 17 May 2006 on the external legal status of sentenced persons confers competence on the JES; however, this role will not be introduced until 1 April 2021. In view of the COVID-19 crisis, on the basis of a draft law, the entry into force of the JES is likely to be further postponed until 1 December 2021.

- The procedure for the intervening period was not clearly established, and so a provisional procedure has been set out.

- Means of referral to the Communities' probation services, including in particular requests from the issuing state sent directly to the Justice Centre instead of the competent judicial authority.

The incompatibility of Belgian law and the adaptation procedure raises two issues, namely the identification of the authority competent to request and make a decision on adaptation, and the question of the compatibility of a measure such as community service with Belgian law. Community service is not in itself incompatible with Belgian law, but since the entry into force of the Law of 17 April 2002 establishing community service as a penalty in its own right in the Belgian criminal justice system, community service can no longer be a condition of a suspended sentence or conditional discharge under Belgian law since a probation measure cannot include another penalty as a condition. In practice, given that the nature of the penalty is not incompatible with Belgian law, since community service exists under Article 216ter of the Code of Criminal Procedure (termination of public prosecution subject to the execution of measures and compliance with conditions) and as a penalty in its own right known as a 'community sentence' (*peine de travail/werkstraf*), there are no grounds for refusing to enforce it as a probation measure within the meaning of Article 4(9) of the Law of 21 May 2013 (= Article 4(1)(i) of FD 947).

- A probation decision is issued subject to recognition by the executing Member State. In fact, a request to recognise and execute a conditional release can be formalised only after a sentence or probation decision. There is therefore some uncertainty as to what will become of that decision at the time the potential conditional release is granted if recognition is refused and the person is already abroad.

- The start and end points for the supervision of a sanction, a measure or an arrangement for enforcing a sentence in Belgium should be specified. It must be clear how long probation measures are to be maintained.

The Belgian authorities acknowledge that there is a lack of awareness of FD 947 on the part of Belgian practitioners. In order to strengthen and improve its practical application, they stressed that it seems essential to promote the existence of this judicial cooperation mechanism and to ensure that practitioners exchange information and best practices, at both national and EU level.

At EU level, Belgium suggests the following in particular:

- promoting the existence of this judicial cooperation mechanism at the level of the European institutions and the relevant existing networks, ensuring synergy between the various networks' action and work;

- making information available to practitioners regarding the national probation systems in all Member States, by establishing structured and regularly updated national fact sheets. This information could usefully be included on the EJN website;

- exchanging best practices and contacts between competent authorities, taking into account the necessary interaction between different types of competent authorities (judicial authorities, probation services, police, etc.);

  developing specific training on this instrument for all the authorities competent to apply it.

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The evaluation team shares the view expressed by the Belgian authorities that there should be close coordination at national level between the different national authorities competent for the application of this instrument. A structure such as an expert network would also make it possible to provide expertise and enable practitioners to exchange information and best practices. Finally, training and conferences could usefully be developed further in order to promote the existence of this judicial cooperation mechanism.

6.3. Conclusions

- The Belgian authorities stated that some of the main reasons for not applying FD 947 were the complexity of mutual recognition legislation, a poor understanding of the instrument on the part of many of the authorities concerned, and differences in national legislation concerning decisions that might fall within its scope.

- The fact that there are multiple national authorities competent to implement the Framework Decision also makes matters more complex, in particular because of the essential role of the Communities' competent services, which causes uncertainty as to which authority should be contacted at different stages of the procedure. The Belgian authorities also mentioned that a lack of information sometimes leads the CESes to refuse to recognise and enforce a probation measure.

- The Belgian competent authorities have held meetings to discuss the problems with a view to finding solutions. However, a number of problems persist. The situation as regards the procedure for convictions involving prison sentences of between six months and three years is not clear, but should be resolved from 1 April 2021, when the CES will assume jurisdiction over these decisions. In view of the COVID-19 crisis, on the basis of a draft law, the entry into force of the JES is likely to be further postponed until 1 December 2021.

- Other issues are linked to the incompatibility of Belgian law with the nature of the penalty imposed by another Member State and to the procedure for adapting the sentence, in the sense that the competent authority in Belgian law is sometimes unknown to those on the ground. In addition, the duration of the supervision in Belgium and the point at which the measure ceases to apply should be made clear in specific cases.

- The Belgian authorities are well aware of these problems and have proposed solutions to promote the practical application of FD 947. In the evaluation team's view, it is particularly important to draw practitioners' attention to the existence of FD 947. Moreover, practitioners in every Member State should be given ample opportunity to engage in in-depth discussions at national and EU level on the existing problems and the solutions that have been found or may be possible in order to improve the application of this Framework Decision.

- As the Belgian authorities suggest, in order to increase mutual trust between Member States, it would be useful to improve awareness of the other national systems and the non-custodial measures they provide for, and to be able to have this updated information available at EU level on the EJN website.

7. FRAMEWORK DECISION 2009/829/JHA ON SUPERVISION MEASURES AS AN ALTERNATIVE TO PROVISIONAL DETENTION

Framework Decision 2009/829/JHA ('FD 829') on supervision measures as an alternative to provisional detention was implemented by the Law of 23 March 2017.

In order to address the various concerns of practitioners and to facilitate the implementation of this Law, a joint circular from the Minister for Justice and the College of Prosecutors-General on the application of the principle of mutual recognition to decisions on supervision measures issued as an alternative to preventive detention has been drafted and will be published and circulated to practitioners shortly.

The following sections in this chapter describe the experiences which the Belgian authorities shared with the team of experts to contribute to this evaluation, and the solutions they propose to further promote the use of this Framework Decision.

The evaluation team would emphasise that practical use of this legal instrument is currently quite limited, which makes it difficult, as things stand, to offer general conclusions on its application by the Member States' competent authorities.

7.1. Authorities competent for Framework Decision 2009/829/JHA

Where Belgium is the issuing state, the competent authority pursuant to Article 6(2) of FD 829 is the public prosecution service for the place in which the accused person's lawful or ordinary residence is located or, in the absence thereof, for the place in which the decision on supervision measures was pronounced.

Where Belgium is the executing state, the competent authority is the public prosecution service for the place in which the accused person is lawfully or ordinarily resident or, in the absence of a residence, for the place in which the person would like to reside.

However, where the accused person is not lawfully or ordinarily resident in Belgium, the Minister for Justice must give his or her prior consent to the forwarding of a decision on supervision measures for the purpose of the recognition and monitoring of those measures. If prior consent is given, the issuing state may forward the decision, together with the certificate, to the public prosecution service with territorial jurisdiction to decide on recognition and monitoring of the measures imposed.

7.2. Problems relating to the failure to apply Framework Decision 2009/829/JHA

The Belgian legislation implementing FD 829 largely reproduces the provisions laid down by that Framework Decision to establish the system of mutual recognition of decisions and measures as an alternative to preventive detention. As far as the monitoring of supervision measures is concerned - apart from any subsequent decision - that national legislation refers to the rules of ordinary law as if the decision had been issued by a Belgian authority.

According to the Belgian authorities, this relationship between the system of mutual recognition and the reference to national law poses certain difficulties and may, in part, explain the failure to apply those instruments, due also to a combination of other factors.

The problems identified by the Belgian authorities in the application of FD 829 are very similar to those identified in the application of FD 947: the complexity of the legislation, the lack of awareness of those instruments on the part of practitioners, and the multiple national authorities involved in the application of the instrument. Even for the application of FD 829, the difference between the national systems is thought to cause difficulties and often necessitates consultations with the Member States which adopted the supervision measures.

According to the Belgian authorities, another reason why this procedure is rarely used is that it seems unsuitable for the types of cases in which a measure is ordered as an alternative to preventive detention, that is to say cases which are – by definition – serious. In their view, there is legal uncertainty underlying the application of this mutual recognition procedure with regard to alternatives to preventive detention, caused by uncertainties as to:

- whether or not the decision on supervision measures is recognised;
- the time limits within which the issuing state will be notified of any failure to comply with the conditions (the concept of 'without delay'); and
- the arrangements for exercising the supervision carried out in the executing state.

Consequently, the Belgian authorities consider that there is an imbalance between the seriousness of the follow-up required by this type of case, which also demands a very high level of responsiveness in view of the nature of the offences concerned by the measure, and the legal uncertainty created by the application of this instrument.

The implementation of FD 829 has not required any changes in Belgium's institutional organisation because, as mentioned above, the actual monitoring of supervision measures takes place in accordance with the system of ordinary law.

The Belgian authorities have indicated that, given the multiplicity of actors competent at national level for the application of FD 829, they do not have any statistical data on its application.

There are in fact very few cases in Belgium in which FD 829 is applied. Nevertheless, the Belgian authorities note some instances in which this Framework Decision has been applied. This experience mostly reveals the difficulties encountered by the Belgian authorities with regard to the way in which requests are forwarded. They point out that difficulties arise when requests are forwarded by the issuing state to the police or directly to the Justice Centre instead of the competent judicial authority.

The solutions proposed by the Belgian authorities in point 6.2 concerning FD 947 would, in their view, also apply in the context of FD 829.

7.3. Conclusions

- The problems encountered in Belgium and the main reasons for the very limited application of FD 829 are very similar to those relating to FD 947; consultations are often necessary with the Member States which adopted the supervision measures.

- Moreover, according to the Belgian authorities, this Framework Decision is also rarely used as it is regarded as often unsuitable for the types of cases in which a measure is ordered as an alternative to preventive detention, and there are many ambiguities and hence legal uncertainty created by the application of this mutual recognition instrument.

- The Belgian authorities take the view that the solutions proposed in point 6.2 concerning FD 947 would also apply in order to strengthen and improve practical application of FD 829.

- In particular, the evaluation team shares the view that a greater effort should be made to promote knowledge of this judicial cooperation mechanism, to ensure the exchange of information and best practices between practitioners at both national and EU level and to provide access via the EJN website to up-to-date information on the other national systems and non-custodial measures provided for by those systems.

8. TRAINING WITH REGARD TO FRAMEWORK DECISIONS 2002/584/JHA, 2008/909/JHA, 2008/947/JHA AND 2009/829/JHA

8.1 Training

In Belgium, the Judicial Training Institute (*Institut de formation judiciaire - IFJ*) is the institution responsible for the initial and continuing training of magistrates (both qualified and trainee magistrates).

Every year, the Institute organises training sessions on mutual recognition covering all the Framework Decisions referred to in this evaluation, and in particular FD 829 and FD 947.

For new magistrates, the IFJ organises mandatory courses each year on subjects including mutual recognition (and in particular the EAW), together with two courses focusing on FD 909. In addition, while other magistrates are entitled to five days of continuing training per annum at national level, this is not an obligation; consequently, practitioners who are reluctant to make use of the mutual recognition instruments are not required to attend the dedicated training sessions.

Every year, around 50 practitioners take part in those training courses. For registrars and administrative services, training on the mutual recognition instruments has been organised on two occasions. During those training sessions, the content of the certificates and forms was explained.

The strategy adopted in Belgium is based on the principle of training the trainers. The senior coordinator for the network of experts in the field of international cooperation in criminal matters circulates the necessary information and details of any developments to the competent judicial authorities. The Belgian authorities have indicated that it might be helpful to consider making this information available to all stakeholders.

Responsibility for training seems to lie mainly with the coordinating magistrates, whose role is to receive information and relay it to other magistrates. For 2020, the Institute has scheduled a two-day course for the coordinating magistrates on mutual recognition in relation to the EAW and the European investigation order, and possibly also FD 909. The training session will also cover the recent case-law of the CJEU. These courses provide ample opportunity to discuss specific practical experiences and problems.

However, there is no regular specific training on the recent case-law of the CJEU. Some judicial authorities in Belgium have expressed an interest in such training being organised.

At present, an exchange between practitioners on the application of the EAW, and in particular the relevant case-law of the CJEU, is organised within the framework of the network of experts on the EAW. Where a judgment of the CJEU is likely to have a significant impact on Belgian EAW practices, as has been the case recently, a memo is drafted by the senior coordinator for the network of experts in the field of international cooperation, who is a magistrate and a member of the Prosecutor-General's Office for the Court of Appeal of Ghent (standing in for the Prosecutor-General) and has been assigned responsibility for international cooperation in accordance with the distribution of subject areas among the members of the College of Prosecutors-General.

The memo is then forwarded to the coordinating magistrates, who subsequently pass on the information to their colleagues.

In the opinion of the evaluation team, national judges, as 'European judges', should be able to apply EU law correctly and should know when it is appropriate or mandatory to refer to the CJEU. This is a relatively new field for criminal law judges. The question was raised as to how judges, in the course of their careers, will be given an opportunity to acquire sufficient knowledge of the mutual recognition instruments and the case-law of the CJEU. Although they have access to online training material, the idea was that training courses should also be made available to this category of judges.

The quality of each training session provided within the IFJ is assessed by participants, who are asked to evaluate the training at the end of each session. The organisers then meet to discuss the evaluations and adjust the training programme if necessary. Where appropriate, the programme is amended and adapted to take account of practitioners' comments and requirements, in particular in the event of any legislative changes and/or developments in the case-law.

The programme of training courses organised by the EU on the subject of mutual recognition instruments, in particular as regards the EAW, or by other organisations is circulated by the IFJ to all Belgian magistrates each month. In addition, specific information is provided on certain training courses such as those organised by Euregio (e.g. CrossBES) or the EJTN.

However, the Belgian training authorities note, both in the replies to the questionnaire and in the course of the exchanges held with the evaluation team during the visit, that Belgian practitioners generally display a relatively low level of participation in this type of training course. In practice, around 30 to 40 magistrates and civil servants take part each year in training courses such as those organised by the CrossBes project, or in other training courses promoted by the IFJ. The Belgian authorities attribute this low rate of participation to the limited number of places allocated to each country, as well as the modest budget and the limited number of potential participants.

Belgian practitioners suggest that improvements should be made to the way in which such information is circulated so as to ensure that they are kept informed, in a simplified way, of the organisation of training courses focusing specifically on EU judicial cooperation instruments.

In the replies to the questionnaire, the Belgian authorities indicated that training courses and awareness-raising activities should be organised at EU level on subjects covered by FD 947 and FD 829, as not enough attention is being paid to those two Framework Decisions at present. In addition, and with particular regard to those two instruments, the training courses and awareness-raising activities on those subjects should, in their view, jointly target all the relevant stakeholders (judicial and police authorities, probation services, prisons); moreover, there is a need for synergy between the activities of the networks concerned by their application, in particular the EJN and the Confederation of European Probation (CEP).

In a few cases, the Belgian judicial authorities noted that, at police level, there could be scope for improving knowledge of the EAW mechanisms. Consequently, judicial officials ensure the circulation of practical information to police officers, for example by forwarding memos. The Belgian authorities indicated that it might be useful to consider providing such information (which is currently disseminated to the judicial authorities by the senior coordinator for the network of experts in the field of international cooperation in criminal matters) to all the relevant stakeholders.

8.2 Participation in European networks

The EJN website is a well-known tool; in particular, the atlas – which provides answers to questions concerning the competent authorities – and the library are often used by Belgian practitioners. Proposed improvements and/or changes are implemented smoothly. However, it can at present be difficult to identify the competent foreign authority, as the atlas available on the EJN website does not specify which authorities are competent for the enforcement of measures and sanctions.

Moreover, the authorities competent for the application of FD 947 and FD 829 are not limited to judicial authorities, but are – more broadly speaking – all the authorities competent in the field of national criminal procedure with regard to the enforcement of supervision measures and sanctions, including probation services.

As already mentioned, the Belgian authorities suggest that the EJN website could usefully contain national fact sheets (in the form of Belgian fact sheets) which are structured and regularly updated in order to provide information on national systems with regard to probation and supervision measures.

The Justice FPS plays an active role in the activities of the European Organisation of Prison and Correctional Services (EuroPris). Up to now, the Brussels public prosecutor's office has not been directly involved in those activities. However, in view of its central role in the application of FD 909, the necessary steps have been taken to ensure that it can now be directly involved.

The meetings organised by EuroPris provide the Belgian representatives with an opportunity to suggest improvements to the application of FD 909.

Given the large number of competent authorities (primarily the judicial authorities and probation services), synergy between the EJN and the CEP is particularly important in order to promote the application of those instruments.

8.3 Conclusions

- The Belgian practitioners met during the evaluation visit demonstrated the diverse nature of the training on offer and the multiple, high-quality sources of information. Each year, the Judicial Training Institute (IFJ) organises training courses on mutual recognition, and in particular the procedure in relation to the EAW.

- However, new magistrates are better trained than their colleagues, as they are required to undergo training, while other judges and prosecutors already in office can take part in the training that is available on their own initiative, but are not obliged to do so. In practice, opportunities for magistrates to actually take part in training initiatives are constrained by their daily workload.

- The strategy adopted in Belgium is based on the principle of training the trainers. The senior coordinator for the network of experts in the field of international cooperation in criminal matters circulates the necessary information and details of any developments to the coordinating magistrates, who have the task of passing on the information received to other magistrates.

- The same channel is also used to circulate information on the recent case-law of the CJEU on mutual recognition, in the form of a memo.
  Although training materials are available to them online, the evaluation team considers that regular specific training on the implementation of this case-law should be organised for all magistrates, and not just for those undergoing initial training or for qualified but already specialised magistrates.

- Overall, the evaluation team takes the view that the Belgian authorities should consider extra efforts to ensure continuing training for magistrates at all stages of their career on all the mutual recognition instruments covered by this evaluation.

- The evaluation team also notes that greater use should be made of training opportunities on mutual recognition at EU level by ensuring increased participation in such training courses by Belgian magistrates who are also required to apply EU law in the context of criminal proceedings with a cross-border dimension.

- The evaluation team shares the view of the Belgian authorities that such EU-level training, which currently mainly concerns the EAW, should be extended to all the mutual recognition instruments covered by this evaluation.

- The Belgian authorities recognise that there is a significant shortfall in the provision of training for administrative staff in the courts, prison registries and police forces on EAW matters. The evaluation team stresses the need for new initiatives to ensure proper training for these categories of officials too, as their tasks require a more detailed knowledge of EU and national legislation in this area.

9. FINAL REMARKS, RECOMMENDATIONS AND BEST PRACTICES

9.1. Suggestions from Belgium

The Belgian authorities suggested:

- it would be useful to be able to access an up-to-date database on the EJN website on non-custodial measures in each of the Member States' legal systems;
- measures could be adopted by the Member States and at EU level to improve knowledge and promote the practical application of FD 947 and FD 829 (see point 6.2), particularly as regards training initiatives;
- it is important to ensure training is available at EU level on all the mutual recognition instruments covered by this evaluation.

9.2. Recommendations

As regards the practical implementation and operation of the Directives and the Regulation, the team of experts involved in the evaluation of Belgium considered the system in place in Belgium to be very satisfactory.

Belgium should follow up on the recommendations below in 18 months, following the adoption of this report by the group concerned.

The evaluation team saw fit to make a number of suggestions for the attention of Belgium's authorities. Furthermore, based on the various good practices, related recommendations are also being put forward to the EU, its institutions and agencies, and to Eurojust and the EJN in particular.

9.2.1 Recommendations for Belgium

Belgium:

1. should establish an efficient and reliable statistical system to collect data on EAWs and certificates issued, executed and refused pursuant to FD 584, FD 909, FD 947 and FD 829;

2. is encouraged to ensure that the human resources involved in implementing the mutual recognition instruments covered by this evaluation are sufficient to ensure efficient cooperation in this context;

3. is encouraged to implement initiatives to raise awareness of the EU mutual recognition instruments among all specialist criminal magistrates;

4. is invited to provide mandatory continuous training for all specialist criminal magistrates which includes topics related to all the legal instruments covered by this evaluation, and especially FD 909, FD 947 and FD 829;

5. is encouraged to include clear provisions in its national legislation regarding the subsequent surrender of a person to a Member State other than the executing state pursuant to Article 28 of FD 584;

6. is invited to take the necessary measures, including adapting its legislation, to provide for the possibility of re-apprehending, for the purpose of enforcing a surrender decision, a person who is subject to an EAW and who has been released in the course of the EAW procedure;

7. is invited to reconsider the practice whereby, in cases where there are several judgments, an EAW is issued for each decision passing sentence;

8. is invited to reconsider its approach, as part of the implementation of FD 909, of asking other Member States to issue a certificate for each judgment in cases where there are multiple decisions;

9. is encouraged, as the executing state, to send the follow-up information provided for in Article 21 of FD 909 to the issuing state proactively and without delay;

10. is encouraged to have the information form for detained persons, concerning the possibility of requesting that a sentence handed down in Belgium be enforced in another Member State under FD 909, translated into the relevant languages;

11. is invited to ensure that, before issuing an EAW for the purpose of enforcing a sentence, the competent judicial authorities thoroughly check whether it would be more appropriate to follow the procedures provided for in FD 909;

12. in the context of a discussion at EU level, is invited to reconsider, in accordance with Article 25 of FD 909, the practice of refusing surrender on the basis of Article 4(6) of FD 584 even before there has been a final decision on the transfer pursuant to FD 909;

13. in the context of a discussion at EU level, is invited to reconsider, pursuant to Article 25 of FD 909, the practice of initiating a procedure for recognition of a sentence that is the subject of an EAW even if no certificate as referred to in FD 909 has yet been received;

14. is encouraged not to surrender before the issuing Member State formalises the guarantee of return, as expressly provided for in Article 5(3) of FD 584.

9.2.2 Recommendations for the European Union and its institutions

The EU institutions should:

- take measures to ensure training is available at EU level on all the mutual recognition instruments covered by this evaluation;
- launch initiatives to improve knowledge and promote the practical application of FD 947 and FD 829;
- hold in-depth discussions on the problems encountered by the judicial authorities in cases where judgments have been rendered in the absence of the person concerned, because Member States have different interpretations of the concept of a judgment in absentia and its finality.

9.2.3 Recommendations for the other Member States

The Member States:

- are encouraged to discuss how to harmonise the practice to be followed in the Member States in cases where, pursuant to Article 4(6) or Article 5(3) of FD 584, consideration is given to transferring rather than surrendering the sentenced person, in particular so as to clarify that the certificate provided for in FD 909 must be forwarded;

- should, as both issuing and executing authorities, be proactive in forwarding information and regularly consulting other Member States in the context of the procedures followed in applying the mutual recognition instruments covered by the ninth round of evaluations;

should, as both the issuing and the executing state, ensure that the competent authorities complete the forms/certificates provided for in the Framework Decisions covered by this evaluation appropriately and in full, and limit requests for additional information to what is strictly necessary;

- are invited to ensure, as the executing state for FD 909, that even where sentenced persons request their own transfer, their consent under Article 18(2)(e) of FD 909 is still obtained;

- are encouraged to undertake initiatives to improve knowledge and promote the application of FD 947 and FD 829, including through the exchange of information and good practices by practitioners at national level.

9.2.4 Recommendations for Eurojust/Europol/the EJN/the EJTN

- The EJN, in collaboration with the Member States, is invited to create a tool on its website with up-to-date information on non-custodial measures in the different Member States.

9.3 Best practices

This section includes a list of best practices which could be adopted by other Member States:

– the existence of coordinating magistrates and expert networks;

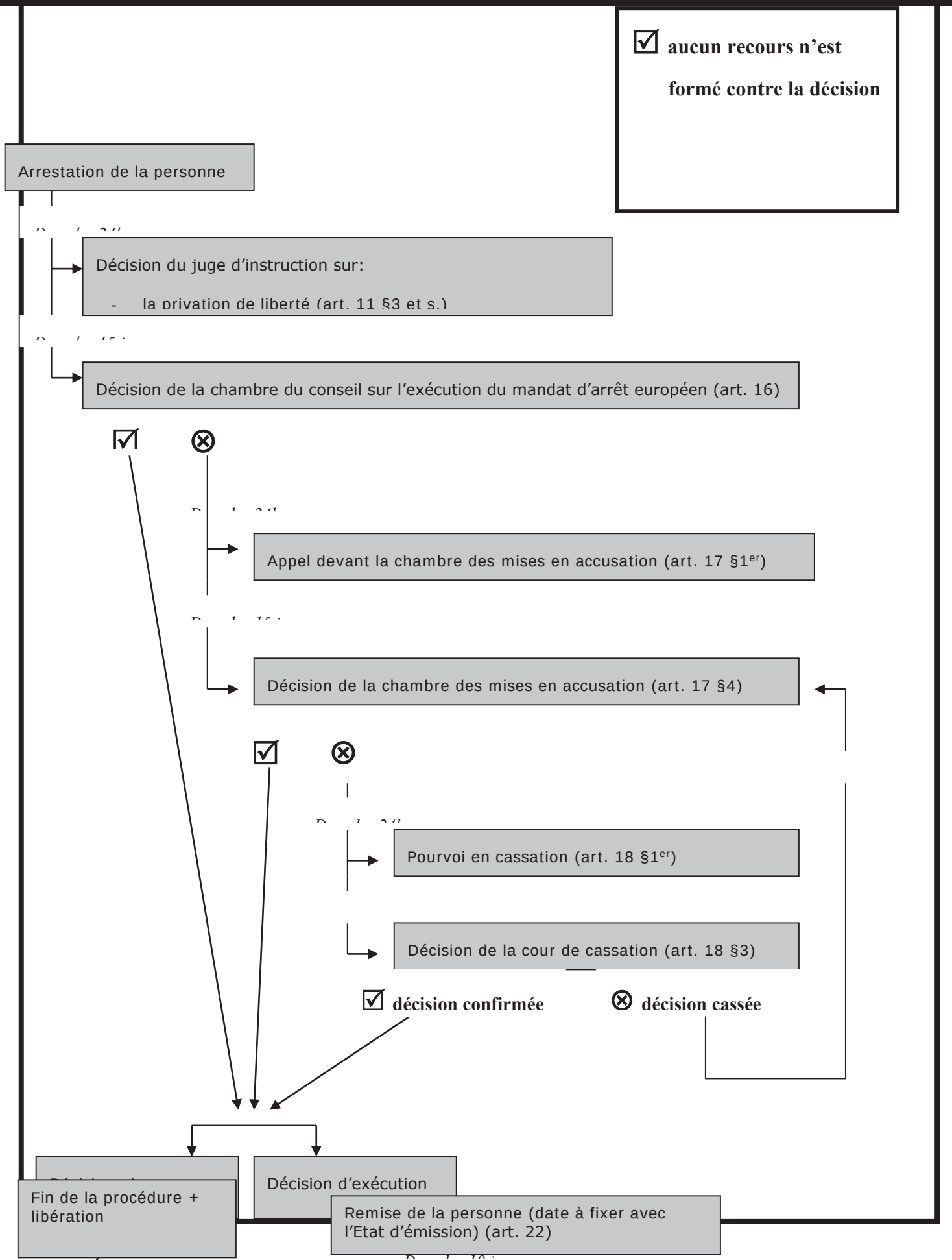
– the dissemination of relevant information to all practitioners concerned;

– the possibility for practitioners to obtain advice and suggested solutions in complex cases;

– training that is, on the whole, suitable and well-organised;

– the establishment of forms of bilateral cooperation with other Member States, in particular neighbouring Member States;

– a determination to avoid situations of impunity, and to seek pragmatic solutions to often complex problems.



Arrestation de la personne

☑ **aucun recours n'est formé contre la décision**

Décision du juge d'instruction constatant l'existence d'une cause manifeste de refus et donc la non-

☑ ⊗

Appel devant la chambre des mises en accusation (art. 14§2)

3.1 – ANNEX C

IMPACT OF COVID-19

Summary of the measures taken by the competent authorities of the Kingdom of Belgium to ensure the functioning of the legal instruments covered by the evaluation while coping with the COVID-19 crisis

Introduction

After the coronavirus outbreak, as many other Member States, the Belgian government has adopted a series of measures in order to limit the spread of the COVID-19. The processing of international cooperation cases in criminal matters has also been influenced by these measures.

This Annex illustrates the approach followed by the Belgian competent authorities to cope with the difficulties arising from the impact of the COVID-19 crisis on the practical implementation of the legal instruments covered by the ninth round of mutual evaluations.

II. GENERAL PRECAUTIONARY MEASURES (INSIDE PRISONS, FOR SURRENDER, EXTRADITION AND TRANSFER)

Attention was drawn to the need for a good flow of information in order to be able to react accurately to rapidly changing situations. Direct contacts between competent authorities were prioritized and encouraged. If not possible or in case of urgency, the national focal point (Office of the Federal Public Prosecutor) was available 24/7. Attention was also drawn to the role of Eurojust and EJN : the national desk at Eurojust was encouraged to be involved as far as possible in order to ensure proper coordination with other Member States and EJN contact points were encouraged to be used complementarily to exchange practical information and best practices.

A list of contact points and specific procedures to follow for urgent and non-urgent requests (both passive and active) under different instruments of mutual recognition were included in specific guidelines in relation to COVID-19 given by the Board of General Prosecutors to the national prosecutors in charge of cross-border judicial cooperation in criminal matters. From the end of March 2020 to the end of June 2020, the application of the various international instruments, both active and passive, was limited to urgent requests.

Since June 2020, the processing of international cooperation cases in criminal matters remains impacted by travel limitations and the reduction of activities of Air Carriers. Due consideration is given to travel advices provided by the Ministry for Foreign Affairs (color code, special requirements such as quarantaine, tests, …etc). Besides, particular precautionary measures are applied by the police services in charge of the concerned person, in consultation with the issuing authorities. General measures (ex. Facial masks) are of application.

General precautionary measures have been established inside the prisons: detainees leaving or entering the prison are tested.

III. FRAMEWORK DECISION 2002/584/JHA ON THE EUROPEAN ARREST WARRANT (EAW)

Impact on the issuing of EAWs

In March 2020, some decisions to temporarily suspend the issuing of EAWs were taken on a case-by-case basis. By the end of March 2020, specific guidelines in relation to COVID-19 were adopted by the Board of General Prosecutors to the national prosecutors in charge of cross-border judicial cooperation in criminal matters. According to these guidelines, national prosecutors have been asked to put on hold non priority new EAWs and to wait before introducing them in the SIS system. More particularly, in case of a EAW issued for the purposes of prosecution, national prosecutors have been asked to put on hold non priority new EAWs.

Issuing of a new EAW for the purposes of executing a sentence or a detention order was only possible in case of certain serious offences[5].

These guidelines have been abrogated at the end of June 2020. As a consequence, the issuing of EAWs resumed without restrictions, taking duly into account obvious considerations in relation to health and security. Priority is given to persons in detention. A risk assessment is required before any mission of police officers outside Belgium can be granted (for instance to ensure the physical surrender/transfer of the person concerned to Belgium). Some difficulties/delays may still occur due to the fluctuating circumstances and rapidly evolving situation.

Impact on the execution of EAWs and postponement of the actual surrender

The execution of certain ongoing EAWs had been suspended on the basis of Art. 23 par. 4 of the Framework Decision. Both legal basis – Articles 23 par. 3 and para. 4 of the Framework Decision - are considered to be applicable to temporary suspend surrender. Only the effective surrender was considered to be suspended, meaning that the execution procedure itself (hearing of the person, decision on the execution, etc.) could in principle be handled normally. This was the case for reported persons who were randomly intercepted, for example during an identity check. For the persons with a known address of legal or habitual residence, the procedure was provisionally launched only in case of serious offences (see footnote 1).

Effective surrenders have resumed at the end of June 2020 taking duly into account obvious considerations in relation to health and security. Some practical difficulties/delays may still occur due to the fluctuating circumstances and rapidly evolving situation. Priority is given to persons in detention.

According to the current situation, physical surrender is assessed on a case-by-case basis and will only be carried out:

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[5] - Persons already in detention,

- Execution of prison sentences exceeding 5 years,
- Sentences for the following offenses / facts:
  - Serious offenses involving the use of violence, such as murder, manslaughter, assault with permanent incapacity for work, aggravated theft with violence, etc.,
  - Domestic violence,
  - Moral offenses (with regard to minors and adults),
  - Terrorist offenses,
- Sentences in cases in which there exist serious indications that the convicted person constitutes an immediate danger to society and/or to the victims.

- after a positive assessment on the feasibility of the transfer (risk assessment);

- if the person concerned can no longer be detained and there is a real risk of absconding;

- and provided the necessary precautionary measures are guaranteed.

To this day, no persons have been released on the basis of non-compliance with the deadlines[6]. To our knowledge, there has been one case in which the EAW has been revoked by the issuing authorities.

Transit

Transit requests may be addressed to the Central Authority of the Ministry of Justice. On a more practical level, prior consultation with the Belgian police will be necessary to set out the modalities of the transit and required intervention of the Belgian police services. The transit will only be allowed if an agreement can be reached on the practical modalities. This summer, Belgium has received more than the average number of transit requests. Recently, and following the resurgence of the pandemic in Europe, the number of transit requests addressed by Belgium to other countries is on the rise.

[6] If execution is not possible within this maximum period of 20 days, article 23 of the law of 19 December 2003 on the EAW allows the surrender to be suspended for serious humanitarian reasons, for example when there are valid reasons to believe that the surrender would manifestly endanger the life or health of the person concerned for the duration of the existence of those grounds. This is considered to be the case in the current corona pandemic.

IV. FRAMEWORK DECISION 2008/909/JHA 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

According to the above mentioned guidelines in relation to COVID-19 given by the Board of General Prosecutors to the national prosecutors at the end of March 2020 and abrogated in June 2020, all transfers were postponed, but certificates could still be issued and received between the competent authorities. Since June, all proceedings have resumed. Physical transfers of sentenced persons however are still not being executed by the Police. Only physical transfers with neighbouring countries (France and The Netherland) are performed.

V. FRAMEWORK DECISION 2008/947/JHA ON PROBATION AND ALTERNATIVE SANCTIONS AND FRAMEWORK DECISION 2009/829/JHA ON THE EUROPEAN SUPERVISION ORDER (ESO)

According to the above mentioned guidelines in relation to COVID-19 given by the Board of General Prosecutors, the new requests under these framework decisions were put on hold if the measures requested are not objectively urgent or if the urgency is not sufficiently justified.

When processing ongoing and urgent requests, Justice Centres (Maisons de Justice/Justitiehuizen) continued to appoint legal assistants but the practical modalities of contact between the legal assistants and the concerned persons were adapted in order to ensure social distancing (contacts via telephone and videoconference). Personal meetings were resumed in June 2020 if considered essential as regard to the guidance and supervision and as regard to the difficulties encountered by concerned persons.

Justice Centres in the Flemish part of the country dealt with three requests from the end of March 2020 to the end of June 2020, each based on a judgment from a Dutch court (one probation file and two work penalty files). From March 2020, twelve requests were received (two probation files and ten work penalty files).

ANNEX A: PROGRAMME FOR ON-SITE VISITS

PROGRAMME OF VISITS
BELGIUM, 21-24 JANUARY 2020

Tuesday 21 January 2020

Panel 1 **9.30 – 10.00**	**Introduction (welcome)**	
Venue: Justice FPS, Boulevard de Waterloo/ Waterloolaan 115, 1000 Brussels, Room 204	- Welcome (Erwin Dernicourt and Daniel Flore) - Presentation of the aims of the visit and of the evaluation team - Roundtable	Representatives of the Justice FPS: Daniel Flore, Steven Limbourg, Amandine Honhon, Jacqueline Maggio, Kris Van Opdenbosch, Clara Lambrey, Ghislain Levaux Representatives of the public prosecution service: Erwin Dernicourt, Isabelle De Tandt, Luc De Houwer, Thomas Lamiroy, Grace Van Beselaere, Elisabeth Dessoy EU evaluation team: Marjorie Bonn, Charlotte Rieger, Lise Chipault, Olivier Lenert, Jesca Beneder, Giovanna Giglio, Maria Bacova
Panel 2 **10.00 – 12.30**	**Legislative framework, role and interaction of those involved in mutual recognition**	
Venue: Justice FPS, Boulevard de Waterloo/ Waterloolaan 115, 1000 Brussels, Room 204	- Presentation of the general legislative framework for mutual recognition instruments (Daniel Flore) - Role of the Ghent Prosecutor-General's Office (Isabelle De Tandt) and the Federal Public Prosecutor's Office (Thomas Lamiroy, Luc De Houwer) - Questions	Representatives of the Justice FPS: Daniel Flore, Steven Limbourg, Amandine Honhon, Jacqueline Maggio, Kris Van Opdenbosch, Clara Lambrey, Ghislain Levaux Public prosecution service: Erwin Dernicourt, Isabelle De Tandt, Luc De Houwer, Thomas Lamiroy, Grace Van Beselaere, Elisabeth Dessoy, Dirk Merckx EU evaluation team: Marjorie Bonn, Charlotte Rieger, Lise Chipault, Olivier Lenert, Jesca Beneder, Giovanna Giglio, Maria Bacova
13.00 – 14.30	Lunch (Les Petits Oignons restaurant)	

Panel 3 **14.30 – 17.00**	**Framework Decision 2008/909/JHA 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**	
Venue: Justice FPS, Boulevard de Waterloo/ Waterloolaan 115, 1000 Brussels, Room 204	- Legislative framework (Jacqueline Maggio) - Practical application as the issuing and executing authority (Kris Van Opdenbosch, Dirk Merckx) - Exchanges and discussions	Representatives of the Justice FPS: Steven Limbourg, Amandine Honhon, Jacqueline Maggio, Kris Van Opdenbosch, Clara Lambrey, Ghislain Levaux Public prosecution service: Isabelle De Tandt, Luc De Houwer, Thomas Lamiroy, Grace Van Beselaere, Elisabeth Dessoy, Dirk Merckx, Sophie Wolf EU evaluation team: Marjorie Bonn, Charlotte Rieger, Lise Chipault, Olivier Lenert, Jesca Beneder, Giovanna Giglio, Maria Bacova

Wednesday 22 January 2020

Panel 4 **9.30 – 12.30**	**Framework Decision 2002/584/JHA on the European arrest warrant (EAW)**	
Venue: Justice FPS, Boulevard de Waterloo/ Waterloolaan 115, 1000 Brussels, Room 204	- Legislative framework (Amandine Honhon) - The issue of judgments in absentia (Jan Van Gaever) - Practical experience (Sophie Wolf) - Exchanges and discussions	Representatives of the Justice FPS: Amandine Honhon, Jacqueline Maggio, Kris Van Opdenbosch, Clara Lambrey, Laurent Sempot Public prosecution service: Isabelle De Tandt, Luc De Houwer, Thomas Lamiroy, Grace Van Beselaere, Elisabeth Dessoy, Dirk Merckx, Jan Van Gaever, Sophie Wolf Investigating judge: Patrick Gaudius EU evaluation team: Marjorie Bonn, Charlotte Rieger, Lise Chipault, Olivier Lenert, Jesca Beneder, Giovanna Giglio, Maria Bacova
12.30 – 14.00	Lunch (organic – Justice FPS)	
Panel 5 **14.00 – 16.30**	**Link between Framework Decision 2002/584/JHA on the EAW and Framework Decision 2008/909/JHA on custodial sentences**	
Venue: Justice FPS, Boulevard de Waterloo/ Waterloolaan 115, 1000 Brussels, Room 204	- Practical experience (Dirk Merckx) - Exchanges and discussions	Representatives of the Justice FPS: Amandine Honhon, Jacqueline Maggio, Kris Van Opdenbosch, Clara Lambrey, Laurent Sempot Public prosecution service: Isabelle De Tandt, Luc De Houwer, Thomas Lamiroy, Grace Van Beselaere, Elisabeth Dessoy, Jan Van Gaever, Sophie Wolf EU evaluation team: Marjorie Bonn, Charlotte Rieger, Lise Chipault, Olivier Lenert, Jesca Beneder, Giovanna Giglio, Maria Bacova

Thursday 23 January 2020

Panel 6 **9.30 – 12.30**	**Framework Decision 2008/947/JHA on probation and Framework Decision 2009/829/JHA on alternative measures to provisional detention (ESO)**	
Venue: Justice FPS Boulevard de Waterloo/ Waterloolaan 115, 1000 Brussels, Room 204	- Legislative framework (Amandine Honhon) - Case studies from the judicial authorities (Sophie Wolf, Dirk Merckx) - Role and practice of the probation services - Exchanges and discussions	Representatives of the Justice FPS: Amandine Honhon, Jacqueline Maggio, Kris Van Opdenbosch, Clara Lambrey, Ghislain Levaux, Vicky De Souter Public prosecution service: Isabelle De Tandt, Grace Van Beselaere, Elisabeth Dessoy, Dirk Merckx, Sophie Wolf Representatives of the probation services: Caroline Vincent, Jean-Jacques Wondo, Pierre Reynaert, Tamara Küpper, Lore Laevers EU evaluation team: Marjorie Bonn, Charlotte Rieger, Lise Chipault, Olivier Lenert, Jesca Beneder, Giovanna Giglio, Maria Bacova
13.00 – 14.00	Lunch (Judicial Training Institute)	
Panel 7 **14.00 – 16.00**	**Presentation of training programmes for magistrates**	
Venue: Judicial Training Institute (Daltons room, 2nd floor, Avenue Louise/ Louizalaan 54, 1000 Brussels)	- Presentation of the Judicial Training Institute (Karin Carlens) - Training courses on international cooperation (Isabelle De Tandt) - Exchanges and discussions	Representatives of the Justice FPS: Amandine Honhon, Jacqueline Maggio, Kris Van Opdenbosch, Clara Lambrey, Ghislain Levaux Public prosecution service: Isabelle De Tandt, Luc De Houwer, Grace Van Beselaere, Elisabeth Dessoy Judicial Training Institute: Karin Carlens, Jos De Vos EU evaluation team: Marjorie Bonn, Charlotte Rieger, Lise Chipault, Olivier Lenert, Jesca Beneder, Giovanna Giglio, Maria Bacova

Panel 8 **16.00 – 17.00**	**Exchanges and discussions on the visit as a whole**	Representatives of the Justice FPS: Amandine Honhon, Jacqueline Maggio, Kris Van Opdenbosch, Clara Lambrey, Ghislain Levaux Public prosecution service: Isabelle De Tandt, Grace Van Beselaere, Elisabeth Dessoy, Luc De Houwer EU evaluation team: Marjorie Bonn, Charlotte Rieger, Lise Chipault, Olivier Lenert, Jesca Beneder, Giovanna Giglio, Maria Bacova
17.00 – 18.30	Briefing by the EU evaluation team with a view to presenting the preliminary findings of the evaluation	

Friday 24 January 2020

Panel 9 **9.30 – 11.00**	**Preliminary findings**	
Venue: Justice FPS Boulevard de Waterloo/ Waterloolaan 115, 1000 Brussels, Room 204	- Presentation of the experts' conclusions and recommendations for Belgium (EU evaluation team) - Questions	Representatives of the Justice FPS: Daniel Flore, Steven Limbourg, Amandine Honhon, Jacqueline Maggio, Kris Van Opdenbosch, Clara Lambrey, Ghislain Levaux Public prosecution service: Isabelle De Tandt, Luc De Houwer, Thomas Lamiroy, Grace Van Beselaere, Elisabeth Dessoy EU evaluation team: Marjorie Bonn, Charlotte Rieger, Lise Chipault, Olivier Lenert, Jesca Beneder, Giovanna Giglio, Maria Bacova

ANNEX B: PERSONS INTERVIEWED/MET

Karin Carlens – Magistrate – International affairs – Judicial Training Institute

Luc De Houwer – Federal magistrate – Federal Public Prosecutor's Office

Vicky De Souter – Justice FPS – Attaché – Criminal Directorate – Legislation Directorate

Isabelle De Tandt – Deputy Prosecutor-General – Ghent Prosecutor-General's Office

Jos De Vos – Judicial Training Institute

Erwin Dernicourt – Prosecutor-General – Ghent Prosecutor-General's Office

Elisabeth Dessoy – Advocate-General – Liège Prosecutor-General's Office

Daniel Flore – Justice FPS – Director-General – Legislation Directorate

Patrick Gaudius – Investigating judge – Brussels

Amandine Honhon – Justice FPS – Attaché – Criminal Directorate – Legislation Directorate

Tamara Küpper – Flemish Community – Director – Department of Welfare, Public Health and Family – Justice Centres (Justitiehuizen) Division

Lore Laevers – Flemish Community – Policy officer – Department of Welfare, Public Health and Family – Justice Centres (Justitiehuizen) Division

Clara Lambrey – Justice FPS – Attaché – Criminal Directorate – Legislation Directorate

Thomas Lamiroy – Federal magistrate – Federal Public Prosecutor's Office

Ghislain Levaux – Justice FPS – Attaché – Legislation Directorate

Steven Limbourg – Justice FPS – Director – Criminal Directorate – Legislation Directorate

Jacqueline Maggio – Justice FPS – Attaché – Criminal Directorate – Legislation Directorate

Dirk Merckx – First deputy public prosecutor – Brussels Public Prosecutor's Office

Pierre Reynaert – French Community – Director – General Administration of Justice Centres (Maisons de Justice)

Laurent Sempot – Justice FPS – Attaché – Prisons Directorate

Grace Van Beselaere – First deputy public prosecutor – Bruges Public Prosecutor's Office

Jan Van Gaever – Advocate-General – Brussels Prosecutor-General's Office

Kris Van Opdenbosch – Case manager – Justice FPS (central authority)

Caroline Vincent – French Community – Legal attaché – General Administration of Justice Centres (Maisons de Justice)

Jean-Jacques Wondo Omanyundu – French Community – Attaché – General Administration of Justice Centres (Maisons de Justice)

Annex C: List of abbreviations/glossary of terms

List of acronyms, abbreviations and terms	Belgian term/term in original language	Belgian acronym/acronym in original language	English
Justice FPS	Service Public Fédéral Justice	SPF Justice	Justice Federal Public Service
FD	Décision-cadre	DC	Framework Decision
EAW	Mandat d'arrêt européen	MAE	European arrest warrant
SIRENE	Instances nationales chargées de l'échange de toutes les informations supplémentaires	SIRENE	Supplementary Information Request at the National Entries
SIS II	Système d'information Schengen de deuxième génération	SIS II	Second generation Schengen Information System
JES	Juge de l'application des peines/Strafuitvoeringsrechter	JAP	Judge for the enforcement of sentences
CES	Tribunal de l'application des peines/Strafuitvoeringsrechtbank	TAP	Court for the enforcement of sentences
EJN	Réseau Judiciaire européen	RJE	European Judicial Network
CEP	Confédération européenne de la probation	CEP	Confederation of European Probation
EuroPris	l'Organisation européenne des services pénitentiaires et correctionnels	EuroPris	European Organisation of Prison and Correctional Services

List of acronyms, abbreviations and terms	Belgian term/term in original language	Belgian acronym/acronym in original language	English
CJEU	Cour de justice de l'Union européenne	CJUE	Court of Justice of the European Union