

BELGIUM – national procedures for transfer of sentenced persons
Updated 18/05/2015

The information contained in this table should be updated on a yearly basis.

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| The Central Authority (name of the institution, address, telephone, fax and e-mail where available) responsible for the transfer of sentenced persons: | <p>Federal Public Service Justice</p> <p>Directorate General Legislation, Fundamental Rights and Freedoms</p> <p>Central Authority International Cooperation in Criminal Matters</p> <p>115, Boulevard de Waterloo</p> <p>1000 Brussels – Belgium</p> <p>Central e-mail: centralauthority_iccm@just.fgov.be</p> <p>Central Fax number: +32 2 542 71 95</p> |
| If different from the Central Authority, the authority to which the request should be sent (name of the institution, address, telephone, fax and e-mail where available): | <p>Requests under the CoE instruments are exclusively dealt with by the Belgian Central Authority</p> |
| If different from the Central Authority, the Authority/ies in charge of coordinating and/or implementing the physical transfer of the person concerned (name of the institutions, address, telephone, fax and e-mail where available): | <p>The Belgian Central Authority handles the transfer by instructing the prosecutor's office for Brussels who then instructs the National Airport Police to arrange and to execute the transfer – via police (Interpol) channels.</p> |
| Channels of communication for the request for the transfer of sentenced persons (directly, through | <p>All incoming and outgoing transfer requests pass through the Central Authority.</p> <p>Diplomatic or direct transfers are not applied.</p> |

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| diplomatic channels or other): | |
| Means of communication (e.g. by post, fax, e-mail ¹): | All means of communication are applied. Transfer requests and the formal replies to these requests (consent or denial) are documents transmitted via post, unless other means of communication are agreed upon. All communications <i>during</i> the transfer process can be e-mail messages between the Central Authorities. |

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| Language requirements: | Belgium requires either a French or a Dutch translation of the transfer request and the documents in support. |
| Documentation required: | Belgium does not require any other documents than those required under the applicable instrument. For transfer request addressed to Belgium, time and effort is saved when up to date contact details of the sentenced person's family are included. These are required in order to assess the social rehabilitation perspectives. |
| Continued enforcement or conversion of the sentence ² : | Belgium applies the continued enforcement procedure. Sentences exceeding the maximum penalty for the offence (possibly re-qualified) in abstracto, will be adapted to that maximum. |
| General rules on early release: | In a nutshell: the application of most modalities of the execution of sentences involving deprivation of liberty (excluding the committal in a psychiatric wing of a prison or a psychiatric ward) with a duration of over 3 years is an exclusive competence of the <i>court for the application of sentences</i> . |

¹ Please indicate if encryption or electronic signature is required.

² In case the sentence is converted, please specify whether this is done before or after the transfer has taken place.

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| | <p>Of those modalities, the conditional release is the ‘final’ modality. Other modalities include the conditional release for the purpose of expulsion or surrender (under the extradition scheme or under the EAW-system), partial detention and temporary release (leave from prison) either for specific compelling reasons or on a regular basis and electronic surveillance. Each modality has a specific time-condition.</p> <p>Each decision with respect to any of the applicable modalities is taken on a purely case-by-case base. The essential guiding principle is the perspective for re-integration which requires the sentenced person to provide substantial and sufficient reasons to believe that the application of a modality.</p> <p>For a more comprehensive overview: see the separate factsheet on the law and practise on conditional release, including other modalities on the execution of sentences.</p> |
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| <p>Scope of application with regard to transfer of mentally disordered persons:</p> | <p>Mentally disordered offenders are essentially treated in the same way under the transfer instruments of the CoE and the Belgian Transfer legislation (1990, amended in 2005).</p> <p>Mentally ill offenders are always committed for a undetermined delay, this is a major difference from prison sentences.</p> <p>Belgium cannot accommodate mixed ‘sanction’ systems applied in some countries that are based on a notion of <i>partial</i> incapacity and impose a combination of a prison sentence and a committal-type of measure (involving therapy). In those cases, Belgium can only transfer the mentally ill offender after the first part of the mixed sanction, the sentence, is (fully) executed, thus limiting the transfer to committal measure.</p> |
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| <p>Scope of application with regard to nationals and/or residents:</p> | <p>Residents having sufficient (legal) ties to Belgium can be considered as being ‘nationals’ in the sense of the CoE instruments.</p> |
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| <p>Other particularly relevant information (such as practice regarding time limits or revocation of consent):</p> | <p>Consent can be revoked at any time.</p> <p>There are no time limits in the Belgian transfer law. Incoming transfer requests are treated within the shortest possible timeframe. The process does not require a ministerial decision (decree).</p> <p>Outgoing request require less procedural steps, since – generally – no assessment is made of the perspectives for re-integration.</p> |
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| <p>Links to national legislation, national guides on procedure:</p> | <p>www.just.fgov.be</p> |
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| <p>Link to information about the Convention (according to Article 4) in the official language(s) of the State Party (see also Rec. R (84) 11 of the Committee of Ministers concerning information about ETS°112 and PC-OC INF 12):</p> | <p>www.just.fgov.be</p> |
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| <p>For Parties to the Additional Protocol</p> | |
| <p>Information on the implementation of Article 2 (e.g. interpretation of “by fleeing to”):</p> | <p>Article 2 is interpreted and applied in accordance with or at least similarly to article 68 Schengen Agreement.</p> <p>‘Flight’ is considered as any wilful means to avoid the (continued) application of the sentence. This includes inter alia: escape from prison or another law enforcement facility, not returning from temporary leave from prison, violating the conditions of conditional release (leaving the sentencing State), etc. In every case an ‘article 2 request’ is made, Belgium includes the legal and factual elements to substantiate the</p> |

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| | <p>'flight' condition of article 2.</p> <p>In case 'flight' ('fleeing to') cannot be established, a request for the transfer of the execution of sentences, the request is based on the 1970 International Validity of Criminal Judgments (ETS n° 070).</p> |
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| <p>Information on the implementation of Article 3 (e.g. interpretation of the requirement of a consequential link between the decision on expulsion and the sentence):</p> | <p>Belgium does not require a clear consequential link between the conviction and the illegal status of the person.</p> |
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| <p>Documentation required:</p> | <p>Apart from the documents required under CETS n° 112, a document regarding the illegal status of the sentenced person and an order to remove that person from the sentencing State's territory is required.</p> |
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| <p>Other relevant information:</p> | <p>Sentenced persons may request their transfer from Belgium as many times as they want.</p> <p>When considering transfer requests, the interests of victims and the execution of other sentences or measures such as the payment of fines, the execution of confiscation orders and the payment of damages to the victims are taken into account on a case-by-case basis. As a general rule, in matters that have had a serious impact on the victims (violent crime including murder or sexual offences) or that had a significant impact on State's interests (terrorism, organized crime, serious fraud), the fulfilment of financial obligations has more weight in the consideration of outgoing transfer requests.</p> <p>Requests made for the (sole) purpose of obtaining a (perceived) more lenient execution of the sentence – i.e. for the purpose of obtaining earlier release, are not granted.</p> |