

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

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**Country: Austria**

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## Section A: General information on existing situation: probation measures, alternative sanctions and supervision measures as an alternative to pre-trial detention

Please add the information required to answer the questions. Provide supporting or explanatory information – highlighting laws, policies and measures which justify the answer.

### Q1. Please outline the specific probation measures or alternative sanctions that are available at the post-trial stage in the Member State on which you are reporting:

In case an offender is sentenced to an imprisonment not exceeding two years, the entire custody (§43 Criminal Code, StGB<sup>1</sup>) or parts of custody (§43a StGB) may be suspended (*bedingte Verurteilung*). It is required, however, that the mere threat of enforcement suffices to prevent the offender from committing further punishable acts, and that the execution of the sentence is not required to prevent further criminal acts by others. Suspending preventive measures (*Bedingte Nachsicht von vorbeugenden Maßnahmen*) is possible under certain circumstances according to §45 (1) StGB. Conditional release (*bedingte Entlassung aus einer Freiheitsstrafe*) is possible according to §46 StGB, conditional release from a preventive measure including detention (*Entlassung aus einer mit Freiheitsentziehung verbundenen vorbeugenden Maßnahme*) is possible according to §47 StGB.

A probation has to be foreseen in case of suspended custody and conditional release according to §48 StGB. Depending on the circumstances the probation lasts one to ten years.

Furthermore, according to § 156b et seqq. Penitentiary System Act (*Strafvollzugsgesetz - StVG*)<sup>2</sup> electronic monitored home curfew (*elektronisch überwachter Hausarrest*) is possible under certain circumstances.<sup>3</sup>

<sup>1</sup> Austria, Criminal Code (*Bundesgesetz vom 23. Jänner 1974 über die mit gerichtlicher Strafe bedrohten Handlungen, Strafgesetzbuch - StGB*), BGBl. Nr. 60/1974, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002296](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002296).

<sup>2</sup> Austria, Penitentiary System Act (*Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen (Strafvollzugsgesetz - StVG)*), BGBl. Nr. 144/1969, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002135](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002135).

<sup>3</sup> Austria, Decree on the execution of punishments by way of electronically monitored house arrest (*Verordnung der Bundesministerin für Justiz über den Vollzug von Strafen und der Untersuchungshaft durch elektronisch überwachten Hausarrest (HausarrestV)*), available at: [www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2010\\_II\\_279/BGBLA\\_2010\\_II\\_279.html](http://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2010_II_279/BGBLA_2010_II_279.html).

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

Alternatives to pre-trial detention are laid down in § 173 (5) Criminal Procedures Act (*Strafprozessordnung*<sup>4</sup>, StPO). The following nine alternatives are listed:

- The vow (*Gelöbnis*) to not flee the country or hide until finishing the criminal proceedings and not to leave the place of residence without permission of the prosecutor.
- The vow not to do anything to hamper prosecution.
- In case of domestic violence the vow not to get in contact with the victim and follow the rulings not to access living areas and hand out all keys.
- The order to live at a certain place with a certain family, not to get in contact with certain apartments, places or persons, to refrain from alcohol or other drugs and to conduct regular work
- The order to inform the courts about any change of residence and to regularly report to the criminal police or other authorities.
- Preliminary probation (*Bewährungshilfe*)
- Giving a security payment according to §§ 180 and 181 StPO.
- Upon approval of the accused the order to agree on drug therapy, medical treatment or psychotherpaie or another health related measure.

§173a StPO provides for the electronically monitoring house arrest at the pre-trial stage.<sup>5</sup>

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<sup>5</sup> See also Austria, Decree on the execution of punishments by way of electronically monitored house arrest (*Verordnung der Bundesministerin für Justiz über den Vollzug von Strafen und der Untersuchungshaft durch elektronisch überwachten Hausarrest (HausarrestV)*), available at: [www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA\\_2010\\_II\\_279/BGBLA\\_2010\\_II\\_279.html](http://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2010_II_279/BGBLA_2010_II_279.html).

**Q3. Are there any specific legislative or policy developments regarding alternatives to prison (at the pre- and post-trial stage) of particular suspects/sentenced persons (such as children, persons with disabilities, persons in need of special treatment or mothers with young children)?**

According to § 5 of the Youth Court Act (*Jugendgerichtsgesetz, JGG*)<sup>6</sup> the maximum prison sentences are lower for youth than for adults. Instead of a life long sentence the maximum prison sentence amounts to 15 years, if the act was conducted after finalising the 16<sup>th</sup> year of age. In case the act was committed before, the maximum prison sentence amounts to 10 years. Instead of imprisonment between 10 to 20 years the range lies between six months and ten years. All other sentences are reduced to half of the sentence and there is no minimum punishment. The young person is only to be taken in imprisonment on remand (*Untersuchungshaft*) in case it is not excessive in relation to the personal development and further development of the young person and the act committed, as well as to the penalty expected.

§ 7 JGG generally refers to section 11 of the StPO on “Diversion”, but § 8 (1) to (4) JGG provides special provisions for the application of this section for youth offences (e.g., paying money to the state shall only be proposed if it may well be assumed that the money is paid by the indicted person himself/herself and if it may well be assumed that the payment does not affect the personal advancement of this person).

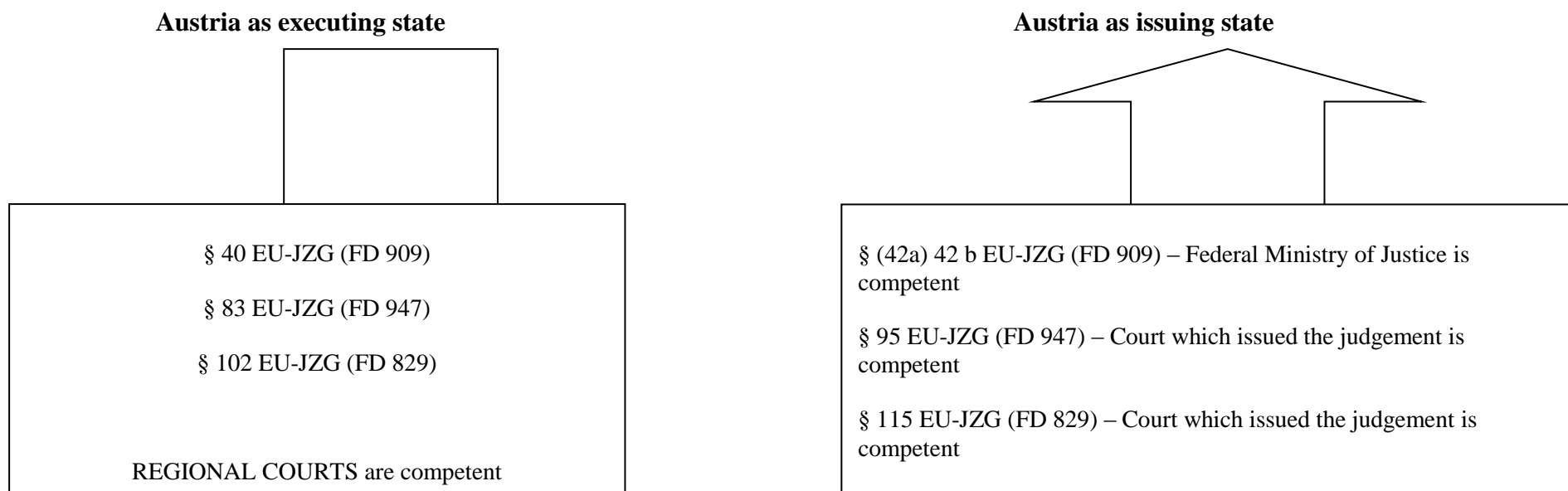
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<sup>6</sup> Austria, Youth Court Act (*Bundesgesetz vom 20. Oktober 1988 über die Rechtspflege bei Jugendstraftaten - Jugendgerichtsgesetz 1988 - JGG*), BGBl. Nr. 599/1988 last amended by BGBl I Nr. 13/2015, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002825](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002825).

## Section B: Transfer of suspects/sentenced persons

Preliminary note: The following graphics showing the competences for the framework decisions 909, 947 and 829 illustrates the problem the project team had in gathering information for this service request. As can be seen below in the overview of relevant provisions of the Act on judicial cooperation in criminal matters with EU member states (EU-JZG)<sup>7</sup>, in most of the cases the courts are competent to deal with the issues of the FDs directly. This means that a (still) rather small number of cases is spread across a large number of judges in Austria. In the Security Report of the Federal Ministry of the Interior data is provided regarding the number of requests for transfers. Numbers are available for the year 2013, in which 336 requests were filed by Austria (316 of those to Member States of the EU). The quota of de facto conducted transfers is rather low with 30% in 2013.<sup>8</sup> No data is available regarding the other proceedings.

This diagnosis on the difficulty to gather information in the subject matter of this service request was also confirmed in an interview with members of the prosecution in Graz. Members of the prosecution stated that it will hardly be possible to find judges who dealt with more than a very few cases and could provide valuable information and insights on how those proceedings are conducted in practice.<sup>9</sup>



Please give a response for each of the boxes. If the information is the same in two boxes, duplicate the text. If the question is not applicable, specify why.

<sup>7</sup> Austria, Act on judicial cooperation in criminal matters with EU member states (*Bundesgesetz über die justizielle Zusammenarbeit in Strafsachen mit den Mitgliedstaaten der Europäischen Union - EU-JZG*), BGBl. I Nr. 36/2004, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003339](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003339).

<sup>8</sup> Austria, Bundesministerium für Inneres (2015), *Sicherheitsbericht 2013*, available at: [www.bmi.gv.at/cms/BMI\\_Service/SB\\_2013/04\\_Justizteil\\_2013.pdf](http://www.bmi.gv.at/cms/BMI_Service/SB_2013/04_Justizteil_2013.pdf), p. 197.

<sup>9</sup> Representatives of the prosecution.

TOPIC	FD 2008/909	FD 2008/947	FD 2009/829 (ESO)
<b>Q1. AVAILABILITY OF INFORMATION</b>			
Q1.1. Is information publicly available in ‘issuing states’ concerning the following:? If yes, please specify.			
<ul style="list-style-type: none"> <li>What information is provided (e.g. conditions for early release for FD 909 or the need for a suspect/sentenced person’s consent to a measure for FD 947 and 829)?</li> </ul>	<p>The relevant law (EU-JZG) implementing the framework decision is publicly available. Apart from this legal information, no further information is provided publicly.</p>	<p>The relevant law (EU-JZG) implementing the framework decision is publicly available. Apart from this legal information, no further information is provided publicly.</p>	<p>The relevant law (EU-JZG) implementing the framework decision is publicly available. Apart from this legal information, no further information is provided publicly.</p>
<ul style="list-style-type: none"> <li>How is the information made publically available (tools, or networks used)?</li> </ul>	<p>Legal information database, available at <a href="http://www.ris.bka.gv.at">www.ris.bka.gv.at</a>.</p>	<p>Legal information database, available at <a href="http://www.ris.bka.gv.at">www.ris.bka.gv.at</a>.</p>	<p>Legal information database, available at <a href="http://www.ris.bka.gv.at">www.ris.bka.gv.at</a>.</p>
<ul style="list-style-type: none"> <li>In which languages is the information provided?</li> </ul>	<p>German</p>	<p>German</p>	<p>German</p>
<p>Q1.2. Apart from the competent authorities required by the FDs, is there any other national office or point of contact responsible for leading initial discussions about potential transfers (as issuing and executing state)? If yes, please provide brief details.</p>	<p>In § 40 a EU-JZG the regional courts are listed as competent authorities. Apart from that no other contact points are listed.</p>	<p>According to § 83 EU-JZG the regional courts are materially competent. Local competency is decided on the place where the convicted has his place of residence or permanent stay or in the cases of no permant residence within Austria the place where the “special bond” (<i>besondere Bindung</i>) is established (§ 83 (2) EU-JZG. Apart from that no other contact points are listed.</p>	<p>According to § 102 EU-JZG the regional courts are material competent. Local competency is decided on the place where the convicted has his place of residence or permanent stay or in the cases of no permant residence within Austria the place where the “special bond” (<i>besondere Bindung</i>) is established. Apart from that no other contact points are listed.</p>

<p>Q1.3. Do the competent authorities collate information about their experience of transfers (such as personal data of the suspect/sentenced person, states involved, issues raised during the transfer process)? If yes, specify the information gathered.</p>	<p>The only data available was already mentioned above regarding Austria as the issuing state for FD 909. The numbers are available for 2013 only, where 336 requests were filed by Austria (316 of those to Member States of the EU). The quota of de facto conducted transfers is rather low with 30% in 2013.<sup>10</sup></p> <p>The Federal Ministry of Justice is the national agency for outgoing requests on the basis of of the Council Framework Decision of 27 November 2008 2008/909 / JHA. The Ministry keeps statistics on requests for transfers made in other EU member states. This statistics includes personal data of the convicted person, the competent authority of the executing state, the legal basis for the transfer, the outcome of the request and the duration of the proceedings. In case the execution of the judgement is not taken over by the state requested , or in case the refusal is withdrawn, the respective reason for this decision is also recorded in this statistics.<sup>11</sup></p>	<p>The interviewed member of the prosecution stated, that the electronic data proceeding system of the judiciary (<i>Verfahrensautomation Justiz</i>) would generally allow to identify proceedings by stating the relevant norms for decision (in this case the norms of the EU-JZG). However the interviewee had doubts that data proceeding system of the judiciary is already filled in properly by the executing staff.</p> <p>The Federal Ministry of Justice clarified that the electronic data proceeding system of the judiciary (<i>Verfahrensautomation Justiz</i>) provides for the possibility to include requests by other member states since 22 April 2015.<sup>12</sup></p>	<p>The interviewed member of the prosecution stated, that the electronic data proceeding system of the judiciary (<i>Verfahrensautomation Justiz</i>) would generally allow to identify proceedings by stating the relevant norms for decision (in this case the norms of the EU-JZG). However the interviewee had doubts that data proceeding system of the judiciary is already filled in properly by the executing staff.</p> <p>The Federal Ministry of Justice clarified that the electronic data proceeding system of the judiciary (<i>Verfahrensautomation Justiz</i>) provides for the possibility to include requests by other member states since 22 April 2015.<sup>13</sup></p>
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<sup>10</sup> Austria, Bundesministerium für Inneres (2015), *Sicherheitsbericht 2013*, available at: [www.bmi.gv.at/cms/BMI\\_Service/SB\\_2013/04\\_Justizteil\\_2013.pdf](http://www.bmi.gv.at/cms/BMI_Service/SB_2013/04_Justizteil_2013.pdf), p. 197.

<sup>11</sup> Representative of the Austrian Federal Ministry of Justice.

<sup>12</sup> Representative of the Austrian Federal Ministry of Justice.

<sup>13</sup> Representative of the Austrian Federal Ministry of Justice.



TOPIC	FD 2008/909	FD 2008/947	FD 2009/829 (ESO)
<b>Q2. INFORMED CONSENT OF THE SUSPECT/SENTENCED PERSON</b>			
<p>Q2.1. Is there a procedure in the issuing state (e.g. some form of mechanism that ensures it is done in all relevant cases) in place to inform the suspect/sentenced person of the option to transfer the judgment or decision to another Member State? If yes, please briefly provide information (e.g. is it an oral or written procedure) and specify who provides this information.</p>	<p>In the legal provisions there is no regulation on information about such options.</p> <p>According to § 42a EU-JZG the head of the institution has to make a protocol on the convicted persons declaration regarding his/her transfer to the executing state without delay, if the prerequisites for execution in another member state (potentially) apply. In this statement the exact place of housing or the permanent stay of the convicted person in the executing state have to be recorded. Furthermore, it has to be noted down whether there is a national judgment regarding repulsion or a prohibition to stay. This protocol has to be given to the Federal Ministry of Justice to check for obtaining the execution in the other state.</p>	<p>According to § 95 (1) EU-JZG the convicted person is to be heard regarding the plan to transfer the supervision to another member state.</p> <p>No information on the practical implementation of this provision could be identified.<sup>16</sup></p>	<p>According to § 115 (1) EU-JZG the affected person is to be heard when it is decided that another member state should be tasked with supervision of alternative measures.</p> <p>No information on the practical implementation of this provision could be identified.<sup>17</sup></p>

<sup>16</sup> Please note that there is neither literature nor a commentary available on these provisions. Furthermore as stated above it was not feasible to identify judges who already worked on these issues.

<sup>17</sup> Please note that there is neither literature nor a commentary available on these provisions. Furthermore as stated above it was not feasible to identify judges who already worked on these issues.

	<p>The clear approval or rejection of the convicted about such a transfer has to be noted in this protocol.<sup>14</sup></p> <p>According to § 42b (10) EU-JZG the convicted person imprisoned in Austria is to be informed in an for him/her understandable language about the implementation of execution of the sentence in the other country using the form provided in attachment VIII of the EU-JZG.</p> <p>In practice this protocol is conducted by using forms in various languages, on which the sentenced person has to state his/her opinion on the transfer.<sup>15</sup></p>		
<p>Q2.2. Is there a procedure in place in the issuing state to obtain the informed consent of the suspect/sentenced person before forwarding the judgment or decision to the executing state? (e.g. a pre-prepared written explanation of the process available in a number of languages). If yes, please briefly specify what information the suspect/sentenced person receives (e.g. information on appeal and release possibilities).</p>	<p>According to § 42a EU-JZG the head of the institution has to make a protocol on the convicted persons declaration regarding his/her transfer to the executing state without delay, if the prerequisites for execution in another member state (potentially) apply. In this statement the exact place of housing or the permanent stay of the convicted person in the</p>	<p>According to § 95 (1) EU-JZG the convicted is to be heard regarding the plan to transfer the supervision to another member state.</p> <p>Transfer of supervision to another state is only applicable according to the legal materials, if either the person has already returned to the other state or</p>	<p>According to § 115 (1) EU-JZG the affected person is to be heard when it is decided that another member state should be tasked with supervision of alternative measures.</p> <p>Generally speaking, transfer is only to be considered if the person has his/her residence or permanent stay in the other country. An</p>

<sup>14</sup> Hinterhofer, H., (2013), ‘§ 42a. Rolle des Anstaltsleiters’, in: Höpfel, F., Ratz, E., (eds.), *Wiener Kommentar zur StGB (online version)*, Rz 2.

<sup>15</sup> Representative of the prison Graz-Karlau.

	<p>executing state have to be recorded. Furthermore, it has to be noted down whether there is a national judgment regarding repulsion or a prohibition to stay. This protocol has to be given to the Federal Ministry of Justice to check for obtaining the execution in the other state.</p> <p>The clear approval or rejection of the convicted about such a transfer has to be noted in this protocol.<sup>18</sup></p> <p>In practice this protocol is conducted by using forms in various languages, on which the sentenced person has to state his/her opinion on the transfer.<sup>19</sup></p>	wants to return. Exception to this rule is only given, if the state declares to want to do supervision although not all requirements are given (§ 95 (2)). <sup>20</sup>	exception to this rule is only possible if the other member state nonetheless is willing to take over supervision (§ 115 (2) EU-JZG).
Q2.3. Does the suspect/sentenced person have the right to revoke his/her consent to the transfer in the issuing state? If yes, please briefly specify until which stage of the procedure this right exists.	No. No provision foreseen by law.	No provision foreseen by law.	No provision foreseen by law.
Q2.4. Is there any procedure in place in the issuing state to obtain the opinion of the sentenced person concerning the following:? If yes, please briefly specify e.g. is it an oral	According to § 42a EU-JZG the head of the institution has to make a protocol on the convicted persons declaration regarding his/her transfer to the executing state		

<sup>18</sup> Hinterhofer, H., (2013), ‘§ 42a. Rolle des Anstaltsleiters’, in: Höpfel, F., Ratz, E., (eds.), *Wiener Kommentar zur StGB (online version)*, Rz 2.

<sup>19</sup> Representative of the prison Graz-Karlau.

<sup>20</sup> Austria (2013), Erlass vom 14. August 2013 über das Bundesgesetz, mit dem das EU-JZG, das ARHG und das Wohnhaus-Wiederaufbaugesetz geändert werden (EU-JZG – ÄndG 2013, Einführungserlass, available at: [www.ris.bka.gv.at/Dokumente/Erlaesse/ERL\\_07\\_000\\_20130814\\_001\\_S751003\\_13\\_IV2\\_13/07\\_20130814\\_S75100313IV213\\_01.pdf](http://www.ris.bka.gv.at/Dokumente/Erlaesse/ERL_07_000_20130814_001_S751003_13_IV2_13/07_20130814_S75100313IV213_01.pdf).

<p>or a written procedure, are there any checks on actual understanding of the option).</p>	<p>without delay, if the prerequisites for execution in another member state (potentially) apply. In this statement the exact place of housing or the permanent stay of the convicted person in the executing state have to be recorded. Furthermore, it has to be noted down whether there is a national judgment regarding repulsion or a prohibition to stay. This protocol has to be given to the Federal Ministry of Justice to check for obtaining the execution in the other state.</p> <p>The clear approval or rejection of the convicted about such a transfer has to be noted in this protocol.<sup>21</sup></p> <p>According to § 42b (10) EU-JZG the convicted person imprisoned in Austria is to be informed in an for him/her understandable language about the implementation of execution of the sentence in the other country using the form provided in attachment VIII of the EU-JZG.</p>		
<ul style="list-style-type: none"> <li>• When consent is not required)?</li> </ul>	<p>According to § 42a EU-JZG the head of the institution has to make a protocol on the convicted persons declaration regarding his/her transfer to the executing state</p>		

<sup>21</sup> Hinterhofer, H., (2013), ‘§ 42a. Rolle des Anstaltsleiters’, in: Höpfel, F., Ratz, E., (eds.), *Wiener Kommentar zur StGB (online version)*, Rz 2.

	<p>without delay, if the prerequisites for execution in another member state (potentially) apply. In this statement the exact place of housing or the permanent stay of the convicted person in the executing state have to be recorded. Furthermore, it has to be noted down whether there is a national judgment regarding repulsion or a prohibition to stay. This protocol has to be given to the Federal Ministry of Justice to check for obtaining the execution in the other state.</p> <p>The clear approval or rejection of the convicted about such a transfer has to be noted in this protocol.<sup>22</sup></p> <p>According to § 42b (10) EU-JZG the convicted person imprisoned in Austria is to be informed in an for him/her understandable language about the implementation of execution of the sentence in the other country using the form provided in attachment VIII of the EU-JZG.</p>		
<ul style="list-style-type: none"> <li>• When consent is required, Article 6 (3) of FD 2008/909/JHA).</li> </ul>	<p>According to § 42a EU-JZG the head of the institution has to make a protocol on the convicted persons declaration regarding his/her transfer to the executing state</p>		

<sup>22</sup> Hinterhofer, H., (2013), '§ 42a. Rolle des Anstaltsleiters', in: Höpfel, F., Ratz, E., (eds.), *Wiener Kommentar zur StGB (online version)*, Rz 2.

	<p>without delay, if the prerequisites for execution in another member state (potentially) apply. In this statement the exact place of housing or the permanent stay of the convicted person in the executing state have to be recorded. Furthermore, it has to be noted down whether there is a national judgment regarding repulsion or a prohibition to stay. This protocol has to be given to the Federal Ministry of Justice to check for obtaining the execution in the other state.</p> <p>The clear approval or rejection of the convicted about such a transfer has to be noted in this protocol.<sup>23</sup></p> <p>According to § 42b (10) EU-JZG the convicted person imprisoned in Austria is to be informed in an for him/her understandable language about the implementation of execution of the sentence in the other country using the form provided in attachment VIII of the EU-JZG..</p>		
<p>Q2.5. Does the suspect/sentenced person have the right to change his/her opinion on the transfer? If yes, please briefly specify until which stage of the procedure this right</p>	<p>There is no such right provided by law. The person's opinion on the transfer is asked for in the meeting with the head of the prison once.</p>		

<sup>23</sup> Hinterhofer, H., (2013), '§ 42a. Rolle des Anstaltsleiters', in: Höpfel, F., Ratz, E., (eds.), *Wiener Kommentar zur StGB (online version)*, Rz 2.

exists and how this is implemented in practice.			
Q2.6. Is the suspect/sentenced person assisted by a legal counsel in the issuing state? If yes, please provide details (e.g. is this legal advice provided face-to-face or over the telephone)	Legal aid is not provided at this stage, as there is no formal proceeding. The suspect/sentenced person is of course able to freely contact his/her attorney to be at his/her disposal. <sup>24</sup>	There is no explicit legal provision foreseen in the relevant law. No relevant information could be gathered in the course of interviews or information requests. Determining the practical procedures would require in-depth interviews with judges who dealt with such cases. This, however, is not feasible in the course of this service request for the reasons provided in the introductory statement.	There is no explicit legal provision foreseen in the relevant law. No relevant information could be gathered in the course of interviews or information requests. Determining the practical procedures would require in-depth interviews with judges who dealt with such cases. This, however, is not feasible in the course of this service request for the reasons provided in the introductory statement.
Q2.7. Is there a procedure in place to ascertain that the legal counsel speaks and understands the suspect/sentenced person's language in the issuing state? If yes, please specify.	No information found on this issue in the norms or the commentary.	No information found on this issue in the norms.	No information found on this issue in the norms.
Q2.8. Does the suspect/sentenced person have the right to legal aid in the issuing state?	No. According to information provided by the head of prison enforcement of the prison Graz-Karlau no legal aid is foreseen at this stage. <sup>25</sup>	There is no explicit legal provision foreseen in the relevant law. No relevant information could be gathered in the course of interviews or information requests. Determining the practical procedures would require in-depth interviews with judges who dealt with such cases. This, however, is not feasible in the course of this service request	There is no explicit legal provision foreseen in the relevant law. No relevant information could be gathered in the course of interviews or information requests. Determining the practical procedures would require in-depth interviews with judges who dealt with such cases. This, however, is not feasible in the course of this service request for the reasons

<sup>24</sup> Representative of the prison Graz-Karlau.

<sup>25</sup> Representative of the prison Graz-Karlau.

		for the reasons provided in the introductory statement.	provided in the introductory statement.
Q2.9. Is the suspect/sentenced person assisted by an interpreter in the issuing state, if required:			
<ul style="list-style-type: none"> <li>While consenting to the transfer?</li> </ul>	<p>The consent of the prisoner is asked for by way of a form in an understandable language for the sentenced person. No interpreter is used in one of the biggest prisons in Austria.<sup>26</sup></p> <p>Those forms are available in the following languages:</p> <p>Czech, Bulgarian, Estonian, Danish, German, Spanish, Finnish, French, Greek, Croatian, Hungarian, Dutch, Italian, Latvian, Lithuanian, Maltese, Slovenian, Portugese, Polish, English, Slovakian, Swedish, Romanian.<sup>27</sup></p>	<p>There is no explicit legal provision foreseen in the relevant law. No relevant information could be gathered in the course of interviews or information requests. Determining the practical procedures would require in-depth interviews with judges who dealt with such cases. This, however, is not feasible in the course of this service request for the reasons provided in the introductory statement.</p>	<p>There is no explicit legal provision foreseen in the relevant law. No relevant information could be gathered in the course of interviews or information requests. Determining the practical procedures would require in-depth interviews with judges who dealt with such cases. This, however, is not feasible in the course of this service request for the reasons provided in the introductory statement.</p>
<ul style="list-style-type: none"> <li>While requesting the transfer?</li> </ul>	<p>The consent of the prisoner is asked for by way of a form in an understandable language for the sentenced person. No interpreter is used in one of the biggest prisons in Austria.<sup>28</sup></p>	<p>There is no explicit legal provision foreseen in the relevant law. No relevant information could be gathered in the course of interviews or information requests. Determining the</p>	<p>There is no explicit legal provision foreseen in the relevant law. No relevant information could be gathered in the course of interviews or information requests. Determining the practical</p>

<sup>26</sup> Representative of the prison Graz-Karlau.

<sup>27</sup> Representative of the Austrian Federal Ministry of Justice.

<sup>28</sup> Representative of the prison Graz-Karlau.



	<p>Those forms are available in the following languages:</p> <p>Czech, Bulgarian, Estonian, Danish, German, Spanish, Finnish, French, Greek, Croatian, Hungarian, Dutch, Italian, Latvian, Lithuanian, Maltese, Slovenian, Portugese, Polish, English, Slovakian, Swedish, Romanian.<sup>29</sup></p>	<p>practical procedures would require in-depth interviews with judges who dealt with such cases. This, however, is not feasible in the course of this service request for the reasons provided in the introductory statement.</p>	<p>procedures would require in-depth interviews with judges who dealt with such cases. This, however, is not feasible in the course of this service request for the reasons provided in the introductory statement.</p>
<p>Q2.10. Are these interpretation or translation services provided during a face-to-face consultation? Please provide brief information.</p>	<p>As no translation is provided, but the forms are handed out in a language the person understands this question is not applicable to the situation in Austria.</p>	<p>There is no explicit legal provision foreseen in the relevant law. No relevant information could be gathered in the course of interviews or information requests. Determining the practical procedures would require in-depth interviews with judges who dealt with such cases. This, however, is not feasible in the course of this service request for the reasons provided in the introductory statement.</p>	<p>There is no explicit legal provision foreseen in the relevant law. No relevant information could be gathered in the course of interviews or information requests. Determining the practical procedures would require in-depth interviews with judges who dealt with such cases. This, however, is not feasible in the course of this service request for the reasons provided in the introductory statement.</p>
<p>Q2.11. Is the suspect/sentenced person's full understanding of the transfer checked on a case by case basis in the issuing state? Please provide brief information.</p>	<p>No formalised procedure foreseen by law.</p>	<p>No formalised procedure foreseen by law.</p>	<p>No formalised procedure foreseen by law.</p>
<p>Q2.12. If the executing state adapts, before the transfer, the sentence or measure</p>	<p>Austria as issuing state according to §§ 42-42g EU-JZG: According</p>	<p>The Federal Ministry of Justice explained that the regional court</p>	<p>The Federal Ministry of Justice explained that the regional court</p>

<sup>29</sup> Representative of the Austrian Federal Ministry of Justice.

<p>imposed by the issuing state (as authorised by Article 8.3 of FD 909, Article 9 of FD 947 and Article 13 of FD 829), does the suspect/sentenced person receive any updated information?</p>	<p>to the Federal Ministry of Justice, the decision of the foreign authority is usually delivered to the sentenced person in the language of the issuing state.<sup>30</sup></p> <p>Austria as executing state according to §§ 39-41j EU-JZG: According to the Federal Ministry of Justice, the regional court has to take a decision in such cases, which is submitted to the person affected according to §41b (1) EU-JZG.<sup>31</sup></p>	<p>has to take a decision in such cases, which is submitted to the person affected according to §85 (2) EU-JZG. The person affected may appeal against this decision.<sup>32</sup></p>	<p>has to take a decision in such cases, which is submitted to the person affected according to §104 (2) EU-JZG. The person affected may appeal against this decision.<sup>33</sup></p>
<p>Q2.13. Is there a right to appeal the forwarding of the judgment/decision in the issuing state? If yes, please briefly provide information (e.g. how the suspect is made aware of his/her right to appeal and what support is made available to him/her)</p>	<p>No. No provision foreseen by law.</p>	<p>No. No provision foreseen by law.</p>	<p>No. No provision foreseen by law.</p>
<p>Q2.14. Does the suspect/sentenced person have a right to a regular review of the decision on the transfer in the issuing state? If yes, please briefly provide information (e.g. how often he/she can exercise this right)</p>	<p>No provision foreseen.</p> <p>A provision regarding appeal is only foreseen when Austria is executing state: The decisions on whether or not the execution is allowed is to be sent to the convicted person and the</p>	<p>No provision foreseen.</p> <p>A provision regarding appeal is only foreseen when Austria is executing state: The decisions on whether or not the execution is allowed is to be sent to the convicted person and the</p>	<p>No provision foreseen.</p> <p>A provision regarding appeal is only foreseen when Austria is executing state: The decisions on whether or not the execution is allowed is to be sent to the convicted person and the</p>

<sup>30</sup> Representative of the Austrian Federal Ministry of Justice.

<sup>31</sup> Representative of the Austrian Federal Ministry of Justice.

<sup>32</sup> Representative of the Austrian Federal Ministry of Justice.

<sup>33</sup> Representative of the Austrian Federal Ministry of Justice.

	prosecutor. An appeal to the Higher regional Court ( <i>Oberlandesgericht</i> ) against this is allowed within 14 days according to § 41b (5) EU-JZG.	prosecutor. An appeal to the Higher regional Court ( <i>Oberlandesgericht</i> ) against this is allowed within 14 days according to § 85 (2) EU-JZG.	prosecutor. An appeal to the Higher regional Court ( <i>Oberlandesgericht</i> ) against this is allowed within 14 days according to § 104 (2) EU-JZG.
Q2.15. Is the suspect/sentenced person assisted by legal counsel in the executing state? If yes, please provide details (e.g. is this legal advice provided face-to-face or over the telephone?)	In case Austria is the executing state the full legal guarantees of the criminal procedure act apply. (including legal counsel)	There is no explicit legal provision foreseen in the relevant law. No relevant information could be gathered in the course of interviews or information requests. Determining the practical procedures would require in-depth interviews with judges who dealt with such cases. This, however, is not feasible in the course of this service request for the reasons provided in the introductory statement.	There is no explicit legal provision foreseen in the relevant law. No relevant information could be gathered in the course of interviews or information requests. Determining the practical procedures would require in-depth interviews with judges who dealt with such cases. This, however, is not feasible in the course of this service request for the reasons provided in the introductory statement.
Q2.16. Have there been instances where the Member State has refused a transfer based on a pre-determined ground of refusal, as permitted to a varying extent under each FD? If so, please briefly provide details.	No cases to be found in the national registry of the courts.  According to the Federal Ministry of Justice, no such data is available yet due to the fact that the electronic data proceeding system of the judiciary ( <i>Verfahrensautomation Justiz</i> ) provides for the possibility to include relevant data only since 22 April 2015 and no pertinent analysis has been made since. <sup>34</sup>	No cases to be found in the national registry of the courts.  According to the Federal Ministry of Justice, no such data is available yet due to the fact that the electronic data proceeding system of the judiciary ( <i>Verfahrensautomation Justiz</i> ) provides for the possibility to include relevant data only since 22 April 2015 and	No cases to be found in the national registry of the courts.  According to the Federal Ministry of Justice, no such data is available yet due to the fact that the electronic data proceeding system of the judiciary ( <i>Verfahrensautomation Justiz</i> ) provides for the possibility to include relevant data only since 22

<sup>34</sup> Representative of the Austrian Federal Ministry of Justice.

		no pertinent analysis has been made since. <sup>35</sup>	April 2015 and no pertinent analysis has been made since. <sup>36</sup>
Q.2.17. Are there any specific legislative or policy developments regarding the informed consent to the transfer of particular suspects/sentenced persons (such as children or persons with disabilities) in the issuing state? (e.g. the use of healthcare professionals)	Nothing to report.	Nothing to report.	Nothing to report.

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<sup>35</sup> Representative of the Austrian Federal Ministry of Justice.

<sup>36</sup> Representative of the Austrian Federal Ministry of Justice.

TOPIC	FD 2008/909	FD 2008/947	FD 2009/829 (ESO)
<b>Q3. DECISION ON TRANSFER</b>			
Q3.1. Are the following factors considered while deciding on forwarding a judgment or decision in the issuing state?			
<ul style="list-style-type: none"> <li>The likely impact on the social rehabilitation of the suspect/sentenced person?</li> </ul>	<p>§42b (3) EU-JZG stipulates that the execution of a judgment shall not be issued in cases, where due to certain circumstances ties of such intensity exist with Austria so that it may well be assumed that the social rehabilitation may better be achieved in Austria.</p> <p>Thus, the impact on resocialisation is taken into account. The basic idea is to have the execution of a sentence take place in the state where the goal of resocialisation is most likely to be achieved.<sup>37</sup> In case the national court comes to the conclusion, that execution of sentence in Austria does not facilitate the resocialisation it might state so in the statement to the other Member State.<sup>38</sup></p>	No provision foreseen.	No provision foreseen.
<ul style="list-style-type: none"> <li>Fundamental rights implications (such as the right to family life, right to education)?</li> </ul>	No provision foreseen.	No provision foreseen.	No provision foreseen.
<ul style="list-style-type: none"> <li>Others? Please specify.</li> </ul>	No provision foreseen.	No provision foreseen.	No provision foreseen.

<sup>37</sup> Wirth B., Hinterhofer, H., (2013), ‘Vorbemerkungen zu den §§ 39–41j EU-JZG’, in: Höpfel, F., Ratz, E., (eds.), *Wiener Kommentar zur StGB (online version)*, Rz 2.

<sup>38</sup> Wirth B., Hinterhofer, H., (2013), ‘§ 39. Voraussetzungen’, in: Höpfel, F., Ratz, E., (eds.), *Wiener Kommentar zur StGB (online version)*, Rz 18.

<p>Q3.2: While deciding on the transfer, are there any specific criteria/guidelines on the factors considered to be relevant for the purposes of (social) rehabilitation in the issuing state? Please provide any document containing those criteria/guidelines and specify whether the following factors are considered:</p>	<p>There are no specific criteria or guidelines available on the factors considered to be relevant for the purpose of rehabilitation in the issuing state.</p> <p>When responding to an information request regarding this question, the Federal Ministry of Justice referred to the legal provisions of the §§39 (1) and 42 EU-JZG outlining the facts that may lead to a transfer and further explained that the criteria mentioned therein would outline the cases, in which rehabilitation could be better achieved by way of a transfer.<sup>39</sup></p>	<p>There are no specific criteria or guidelines available on the factors considered to be relevant for the purpose of rehabilitation in the issuing state.</p> <p>When responding to an information request regarding this question, the Federal Ministry of Justice referred to the legal provisions of the §82 (1) EU-JZG outlining the circumstances under which a execution of a probation measure or alternative sanction is not allowed.<sup>40</sup> Yet, §82 (1) EU-JZG does not contain any guidelines on the factors to be considered for the purpose of rehabilitation.</p> <p>§82(2) EU-JZG states that certain (yet unspecified) ties implying that rehabilitation could be better achieved by way of an execution in Austria, might justify such an execution although the person does not have his/her residence or permanent stay in Austria.</p>	<p>There are no specific criteria or guidelines available on the factors considered to be relevant for the purpose of rehabilitation in the issuing state.</p> <p>When responding to an information request regarding this question, the Federal Ministry of Justice referred to the legal provisions of the §101 (1) EU-JZG outlining the circumstances under which a execution of a less severe measure is not allowed.<sup>41</sup> Yet, §101 (1) EU-JZG does not contain any guidelines on the factors to be considered for the purpose of rehabilitation.</p> <p>§101 (2) EU-JZG states that certain (yet unspecified) ties implying that rehabilitation could be better achieved by way of an execution in Austria, might justify such an execution although the person does not have his/her residence or permanent stay in Austria.</p>
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<sup>39</sup> Representative of the Austrian Federal Ministry of Justice.

<sup>40</sup> Representative of the Austrian Federal Ministry of Justice.

<sup>41</sup> Representative of the Austrian Federal Ministry of Justice.

<ul style="list-style-type: none"> <li>Family and social ties (e.g. accommodation, employment or other economic ties, linguistic and cultural links)?</li> </ul>	<p>§39 (1) dealing with Austria as executing state: citizenship and accommodation; lawful residence.<sup>42</sup></p> <p>§42 EU-JZG dealing with Austria as issuing state: citizenship and accommodation; lawful residence.<sup>43</sup></p>	<p>See the statement on this part of Q3.2. above.</p>	<p>See the statement on this part of Q3.2. above.</p>
<ul style="list-style-type: none"> <li>Criminal history and criminal ties?</li> </ul>	<p>No.</p>	<p>See the statement on this part of Q3.2. above.</p>	<p>See the statement on this part of Q3.2. above.</p>
<ul style="list-style-type: none"> <li>Humanitarian concerns (i.e. terminal illness of suspect/sentenced person or family members)?</li> </ul>	<p>No.</p>	<p>See the statement on this part of Q3.2. above.</p>	<p>See the statement on this part of Q3.2. above.</p>
<ul style="list-style-type: none"> <li>Detention conditions (e.g. issues of overcrowding or availability of courses, such as the <i>Modulos</i> in Spain which has separate units to promote a progressive accountability of inmates)</li> </ul>	<p>No.</p>	<p>See the statement on this part of Q3.2. above.</p>	<p>See the statement on this part of Q3.2. above.</p>
<ul style="list-style-type: none"> <li>Others?</li> </ul>	<p>§39 (1) dealing with Austria as executing state: certain (yet unspecified) ties implying that rehabilitation could be better achieved by way of a execution in Austria (although in case the requirements of citizenship and accommodation or lawful residence are not given)<sup>44</sup></p>	<p>See the statement on this part of Q3.2. above.</p>	<p>See the statement on this part of Q3.2. above.</p>

<sup>42</sup> Representative of the Austrian Federal Ministry of Justice.

<sup>43</sup> Representative of the Austrian Federal Ministry of Justice.

<sup>44</sup> Representative of the Austrian Federal Ministry of Justice.

	<p>§42 EU-JZG dealing with Austria as issuing state: certain (yet unspecified) ties implying that rehabilitation could be better achieved by way of a transfer (although in case the requirements of citizenship and accommodation or lawful residence are not given).<sup>45</sup></p>		
<p>Q.3.3. Are the following persons/entities consulted in the evaluation of the likelihood of social rehabilitation by the issuing state:</p>			
<ul style="list-style-type: none"> <li>• Probation agencies or similar entities in the issuing state?</li> </ul>	No.	No information available. The Federal Ministry of Justice could only provide information on the implementation of FD 909. <sup>46</sup>	No information available. The Federal Ministry of Justice could only provide information on the implementation of FD 909. <sup>47</sup>
<ul style="list-style-type: none"> <li>• The competent authorities in the executing state?</li> </ul>	The Federal Ministry of Justice, in this context only competent for requesting the execution in another member state, explained that consultations are held with the competent authorities in case of §41 (1) Z 3 EU-JZG (these are cases in which certain - yet unspecified - ties imply that rehabilitation could be better achieved by way of a transfer. <sup>48</sup>	No information available. The Federal Ministry of Justice could only provide information on the implementation of FD 909. <sup>49</sup>	No information available. The Federal Ministry of Justice could only provide information on the implementation of FD 909. <sup>50</sup>

<sup>45</sup> Representative of the Austrian Federal Ministry of Justice.

<sup>46</sup> Representative of the Austrian Federal Ministry of Justice.

<sup>47</sup> Representative of the Austrian Federal Ministry of Justice.

<sup>48</sup> Representative of the Austrian Federal Ministry of Justice.

<sup>49</sup> Representative of the Austrian Federal Ministry of Justice.

<sup>50</sup> Representative of the Austrian Federal Ministry of Justice.



<ul style="list-style-type: none"> <li>The suspect/sentenced person?</li> </ul>	<p>The sentenced person is heard according to §42a EU-JZG, when the head of the institution has to make a protocol on the convicted person's declaration regarding his/her transfer to the executing state.<sup>51</sup></p>	<p>No information available. The Federal Ministry of Justice could only provide information on the implementation of FD 909.<sup>52</sup></p>	<p>No information available. The Federal Ministry of Justice could only provide information on the implementation of FD 909.<sup>53</sup></p>
<ul style="list-style-type: none"> <li>The family of the suspect/sentenced persons, especially with regard to child offenders?</li> </ul>	<p>No.</p>	<p>No information available. The Federal Ministry of Justice could only provide information on the implementation of FD 909.<sup>54</sup></p>	<p>No information available. The Federal Ministry of Justice could only provide information on the implementation of FD 909.<sup>55</sup></p>
<ul style="list-style-type: none"> <li>Any other person/entity?</li> </ul>	<p>The Federal Ministry of Justice, in this context only competent for requesting the execution in another member state, explained that consultations with persons/entities may be held in case of §42b (3) EU-JZG (these are cases in which certain - yet unspecified - ties imply that rehabilitation could be better achieved by way of an execution in Austria).<sup>56</sup></p>	<p>No information available. The Federal Ministry of Justice could only provide information on the implementation of FD 909.<sup>57</sup></p>	<p>No information available. The Federal Ministry of Justice could only provide information on the implementation of FD 909.<sup>58</sup></p>

<sup>51</sup> Representative of the Austrian Federal Ministry of Justice.

<sup>52</sup> Representative of the Austrian Federal Ministry of Justice.

<sup>53</sup> Representative of the Austrian Federal Ministry of Justice.

<sup>54</sup> Representative of the Austrian Federal Ministry of Justice.

<sup>55</sup> Representative of the Austrian Federal Ministry of Justice.

<sup>56</sup> Representative of the Austrian Federal Ministry of Justice.

<sup>57</sup> Representative of the Austrian Federal Ministry of Justice.

<sup>58</sup> Representative of the Austrian Federal Ministry of Justice.

<p>Q3.4. Are there any specific legislative or policy developments regarding the evaluation of the likelihood of social rehabilitation of particular suspects/ sentenced persons (such as children or persons with disabilities) by the issuing state?</p>	<p>No.</p>	<p>No.</p>	<p>No.</p>
<p>Q3.5. Is additional information, other than that required in the certificate (for which the standard form is given in Annex I of the three FDs), provided to the competent authorities of the executing state while forwarding the judgment or decision? If yes, please specify if pre-sentence reports are forwarded.</p>	<p>The Federal Ministry of Justice reported that in case of §42 (1) 1 EU-JZG the executing state usually requests the order on the prohibition of remaining in Austria.</p>	<p>No information available. The Federal Ministry of Justice could only provide information on the implementation of FD 909.<sup>59</sup></p>	<p>No information available. The Federal Ministry of Justice could only provide information on the implementation of FD 909.<sup>60</sup></p>
<p>Q3.6. If pre-sentence reports are forwarded by the issuing state, are they translated to the language of the executing state?</p>	<p>There is no explicit legal provision foreseen in the relevant law. No relevant information could be gathered in the course of interviews or information requests. Determining the practical procedures would require in-depth interviews with judges who dealt with such cases. This, however, is not feasible in the course of this service request for the reasons provided in the introductory statement.</p>	<p>There is no explicit legal provision foreseen in the relevant law. No relevant information could be gathered in the course of interviews or information requests. Determining the practical procedures would require in-depth interviews with judges who dealt with such cases. This, however, is not feasible in the course of this service request for the reasons provided in the introductory statement.</p>	<p>There is no explicit legal provision foreseen in the relevant law. No relevant information could be gathered in the course of interviews or information requests. Determining the practical procedures would require in-depth interviews with judges who dealt with such cases. This, however, is not feasible in the course of this service request for the reasons provided in the introductory statement.</p>

<sup>59</sup> Representative of the Austrian Federal Ministry of Justice.

<sup>60</sup> Representative of the Austrian Federal Ministry of Justice.

<p>Q3.7. Are there specific measures, as required by Article 4 (6) FD 909, which constitute the basis on which the competent authorities in the executing State have to take their decisions whether or not to consent to the forwarding of the judgement and the certificate (where required)?</p>	<p>The Federal Ministry of Justice referred to the explanatory remarks to §§39 (1) 3 and 41a (3) EU-JZG.<sup>61</sup></p> <p>§39 (1) 3 EU-JZG regulates the cases in which Austria might execute the judgement of a person because certain ties imply that rehabilitation could be better achieved by way of an execution in Austria. The explanatory remarks on this provision state that an overall view regarding a number of objective criteria (such as duration, type and conditions of his/her stay in Austria, family ties and economic ties with Austria) is decisive for this decision. The explanatory remarks further state that §39 (1) 3 EU-JZG has to be interpreted in connection with § 41a (3) EU-JZG, which states that consultations have to be held with the competent authorities of the issuing state.<sup>62</sup></p>		
<p>Q3.8. Are there formal and clear rules regarding data protection in the information exchange between:</p>	<p>There are no specific rules. The Federal Ministry of Justice stated that all pertinent national and</p>	<p>There are no specific rules. The Federal Ministry of Justice stated that all pertinent national and</p>	<p>There are no specific rules. The Federal Ministry of Justice stated that all pertinent national and</p>

<sup>61</sup> Representative of the Austrian Federal Ministry of Justice.

<sup>62</sup> Austria (without date), Vorblatt u. Erläuterungen, 1523 der Beilagen XXIV. GP – Regierungsvorlage, Explanatory Remarks on the Act Implementing Framework Decision 2008/909/JI, available at: [www.parlament.gv.at/PAKT/VHG/XXIV/I/I\\_01523/fname\\_235584.pdf](http://www.parlament.gv.at/PAKT/VHG/XXIV/I/I_01523/fname_235584.pdf).

	international data protection regulations apply. <sup>63</sup>	international data protection regulations apply. <sup>64</sup>	international data protection regulations apply. <sup>65</sup>
<ul style="list-style-type: none"> <li>National authorities (consulted in the evaluation of the likelihood of social rehabilitation) in the issuing state?</li> </ul>	There are no specific rules. The Federal Ministry of Justice stated that all pertinent national and international data protection regulations apply. <sup>66</sup>	There are no specific rules. The Federal Ministry of Justice stated that all pertinent national and international data protection regulations apply. <sup>67</sup>	There are no specific rules. The Federal Ministry of Justice stated that all pertinent national and international data protection regulations apply. <sup>68</sup>
<ul style="list-style-type: none"> <li>Authorities in the issuing and executing state?</li> </ul>	There are no specific rules. The Federal Ministry of Justice stated that all pertinent national and international data protection regulations apply. <sup>69</sup>	There are no specific rules. The Federal Ministry of Justice stated that all pertinent national and international data protection regulations apply. <sup>70</sup>	There are no specific rules. The Federal Ministry of Justice stated that all pertinent national and international data protection regulations apply. <sup>71</sup>

<sup>63</sup> Representative of the Austrian Federal Ministry of Justice.

<sup>64</sup> Representative of the Austrian Federal Ministry of Justice.

<sup>65</sup> Representative of the Austrian Federal Ministry of Justice.

<sup>66</sup> Representative of the Austrian Federal Ministry of Justice.

<sup>67</sup> Representative of the Austrian Federal Ministry of Justice.

<sup>68</sup> Representative of the Austrian Federal Ministry of Justice.

<sup>69</sup> Representative of the Austrian Federal Ministry of Justice.

<sup>70</sup> Representative of the Austrian Federal Ministry of Justice.

<sup>71</sup> Representative of the Austrian Federal Ministry of Justice.

TOPIC	FD 2008/909	FD 2008/947	FD 2009/829 (ESO)
<p><b>Q4. VICTIMS</b></p> <p>According to a decision of the Higher Regional Court of Vienna the rights of victims according to § 65 Criminal Procedures Act are not applicable in the transfer proceedings (OLG Wien 12. 1. 2010, 22 Bs 324/09x), as it is a procedure dissociated from national criminal proceedings, which are not similar to those material criminal proceedings. This understanding of exclusion of rights of victims for transfer proceedings is not followed by Mr. Schwaighofer in his article.<sup>72</sup> According to the commentary on the Criminal Procedures Act for § 66 (rights of victims) the rights of victims do not apply in criminal extradition proceedings, although § 9 (1) ARHG and § 1 (2) EU-JZG together with § 9 (1) ARHG foresee subsidiary applicability of the Criminal Procedures Act.<sup>73</sup></p> <p><b>In a response from the Ministry of Justice regarding this issue, it was stated that no particular information rights are provided for the procedures according to the EU-JZG. Yet, the Ministry confirmed that § 1 (2) EU-JZG together with § 9 (1) ARHG foresee the subsidiary applicability of the Criminal Procedures Act (and thus the provisions concerning victims' rights). This response, however, still does not constitute an explicit clarification on what victims' rights are applicable, but rather seems to confirm the legal assessment provided by Mr. Schwaighofer (see above.)</b></p> <p><b>With regards to Austria as executing state, the Federal Ministry of Justice made a reference to §149 (5) Penitentiary System Act (Strafvollzugsgesetz – StVG), which has already been reported in the final version of the response to question Q4.6 of the report.</b></p> <p>According to this research result the following section will not be answered, as no applicability of rights of victims is given.</p>			
<p>Q4.1. Do the victims have the right to receive the following information regarding the transfer from the issuing state:</p>			
<ul style="list-style-type: none"> <li>The decision to transfer</li> </ul>			
<ul style="list-style-type: none"> <li>The status of the transfer</li> </ul>			
<ul style="list-style-type: none"> <li>Other? Please specify.</li> </ul>			

<sup>72</sup> See also Schwaighofer, K. (2010), 'Opferrechte und Opferschutz im Auslieferungsverfahren', *Journal für Strafrecht* 2010, p. 29.

<sup>73</sup> Kier, R., (2014), '§ 66. Opferrechte', in: Fuchs, H., Ratz, E., (eds.), *Wiener Kommentar zur StPO (online version)*, Rz 2.

Q4.2. Is there any procedure in place to provide this information as issuing or executing state? If yes, please specify:			
<ul style="list-style-type: none"> <li>• Is the information provided upon request of the victim?</li> </ul>			
<ul style="list-style-type: none"> <li>• Who responsible for providing this information?</li> </ul>			
<ul style="list-style-type: none"> <li>• Is it a verbal or written communication?</li> </ul>			
Q4.3. Do the victims have the right to be heard concerning the transfer (in the state you are describing, as issuing or executing state)? (e.g. through submitting an oral or written response)			
Q4.4. Do the victims have any other rights concerning the transfer (in the state you are describing, as issuing or executing state)? Please specify.			
Q4.5. Do the victims have access to translators/interpreter in order to be kept fully informed of the transfer (in the state you are describing, as issuing or executing state)?			
Q4.6. Do the victims have the right to be informed of the suspect/sentenced person's release (in the state you are describing, as issuing or executing state)?	According to § 149 (5) Penitentiary System Act ( <i>Strafvollzugsgesetz - StVG</i> ) <sup>74</sup> the victim has to be informed about the	The victim of a sexual offence has to be heard in the course of deciding on the admissibility of electronic monitored home	

<sup>74</sup> Austria, Penitentiary System Act (*Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen (Strafvollzugsgesetz - StVG)*), BGBl. Nr. 144/1969, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002135](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002135).

	<p>first unguarded leaving, as well as the forthcoming or concluded release of the convict. The information has to be provided by the head of the institution. The victim must have requested to be informed about this issue beforehand in the course of the trial.<sup>75</sup></p>	<p>curfew (<i>elektronisch überwachter Hausarrest</i>) according to § 156d (3) Penitentiary System Act (<i>Strafvollzugsgesetz - StVG</i>).<sup>76</sup> If the electronic monitored home curfew is granted the victim has to be informed. The victim must have requested to be informed on this issue beforehand in the course of the trial.<sup>77</sup></p>	
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<sup>75</sup> Please note that the legal commentary on this provision does not deal with the question how (or if at all) victims in other member states are informed.

<sup>76</sup> Austria, Penitentiary System Act (*Bundesgesetz vom 26. März 1969 über den Vollzug der Freiheitsstrafen und der mit Freiheitsentziehung verbundenen vorbeugenden Maßnahmen (Strafvollzugsgesetz - StVG)*), BGBl. Nr. 144/1969, available at: [www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002135](http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002135).

<sup>77</sup> Please note that the legal commentary on this provision does not deal with the question how (or if at all) victims in other member states are informed.