

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

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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:

The Criminal Code provides for several types of alternative sanctions to prison¹ :

- community work
- probation order² (*contrainte pénale*) introduced by Law No. 2014-896 of August 15, 2014³
- day-fines (daily contribution for a certain number of days, with a failure to pay this contribution resulting in this sentence being transformed into days of imprisonment)
- citizenship training course
- deprivation or restriction of freedom sentences provided for by article 131-6 of the Criminal Code⁴
- sanction-compensation sentences.

¹ France, Criminal Code (*Code pénal*), article 131-3, available at:

[www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000006181728&cidTexte=LEGITEXT000006070719&dateTexte=20150518].

² The probation order requires the person concerned, under the control of the judge for the application of sentences and for a duration which is fixed by the jurisdiction ranging between six months and five years, to submit to monitoring and assistance measures, as well as to obligations and particular prohibitions intended to prevent re-offending by supporting their reintegration into society. This sentence can be imposed on the perpetrator of an offence which carries a prison sentence of 5 years or less (this condition should no longer apply from January 1, 2017) when the personality, and the material, family and social situation and the facts of the case justify individualized socio-educational support.

³ France, Law n° 2014-896 on the individualisation of penalties and strengthening of the criminal sanctions' effectiveness (*Loi n° 2014-896 relative à l'individualisation des peines et renforçant l'efficacité des sanctions pénales*), 15 August 2014, available at:

[www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000029362502&categorieLien=id] ; France, Criminal code (*Code pénal*), article 131-4-1, available at : [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000006181728&cidTexte=LEGITEXT000006070719&dateTexte=20150518].

⁴ France, Criminal code (*Code pénal*), article 131-6, available at:

[www.legifrance.gouv.fr/affichCode.do;jsessionid=77F88ACED6928021F4605ABFBAC58FC5.tpdila08v_1?idSectionTA=LEGISCTA000006181728&cidTexte=LEGITEXT000006070719&dateTexte=20150524].

In the cases provided for by the law, the judgement jurisdiction can order socio-legal follow-up. This follow-up requires the offender, under the control of the judge for the application of sentences and for a duration which is fixed by the judgement jurisdiction, to submit to monitoring and assistance measures intended to prevent re-offending.⁵ This socio-legal follow-up can also include electronic tagging as a safety measure⁶

Sentencing:

The system of personalization of sentences is intended to limit the imprisonment of the offender: the judgement jurisdiction can decide *ab initio* that the sentence will be carried out in whole or part under the mode of day-release⁷ or external placement,⁸ or under electronic tagging.⁹ Under certain conditions this may be ordered as part of a suspended prison sentence (simple suspension),¹⁰ or that the sentence will be suspended upon completion, with the offender being placed on probation (the offender must satisfy monitoring measures¹¹ and meet specifically imposed obligations¹²).¹³ A suspension conditional on the obligation to complete community work can also be ordered.¹⁴

⁵ France, Criminal code (*Code pénal*), article 131-36-1, available at:

[www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000006181732&cidTexte=LEGITEXT000006070719&dateTexte=20150524].

⁶ France, Criminal code (*Code pénal*), article 131-36-9, 131-36-12, available at:

[www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000006181733&cidTexte=LEGITEXT000006070719&dateTexte=20150524].

⁷ Day-release is a method of execution of the sentence where the offender is allowed out during the day and must return to the prison every evening.

⁸ France, Criminal code (*Code pénal*), article 132-25, available at:

[www.legifrance.gouv.fr/affichCode.do?idArticle=LEGIARTI000021330941&idSectionTA=LEGISCTA000006192905&cidTexte=LEGITEXT000006070719&dateTexte=20150524]. External placement is a method of execution of the sentence where the offender is dealt with in a centre outside the prison. They carry out an activity during the day and return to their accommodation the evening.

⁹ France, Criminal code (*Code pénal*), article 132-26-1, available at:

[www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000006192893&cidTexte=LEGITEXT000006070719&dateTexte=20150524]. Under the mode of electronic tagging, the offender is placed under house arrest by means of a bracelet and a device connected to the telephone line. They may go out for periods during the day.

¹⁰ France, Criminal code (*Code pénal*), article 132-29, available at:

[www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000006181746&cidTexte=LEGITEXT000006070719&dateTexte=20150524].

¹¹ France, Criminal code (*Code pénal*), article 132-44, available at:

[www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000006192897&cidTexte=LEGITEXT000006070719&dateTexte=20150524].

¹² France, Criminal code (*Code pénal*), article 132-45, available at:

[www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000006192897&cidTexte=LEGITEXT000006070719&dateTexte=20150524].

¹³ France, Criminal code (*Code pénal*), article 132-40, available at:

[www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000006192896&cidTexte=LEGITEXT000006070719&dateTexte=20150524].

¹⁴ France, Criminal code (*Code pénal*), article 132-54, available at:

[www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000006192896&cidTexte=LEGITEXT000006070719&dateTexte=20150524].

It should however be noted that in France, electronic tagging is not an alternative measure to detention (nor a measure of probation after judgment) but a method of execution of a provisional measure of detention (or a method of execution of a sentence of deprivation of liberty after judgment). Moreover, the duration of the electronic tagging is imputed to the custodial part of any sentence imposed in the event of a later conviction, contrary to the case for the duration of probation. Furthermore, persons placed under house arrest with electronic tagging are 'confined'¹⁵, contrary to persons placed on probation.¹⁶

The judge for the application of sentences can also arrange the execution of a sentence pronounced by a judgement jurisdiction so that it is carried out in the form of day-release, external placement, or under electronic tagging¹⁷.

They can also decide during the course of imprisonment on release on parole¹⁸. Thus, prisoners having already served half of their sentence (or two thirds when they are a repeat offender) and who demonstrate serious efforts at social reintegration can benefit from release on parole. This consists of the early release, under the control of the relevant local judge for the application of sentences, of an offender who has served part of their sentence and demonstrated good behaviour : in exchange for early release decided on by the judge, these offenders are subject to regular follow-up and the respect of certain obligations (service, work, compensating victims, etc.).

Administrative and legal measures influencing the duration of the sentence: all prisoners are eligible for a reduction in their sentences.

For administrative measures, credits for the reduction of sentences (3 months for the first year, then 2 months per year) are systematically granted to the prisoner, but they can be withdrawn by the judge for the application of sentences in the event of bad behaviour.

For legal measures, additional reductions of sentences (up to 2 months per year) can be granted by the judge for the application of sentences in the event of compensation for the civil parties, regular performance of an activity in detention, or for respect of an obligation of service.

¹⁵ This means that these people are registered with the prison are given a prisoner number.

¹⁶ France, Impact Assessment. Bill adapting the French criminal proceedings to the European Union law (*Etude d'impact. Projet de loi portant adaptation de la procédure pénale au droit de l'Union européenne*), 18 April 2014, available at: [www.legifrance.gouv.fr/affichLoiPreparation.do?sessionId=AD7005C5BF66F5DEC3EB8A08549A1901.tpdila15v_1?idDocument=JORFDOLE000028868633&type=general&typeLoi=proj&legislature=14].

¹⁷ France, Code of criminal proceedings (*Code de procédure pénale*), article 723-15, available at: [www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006071154&idArticle=LEGIARTI000006578053].

¹⁸ France, Code of criminal proceedings (*Code de procédure pénale*), article 729, available at : <http://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006071154&idArticle=LEGIARTI000006578105&dateTexte=&categorieLien=cid>

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

Any person put under investigation can be required to meet with one or more obligations of judicial control because of the needs of the investigation or as a measure of safety. If these appear insufficient, they may be put under house arrest with electronic tagging. In exceptional circumstances, if the obligations of judicial control or house arrest with electronic tagging do not make it possible to achieve these objectives, they may be placed in provisional detention.¹⁹ The decision of placement in provisional detention or prolongation of such follows precise criteria defined by law²⁰.

Judicial control compels the person concerned to meet, according to the decision of the investigating judge or the judge for freedoms and detention, with one or more of the obligations listed in article 138 of the Code of Criminal Procedure.²¹ These obligations or prohibitions are as follows:

1. Not to leave the area limits determined by the investigating judge;
2. Not to leave their home or the residence fixed by the investigating judge except under the conditions and for the reasons determined by the magistrate;
3. Not to go to certain places or to go only to the places determined by the investigating judge;
4. To inform the investigating judge of any movement beyond given limits;
5. To present themselves periodically at the services or authorities designated by the investigating judge which are held to observe the strictest discretion over the allegations concerning the accused;
6. To respond to the convocations of any authority or any qualified person designated by the investigating judge and to subject themselves, if necessary, to monitoring measures concerning their employment or attendance on training programmes;

¹⁹ France, Code of criminal proceedings (*Code de procédure pénale*), article 137, available at: [www.legifrance.gouv.fr/affichCode.do;jsessionid=3A7BBAE24728564A1DDC811902551759.tpdila08v_1?idSectionTA=LEGISCTA000021331523&cidTexte=LEGITEX T000006071154&dateTexte=20150524].

²⁰ France, Code of criminal proceedings (*Code de procédure pénale*), article 144, available at: [<http://legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006071154&idArticle=LEGIARTI000006575665&dateTexte=&categorieLien=cid>].

²¹ France, Code of criminal proceedings (*Code de procédure pénale*), article 138, available at: [www.legifrance.gouv.fr/affichCode.do;jsessionid=3A7BBAE24728564A1DDC811902551759.tpdila08v_1?idSectionTA=LEGISCTA000006182889&cidTexte=LEGITEX T000006071154&dateTexte=20150524].

7. To provide either to the court clerk, or to the police or a gendarmerie brigade all identity documents, and in particular the passport, in exchange for an acknowledgement document which testifies to their identity;
 8. To refrain from driving any or certain vehicles and, if necessary, surrender their driving licence to the court clerk in exchange for an acknowledgement document; however, the investigating judge may decide that the accused may make use of the driving licence for work purposes.
 9. To refrain from receiving or meeting certain persons specifically designated by the investigating judge, or to enter into relations with them, in any way whatsoever;
 10. To undergo measures of examination, treatment or care, even if requiring hospitalization, in particular for purposes of detoxification;
 11. To provide a bond the amount of which, and payment in one or more instalments, are fixed by the investigating judge, taking into account in particular the resources of the accused;
 12. Not to undertake certain economic or social activities, other than the exercise of elected mandates and trade-union responsibilities, when the offence was committed during the exercise or at the time of the exercise of these activities and when it is to be feared that a new offence is committed;
 13. Not to write cheques other than those which exclusively allow the withdrawal of funds by the drawer for the drawer or those which are certified and, if necessary, to give the court clerk any cheques whose use is thus prohibited;
 14. Not to keep or carry a weapon and, if necessary, to give any weapons which they own to the court clerk in exchange for a receipt;
 15. To provide within a specific time, for a period and an amount determined by the investigating judge, personal or material surety intended to guarantee the rights of the victim;
 16. To prove payment of family contributions or any payments they have been ordered to make in accordance with court decisions or conventions which carry an obligation to may payments or contributions related to marriage.
 17. Not to live in the family home or the residence of the couple and, if necessary, to refrain from visiting this home or this residence or the immediate surroundings, as well as, if necessary, being the subject of medical, social, or psychological support measures.
- House arrest with electronic tagging obliges the person to live in their home or in a residence fixed by the investigating judge or the judge for freedoms and detention and not to leave these places except under the conditions and reasons determined by this judge (electronic tagging may be ordered).²²

²² France, Code of criminal proceedings (*Code de procédure pénale*), article 142-5, available at: [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000021331515&cidTexte=LEGITEXT000006071154&dateTexte=20150524].

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)?

General provisions

A court can impose the sentence of a probation order, if individualized and socio-educational support is justified by the personality and the material, family and social situation of the perpetrator of an offence which is punishable by a custodial sentence of a duration of five years or less and by the facts of the case.²³

The timing of a community sentence may be suspended on serious grounds of a medical, family, professional or social nature.²⁴ Community service is subject to the legislative and regulatory rules relating to night-work, health and safety, and work of women and young workers.²⁵

Children

According to article 2 of the Order relating to young offenders,²⁶ the courts for children can impose protection, support, monitoring, and education measures. When the circumstances and the personality of the child require it other measure can be imposed: an educational sanction for minors aged ten to eighteen years old²⁷ or a sentence for minors aged thirteen to eighteen years taking into account the attenuation of their criminal responsibility.²⁸ In this case, if a fine, community service, or suspended prison sentence are imposed, an educational sanction may also be imposed. The juvenile court and the criminal court for minors can impose a custodial sentence, with or without suspension, only after having specifically justified the choice of this sentence.²⁹

Probation orders, banning orders from the French territory, and sentences of a day-fine, deprivation of civic, civil or family rights, prohibition from public office or a professional or social occupation, exclusion orders, closure of an establishment, exclusion from the public markets or the publication or

²³ France, Criminal code (*Code pénal*), article 131-4-1, available at:

[www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000006181728&cidTexte=LEGITEXT000006070719&dateTexte=20150524].

²⁴ France, Criminal code (*Code pénal*), article 131-22, available at:

[www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000006181731&cidTexte=LEGITEXT000006070719&dateTexte=20150524].

²⁵ France, Criminal code (*Code pénal*), article 131-23, available at:

[www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000006181731&cidTexte=LEGITEXT000006070719&dateTexte=20150524].

²⁶ France, Act on juvenile delinquency n°45-174 (*Ordonnance n° 45-174 relative à l'enfance délinquante*), 2 February 1945, article 2, available at:

[www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006069158].

²⁷ France, Act on juvenile delinquency n°45-174 (*Ordonnance n° 45-174 relative à l'enfance délinquante*), 2 February 1945, article 15-1, available at:

[www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006069158].

²⁸ France, Act on juvenile delinquency n°45-174 (*Ordonnance n° 45-174 relative à l'enfance délinquante*), 2 February 1945, articles 20-2 à 20-9, available at:

[www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006069158].

²⁹ France, Act on juvenile delinquency n°45-174 (*Ordonnance n° 45-174 relative à l'enfance délinquante*), 2 February 1945, article 2, available at:

[www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006069158].

dissemination of the conviction cannot be imposed against a minor.³⁰ The provisions of article 131-5-1 of the Criminal Code relating to the sentence of a citizenship training course are applicable to minors aged thirteen to eighteen years. The contents of the training course are then adapted to the age of the offender.³¹ The provisions of articles 131-8 and 131-22 to 131-24 of the Criminal Code relating to community service are applicable to the minors aged sixteen to eighteen years. Similarly, the provisions of articles 132-54 to 132-57 of the Criminal Code relating to suspended sentences upon completion of community service are also applicable. For the application of article 132-57 of the Criminal Code, the conversion of a custodial sentence of into a suspended sentence upon completion of community service is possible, under the conditions and according to the procedures provided for in the same article, when the minor is sixteen years old on the day of the decision. For the application of articles 131-8 and 132-54 of the Criminal Code, community service must be adapted to the minors and be of an educational nature or be likely to support the social integration of the young offender.³² Following a suspended sentence with probation or an external placement, or following a release on parole minors are placed in secure educational centres where they are the subject of measures of monitoring and control making it possible to ensure educational follow-up reinforced and adapted to their personality.³³

An electronic tagging decision (prohibited from leaving the home or other place designated by the judge for the application of sentences outside the periods fixed by the judge, the obligation respond to convocations of any public authority designated by the judge for the application of sentences) may only be taken with the agreement of the holders of the right to exercise parental authority if it concerns a dependant minor.³⁴

A specialized court for minors can decide to place the minor in a secure educational centre.³⁵

³⁰ France, Act on juvenile delinquency n°45-174 (*Ordonnance n° 45-174 relative à l'enfance délinquante*), 2 February 1945, article 20-4, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006069158].

³¹ France, Act on juvenile delinquency n°45-174 (*Ordonnance n° 45-174 relative à l'enfance délinquante*), 2 February 1945, article 20-4-1, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006069158].

³² France, Act on juvenile delinquency n°45-174 (*Ordonnance n° 45-174 relative à l'enfance délinquante*), 2 February 1945, article 20-5, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006069158].

³³ France, Act on juvenile delinquency n°45-174 (*Ordonnance n° 45-174 relative à l'enfance délinquante*), 2 February 1945, article 33, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006069158].

³⁴ France, Criminal code (*Code pénal*), articles 132-26-1, 131-26-2, available at:

[www.legifrance.gouv.fr/affichCode.do?idArticle=LEGIARTI000021330941&idSectionTA=LEGISCTA000006192905&cidTexte=LEGITEXT000006070719&dateTexte=20150524].

³⁵ France, Act on juvenile delinquency n°45-174 (*Ordonnance n° 45-174 relative à l'enfance délinquante*), 2 February 1945, articles 20-10, 33, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006069158].

Minors aged thirteen to eighteen years old can be placed on probation under certain conditions.³⁶ Minors aged sixteen to eighteen years old can be placed under house arrest with electronic tagging under certain conditions.³⁷ In the event of non-observance of the imposed obligations, the minor could be placed in a secure educational centre or in provisional detention.³⁸

Placement under electronic tagging can be only ordered for an adult.³⁹

Mothers with young children

Prohibition from the French territory cannot be ordered when it concerns a foreigner who has resided regularly in France for more than ten years who is not living in a state of polygamy, and is father or mother of a French child residing in France, provided that they contribute to the maintenance and the education of the child, and this under certain conditions.⁴⁰

According to article D 401 of the Code of Criminal Procedure, children can be left with their mother in detention until the age of eighteen months. Specially adapted buildings are reserved for the reception of mothers having kept their child with them. It is the responsibility of the relevant prison rehabilitation and probation service of the prison, in liaison with the relevant child and family services and the holders of parental authority, to organize the child's stay with the detained mother and the child's ability to leave the prison, and to prepare, if necessary, the separation of the child from mother, in the child's best interest. During the twelve months following the child's departure, the child can be allowed to stay for short periods with the mother. This solution is considered to be insufficient by the Controller general of prisons.⁴¹

³⁶ France, Act on juvenile delinquency n°45-174 (*Ordonnance n° 45-174 relative à l'enfance délinquante*), 2 February 1945, articles 8, 10-2, and 11, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006069158].

³⁷ France, Act on juvenile delinquency n°45-174 (*Ordonnance n° 45-174 relative à l'enfance délinquante*), 2 February 1945, article 10-3, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006069158].

³⁸ France, Act on juvenile delinquency n°45-174 (*Ordonnance n° 45-174 relative à l'enfance délinquante*), 2 February 1945, articles 10-2, 11, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006069158].

³⁹ France, Criminal code (*Code pénal*), article 131-36-10, available at:

[www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000006181733&cidTexte=LEGITEXT000006070719&dateTexte=20150524]; France, Act on juvenile delinquency n°45-174 (*Ordonnance n° 45-174 relative à l'enfance délinquante*), 2 February 1945, article 10-3, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006069158].

⁴⁰ France, Criminal code (*Code pénal*), article 131-30-2, available at:

[www.legifrance.gouv.fr/affichCode.do?jsessionid=77F88ACED6928021F4605ABFBAC58FC5.tpdila08v_1?idSectionTA=LEGISCTA000006181731&cidTexte=LEGITEXT000006070719&dateTexte=20150524].

⁴¹ France, General controller of prisons (*Contrôleur général des prisons*), Opinion on young children in prison and on their detained mothers) (*Avis relatif aux jeunes enfants en prison et à leurs mères détenues*), 8 August 2013, available at: [www.cglpl.fr/wp-content/uploads/2013/08/Avis-m%C3%A8res-enfants_20130903-def.pdf].

Moreover, according to articles 720-1 and 729-3, a sentence of imprisonment can be suspended and release on parole can be granted when the offender has parental authority of a child of less than ten years old and who has their usual residence with this parent.⁴² These provisions do not only concern mothers, but any parent coming under the conditions stated by articles 720-1 and 729-3 of the Code of Criminal Procedure.

Articles 723-1 and 723-7 of the Code of Criminal Procedure⁴³ specify that the probationary measures of day-release, external placement, or placement under electronic tagging for release on parole, which relate to one or more sentences not exceeding two years, or sentences for which the total duration remaining to be served does not exceed two years, can be carried out one year before the date on which the release on parole provided for in article 729-3 is possible.

Persons with disabilities and persons in need of special treatment

Probation cannot be imposed on people aged sixty-five years or older at the time of the conviction.⁴⁴

Day-release, external placement⁴⁵ or placement under electronic tagging can be applied to an offender who needs to follow medical treatment.⁴⁶⁴⁷

Offenders who receive a custodial sentence equal to or higher than fifteen years are placed, for a duration of at least six weeks, in a specialized service in order to determine the social, welfare and medical follow up for the duration of their sentence. If the person suffers from psychiatric disorders, upon medical advice they receive support adapted to their needs and, if necessary, in hospital.⁴⁸

⁴² France, Code of criminal proceedings (*Code de procédure pénale*), article 720-1 et 729-3, available at:

[www.legifrance.gouv.fr/affichCode.do;jsessionid=3A7BBAE24728564A1DDC811902551759.tpdila08v_1?idSectionTA=LEGISCTA000006167532&cidTexte=LEGITEXT000006071154&dateTexte=20150524].

⁴³ France, Code of criminal proceedings (*Code de procédure pénale*), article 723-1 et 723-7, available at:

[www.legifrance.gouv.fr/affichCode.do;jsessionid=D6375E0168B88CCD90D0864C9769F683.tpdila08v_1?idSectionTA=LEGISCTA000006167552&cidTexte=LEGITEXT000006071154&dateTexte=20150524].

⁴⁴ France, Code of criminal proceedings (*Code de procédure pénale*), article 751, available at:

[www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000006138149&cidTexte=LEGITEXT000006071154&dateTexte=20150524].

⁴⁵ France, Criminal code (*Code pénal*), article 132-25, available at :

[www.legifrance.gouv.fr/affichCode.do?idArticle=LEGIARTI000021330941&idSectionTA=LEGISCTA000006192905&cidTexte=LEGITEXT000006070719&dateTexte=20150524]

⁴⁶ France, Criminal code (*Code pénal*), article 132-26-1, available at:

[www.legifrance.gouv.fr/affichCode.do?idArticle=LEGIARTI000021330941&idSectionTA=LEGISCTA000006192905&cidTexte=LEGITEXT000006070719&dateTexte=20150524].

⁴⁷ For statistics, see France, Working group Health Justice (*Groupe de travail Santé Justice*), Report on alternative sanctions and penalty suspensions for medical reasons (*Rapport "Aménagements et suspensions de peine pour raison médicale "*), available at:

[www.justice.gouv.fr/art_pix/rapport_aménagement_suspensions_peine_raison_medic.pdf].

⁴⁸ France, Code of criminal proceedings (*Code de procédure pénale*), article 717-1 A, available at:

[www.legifrance.gouv.fr/affichCode.do;jsessionid=3A7BBAE24728564A1DDC811902551759.tpdila08v_1?idSectionTA=LEGISCTA000006167531&cidTexte=LEGITEXT000006071154&dateTexte=20150524].

Moreover, suspension of the sentence and release on parole can be ordered for medical reasons.⁴⁹⁵⁰

The draft bill relating to the creation of a measure of provisional suspension of detention for medical reasons was passed by the Senate on February 13, 2014 after the first reading.⁵¹

The release of a person placed in provisional detention can be ordered, procedurally or at the request of the interested party, when a medical report establishes that this person suffers from a life threatening illness or if their physical or mental health is incompatible with being held in detention.⁵²

⁴⁹ France, Code of criminal proceedings (*Code de procédure pénale*), article 720-1-1, available at:

[www.legifrance.gouv.fr/affichCode.do;jsessionid=3A7BBAE24728564A1DDC811902551759.tpdila08v_1?idSectionTA=LEGISCTA000006167532&cidTexte=LEGITEXT000006071154&dateTexte=20150524].

⁵⁰ France, Code of criminal proceedings (*Code de procédure pénale*), article 729, available at:

[www.legifrance.gouv.fr/affichCode.do;jsessionid=65D0A0CD89FDF73B1F6619B3E2834BDC.tpdila08v_1?idSectionTA=LEGISCTA000006138144&cidTexte=LEGITEXT000006071154&dateTexte=20150524].

⁵¹ France, Bill relating to the suspension of pre-trial detention for medical reasons (*La proposition de loi relative à la création d'un dispositif de suspension de détention provisoire pour motif d'ordre médical*), available at:

[www.legifrance.gouv.fr/affichLoiPreparation.do;jsessionid=A239D82A7200A9E1496ECE1C2DDAA097.tpdjo09v_2?idDocument=JORFDOLE000028595675&type=general&typeLoi=prop&legislature=14].

⁵² France, Code of criminal proceedings (*Code de procédure pénale*), article 147-1, available at:

[www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000021331519&cidTexte=LEGITEXT000006071154&dateTexte=20150524].

Section B: Transfer of suspects/sentenced persons

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

TOPIC	FD 2008/909	FD 2008/947	FD 2009/829 (ESO)
Q1. AVAILABILITY OF INFORMATION			
Q1.1. Is information publicly available in 'issuing states' concerning the following? If yes, please specify.			
<ul style="list-style-type: none"> What information is provided (e.g. conditions for early release for FD 909 or the need for a suspect/sentenced person's consent to a measure for FD 947 and 829)? 	<p>Article 728-18 of the Code of Criminal Procedure :</p> <p>If the representative of the public ministry (prosecutor at the court which issued the decision) decides to send the decision of the judgment and the certificate to the relevant authority of the State of execution, they inform the offender of this (in written as the official record (<i>procès-verbal</i>) of this formality is provided. They also inform them:</p> <p>1. That, in the event of execution of the judgment on the territory of this State, the execution of the sentence will be governed by that State's</p>	<p>According to the draft bill on the adaptation of the Criminal Procedure to European Union law,⁵³ a judgment or a decision of probation can be transmitted to the relevant authority of another Member State of the European Union without the consent of the person concerned when their usual place of residence, under regular conditions, is in this State and they have gone back or wish to go back there;</p> <p>A judgment or a decision of probation can be transmitted to the relevant authority of another Member State of the European</p>	<p>According to the draft bill on the adaptation of the Criminal Procedure to European Union law,⁵⁴ a person for whom a decision of placement on probation has been made, is informed that this decision can give rise to a transmission to the relevant authority of another Member State of the European Union if they usually resides there, under regular conditions, and agree to go back there (new article. 696-52-1 of the Code of Criminal Procedure).</p>

⁵³ France, Bill adapting the French criminal proceedings to the European Union law (*Le projet de loi portant adaptation de la procédure pénale au droit de l'Union européenne*), available at:

[www.legifrance.gouv.fr/affichLoiPreparation.do;jsessionid=410DC5040B884A2BA759DD5C2DA9076B.tpdila15v_1?idDocument=JORFDOLE000028868633&type=contenu&id=2&typeLoi=proj&legislature=14].

⁵⁴ France, Bill adapting the French criminal proceedings to the European Union law (*Le projet de loi portant adaptation de la procédure pénale au droit de l'Union européenne*), available at:

[www.legifrance.gouv.fr/affichLoiPreparation.do;jsessionid=410DC5040B884A2BA759DD5C2DA9076B.tpdila15v_1?idDocument=JORFDOLE000028868633&type=contenu&id=2&typeLoi=proj&legislature=14].

	<p>legislation which will determine thus, in particular, the conditions for early or conditional release;</p> <p>2. That the period of deprivation of liberty already served under the judgment will be deducted from the sentence remaining to be served;</p> <p>3. That the relevant authority of the State of execution can decide to adapt the sentence or the measure of deprivation of liberty if, in its duration or its nature, it is incompatible with the legislation of this State;</p> <p>4. That the adaptation of the sentence or the measure of deprivation of liberty by the State of execution cannot result in an increase of the sentence.</p>	<p>Union, if the person concerned does not usually reside, under regular conditions, in this State, but requests to serve their sentence or measures of probation there, provided that the relevant authority of this State consents to the transmission of the decision of the judgment or probation relating to this person (new article 764-5 of the Code of Criminal Procedure).</p>	<p>The person concerned can request that the decision of placement on probation is carried out in another Member State than that in which they usually reside, under regular conditions, if the relevant authority of this State consents to the transmission of the decision of placement on probation relating to them (new article 696-52-2 of the Code of Criminal Procedure).</p>
<ul style="list-style-type: none"> • How is the information made publically available (tools, or networks used)? 	<p>Chapter VI of Title II of Book V of the Code of Criminal Procedure 'Of the execution of the decisions of the judgment to a sentence or a measure of deprivation of liberty pursuant to the framework decision 2008/909/JAI of the Council of November 27, 2008 concerning the application of the principle of mutual recognition in criminal matters of judgements imposing sentences or deprivation of liberty for purposes of their execution in the European Union'.</p> <p>National legislation can be</p>	<p>Draft bill on the adaptation of the Criminal procedure to European Union law supplements Book V of the Code of Criminal Procedure by Title VII d 'Of the execution of judgments and of decisions of probation pursuant to the framework decision of the Council of the European union of November 27, 2008 '.</p> <p>National legislation can be consulted on the Legifrance site, a public service for information on</p>	<p>Draft bill on the adaptation of the Criminal procedure to European Union law supplements Title X of Book IV of the Code of Criminal Procedure by Chapter VI "Of the execution of the decisions of probation within the Member States of the European Union pursuant to the framework decision of the council of the European Union of October 23, 2009".</p> <p>National legislation can be consulted on the Legifrance site, a</p>

	consulted on the Legifrance site, a public service for information on law, at the following address: http://www.legifrance.gouv.fr/	law, at the following address: http://www.legifrance.gouv.fr/	public service for information on law, at the following address: http://www.legifrance.gouv.fr/
<ul style="list-style-type: none"> In which languages is the information provided? 	<p>Article 728-18 of the Code of Criminal Procedure:</p> <p>The person is informed in a language which they understand.</p> <p>This provision supposes recourse to an interpreter, as much as is required</p>	<p>The information is published on the www.legifrance.gouv.fr website in French</p> <p>According to the preliminary article of the Code of Criminal Procedure, if the suspect or the accused person does not understand the French language, they have the right, until the end of the procedure, to the assistance of an interpreter in a language which they understand, including for meetings with their lawyer which have a direct link with any questioning or interview, and, except when the person concerned clearly and expressly rejects the option, the right to the translation of documents which are essential to their defence and the guarantee of a fair trial, which must, for this reason, be provided or indicated to them pursuant to the Code of Criminal Procedure.</p>	<p>No specific provisions in which language the information is provided to the concerned person.</p> <p>The information is published on the website www.legifrance.gouv.fr in French</p> <p>According to the preliminary article of the Code of Criminal Procedure, if the suspect or the accused person does not understand the French language, they have the right, until the end of the procedure, to the assistance of an interpreter in a language which they understand, including for meetings with their lawyer which have a direct link with any questioning or interview, and, except when the person concerned clearly and expressly rejects the option, the right to the translation of documents which are essential to their defence and the guarantee of a fair trial, which must, for this reason, be provided or indicated to them pursuant to the Code of Criminal Procedure.</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	Article 728-34 of the Code of Criminal Procedure:	The draft bill provides that the Public Prosecutor receives the requests relating to the	The draft Bill provides that the Public Prosecutor receives the requests relating to the recognition and the execution on the French

<p>about potential transfers (as issuing and executing state)? If yes, please provide brief details.</p>	<p>The Public Prosecutor receives the requests relating to the recognition and the execution on the French territory of the decisions of judgments pronounced by the jurisdictions of the other Member States.</p> <p><u>The central authority in charge of transferring offenders :</u></p> <p>Ministry for Justice Department for criminal matters and graces (grace or clemency it is when the penalty is forgiven), Office of international cooperation in criminal matters (<i>Direction des affaires criminelles et des grâces, Bureau de l'entraide pénale internationale</i>)</p> <p><u>Authority in charge of coordination and the implementation of physical transfers:</u></p> <p>Ministry for Justice Directorate of prison authorities, National Department for transfers</p>	<p>recognition and the execution on the French territory of the decisions of judgments pronounced by the jurisdictions of the other Member States. The Public Prosecutor can also ask the relevant authority of another Member State to transmit a request relating to the recognition and the execution on the French territory of a decision of judgment pronounced by a jurisdiction of that State (new article 764-18 of the Code of Criminal Procedure).</p> <p>If the recognition of the judgment or the decision is subordinated to the assent of the State of execution, the Public Prosecutor grants the transmission of the judgment or the decision of probation if the person concerned has French nationality. In other cases, the Public Prosecutor refers to the Minister for justice (new article 764-20 of the Code of Criminal Procedure).</p> <p>The judge for the application of sentences is able to rule on the requests for recognition and serving of judgments and decisions of probation (new</p>	<p>territory of the decisions of placement on probation ordered by the relevant authorities of the other Member States, as well as all the decisions of extension, modification or withdrawal that are related to measures that are already ordered and recognized (new article 696-66 of the Code of Criminal Procedure).</p> <p>If the recognition of the judgment or the decision is subordinated to the assent of the State of execution, the Public Prosecutor grants the transmission of the decision of placement on probation if the person concerned has French nationality. In other cases, the Public Prosecutor refers to the Minister for justice (new article 696-68 of the Code of Criminal Procedure).</p> <p>The Public Prosecutor refers to the relevant local judge for freedoms and detention who rules on the requests for recognition of the decisions of placement on probation ordered by the relevant authorities of the other Member States (new articles 696-69 and 696-70 of the Code of Criminal Procedure).</p>
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		article 764-22 of the Code of Criminal Procedure).	The draft bill also provides for the designation of one or more central authorities to ensure the reception of the transmissions (new article 696-55 of the Code of Criminal Procedure).
<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 Directorate of criminal affairs and graces of the Ministry of Justice has an intranet site with a section: 'international criminal cooperation'. On this site the legal authority of the State of execution exchanges information with the legal authority of the issuing State (before the transmission of the certificate when the agreement of the offender is a condition necessary to the implementation of the procedure, in the event of reorientation of the procedure towards another legal authority, in the event of refusal or of acceptance of the recognition and the execution of the decision of judgment of a custodial sentence, in the event of recourse of any interested party, of difficulty in execution as well as any other decision or measure affecting the judgment).⁵⁵</p> <p>According to the Ministry of justice, the European Union has organized transposition meetings to</p>	<p>The draft Bill provides only that the transmission of the judgment or the decision of probation, of the certificate and all the parts relating to the execution of the measures and any exchange relating to these are carried out directly, by any traceable written means and under conditions making it possible for the recipient to check the authenticity of it, between the relevant authorities of the issuing State of and those of the State of execution (new article 764-8 of the Code of Criminal Procedure).</p>	<p>The draft Bill provides only that the transmission of the certified copy of the decision of placement on probation, of the certificate, as well as all correspondences and parts with regard to them, is carried out by any traceable written means and under conditions making it possible for the recipient to check the authenticity of it, directly, between the relevant authorities of the issuing State and those of the State of execution (new article 696-55 of the Code of Criminal Procedure).</p>

⁵⁵ France, Circular NOR : JUSD1425570C (*Circulaire NOR : JUSD1425570C*), 28 October 2014, available at: [www.textes.justice.gouv.fr/art_pix/JUSD1425570C.pdf].

	<p>enable Member States 'to exchange' on the problems raised by this framework decision. Although there is obviously communication between the services for negotiation, transposition, and implementation of this framework decision.</p> <p>Moreover, the negotiation and transposition group and the office for international cooperation on criminal matters have communicated regularly and carry out information exchanges with the representatives of the other Member States of the European Union.</p> <p>Comparative studies have also been carried out by the office for comparative law within the framework of the transposition of this framework decision, in particular through the RCLUE (network of legislative co-operation of the ministries of Justice of the Member States of the European Union).⁵⁶</p>		
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⁵⁶ France, representative of the Department for criminal matters and graces (*Direction des affaires criminelles et des grâces*).

TOPIC	FD 2008/909	FD 2008/947	FD 2009/829 (ESO)
Q2. INFORMED CONSENT OF THE SUSPECT/SENTENCED PERSON			
<p>Q2.1. Is there a procedure in the issuing state (e.g. some form of mechanism that ensures it is done in all relevant cases) in place to inform the suspect/sentenced person of the option to transfer the judgment or decision to another Member State? If yes, please briefly provide information (e.g. is it an oral or written procedure) and specify who provides this information.</p>	<p>Article 728-18 of the Code of Criminal Procedure :</p> <p>If the representative of the public ministry (prosecutor at the court which issued the decision) decides to transmit the decision of judgment and the certificate to the relevant authority of the State of execution, they inform the offender of this in a language which they understand. An official record of this formality is provided, so the offender is informed in writing. If the offender is on the territory of the State of execution, the representative of the public ministry asks the relevant authority of this State to proceed with this formality.</p>	<p>No specific provisions on information of the suspect/sentenced person of the option to transfer the judgment or decision to another Member State.</p> <p>The offender is informed of the decision of the judge for the application of sentences of the State of execution who rules on a request for recognition and serving of judgments and decisions of probation. This decision is notified to the offender without delay (new article 764-28 of the Code of Criminal Procedure).</p>	<p>According to the new article 696-52 of the Code of Criminal Procedure, a decision of placement on probation can give rise to a transmission to the relevant authority of another Member State of the European Union when:</p> <p>'1. The person concerned usually resides, under regular conditions, in the territory of the State of execution and, having been informed of the measures concerned, agrees to go back there'.</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>Articles 728-17, 728-37 of the Code of Criminal Procedure:</p> <p>When the offender is on the French territory, the representative of the public ministry obtains their consent when required to do so pursuant to paragraph 3 of article 728-11.</p>	<p>No specific procedure to obtain the informed consent of the suspect/sentenced person before forwarding the judgement or decision to the executing state.</p> <p>However, the draft Bill provides that the person concerned can ask for the execution of their sentence or measure of probation on the territory of another State (the</p>	<p>According to new article 696-52 of the Code of Criminal Procedure, a decision of placement on probation can give rise to a transmission to the relevant authority of another Member State of the European Union when:</p> <p>'1. The person concerned usually resides, under regular conditions, in the territory of the State of execution and, having been</p>

		<p>new article 764-5-2 of the Code of Criminal Procedure).</p> <p>In addition, the judge for the application of sentences in a State of execution can consult the offender, including by using means of telecommunications, before ruling on the requests for recognition and serving of the judgments and the decisions of probation (new article 764-22 of the Code of Criminal Procedure).</p>	<p>informed of the measures concerned, agrees to go back there'.</p> <p>2. The person concerned can request that the decision of placement on probation is carried out in another Member State than that in which they usually reside, under regular conditions, if the relevant authority of this State consents to the transmission of the decision of placement on probation relating to them.</p> <p>In addition, the judge for freedoms and detention in a State of execution can consult the person placed on probation, including by using means of telecommunications (new article 696-70 of the Code of Criminal Procedure).</p>
<p>Q2.3. Does the suspect/sentenced person have the right to revoke his/her consent to the transfer in the issuing state? If yes, please briefly specify until which stage of the procedure this right exists.</p>	<p>No provision limits the possibility for the offender to withdraw their consent to a transfer, as such the interested party can withdraw their request at any time during the procedure.⁵⁷</p>	<p>No specific provisions</p>	<p>No specific provisions</p>

⁵⁷ France, Ministry of justice (Ministère de la justice), National procedure of transfer of sentences persons (*Procédures nationales pour le transfèrement des personnes condamnées*), available at: [www.coe.int/t/dghl/standardsetting/pc-oc/Country_information1_en_files/France%20Revised%20Template%20-%20Transfer%20of%20sentenced%20persons_fr.pdf].

	<p>However, as outlined by the Ministry of justice in the answer to our questions, “when consent is a condition for the transfer, the offender must provide this consent before the transmission of the certificate addressed by the Issuing State to the Executing State: Article 6-1 of framework decision states: 'Without prejudice to the provisions of paragraph 2, a judgement accompanied by a certificate can only be transmitted to the Executing State for the purpose of recognition and execution of the judgement with the consent of the convicted person, in accordance with the law of the Issuing State '. The directive does not provide for any possibility for the offender to withdraw their consent. This is thus neither a 'fundamental right', nor a 'right' provided for by the directive”.</p> <p>Thus, as there is not any clear text, various interpretations exist.⁵⁸</p>		
<p>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 or a written procedure, are there any checks on actual understanding of the option).</p>	<p>Article 728-17 of the Code of Criminal Procedure:</p> <p>When the offender is on the French territory, the representative of the public ministry proceeds with or orders an interview in order to make</p>		

⁵⁸ France, representative of the Department for criminal matters and graces (*Direction des affaires criminelles et des grâces*).

	<p>oral or written observations on the planned transfer. An official record of hearings is provided.</p> <p>When the offender is on the territory of the State of execution, the representative of the public ministry asks the relevant authority of this State to proceed with this interview.</p> <p>Article 728-37 of the Code of Criminal Procedure:</p> <p>When the relevant authority of the State of judgment makes a request, the Public Prosecutor carries out the hearing of the offender, if they are on the French territory, in order to make written or oral observations. These observations are attached to the file.</p>		
<ul style="list-style-type: none"> • When consent is not required)? 	<p>The judgment can put forward for execution in another Member State of the European Union without the consent of the offender or that of the State of execution in the following situations:</p> <ul style="list-style-type: none"> • the offender is a national of the State of execution and has their usual residence in that State (article 728-11- 1 of the Code of Criminal Procedure); • the offender is a national of the State of execution and is the object, under the terms of the decision of 		

	<p>judgment or any other court or administrative order, of a measure of deportation to the territory of the State of which they are a national, applicable upon their release (article 728-11-2 of the Code of Criminal Procedure).</p> <p>The consent of the offender is not necessary when the offender sought refuge on the territory of the State of execution or returned there because of their conviction or investigations and legal proceedings leading to this.</p> <p>When France is the State of execution, the relevant authority can only consent to the execution of the sentence on the French territory when the offender has resided in France without interruption for at least five years (article 728-11 3° §§2-3 of the Code of criminal procedure).</p>		
<ul style="list-style-type: none"> • When consent is required, Article 6 (3) of FD 2008/909/JHA). 	<p>The judgment can only be put up for execution in another Member State of the European Union with the dual consent of the offender and the relevant authority of the State of execution in all other situations (article 728-11 3° of the Code of Criminal Procedure).</p>		

<p>Q2.5. Does the suspect/sentenced person have the right to change his/her opinion on the transfer? If yes, please briefly specify until which stage of the procedure this right exists and how this is implemented in practice.</p>	<p>No provision limits the possibility for the offender to withdraw their consent to a transfer, as such the interested party can withdraw their request at any time during the procedure.⁵⁹</p>		
<p>Q2.6. Is the suspect/sentenced person assisted by a legal counsel in the issuing state? If yes, please provide details (e.g. is this legal advice provided face-to-face or over the telephone)</p>	<p>According to the preliminary article of the Code of Criminal Procedure, any suspect or accused person has the right to be assisted by a lawyer.</p> <p>Articles 728-48 and 728-49 of the Code of Criminal Procedure:</p> <p>An offender who goes to the Criminal Appeals Chamber to dispute a decision of the Public Prosecutor or an order approving or refusing to approve the proposal for an adaptation of a sentence, or a measure of deprivation of liberty, has the possibility of being represented before the court by a lawyer of their choice or, failing this, by a lawyer officially appointed by the president of the Bar.</p>	<p>According to the preliminary article of the Code of Criminal Procedure, any suspect or accused person has the right to be assisted by a lawyer.</p>	<p>According to the preliminary article of the Code of Criminal Procedure, any suspect or accused person has the right to be assisted by a lawyer.</p>

⁵⁹ France, Ministry of justice (Ministère de la justice), National procedure of transfer of sentences persons (*Procédures nationales pour le transfèrement des personnes condamnées*), available at: [www.coe.int/t/dghl/standardsetting/pc-oc/Country_information1_en_files/France%20Revised%20Template%20-%20Transfer%20of%20sentenced%20persons_fr.pdf].

<p>Q2.7. Is there a procedure in place to ascertain that the legal counsel speaks and understands the suspect/sentenced person's language in the issuing state? If yes, please specify.</p>	<p>According to the preliminary article of the Code of Criminal Procedure, if the suspect or the accused person does not understand the French language, they have the right, until the end of the procedure, to the assistance of an interpreter in a language which they understand, including for meetings with their lawyer which have a direct link with any questioning or interview, and, except when the person concerned clearly and expressly rejects the option, the right to the translation of documents which are essential to their defence and the guarantee of a fair trial, which must, for this reason, be provided or indicated to them pursuant to the Code of Criminal Procedure</p>	<p>According to the preliminary article of the Code of Criminal Procedure, if the suspect or the accused person does not understand the French language, they have the right, until the end of the procedure, to the assistance of an interpreter in a language which they understand, including for meetings with their lawyer which have a direct link with any questioning or interview, and, except when the person concerned clearly and expressly rejects the option, the right to the translation of documents which are essential to their defence and the guarantee of a fair trial, which must, for this reason, be provided or indicated to them pursuant to the Code of Criminal Procedure.</p>	<p>According to the preliminary article of the Code of Criminal Procedure, if the suspect or the accused person does not understand the French language, they have the right, until the end of the procedure, to the assistance of an interpreter in a language which they understand, including for meetings with their lawyer which have a direct link with any questioning or interview, and, except when the person concerned clearly and expressly rejects the option, the right to the translation of documents which are essential to their defence and the guarantee of a fair trial, which must, for this reason, be provided or indicated to them pursuant to the Code of Criminal Procedure</p>
<p>Q2.8. Does the suspect/sentenced person have the right to legal aid in the issuing state?</p>	<p>People whose resources are insufficient for them to exercise their rights in justice can be given legal aid (article 2 of the Law relating to legal aid).⁶⁰</p>	<p>People whose resources are insufficient for them to exercise their rights in justice can be given legal aid (article 2 of the Law relating to legal aid).</p>	<p>People whose resources are insufficient for them to exercise their rights in justice can be given legal aid (article 2 of the Law relating to legal aid).</p>
<p>Q2.9. Is the suspect/sentenced person assisted by an interpreter in the issuing state, if required:</p>			

⁶⁰ France, Law on legal aide n°91-647 (*Loi relative à l'aide juridique n°91-647*), 10 July 1991, article 2, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006077779].

<ul style="list-style-type: none"> • While consenting to the transfer? 	<p>According to the preliminary article of the Code of Criminal Procedure, if the suspect or the accused person does not understand the French language, they have the right, until the end of the procedure, to the assistance of an interpreter in a language which they understand, including for meetings with their lawyer which have a direct link with any questioning or interview, and, except when the person concerned clearly and expressly rejects the option, the right to the translation of documents which are essential to their defence and the guarantee of a fair trial, which must, for this reason, be provided or indicated to them pursuant to the Code of Criminal Procedure.</p> <p>According to the Ministry of justice, “the 'right' to an interpreter relates to all the criminal procedure but not to requests for transfers (moreover transfers are not a 'right' of offenders).</p> <p>However, if the representative of the public ministry (prosecutor at the court which issued the decision) decides to send the decision of the judgment and the certificate to the relevant authority of the State of execution, they inform the offender in a language which he/she</p>	<p>N/A</p>	<p>According to the preliminary article of the Code of Criminal Procedure, if the suspect or the accused person does not understand the French language, they have the right, until the end of the procedure, to the assistance of an interpreter in a language which they understand, including for meetings with their lawyer which have a direct link with any questioning or interview, and, except when the person concerned clearly and expressly rejects the option, the right to the translation of documents which are essential to their defence and the guarantee of a fair trial, which must, for this reason, be provided or indicated to them pursuant to the Code of Criminal Procedure.</p> <p>According to the Ministry of justice, “the 'right' to an interpreter relates to all the criminal procedure but not to requests for transfers (moreover transfers are not a 'right' of offenders).</p> <p>However, if the representative of the public ministry (prosecutor at the court which issued the decision) decides to send the decision of the judgment and the certificate to the relevant authority of the State of execution, they inform the offender in a language which he/she</p>
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	understands (article 728-18 of the Code of criminal procedure)” ⁶¹		understands (article 728-18 of the Code of criminal procedure)” ⁶²
<ul style="list-style-type: none"> • While requesting the transfer? 	<p>According to the preliminary article of the Code of Criminal Procedure, if the suspect or the accused person does not understand the French language, they have the right, until the end of the procedure, to the assistance of an interpreter in a language which they understand, including for meetings with their lawyer which have a direct link with any questioning or interview, and, except when the person concerned clearly and expressly rejects the option, the right to the translation of documents which are essential to their defence and the guarantee of a fair trial, which must, for this reason, be provided or indicated to them pursuant to the Code of Criminal Procedure.</p> <p>According to the Ministry of justice, “the 'right' to an interpreter relates to all the criminal procedure but not to requests for transfers (moreover transfers are not a 'right' of offenders).</p> <p>However, if the representative of the public ministry (prosecutor at the court which issued the decision)</p>	<p>According to the preliminary article of the Code of Criminal Procedure, if the suspect or the accused person does not understand the French language, they have the right, until the end of the procedure, to the assistance of an interpreter in a language which they understand, including for meetings with their lawyer which have a direct link with any questioning or interview, and, except when the person concerned clearly and expressly rejects the option, the right to the translation of documents which are essential to their defence and the guarantee of a fair trial, which must, for this reason, be provided or indicated to them pursuant to the Code of Criminal Procedure.</p> <p>According to the Ministry of justice, “the 'right' to an interpreter relates to all the criminal procedure but not to requests for transfers (moreover transfers are not a 'right' of offenders).</p>	<p>According to the preliminary article of the Code of Criminal Procedure, if the suspect or the accused person does not understand the French language, they have the right, until the end of the procedure, to the assistance of an interpreter in a language which they understand, including for meetings with their lawyer which have a direct link with any questioning or interview, and, except when the person concerned clearly and expressly rejects the option, the right to the translation of documents which are essential to their defence and the guarantee of a fair trial, which must, for this reason, be provided or indicated to them pursuant to the Code of Criminal Procedure.</p> <p>According to the Ministry of justice, “the 'right' to an interpreter relates to all the criminal procedure but not to requests for transfers (moreover transfers are not a 'right' of offenders).</p> <p>However, if the representative of the public ministry (prosecutor at the court which issued the decision)</p>

⁶¹ France, representative of the Department for criminal matters and graces (*Direction des affaires criminelles et des grâces*).

⁶² France, representative of the Department for criminal matters and graces (*Direction des affaires criminelles et des grâces*).

	<p>decides to send the decision of the judgment and the certificate to the relevant authority of the State of execution, they inform the offender in a language which he/she understands (article 728-18 of the Code of criminal procedure)".⁶³</p>	<p>However, if the representative of the public ministry (prosecutor at the court which issued the decision) decides to send the decision of the judgment and the certificate to the relevant authority of the State of execution, they inform the offender in a language which he/she understands (article 728-18 of the Code of criminal procedure)".⁶⁴</p>	<p>decides to send the decision of the judgment and the certificate to the relevant authority of the State of execution, they inform the offender in a language which he/she understands (article 728-18 of the Code of criminal procedure)".⁶⁵</p>
<p>Q2.10. Are these interpretation or translation services provided during a face-to-face consultation? Please provide brief information.</p>	<p>According to the preliminary article of the Code of Criminal Procedure, if the suspect or the accused person does not understand the French language, they have the right, until the end of the procedure, to the assistance of an interpreter in a language which they understand, including for meetings with their lawyer which have a direct link with any questioning or interview, and, except when the person concerned clearly and expressly rejects the option, the right to the translation of documents which are essential to their defence and the guarantee of a fair trial, which must, for this reason, be provided or indicated to them pursuant to the Code of Criminal Procedure.</p>	<p>According to the preliminary article of the Code of Criminal Procedure, if the suspect or the accused person does not understand the French language, they have the right, until the end of the procedure, to the assistance of an interpreter in a language which they understand, including for meetings with their lawyer which have a direct link with any questioning or interview, and, except when the person concerned clearly and expressly rejects the option, the right to the translation of documents which are essential to their defence and the guarantee of a fair trial, which must, for this reason, be provided or indicated to</p>	<p>According to the preliminary article of the Code of Criminal Procedure, if the suspect or the accused person does not understand the French language, they have the right, until the end of the procedure, to the assistance of an interpreter in a language which they understand, including for meetings with their lawyer which have a direct link with any questioning or interview, and, except when the person concerned clearly and expressly rejects the option, the right to the translation of documents which are essential to their defence and the guarantee of a fair trial, which must, for this reason, be provided or indicated to them pursuant to the Code of Criminal Procedure.</p>

⁶³ France, representative of the Department for criminal matters and graces (*Direction des affaires criminelles et des grâces*).

⁶⁴ France, representative of the Department for criminal matters and graces (*Direction des affaires criminelles et des grâces*).

⁶⁵ France, representative of the Department for criminal matters and graces (*Direction des affaires criminelles et des grâces*).

	<p>According to the Ministry of justice, “the 'right' to an interpreter relates to all the criminal procedure but not to requests for transfers (moreover transfers are not a 'right' of offenders).</p> <p>However, if the representative of the public ministry (prosecutor at the court which issued the decision) decides to send the decision of the judgment and the certificate to the relevant authority of the State of execution, they inform the offender in a language which he/she understands (article 728-18 of the Code of criminal procedure)”.⁶⁶</p>	<p>them pursuant to the Code of Criminal Procedure.</p> <p>According to the Ministry of justice, “the 'right' to an interpreter relates to all the criminal procedure but not to requests for transfers (moreover transfers are not a 'right' of offenders).</p> <p>However, if the representative of the public ministry (prosecutor at the court which issued the decision) decides to send the decision of the judgment and the certificate to the relevant authority of the State of execution, they inform the offender in a language which he/she understands (article 728-18 of the Code of criminal procedure)”.⁶⁷</p>	<p>According to the Ministry of justice, “the 'right' to an interpreter relates to all the criminal procedure but not to requests for transfers (moreover transfers are not a 'right' of offenders).</p> <p>However, if the representative of the public ministry (prosecutor at the court which issued the decision) decides to send the decision of the judgment and the certificate to the relevant authority of the State of execution, they inform the offender in a language which he/she understands (article 728-18 of the Code of criminal procedure)”.⁶⁸</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>The representative of the public ministry proceeds with or orders an interview with the offender in order to make oral or written observations on the planned transfer and, if necessary, obtains their consent (article 728-11-3 Code of Criminal Procedure). An official record of the interview is provided (article</p>	<p>No specific provisions</p>	<p>No specific provisions</p>

⁶⁶ France, representative of the Department for criminal matters and graces (*Direction des affaires criminelles et des grâces*).

⁶⁷ France, representative of the Department for criminal matters and graces (*Direction des affaires criminelles et des grâces*).

⁶⁸ France, representative of the Department for criminal matters and graces (*Direction des affaires criminelles et des grâces*).

	<p>728-17 of the Code of Criminal Procedure).</p> <p>As the Ministry of justice highlights, an obligation to check 'comprehension of the procedure for transfers' would imply that any candidate for a transfer understands very complex legal problems (such as the risk of prosecution for previous offences because of the absence of the 'principle of speciality' when the transfer is done with the consent of the offender, the consequences of the transfer on the severity of the sentence due to the application of maximum sentences incurred in the Executing State, the impact of a partial recognition of the conviction, the modification of the rules of reduction of sentences, the application of generally different rules of conditional release, the obligatory nature or not for consent, etc.)⁶⁹</p>		
<p>Q2.12. If the executing state adapts, before the transfer, the sentence or measure imposed by the issuing state (as authorised by Article 8.3 of FD 909, Article 9 of FD 947 and Article 13 of FD 829), does the suspect/sentenced person receive any updated information?</p>	<p>Article 728-48 of the Code of Criminal Procedure:</p> <p>The Public Prosecutor notifies the offender without delay of the decision to recognize and execute the foreign sentence/ or do not recognize and execute it; of the decision to approve or to refuse to</p>	<p>According to the draft bill, when the judge for the application of sentences proceeds with the adaptation of a sentence or the measure of probation imposed or has reduced his duration, the judge's decision is immediately</p>	<p>According to the draft bill, if the relevant judge for freedoms and detention, able to adapt measures, considers it necessary to interview the person placed on probation, the judge can use means of</p>

⁶⁹ France, representative of the Department for criminal matters and graces (*Direction des affaires criminelles et des grâces*).

	<p>approve the request for an adaptation of the sentence or the measure of deprivation of liberty.</p>	<p>brought to the knowledge of the relevant authorities of the issuing Member State (new article 764-28 of the Code of Criminal Procedure).</p>	<p>telecommunication (new article 696-70 of the Code of Criminal Procedure).</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>The offender is informed by a note in the formal notification that, if they do not accept the decision of the Public Prosecutor on the recognition and the execution of the conviction decision or the order approving or refusing to approve the proposal for an adaptation of the sentence, they have ten days to appeal to the Criminal Appeals Chamber with a request specifying, in order for it to be admissible, the legal or factual reasons for their appeal (article 728-48 of the Code of Criminal Procedure).</p> <p>However, the offender cannot appeal to the Criminal Appeals Chamber in the event of a refusal of execution which has been rejected as per the cases provided for in paragraph 3 of article 728-11.</p> <p>The decision of the Criminal Appeals Chamber can be the subject of an appeal in cassation (article 728-53).</p>	<p>The draft Bill provides only for the right of the offender to dispute the decision of the judge for the application of sentences in the State of execution. The offender is informed by a note in the formal notification that, if they do not accept this decision, they have 24 hours to appeal to the Application of Sentences Chamber with a request specifying, in order for it to be admissible, the legal or factual reasons for their appeal (article 764-28 of the Code of Criminal Procedure).</p>	<p>The draft Bill provides only for the right of the offender to contest the decision of the judge for the freedoms and detention in the State of execution. A person placed on probation is informed by a note in the formal notification that, if they do not accept this decision, they have 5 days to appeal to the Investigating Chamber with a request specifying, in order for it to be admissible, the legal or factual reasons for their appeal (new article 696-78 of the Code of Criminal Procedure).</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>The decision of judgment/sentence can be reviewed. The review falls only within the competence of the State of judgment</p> <p>A judgment pronounced abroad cannot be the subject of a review procedure in France (article 728-57 of the Code of Criminal Procedure).</p> <p>In the absence of an explicit decision, on the transfer the offender can appeal before the administrative court</p>	<p>No specific provisions</p>	<p>No specific provisions</p>
<p>Q2.15. Is the suspect/sentenced person assisted by legal counsel in the executing state? If yes, please provide details (e.g. is this legal advice provided face-to-face or over the telephone?)</p>	<p>According to the preliminary article of the Code of Criminal Procedure, any suspect or accused person has the right to be assisted by a lawyer.</p>	<p>An offender who contests the decision of the judge for the application of sentences before the Chamber for the application of sentences has the possibility of being represented before the court by a lawyer of their choice or, failing this, by a lawyer officially appointed by the president of the Bar (new article 764-28 of the Code of Criminal Procedure).</p>	<p>A person placed on probation who contests the decision of the judge for freedoms and detention before the Investigating Chamber, has the possibility of being represented before the court by a lawyer of their choice or, failing this, by a lawyer officially appointed by the president of the Bar (new article 696-78 of the Code of Criminal Procedure).</p>
<p>Q2.16. Have there been instances where the Member State has refused a transfer based on a pre-determined ground of refusal, as permitted to a varying extent under each FD? If so, please briefly provide details.</p>	<p>No case law so far, the decision was transposed by the Law of 5 August 2013 (the decisions of the</p>	<p>No case law so far, the decision has not been transposed yet.</p>	<p>No case law so far, the decision has not been transposed yet.</p>

	<p>first instance courts are not available).⁷⁰</p> <p>However, the Ministry of justice informs that various appeals before the administrative court have been introduced, without any offender as yet having successfully appealed.⁷¹</p>		
<p>Q.2.17. Are there any specific legislative or policy developments regarding the informed consent to the transfer of particular suspects/sentenced persons (such as children or persons with disabilities) in the issuing state? (e.g. the use of healthcare professionals)</p>	<p>Article 728-17 of the Code of Criminal Procedure:</p> <p>When the offender on the French territory is a minor or the subject of a protection measure, the representative of the public ministry proceeds with or orders an interview with the person charged with representing or assisting them to make oral or written observations on the planned transfer. An official record of the interview is provided. If necessary, the person charged with assisting or representing the minor or the person under a protection measure can make oral or written observations, which are attached to the file.</p> <p>When the offender or the person charged with assisting or</p>	<p>No specific provisions</p>	<p>No specific provisions</p>

⁷⁰ France, Law n° 2013-711 adapting various provisions in the area of justice under the European Union law and international commitments of France (*Loi n° 2013-711 portant diverses dispositions d'adaptation dans le domaine de la justice en application du droit de l'Union européenne et des engagements internationaux de la France*), 5 August 2013, available at : [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000027805521].

⁷¹ France, representative of the Department for criminal matters and graces (*Direction des affaires criminelles et des grâces*).

	<p>representing because of their age or a protection measure is on the territory of the State of execution, the public ministry requests the relevant authority of this State to carry out interviews as those mentioned above.</p> <p>Article 728-37 of the Code of Criminal Procedure:</p> <p>When the relevant authority of the State of judgment makes a request, the Public Prosecutor carries out the hearing of the person charged with assisting or representing the offender because of their age or a protection measure, if they are on the French territory, in order to make written or oral observations. These observations are attached to the file.</p>		
TOPIC	FD 2008/909	FD 2008/947	FD 2009/829 (ESO)
Q3. DECISION ON TRANSFER			
Q3.1. Are the following factors considered while deciding on forwarding a judgment or decision in the issuing state?			
<ul style="list-style-type: none"> The likely impact on the social rehabilitation of the suspect/sentenced person? 	<p>Article 728-10 of the Code of Criminal Procedure provides that the recognition and the execution of sentences or a measure of deprivation of liberty aims at facilitating the social rehabilitation of the offender.</p>	<p>According to the draft bill, it determines the rules applicable to the recognition and the execution, in a Member State of the European Union, of judgments or decisions adopted on the basis of such judgments, pronounced by the French courts ordering alternative sentences or measures</p>	<p>No specific provisions in the Bill</p>

	<p>Article 728-15 of the Code of Criminal Procedure specifies that the representative of the public ministry of the court which pronounced the decision of judgment can decide on a transfer when it is certain that the execution of the judgment on the territory of the other Member State will facilitate the social rehabilitation of the interested party.</p> <p>Article 728-16 of the Code of Criminal Procedure:</p> <p>Before carrying out the transmission of the decision of judgment and the certificate, the representative of the public ministry can, and in certain cases⁷² must, consult the relevant authority of the State of execution in order to determine if the execution of the judgment on the territory of that State is likely to facilitate the social rehabilitation of the offender.</p> <p>Article 728-22 of the Code of Criminal Procedure: As long as the execution of the sentence has not begun, the representative of the public ministry can, at any time, decide to withdraw the certificate, in</p>	<p>of probation, as well as the recognition and the execution in France of such judgments and decisions pronounced by the relevant authorities of another Member State of the European Union, in order to facilitate the social rehabilitation of the offender (new article 764-1 of the Code of Criminal Procedure).</p> <p>No specific provisions on considerations while deciding on forwarding a judgment or decision in the issuing state.</p>	
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⁷² Such a consultation is compulsory for cases other than those listed in paragraphs 1 and 2 of [article 728-11](#) of the Code of Criminal Procedure.

	<p>particular, if the relevant authority of the State of execution has sent, subsequent to the transmission of the decision of judgment, a reasoned opinion according to which the execution of the judgment would not contribute to facilitating the social rehabilitation of the offender, and if the representative of the public ministry considers this opinion founded.</p>		
<ul style="list-style-type: none"> Fundamental rights implications (such as the right to family life, right to education)? 	<p>Article 728-32 of the Code of Criminal Procedure:</p> <p>The execution of the decision of judgment can be refused if it is established that the person was convicted because of their sex, race, religion, ethnic origin, nationality, language, political opinions or orientation or sexual identity, or that this person's situation is at risk because of one of these reasons.</p>	<p>According to the bill, the Minister for justice (referred to if the person concerned does not have French nationality) can consent to the transmission of the judgment or decision if the person concerned has the nationality of a Member State of the European Union and if there are exceptional reasons justifying the execution of the decision in France. It takes account in particular of the importance of its decision for the good administration of justice, the existence of personal and family bonds in France and of the lack of a risk to public law and order (new article 764-20 of the Code of Criminal Procedure).</p>	<p>According to the bill, the Minister for justice (referred to if the person concerned does not have French nationality) can consent to the transmission of the judgment or decision if the person concerned has the nationality of a Member State of the European Union and if there are exceptional reasons justifying the execution of the decision in France. It takes account in particular of the importance of its decision for the good administration of justice, the existence of personal and family bonds in France and of the lack of a risk to public law and order (new article 696-68).</p>
<ul style="list-style-type: none"> Others? Please specify. 		<p>According to the bill, it also aims at the improvement of the protection of the victims and the</p>	

		<p>public (new article 764-1 of the Code of Criminal Procedure).</p> <p>No specific provisions on considerations while deciding on forwarding a judgment or decision in the issuing state.</p>	
<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>According to the general provision of article 707 of the Code of Criminal Procedure, the system for the execution of deprivation of liberty sentences aims at preparing the rehabilitation and reintegration of the offender in order to enable them to act responsibly, and be respectful of the rules and the interests of society and to avoid re-offending. This system is progressively adapted during the execution of the sentence, according to the development of the personality and the material, family and social situation of the offender, which are the subject of regular evaluations.</p> <p>It seems logical to the Ministry of justice to take into account nationality, the existence of members of the family of the offender in the Executing State, the knowledge of the language of the Executing State, the social bonds,</p>	<p>No</p>	<p>No</p>

	the offender's education in the Executing State, and the availability of a residence in the Executing State. ⁷³		
<ul style="list-style-type: none"> Family and social ties (e.g. accommodation, employment or other economic ties, linguistic and cultural links)? 	Yes, article 707 II of Code of criminal proceedings : , the system for the execution of deprivation of liberty sentences is progressively adapted during the execution of the sentence, according to the development of the personality and the material, family and social situation of the offender, which are the subject of regular evaluations.	Yes, the new article 764-20 of the Code of criminal proceedings: “family and social ties”.	Yes, the new article 696-68 of the Code of criminal proceedings: “family and social ties”.
<ul style="list-style-type: none"> Criminal history and criminal ties? 	No provision, but the national legal practice could be transposed to transfers on a European scale. In particular, criminal bonds are usually taken into account at the time of the choice of prisons at the time when the imprisonment of the accused person considered, and at the time of the requests for transfers. This practice is derived from the criterion of provisional detention, in article 144 of the Code of Criminal Procedure, aiming at avoiding any risk of conspiracy between the suspected people.	No specific provisions in the Bill	No specific provisions in the Bill

⁷³ France, representative of the Department for criminal matters and graces (*Direction des affaires criminelles et des grâces*).

	<p>Thus, people presenting a risk of conspiracy within the framework of the same case are generally placed in different prisons. This concern of the investigating judges should be expressed in the same manner for transfers on a European scale.⁷⁴</p>		
<ul style="list-style-type: none"> Humanitarian concerns (i.e. terminal illness of suspect/sentenced person or family members)? 	<p>Article D32-1 of the Code of Criminal Procedure provides that:</p> <p>'an investigating judge who refers to the judge for freedoms and detention, pursuant to the provisions of the fourth sub-paragraph of article 137-1, for the purposes of placing the accused in provisional detention fills out an individual note containing information relating to the evidence leading to the prosecution of the person and to their criminal record and personality, which is destined, in the event of placement in detention, for the head of the prison.</p> <p>If the judge orders the placement of the person in provisional detention, the judge for freedoms and detention sends to the head of the establishment, in addition</p>	<p>No specific provisions in the Bill</p>	<p>No specific provisions in the Bill</p>

⁷⁴ Interview with the investigating judge Magali Lafourcade, 9 June 2015.

	<p>to the notice of detention, this individual stamped note, after having completed this if it is considered necessary.</p> <p>The documents mentioned in the preceding sub-paragraph can, if necessary, be sent to the head of the establishment by the investigating judge if the case file for the procedure is returned to this judge before the execution of the detention notice.</p> <p>When the judge for freedoms and detention orders placement in detention after being directly called upon by the Public Prosecutor pursuant to the provisions of the second sub-paragraph of article 137-4, the judge themselves completes the individual notice provided for in the first sub-paragraph of this article.'</p> <p>In practice, this individual notice follows the prisoner in the event of transfer and contains in particular information related to their medical condition on the basis of statements made by the future prisoner, and can be supplemented by any element which may be useful for the most adapted support (drug-</p>		
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	addiction, suicide risk, illness, disability, etc.).		
<ul style="list-style-type: none"> Detention conditions (e.g. issues of overcrowding or availability of courses, such as the <i>Modulos</i> in Spain which has separate units to promote a progressive accountability of inmates) 	<p>Yes, general provision of the article 707 III of Code of criminal proceedings:</p> <p>Any offender imprisoned pursuant to a custodial sentence benefits from, each time that is possible, a progressive return to freedom by taking account of the material conditions of detention and the occupancy rate of the prison establishment.</p>	No specific provisions in the Bill	No specific provisions in the Bill
<ul style="list-style-type: none"> Others? 	<p>Article 707 II of Code of criminal proceedings :</p> <p>Developments of the personality of the offender.</p>		
Q.3.3. Are the following persons/entities consulted in the evaluation of the likelihood of social rehabilitation by the issuing state:			
<ul style="list-style-type: none"> Probation agencies or similar entities in the issuing state? 	<p>Answer of the Ministry of justice:</p> <p>“Firstly, the 2008/909/JAI framework decision does not provide for this.</p> <p>Secondly, the probation advisers of the Issuing State know the offender and their prospects for social rehabilitation in the Issuing State but not in the Executing State, to</p>		

	<p>where the offender expresses their desire to be transferred”.⁷⁵</p>		
<ul style="list-style-type: none"> The competent authorities in the executing state? 	<p>Article 728-16 of the Code of Criminal Procedure:</p> <p>Before carrying out the transmission of the decision of judgment and the certificate, the representative of the public ministry can, and in certain cases⁷⁶ must, consult the relevant authority of the State of execution in order to determine if the execution of the judgment on the territory of that State is likely to facilitate the social rehabilitation of the offender.</p> <p>When consulted by the relevant authority of the State of judgment before the transmission of the decision of judgment and the certificate, the Public Prosecutor can indicate to the relevant authority of the State of judgment, in a written and grounded opinion, if the execution in France of the judgment appears likely to support the social rehabilitation of the offender.</p>		

⁷⁵ France, representative of the Department for criminal matters and graces (*Direction des affaires criminelles et des grâces*).

⁷⁶ Such a consultation is compulsory for cases other than those listed in paragraphs 1 and 2 of [article 728-11](#) of the Code of Criminal Procedure.

<ul style="list-style-type: none"> The suspect/sentenced person? 	<p>Answer of the Ministry of justice:</p> <p>“Firstly, the 2008/909/JAI framework decision does not provide for this.</p> <p>Secondly, the probation advisers of the Issuing State know the offender and their prospects for social rehabilitation in the Issuing State but not in the Executing State, to where the offender expresses their desire to be transferred”.⁷⁷</p>		
<ul style="list-style-type: none"> The family of the suspect/sentenced persons, especially with regard to child offenders? 	<p>Answer of the Ministry of justice:</p> <p>“Firstly, the 2008/909/JAI framework decision does not provide for this.</p> <p>Secondly, the probation advisers of the Issuing State know the offender and their prospects for social rehabilitation in the Issuing State but not in the Executing State, to where the offender expresses their desire to be transferred”.⁷⁸</p>		
<ul style="list-style-type: none"> Any other person/entity? 	<p>Answer of the Ministry of justice:</p>		

⁷⁷ France, representative of the Department for criminal matters and graces (*Direction des affaires criminelles et des grâces*).

⁷⁸ France, representative of the Department for criminal matters and graces (*Direction des affaires criminelles et des grâces*).

	<p>“Firstly, the 2008/909/JAI framework decision does not provide for this.</p> <p>Secondly, the probation advisers of the Issuing State know the offender and their prospects for social rehabilitation in the Issuing State but not in the Executing State, to where the offender expresses their desire to be transferred”.⁷⁹</p>		
<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>Some clarifications from the Ministry of justice:</p> <p>“Firstly, the detention of children is a completely exceptional situation (the framework decision applies only to final judgments and does not relate to provisional detention, which is very limited as regards minors). In addition, the detention of minors concerns rather short periods of detention which do not come under framework decision 2008/909/JAI. The rare cases where a minor may be concerned are those with long sentences, which necessarily correspond to the offences, and where the status of being a minor is temporary: these offenders are mostly of adult age</p>	<p>No</p>	<p>No</p>

⁷⁹ France, representative of the Department for criminal matters and graces (*Direction des affaires criminelles et des grâces*).

	<p>when the decision for the procedure having led to their conviction becomes final.</p> <p>The situation of offenders with a disability is also very rare and depends on the nature of the disability. Each situation is treated on a case-by-case basis”.⁸⁰</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 certificate and all the documents related to the judgment and if necessary any document which could prove to be useful for the medical and social situation of the person concerned (e.g. reduced mobility) are the subject of direct transmissions between the relevant authorities of the State of judgment and the State of execution.⁸¹</p>	<p>According to the bill, a Public Prosecutor who receives the requests relating to the recognition and the execution on the French territory of the judgments or the decisions of probation pronounced by the courts of the other Member States, can proceed or order the collection of any further information which is considered useful (new article 764-18 of the Code of Criminal Procedure).</p>	<p>According to the bill, a Public Prosecutor who receives the requests relating to the recognition and the execution on the French territory of the decisions of probation can proceed or order the collection of any further information which is considered useful (new article 696-66 of the Code of Criminal Procedure).</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>The Ministry of justice points out that the framework decision provides that the Issuing State only has to translate the certificate and the judgement (even only essential parts) into the language of the Executing State (or into a language</p>	<p>No specific provisions in the Bill</p>	<p>No specific provisions in the Bill</p>

⁸⁰ France, representative of the Department for criminal matters and graces (*Direction des affaires criminelles et des grâces*).

⁸¹ France, Circular NOR : JUSD1425570C (*Circulaire NOR : JUSD1425570C*), 28 October 2014, available at: [www.textes.justice.gouv.fr/art_pix/JUSD1425570C.pdf].

	<p>of the European Union accepted by this State).</p> <p>The opinion of offender is not translated by the Issuing State.</p> <p>The framework decision does not provide for any 'report transmitted by the Issuing State'.</p> <p>In fact, Article 23-1 of the directive states: 'the certificate is translated into the official language, or one of the official languages, of the Executing State. Any Member State can, during the adoption of present framework decision, or subsequently, indicate in a declaration lodged with the secretariat general of the Council that they will accept a translation in one or more official languages of the institutions of the European Union.</p> <p>As France has not made any such declaration, only the certificates must be transmitted in French by the Issuing State. If the Prosecutor deems it useful, s/he may have the opinion of the offender translated.</p> <p>When France plans to transfer an offender it collects its observations in French (through official reports [procès-verbal]) and transmits the certificate accompanied by a translation in the language of the</p>		
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	<p>Executing State, as well as the observations without translation. Article 728-19 of the Code of criminal procedure provides that: "The representative of the public ministry transmits to the relevant authority of the Executing State a certified copy of the decision of judgement as well as the original or a copy of the certificate mentioned in article 728-12 and, if necessary, a copy of the official report of the hearing of the offender and the official report of the hearing of the person charged with representing or assisting them.</p> <p>The representative also transmits to this authority a translation of the certificate either in the official language, or one of the official languages, of the Executing State, or in one of the official languages of the institutions of the European Union accepted by this State. Upon the request of the relevant authority of the Executing State, the representative provides and transmits the translation, under the same conditions, of the decision of judgment or the essential parts of this decision.⁸²</p>		
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⁸² France, representative of the Department for criminal matters and graces (*Direction des affaires criminelles et des grâces*).

<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>Article 728-36 of the Code of Criminal Procedure:</p> <p>When consulted by the relevant authority of the State of judgment before the transmission of the decision of judgment and the certificate, the Public Prosecutor can indicate to the relevant authority of the State of judgment, in a written and grounded opinion, if the execution in France of the judgment appears likely to support the social rehabilitation of the offender.</p> <p>Article 728-43 of the Code of Criminal Procedure:</p> <p>In the case where, pursuant to paragraph 3 of article 728-11, the consent of the relevant authority of the State of execution is required, the Public Prosecutor considers if it is necessary to give consent by considering, in particular, the effect of the decision on the social rehabilitation of the offender.</p>		
<p>Q3.8. Are there formal and clear rules regarding data protection in the information exchange between:</p>	<p>The general provisions of Law No. 78-17 of January 6, 1978 relating to</p>	<p>Law No. 78-17 of January 6, 1978 relating to data processing, files and freedoms Under article 1, information technology should be at the service of every citizen. Its development shall take place in</p>	<p>Law No. 78-17 of January 6, 1978 relating to data processing, files and freedoms Under article 1, information technology should be at the service of every citizen. Its development shall take place in the</p>

	<p>data processing, files and freedoms are applicable.⁸³</p> <p>Under article 1, information technology should be at the service of every citizen. Its development shall take place in the context of international co-operation. It shall not violate human identity, human rights, privacy, or individual or public liberties.</p>	<p>the context of international co-operation. It shall not violate human identity, human rights, privacy, or individual or public liberties.</p>	<p>context of international co-operation. It shall not violate human identity, human rights, privacy, or individual or public liberties.</p>
<ul style="list-style-type: none"> National authorities (consulted in the evaluation of the likelihood of social rehabilitation) in the issuing state? 	<p>The general provisions of Law No. 78-17 of January 6, 1978 relating to data processing, files and freedoms are applicable.⁸⁴</p> <p>Under article 1, information technology should be at the service of every citizen. Its development shall take place in the context of international co-operation. It shall not violate human identity, human rights, privacy, or individual or public liberties.</p>	<p>The general provisions of Law No. 78-17 of January 6, 1978 relating to data processing, files and freedoms are applicable.⁸⁵</p> <p>Under article 1, information technology should be at the service of every citizen. Its development shall take place in the context of international co-operation. It shall not violate human identity, human rights, privacy, or individual or public liberties.</p>	<p>The general provisions of Law No. 78-17 of January 6, 1978 relating to data processing, files and freedoms are applicable.⁸⁶</p> <p>Under article 1, information technology should be at the service of every citizen. Its development shall take place in the context of international co-operation. It shall not violate human identity, human rights, privacy, or individual or public liberties.</p>

⁸³ France, Law n° 78-17 relating to data, files and liberties (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), du 6 janvier 1978, available at : [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460].

⁸⁴ France, Law n° 78-17 relating to data, files and liberties (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), du 6 janvier 1978, available at : [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460].

⁸⁵ France, Law n° 78-17 relating to data, files and liberties (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), du 6 janvier 1978, available at : [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460].

⁸⁶ France, Law n° 78-17 relating to data, files and liberties (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), du 6 janvier 1978, available at : [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460].

<ul style="list-style-type: none"> • Authorities in the issuing and executing state? 	<p>The Ministry of justice points out that for the transfer of personal data to a State belonging to the European Union, it is not necessary to ensure that this Member State provides a sufficient level of protection of the private life and freedoms and basic rights of people with regard to the processing of which these data are the object or may be the object. The simple fact that this State is member of the European Union guarantees that it ensures such a level of protection.</p> <p>Thus, Bulgaria, Romania, Slovakia, Poland, the Czech Republic, Germany, Spain, Italy, Malta and Cyprus, etc. have a level of personal data protection which does not imply the necessity to be assured of the existence of such a level of personal data protection, which is contrary to the case for Switzerland, Norway, Canada, the United States etc.⁸⁷</p>		
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⁸⁷ France, representative of the Department for criminal matters and graces (*Direction des affaires criminelles et des grâces*).

TOPIC	FD 2008/909	FD 2008/947	FD 2009/829 (ESO)
Q4. VICTIMS			
Q4.1. Do the victims have the right to receive the following information regarding the transfer from the issuing state:			
<ul style="list-style-type: none"> The decision to transfer 	No specific provisions	No specific provisions	No specific provisions
<ul style="list-style-type: none"> The status of the transfer 	No specific provisions	No specific provisions	No specific provisions
<ul style="list-style-type: none"> Other? Please specify. 	<p>The Ministry of justice points out that “firstly, the 2008/909/JAI framework decision does not provide for this. The same applies for the framework decision of 2001 and the directive of 2012 specifically devoted to the rights of victims.</p> <p>In addition, the victims or their family are informed of the release of the offender and will be informed of any possible escape of the offender, but they are informed neither of the place of detention, nor of internal transfers in France. The execution of sentences is a role of the State and informing the victim does not appear justified. There does not appear to be any reason to inform the family or the victim of the transfer of the offender abroad”.⁸⁸</p>		

⁸⁸ France, representative of the Department for criminal matters and graces (*Direction des affaires criminelles et des grâces*).

Q4.2. Is there any procedure in place to provide this information as issuing or executing state? If yes, please specify:	No specific provisions	No specific provisions	No specific provisions
<ul style="list-style-type: none"> • Is the information provided upon request of the victim? 			
<ul style="list-style-type: none"> • Who responsible for providing this information? 			
<ul style="list-style-type: none"> • Is it a verbal or written communication? 			
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)	No specific provisions	No specific provisions	No specific provisions
Q4.4. Do the victims have any other rights concerning the transfer (in the state you are describing, as issuing or executing state)? Please specify.	No specific provisions	No specific provisions However the bill provides that it aims at the improvement of the protection of victims in general (new article 764-1 of the Code of Criminal Procedure).	No specific provisions
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)?	No specific provisions	No specific provisions	No specific provisions
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 article 707 IV of the Code of Criminal Procedure, during the execution of the sentence, the victim has the right to:	According to article 707 IV of the Code of Criminal Procedure, during the execution of the sentence, the victim has the right to:	According to article 707 IV of the Code of Criminal Procedure, during the execution of the sentence, the victim has the right to:

	3. Be informed, if they wish, of the end of the execution of a sentence deprivation of liberty.	3. Be informed, if they wish, of the end of the execution of a sentence deprivation of liberty.	3. Be informed, if they wish, of the end of the execution of a sentence deprivation of liberty.
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