

Rehabilitation and mutual recognition – practice concerning EU law on transfer of persons sentenced or awaiting trial May 2015

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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: Max 200 words

The Italian system envisages a wide range of post-trial alternative measures to custody. They have been in place since 1975 when the prison legislation reform was approved¹. Law No. 663 of 10 October 1986² introduced major changes to the prison legislation. For many years, these measures could not be applied directly by the ordinary court as an alternative to a custodial sentence. Alternative sanctions could only be applied by a specialised court, named ‘Supervisory Court’ (*Tribunale di Sorveglianza*)³ once a specified length of time in prison had been served, and when the time still to be served was below certain thresholds set out in the law. In 1998 a new law⁴ introduced the possibility to immediately suspend short custodial sentences, and enabled the immediate application of alternative measures, thus avoiding imprisonment.

Law No. 165/1998 introduced the possibility to apply alternative sanctions/probation measures to avoid imprisonment. However, the specialised court processes any request made by a prisoner. To explain it briefly: the authority that has the competence to suspend custodial sentences is the public prosecutor.

¹ Law No. 354 of 26 July 1975, Norms governing the prison system and the enforcement of measures involving deprivation of, and limitation to liberty – *Legge 26 luglio 1975, n. 354, Norme sull’ordinamento penitenziario e sulla esecuzione delle misure privative e limitative della libertà*, available at: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1975-07-26;354!vig=>

² Law No. 663 of 10 October 1986, Modifications to the law governing the prison system and the enforcement of measures involving deprivation of, and limitation to liberty (so-called ‘Gozzini Law’) - *Legge 10 ottobre 1986, n. 663, Modifiche alla legge sull’ordinamento penitenziario e sulla esecuzione delle misure privative e limitative della libertà*, available at: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1986-10-10;663!vig=>

³ Law No. 663/1986, as it is nowadays, established the Supervisory Court. It is a specialised court which intervenes in the phase of enforcement of criminal sentences.

⁴ Law No. 165 of 27 May 1998, Modifications to Article 656 of the Criminal Procedure Code and to Law No. 354 of 26 July 1975, as subsequently amended, so-called ‘Simeone-Saraceni Law’ – *Legge 27 maggio 1998, n. 165, Modifiche all’articolo 656 del Codice di procedura penale ed alla Legge 26 luglio 1975, n. 354, e successive modificazioni*, available at: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1998;165>

The condemned person is entitled, within 30 days, to submit a request (in the meanwhile s/he is not kept in jail). If the condemned person does not submit any request, s/he will be imprisoned. While in prison, however, s/he can ask for alternative sanctions.

The main alternative sanctions are the following:

1) probation (Article 47 of Law No. 354/1975) in the case of a custodial sentence not exceeding four years (further to the approval of Decree Law No. 146 of 23 December 2013)⁵; pursuant to judgment No. 569 of 13-22 December 1989 (*sentenza 13-22 dicembre 1989, n. 569*) of the Constitutional Court, probation applies also in case a custodial sentence envisages imprisonment for a longer period but the time that a prisoner must still serve in prison does not exceed three years; this probation measure is named ‘affidamento in prova ai servizi sociali’, commonly translated as ‘probation’. The court lays down a series of requirements (e.g. restrictions on the place of residence and on freedom of movement, ban on going to specific places such as pubs, and obligation to perform specified activities, in particular work duties) and places the person under the supervision of the local social service. The social service helps and monitors the person’s behaviour. As stated in Article 47, paragraph 9 of Law No. 354/1975, “social service monitors the conduct of the person and helps him/her overcome difficulties in adapting to social life, even by getting in touch with his/her family and life contexts”.

2) home detention (Article 47b of Law No. 354/1975). Across the years, several forms of home detention have been established. The first one, introduced in 1986, applies in the case of a custodial sentence not exceeding four years for specific situations such as pregnant women, even partially disabled offenders aged over 60, and health, or educational reasons.

In 1998 the so called ‘generic home detention’ was introduced and can be applied in the case of a custodial sentence (or a remaining part thereof) not exceeding two years. In 2001 special home detention was introduced for mothers with children under 10 years of age. Law No. 199 of 26 November 2010⁶, introduced new measures aimed at encouraging the application of home detention in the case of sentences not exceeding one year. The already cited Decree Law No. 146 of 23 December 2013 introduced home detention with electronic surveillance;

3) day release (Article 48 of Law No. 354/1975): with this measure the detainee is authorised to spend part of the day outside of jail in order to work, take part in training activities, or engage in social activities.

⁵ Decree Law No. 146 of 23 December 2013 Urgent measures on the protection of fundamental rights of detainees and the phased reduction of the prison population – *Decreto Legge 23 dicembre 2013, n. 146, Misure urgenti in tema di tutela dei diritti fondamentali dei detenuti e di riduzione controllata della popolazione carceraria*, available at: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto-legge:2013-12-23;146>

⁶ Law No. 199 of 26 November 2010, Provisions governing the enforcement at home of custodial sentences not exceeding 18 months (*Legge 26 novembre 2010, n. 199, Disposizioni relative all’esecuzione presso il domicilio delle pene detentive non superiori a diciotto mesi*), available at: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2010;199>

Q2. Please outline the specific supervision measures as alternatives to pre-trial detention that are available in the Member State: Max 200 words

According to the law, “no person can be subjected to pre-trial supervision measures unless serious evidence of guilt exists” (Article 273⁷ Criminal Procedure Code). Such evidence is a necessary but not sufficient condition. In addition, one of the conditions stated in Article 274 must exist, namely: a) real and immediate danger to the collection or genuineness of evidence; b) real risk of absconding; c) real danger that the suspect may commit serious offences.

Pre-trial supervision measures, expressly set out in the legislation, are:

- ban on leaving the country (Article 281 of the Criminal Procedure Code); the person charged must not leave the country without authorisation from the court;
- obligation to report to the police (Article 282 of the Criminal Procedure Code) on the days and at the times specified by the court;
- removal from the family home (Article 282a of the Criminal Procedure Code), i.e. the court issues an order to leave the family home immediately and not to return or have access thereto without authorisation;
- restraining order (Article 282b of the Criminal Procedure Code) banning the accused person from places frequented by the victim of the crime;
- prohibition or obligation to reside at a specific address (Article 283 of the Criminal Procedure Code) , which forbids the accused person from living in a specified place or entering it without authorisation from the court, or obliges the accused person to reside in a specific place;
- home detention (Article 284 of the Criminal Procedure Code); since 2013, home detention is complemented with electronic surveillance unless the court deems it to be unnecessary.

⁷ Decree of the President of the Republic 22 September 1988, No. 47, Approval of the Criminal Procedure Code – *Decreto del Presidente della Repubblica 22 settembre 1988, n. 447*, Approvazione del codice di procedura penale.

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)?

Yes, there are.

Home detention (as a post-trial measure) applies in the case of a custodial sentence not exceeding four years (Article 47b, paragraph 1 of Law No. 354/1975) for:

- 1) pregnant women or mothers with a child under the age of 10 who lives with them;
- 2) fathers with a child under the age of 10 who lives with them, when the mother is deceased or cannot provide assistance to the child;
- 3) people whose health conditions require to be continuously monitored by healthcare institutions (e.g. people on dialysis or needing constant blood transfusions);
- 4) over-60s in case of (even partial) inability to perform daily activities;
- 5) people under 21 for health, work, study, and family reasons.

Home detention (as a post-trial measure) is called 'humanitarian' (Article 47b, paragraph 1, letter b of Law No. 354/1975) when one of the conditions that allow the mandatory or discretionary postponement of the custodial sentence pursuant to Articles 146 e 147 of the Criminal Code apply to the sentenced person:

- pregnant women or with a child under one year of age;
- people suffering from AIDS or similar diseases when their health conditions are incompatible with detention;
- people who ask for, and obtain a pardon;
- people suffering from serious physical infirmity;
- mothers with children under the age of three;
- people over 70.

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 ⁸	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>There is no specific information available for detainees. A representative of the Ministry of Justice specified that the information is quite widespread in prison. However in a recent European meeting organized by UK the idea of a leaflet has been launched⁹.</p>	<p>There is no information available. According to a representative of the Ministry of Justice the transfer of sentenced people who benefit from probation measures or alternative sanctions to detention is not likely to occur in Italy, because it requires a bilateral agreement. This person confirmed that to the best of his knowledge, this does not occur¹⁰. We have also consulted the Annual Report on Justice Administration (see the excerpt in Attachment</p>	<p>There is no information available. The transfer of people placed under pre-trial detention is not likely to occur in Italy. According to the interviewed personnel of the Court of Appeal of Turin only condemned people can be transferred. There is no legal act that allows this for EU citizens. We have also consulted the Annual Report on Justice Administration (see the excerpts in Attachment No. 1) but there is</p>

⁸ The draft law ‘Delegation to the Government for the implementation of EU directives and the enforcement of other EU acts – European Enabling Law 2014’ (*Disegno di legge ‘Delega al Governo per il recepimento delle direttive europee e l’attuazione di altri atti dell’Unione europea – Legge di delegazione europea 2014*) contains Article 11 (Article 18 in the text approved by the Senate) which requires to transpose, within three months from the entry into force of this draft law, Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions, as well as Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention. The Chamber of Deputies approved the draft law on 2 July 2015. The text has been published and it is entered into force on 9 July 2015. It is the law n.114/2015. The abovementioned framework decisions will be transposed – if the Government meets the deadline set out in Article 18 – within three months from the entry into force of the law (9 October). The text of the new law is available here: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2015;114>

⁹ Information from a representative of the Ministry of Justice.

¹⁰ Communication

		No. 1) but there is no information on the existence of this practice.	no information on the existence of this practice.
<ul style="list-style-type: none"> • How is the information made publically available (tools, or networks used)? 	Not applicable	Not applicable for the reasons expressed in the point above.	Not applicable for the reasons expressed in the point above.
<ul style="list-style-type: none"> • In which languages is the information provided? 	Not applicable	Not applicable for the reasons expressed in the point above.	Not applicable for the reasons expressed in the point above.
Q1.2. Apart from the competent authorities required by the FDs, is there any other national office or point of contact responsible for leading initial discussions about potential transfers (as issuing and executing state)? If yes, please provide brief details.	<p>No other authorities are involved, according to Legislative Decree No. 161 of 7 September 2010, Provisions to adapt national legislation to Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, (<i>Decreto legislativo 7 settembre 2010, n. 161, Disposizioni per conformare il diritto interno alla Decisione quadro 2008/909/GAI relativa all'applicazione del principio del reciproco riconoscimento alle sentenze penali che irrogano pene detentive o misure privative della libertà personale, ai fini della loro esecuzione nell'Unione europea</i>).</p>	Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1
Q1.3. Do the competent authorities collate information about their	We asked this question to the staff of the Ministry of Justice. They answered that	Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1

<p>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>statistics is under preparation. Data are not available for the time being¹¹.</p> <p>However, according to the 2014 Annual Report on Justice Administration (see excerpt in attachment no. 1), in 2014 27 detainees were returned. No figures are available for previous years. This allows us to infer that data are being collected but considering that the enforcement is still in its initial phase, information collection has not been entirely defined yet.</p> <p>In addition in the Circular letter 22 April 2015¹² the Prisons Department affirmed that the screening procedure (described below in Q 2.1) identified 1.044 detainees that could be transferred. The list of these detainees was attached to the Circular Letter that circulated only internally.</p>		
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¹¹ Communication.

¹² Circular Letter Ministry of justice. Department of Prison Administration - Office of the Chief of the Department - Office of Study, research and International 22 April 2015 Transfer of EU detainees in execution of a penalty toward the origin country. Framework Decision 2008/909/JHA. Circolare Ministero della Giustizia. Dipartimento Amministrazione Penitenziaria- ufficio del Capo Dipartimento – Ufficio Studi Ricerche Legislazione e Rapporti Internazionali 22 aprile 2015 Trasferimento dei detenuti comunitari in esecuzione pena verso il loro paese di origine. Decisione quadro 2008/909/JHA

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>There is no procedure described in Legislative Decree No. 161/2010.</p> <p>However, the Circular Letter of 18 April 2014¹³ established that a screening was to be conducted by 29 April 2014 in order to identify all the detainees that met the requirements to be transferred. During this screening the detainees were informed about the procedure and their opinion on it was collected (see the template attached to the Circular Letter of 18 April 2014).</p> <p>A representative of the Ministry of Justice said that they renewed the Circular Letter of 18 April 2014 in 2015 and they will provide a copy back from the summer holiday.</p> <p>We asked the representatives of two prisons in Piedmont¹⁴, and a representative of one of the prisons in Rome¹⁵ (who is currently acting as regional coordinator of the prisons</p>	<p>Not applicable for the reasons expressed in Q 1.1</p>	<p>Not applicable for the reasons expressed in Q 1.1</p>

¹³ Circular Letter Ministry of justice. Department of Prison Administration 18 April 2014 Transfer of EU detainees in execution of a penalty toward the origin country in implementation of the Framework Decision 2008/909/JHA. Circolare Ministero della Giustizia. Dipartimento Amministrazione Penitenziaria 18 aprile 2014 Trasferimento dei detenuti comunitari in esecuzione pena verso il loro paese di origine in attuazione della decisione quadro 2008/909/JHA

This Circular Letters have been attached to this report. Attachment no. 2.

¹⁴ No information provided by these representatives.

¹⁵ No information provided by these representatives.

	<p>in Tuscany), and representatives of other prisons about the concrete application of this procedure. Information was provided on TCN detainees¹⁶ but no information on the transfer of EU detainees. We are still waiting for information from the other representatives. Until now (17 August 2015) the only procedure activated has been the one of screening described above¹⁷.</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</p>	<p>Legislative Decree No. 161/2010 sets out the necessity to obtain consent only when the executing State has already accepted the transfer.</p> <p>However, in the screening referred to in Q 2.1 the opinion of detainees was collected before the beginning of the procedure. Please note that the circular letters clearly state that this is just an opinion and not a binding consent. The screening, as already stated, aimed at identifying the detainees that could be transferred, irrespective of whether they had consented or not.</p> <p>Moreover it is worth mentioning that in the first released Circular Letter¹⁸, the Framework Decision has been welcomed</p>	<p>Not applicable for the reasons expressed in Q 1.1</p>	<p>Not applicable for the reasons expressed in Q 1.1</p>

¹⁶ Information from a representative of a prison in Emilia Romagna.

¹⁷ Information from a representative of the Ministry of Justice.

¹⁸ Circular Letter Ministry of justice. Department for justice Affairs 2 May 2012 - Recognition and execution of foreign judgments in criminal matters. Legislative Decree No. 161/2010 laying down provisions to comply national law to the Framework Decision 2008/909/JHA. First applicative issues. Circolare Ministero della Giustizia Dipartimento per gli Affari di Giustizia. Riconoscimento ed esecuzione delle sentenze penali straniere 2 maggio 2012 D.lgs. 161/2010 recante disposizioni per conformare il diritto interno alla Decisione Quadro 2008/909/GAI. Prime questioni applicative. This Circular Letters have been attached to this report. Attachment no. 3.

<p>appeal and release possibilities).</p>	<p>because: “the transfer does not require the consent of the condemned person, at least in the majority of cases”.</p> <p>A brief description of the procedure was provided by a representative of the Ministry of Justice.¹⁹The procedure establishes that the public prosecutor (who can delegate the <i>magistrato di sorveglianza</i> i.e. supervisory magistrate²⁰) hears the detainees²¹ at the beginning of the procedure and in this occasion the person receives the notification (Annex II of the Framework Decision).</p> <p>Later on, the detainee is heard by the Registration Office of the Prison that fill in the template cited in Q 2.1.</p> <p>The person²² underlines that the Ministry of Justice is trying to raise awareness among the public prosecutors. She cannot guarantee that this is done in all the cases but they are confident that the situation is improving.</p> <p>In any case the person is heard by the Registration Office of the prison.</p>		
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¹⁹ Information from a representative of the Ministry of Justice.

²⁰ It is a specialised magistrate, which intervenes in the phase of enforcement of criminal sentences.

²¹ These detainees are those identified by the screening procedure.

²² Information from a representative of the Ministry of Justice.

	However, it is worth noticing that this is just an opinion and not a binding consent.		
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>The consent, when requested, can be revoked before the beginning of the execution abroad (Article 6, paragraph 8 of Legislative Decree No. 161/2010).</p> <p>However, from the Circular Letter²³ of 28 April 2014 and the interviews carried out in Turin it clearly emerged that Italy is giving priority to the cases where consent is not necessary (this circular letter defines these situations as “simplified transfers”). Taking into account the small number of detainees transferred, it is almost impossible that the right to revocation has been concretely applied.</p> <p>Nevertheless, a representative of the Ministry of Justice stated that it happened that a person revoked the consent. He has seen a couple of cases²⁴.</p>	Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1
Q2.4. Is there any procedure in place in the issuing state to obtain the opinion of the			

²³ Circular Letter of the Ministry of Justice, Department for Justice Affairs, of 28 April 2014 – Transfer of foreign detainees in compliance with Framework Decision 2008/909/JHA (*Circolare del Ministero della Giustizia, Dipartimento per gli Affari di Giustizia, del 28 aprile 2014 – Trasferimenti dei detenuti stranieri in attuazione della Decisione Quadro 2008/909*)

²⁴ Information from a representative of the Ministry of Justice.

<p>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>• When consent is not required)?</p>	<p>The opinion of the sentenced person who is in Italy must be requested pursuant to Article 6, paragraph 2 of Legislative Decree No. 161/2010 which, however, does not envisage any specific procedure.</p> <p>See answer in Q 2.1 and Q 2.2. for the concrete application at present of the request for the detainee’s opinion.</p> <p>The opinion is given in writing, using a template in Italian, English, and French.</p>		
<p>• When consent is required, Article 6 (3) of FD 2008/909/JHA).</p>	<p>Consent – when requested – has to be in writing and given in person (Article 5, paragraph 4 of Legislative Decree No. 161/2010).</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</p>	<p>The only provision is the one contained in Q 2.3. A representative of the Ministry of Justice stated that the right to revoke the consent is the guarantee of the right to change opinion²⁵.</p>		

²⁵ Information from a representative of the Ministry of Justice.

stage of the procedure this right exists and how this is implemented in practice.			
<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>No. According to the personnel interviewed in the Court of Appeal of Turin, the prison registration office hears the detainee without any legal assistance. We are waiting for additional information to be provided by the Department of Prison Administration and the directors and coordinators contacted at local level (those referred to in Q 2.1).</p> <p>Moreover, we interviewed a lawyer who had a Romanian client who was transferred to his country of origin in May 2014. The lawyer was informed about the transfer directly by the client who sent her a letter from Romania.</p> <p>However a representative of the Ministry of Justice stated that the right to a lawyer is guaranteed in the procedure for the recognition of the sentence²⁶.</p>	<p>Not applicable for the reasons expressed in Q 1.1</p>	<p>Not applicable for the reasons expressed in Q 1.1</p>
<p>Q2.7. Is there a procedure in place to ascertain that the legal counsel speaks and understands the suspect/sentenced person's</p>	<p>Not applicable. See Q 2.6.</p>	<p>Not applicable for the reasons expressed in Q 1.1</p>	<p>Not applicable for the reasons expressed in Q 1.1</p>

²⁶ Information from a representative of the Ministry of Justice.

language in the issuing state? If yes, please specify.			
Q2.8. Does the suspect/sentenced person have the right to legal aid in the issuing state?	No. See Q 2.6	Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1
Q2.9. Is the suspect/sentenced person assisted by an interpreter in the issuing state, if required:	<p>We are conducting further investigations on this point. According to the interviews we have conducted, the assistance of an interpreter is guaranteed to the suspect/sentenced person. However, at present the person is heard by prison officers and not by the judicial authority. Consequently, the interpreter is provided by the prison itself. We are waiting to receive information from the Department of Prison Administration and the directors and coordinators contacted at local level (those referred to in Q 2.1) in order to verify the concrete implementation of this issue.</p> <p>The staff of the Ministry of Justice who contacted us in August said that in practice this does not happen because the detainees are mainly from Romania and they speak Italian²⁷.</p>	Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1

²⁷ Information from a representative of the Ministry of Justice.

<ul style="list-style-type: none"> • While consenting to the transfer? 	See above.	Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1
<ul style="list-style-type: none"> • While requesting the transfer? 	See above.	Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1
Q2.10. Are these interpretation or translation services provided during a face-to-face consultation? Please provide brief information.	See above.	Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1
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>See above. Due to the limited number of detainees transferred, it is difficult to provide an answer. However, in the case referred to in Q 2.6, the sentenced person had not fully understood he was being transferred.</p> <p>The fact that the detainees is heard by the magistrate and then by the Registration Office of the Prison should guarantee that the person understands what is going on. However, Q 2.2. and Q 2.6 confirm that the person is not always heard by the magistrate.</p>	Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1
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	We are conducting further investigations on this issue. A representative of the Ministry	Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1

<p>947 and Article 13 of FD 829), does the suspect/sentenced person receive any updated information?</p>	<p>of Justice stated that the detainees receives updated information²⁸.</p>		
<p>Q2.13. Is there a right to appeal the forwarding of the judgment/decision in the issuing state? If yes, please briefly provide information (e.g. how the suspect is made aware of his/her right to appeal and what support is made available to him/her)</p>	<p>No. According to the ordinary rules, the right to appeal applies only in the case of imprisonment sentences.</p> <p>The decision to transfer, more specifically the certificate (Annex I of Framework Decision 909/2008/JHA) is “an act addressed not to the detainee but to the foreign authority, clearly ancillary and secondary to the sentence that has to be executed [...] (see, <i>mutatis mutandis</i>, judgment of the Joint Penal Chambers of the Court of Cassation No. 30769 of 21 June 2012 on European arrest warrant, filed on 27 July 2012, plaintiff: Caiazzo)”²⁹.</p>	<p>Not applicable for the reasons expressed in Q 1.1</p>	<p>Not applicable for the reasons expressed in Q 1.1</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</p>	<p>No. See the point above.</p>	<p>Not applicable for the reasons expressed in Q 1.1</p>	<p>Not applicable for the reasons expressed in Q 1.1</p>

²⁸ Information from a representative of the Ministry of Justice.

²⁹ Circular Letter 28 Aprile 2014, p. 3.

he/she can exercise this right)			
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?)	According to the personnel interviewed in the Court of Appeal of Turin, in Italy there is no knowledge of what happens in the executing State	Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1
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.	We are waiting for a reply from the Minister of Justice to be able to give a comprehensive answer. A representative of the Ministry of Justice stated that it never happened since he is in charge of this issue ³⁰ .	Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1
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	No. However, children are not subject to transfer in Italy. The low number of cases suggests that the case of people with disabilities might have never occurred.	Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1

³⁰ Information from a representative of the Ministry of Justice.

issuing state? (e.g. the use of healthcare professionals)			
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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>No. At local level, monitoring by the judicial police concerns the situation in Italy (presence of family, work, etc.) and it does not happened before forwarding a judgment. We are waiting for a reply from the Minister of Justice to verify whether any monitoring is implemented at central level.</p> <p>The staff of the Ministry of Justice specified that the information included in the already cited template (see Q. 2.1; 2.2) give elements on the likely of social rehabilitation in the executing country.</p> <p>Moreover now the registration office of the prisons include in the template new information coming from an IT software (the <i>Applicativo 15</i> cited in the Circular Letter 22 April 2015). This <i>Applicativo 15</i> contains the information on phone calls, visits and the things received during the detention. This provide additional information on who is taking care</p>	<p>Not applicable for the reasons expressed in Q 1.1</p>	<p>Not applicable for the reasons expressed in Q 1.1</p>

	of the detainee (in Italy or abroad) ³¹ .		
<ul style="list-style-type: none"> • Fundamental rights implications (such as the right to family life, right to education)? 	<p>In the screening described in Q 2.1, prison staff collects personal details and family bonds, in particular where the detainee, his/her family, and his/her family of origin resided and lived in the previous five years. (see the abovementioned template attached to the Circular Letter of 18 April 2014).</p> <p>The staff of the Ministry of Justice underlined that now the registration office of the prisons include in the template cited in Q 2.1 and Q2.4 new information coming from an IT software (the <i>Applicativo 15</i> cited in the Circular Letter 22 April 2015). This <i>Applicativo 15</i> contains the information on phone calls, visits and the things received during the detention. This provide additional information on who is taking care of the detainee (in Italy or abroad)³².</p>	Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1

³¹ Information confirmed by a representative of the Ministry of Justice.

³² Information confirmed by a representative of the Ministry of Justice.

<ul style="list-style-type: none"> Others? Please specify. 		Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1
<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>		Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1
<ul style="list-style-type: none"> Family and social ties (e.g. accommodation, employment or other economic ties, linguistic and cultural links)? 	<p>As already mentioned, the template attached to the Circular Letter of 18 April 2014 requires prison officers to collect personal details and family bonds, in particular where the detainee, his/her family, and his/her family of origin resided and lived in the previous five years. See also Q 3.1.</p>	Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1
<ul style="list-style-type: none"> Criminal history and criminal ties? 	<p>Only the judicial status in Italy.</p>	Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1
<ul style="list-style-type: none"> Humanitarian concerns (i.e. terminal illness of suspect/sentenced person or family members)? 	<p>No. But we are investigating further.</p>	Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1
<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 	<p>Not from the judicial authority. Please note that one of the people interviewed in the Court of Appeal answered: “Romania is in the EU. So we assume that they have</p>	Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1

<p>which has separate units to promote a progressive accountability of inmates)</p>	<p>acceptable conditions.” From the two 2014 Circular Letters it is crystal clear that Italy is pushing for transfers due to the need to reduce overcrowding in its prisons (see Court of Justice of the European Union (CJEU), 43517/09, <i>Torreggiani and others vs. Italy</i>, 8 January 2013).</p> <p>We are investigating further with the prison authority on this issue.</p> <p>The staff of the Ministry of Justice³³ underlined that they do not know where the detainees will be transferred. Considering that the transfer should facilitate the rehabilitation the authority in the executing country should guarantee this (for example that the prison is near the family of the detainee and it is adequate). She also underlines that they have no possibility to verify this.</p>		
<ul style="list-style-type: none"> • Others? 		<p>Not applicable for the reasons expressed in Q 1.1</p>	<p>Not applicable for the reasons expressed in Q 1.1</p>

³³ Information from a representative of the Ministry of Justice.

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>No. However we are investigating further.</p> <p>When the registration office fill in the template (see Q 2.1 -2.2) the personnel refer to the information provided by the educator and social workers who work in prison in the documents they prepare on the situation of the detainee (work, family, etc.).</p> <p>Therefore they are no heard but the information they collect form the detainees during the detention are used³⁴.</p>	Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1
<ul style="list-style-type: none"> • The competent authorities in the executing state? 	No. However we are investigating further.	Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1
<ul style="list-style-type: none"> • The suspect/sentenced person? 	No. However we are investigating further.	Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1
<ul style="list-style-type: none"> • The family of the suspect/sentenced persons, especially with regard to child offenders? 	Children are not subject to transfer.	Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1
<ul style="list-style-type: none"> • Any other person/entity? 		Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1

³⁴ Information from a representative of the Ministry of Justice.

<p>Q3.4. Are there any specific legislative or policy developments regarding the evaluation of the likelihood of social rehabilitation of particular suspects/ sentenced persons (such as children or persons with disabilities) by the issuing state?</p>	<p>No case. Difficult to answer.</p>	<p>Not applicable for the reasons expressed in Q 1.1</p>	<p>Not applicable for the reasons expressed in Q 1.1</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>We need a reply form the Ministry of Justice to answer this. A representative of the Ministry of Justice stated that in general they do not provide additional information to the competent authorities of the executing state³⁵.</p> <p>The procedure provided by the staff of the Ministry of Justice establishes that the information collected by the Registration Office of the place of detention are forwarded to the authorities of the executing State. It was confirmed that as far as they know this information is transmitted. It was suggested to verify with the Ministry of Justice³⁶ if they transmit the template or a brief summary translated. The Department of Prisons Administration does not translate these information. Please notice</p>	<p>Not applicable for the reasons expressed in Q 1.1</p>	<p>Not applicable for the reasons expressed in Q 1.1</p>

³⁵ Information from a representative of the Ministry of Justice.

³⁶ Information from a representative of the Ministry of Justice.

	that the template is handwriting. However this is not a pre- sentence report ³⁷ .		
Q3.6. If pre-sentence reports are forwarded by the issuing state, are they translated to the language of the executing state?	Not applicable.	Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1
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)?	No measures established by the law when Italy acts as executing State. However, Italy as issuing state has experienced refusal from executing state (in particular Romania) on the basis of the lack of possibilities of social rehabilitation ³⁸ .		
Q3.8. Are there formal and clear rules regarding data protection in the information exchange between:		Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1
<ul style="list-style-type: none"> National authorities (consulted in the evaluation of the likelihood of social rehabilitation) in the issuing state? 	We need a reply form the Ministry of Justice to answer this. A representative of the Ministry of Justice stated that he has no knowledge of specific regulation. However he affirmed that Italian DPA is very efficient and if there is an issue they will certainly raise it ³⁹ .	Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1

³⁷ Information confirmed by a representative of the Ministry of Justice.

³⁸ Information from a representative of the Ministry of Justice.

³⁹ Information from a representative of the Ministry of Justice.

<ul style="list-style-type: none"> • Authorities in the issuing and executing state? 	<p>We need a reply from the Ministry of Justice to answer this. The person in charge of the issue at the Ministry of Justice stated that he has no knowledge of specific regulation. However he affirmed that Italian DPA is very efficient and if there is an issue they will certainly raise it⁴⁰.</p>	<p>Not applicable for the reasons expressed in Q 1.1</p>	<p>Not applicable for the reasons expressed in Q 1.1</p>
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⁴⁰ Information from a representative of the Ministry of Justice..

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 	<p>No. Legislative Decree No. 161/2010 and circular letters⁴¹ do not contain any provision implementing the law.</p> <p>According to the interviewed personnel of the Court of Appeal of Turin, victims are never involved in the procedure. They are neither informed nor invited to hearings.</p> <p>A representative of the Ministry of Justice confirmed that the victims are not part of the procedure. Moreover he has no knowledge</p>	<p>Not applicable for the reasons expressed in Q 1.1</p>	<p>Not applicable for the reasons expressed in Q 1.1</p>

⁴¹ The already cited: Circular Letter of the Ministry of Justice, Department for Justice Affairs, of 2 May 2012 – Recognition and execution of foreign judgments in criminal matters. Legislative Decree No. 161/2010 laying down provisions to adapt national law to Framework Decision 2008/909/JHA. First applicative issues (*Circolare del Ministero della Giustizia, Dipartimento per gli Affari di Giustizia, del 2 maggio 2012 – Riconoscimento ed esecuzione delle sentenze penali straniere 2 maggio 2012. D.lgs. 161/2010 recante disposizioni per conformare il diritto interno alla Decisione Quadro 2008/909/GAI. Prime questioni applicative*)
Circular Letter of the Ministry of Justice, Department of Prison Administration, of 18 April 2014 – Transfer of EU condemned detainees to their country of origin in compliance with Framework Decision 2008/909/JHA (*Circolare del Ministero della Giustizia, Dipartimento Amministrazione Penitenziaria, del 18 aprile 2014 – Trasferimento dei detenuti comunitari in esecuzione pena verso il loro paese di origine in attuazione della Decisione Quadro 2008/909/JHA*)
Circular Letter of the Ministry of Justice, Department for Justice Affairs, of 28 April 2014 – Transfer of foreign detainees in compliance with Framework Decision 2008/909/JHA (*Circolare del Ministero della Giustizia, Dipartimento per gli Affari di Giustizia, del 28 aprile 2014 – Trasferimenti dei detenuti stranieri in attuazione della Decisione Quadro 2008/909*)

	(and he also asked to colleagues) that victims asked to be involved ⁴² .		
<ul style="list-style-type: none"> • The status of the transfer 	No. See the explanation above.	Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1
<ul style="list-style-type: none"> • Other? Please specify. 	No. See the explanation above.	Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1
Q4.2. Is there any procedure in place to provide this information as issuing or executing state? If yes, please specify:	No. See the explanation above.	Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1
<ul style="list-style-type: none"> • Is the information provided upon request of the victim? 	<p>No. There are no cases available. Please consider that, as stated in Q 1.3, people being transferred are very few. As soon as the Directorate General for Criminal Justice, International Cooperation Office replies, we will be able to verify whether a procedure is activated in the case of a request submitted by a victim.</p> <p>A representative of the Ministry of Justice confirmed that it never happened (at least none affirms to remember) that victims sent a request⁴³.</p>	Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1

⁴² Information from a representative of the Ministry of Justice.

⁴³ Information from a representative of the Ministry of Justice.

<ul style="list-style-type: none"> • Who responsible for providing this information? 	Not applicable	Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1
<ul style="list-style-type: none"> • Is it a verbal or written communication? 	Not applicable	Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1
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. See explanation in Q 4.1.	Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1
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. See explanation in Q 4.1.	Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1
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. See explanation in Q 4.1.	Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1
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)?	No. See explanation in Q 4.1.	Not applicable for the reasons expressed in Q 1.1	Not applicable for the reasons expressed in Q 1.1