

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:

Power of the President in Special Cases – This is a measure provided for under Article 574 of the Criminal Code¹, which states as follows:

It shall also be lawful for the President of Malta, in special cases, to grant temporary release to any accused person who is in custody for any crime or contravention, subject to such conditions as the President of Malta may think fit to impose. In default of observance by the accused of any of such conditions he shall be liable to be re-arrested forthwith.

Probation Act², a Suspended Sentence is based on the Criminal Code³ whilst Parole emerges from the Restorative Justice Act⁴.

A Probation Order would replace a sentence and require the offender to be supervised by a Probation Officer for as long as the Court determines. The law stipulates a minimum period of 12 months and a maximum one of three years. A Community Services Order, only applicable for offenders aged 16 and over, would be granted where the Court believes imprisonment would be the appropriate sentence yet chooses to impose unpaid work, or unpaid work and training. The Order should specify the number of required hours, with a minimum of 40 hours and a maximum of 480. As the name implies, a Combination Order imposes probation supervision in connection with a Community Service Order. The minimum number of hours that may be imposed under a Combination Order is 40, and the maximum 100. For imprisonment sentences not exceeding 7 years, where the Court feels that imprisonment, a Probation Order, a Community Services Order or a Combination Order are not expedient, it may wholly or conditionally discharge the offender. A conditional discharge would require the offender not to commit any offence during the Order period for a maximum period of three years. In assessing the possibility of making a Condition Discharge Order, the Court may consider all the circumstances of the case, including the offence's nature and the offender's character.

The latter orders are similar to Suspended Sentences, whereby prison sentences of not more than two years may be put on hold for a specified period (not less than one year and not more than four years) on condition that the offender does not commit another offence punishable with imprisonment. Upon violation of this condition, the

¹ Chapter 9 of the Laws of Malta, available at <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8574&l=1>.

² Chapter 446 of the Laws of Malta, available at <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8912&l=1>.

³ Chapter 9 of the Laws of Malta, available at <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8574&l=1>.

⁴ Chapter 516 of the Laws of Malta, available at <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11813&l=1>.

original sentence comes into force.

Parole may be granted, following an application by a prisoner, by the Parole Board to persons already serving one or more prison sentences. The Act excludes certain categories of prisoners from parole eligibility: prisoners sentenced to imprisonment of less than one year; immigration detainees; prisoners subject to extradition proceedings; third-country nationals who would be deported at the end of their sentence; prisoners found to conspire against the State; prisoners sentenced for acts of terrorism, of its funding; persons serving life imprisonment. Prisoners become eligible for parole at a time to be calculated in accordance with an equation based on the term of imprisonment. The prisoner under parole is placed under the supervision of a Parole Officer and parole conditions may be attached to the order, including measures to protect victims, treatment procedures and participation in community or educational activities .

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

As measures for pre-trial detention alternatives, Maltese law envisages Provisional Orders of Supervision, Bail and Protection Orders. Provisional Orders of Supervision are essentially Probation Orders imposed pending trial.

Bail, regulated in the Criminal Code, It may be granted, following an application, to persons who are accused or charged with any crime or contravention. When granted, it translates into temporary release from custody with the main condition being subsequent appearance at criminal proceedings. It may be granted on fulfillment or respect of specific conditions, such as payment of a financial guarantee, required residence at a specific address or no international travel. Bail is granted where the court is satisfied that the person on bail will not prejudice the ends of justice.

The Criminal Code also provides for Protection Orders that may be granted to persons charged before the Court of Magistrates. The aims of these orders are to protect injured or other persons or to protect public peace. When imposed, a Protection Order may be accompanied by restrictions or prohibitions as deemed fit by the Court.

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)?

Max 200 words

The only alternative to imprisonment is through the services provided by the Department of Parole and Probation (DPP). The DPP is only responsible for the supervision of offenders in the community. These could be offenders on a parole licence or those sentenced to a probation order, suspended sentence with supervision community service order and combination order⁵. In terms of those suspected of a crime or still awaiting trial the court might impose an order of supervision known as provisional order of supervision whereby probation staff supervises the person in the community until he/she is sentenced⁶.

There are no specific laws, policies or administrative provisions which address particular suspects or sentenced persons such as children, persons with disabilities or persons in need of special treatment or mothers with young children, however, the probation services endeavour to treat each case individually, and when a person is placed under an order, a care plan is developed. When developing this care plan, the specific circumstances and needs of such persons are identified, and they are then addressed accordingly through multi-agency cooperation with other agencies that provide specialist support services, such as Agenzija Appoġġ, Agenzija Sapport and the Education or Health authorities⁷.

⁵ Information supplied by a representative of the Probation and Parole Department. This also confirms the information provided throughout the report.

⁶ Information supplied by a representative of the Probation and Parole. This also confirms the information provided throughout the report.

⁷ Queries sent to the police headquarters and a correctional facility but no responses received to date.

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>Yes, through Custodial Sentences or Measures Involving Deprivation of Liberty Orders (Execution in the European Union) Regulations, 2012, Legal Notice 55 of 2012 available at: http://www.doi-archived.gov.mt/en/legalnotices/2012/02/LN%2055%20Eng.pdf</p>	<p>Yes, through the Probation Act (referred to above).</p>	<p>Yes, through Subsidiary Legislation 9.19⁸</p>
<ul style="list-style-type: none"> How is the information made publically available (tools, or networks used)? 	<p>Internet EJN Website</p>	<p>Internet EJN Website</p>	<p>Internet</p>
<ul style="list-style-type: none"> In which languages is the information 	<p>English and Maltese</p>	<p>English and Maltese</p>	<p>English and Maltese</p>

⁸ Decisions on Supervision Measures (Execution in the European Union) Regulations, Legal Notice 249 of 2013, available at <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12089&l=1>. The Subsidiary Legislation enforces the Framework Decision.

provided?			
<p>Q1.2. Apart from the competent authorities required by the FDs, is there any other national office or point of contact responsible for leading initial discussions about potential transfers (as issuing and executing state)? If yes, please provide brief details.</p>	<p>No, there is no formal authority, however NGO's such as Mid-Dlam ghad-Dawl⁹ would provide information and assistance if so requested.</p>	<p>No, there is no formal authority, however NGO's such as Mid-Dlam ghad-Dawl would provide information and assistance if so requested.</p>	<p>No.</p>
<p>Q1.3. Do the competent authorities collate information about their experience of transfers (such as personal data of the suspect/sentenced person, states involved, issues raised during the transfer process)?</p>	<p>Yes. To date Malta received only one request under this instrument.</p>	<p>Yes.</p>	<p>Yes, but to date Malta has not made use of the Regulations either as a receiving or an issuing state¹⁰.</p>

⁹ More information: <http://mddmalta.com/>

¹⁰ Exchange with a representative of the Office of the Attorney General.

If yes, specify the information gathered.			
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>According to the information provided by the relevant stakeholders, all EU nationals within the Correctional Facilities are provided with such information during a meeting for this specific purpose.</p> <p>Article 8 (4) of Legal Notice 55/2012 provides that <i>‘competent authority of the issuing State shall inform the sentenced person, in a language which he understands, that it has decided to forward the judgment together with the certificate by using the standard form of the notification set out in Schedule III. When the sentenced person is in the executing State at the time of that decision, that form shall be transmitted to the executing State which shall inform the sentenced person accordingly’</i> – this provision however applies once a decision has already been taken.</p> <p>The relevant Legal Notice (above-mentioned) also includes a Notification Form which informs the sentenced person of the decision to transfer.</p>	<p>No</p>	<p>No information on practice is available as the Regulations have not yet been used.</p> <p>Regulation 6(1), on forwarding the decision to the MS in which the person lawfully and ordinarily resides, requires the person’s consent to return to that MS and also information on the</p>
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			measures for the decision to be transmitted. Decisions may be forwarded to any other MS only upon the request of the person.
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	Yes, this is provided for under Art. 8 of Legal Notice 55/2012 and provides as follows : <i>8. (1) Saving the provisions of sub-regulation (2), a judgment together with the certificate shall only be transmitted to the executing State with the consent of the sentenced person.</i> <i>(3) (a) Where the sentenced person is still in the issuing State, the said person shall be given an opportunity to state his opinion orally or in writing. Where the issuing State considers it necessary in view of the sentenced person's age or his physical or mental condition, that opportunity shall be given to the person vested with legal representation of the sentenced person.</i> <i>(b) The opinion of the sentenced person shall be taken into account by the issuing State when deciding the issue of forwarding the judgment together with the certificate. Where the person has availed himself of the opportunity provided for in this sub- regulation, that opinion shall be forwarded to the executing State. If the sentenced person stated his opinion orally, the issuing State shall ensure that the written record of such statement is available to executing</i>	Yes – this is done also through the relevant probation officer. ¹¹	No information is available on practice as the Regulations have never been used.

¹¹ This information was provided by a representative of the Ministry of Home Affairs and National Security.

<p>information the suspect/sentenced person receives (e.g. information on appeal and release possibilities).</p>	<p><i>State.</i></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>The relevant Legal Notice does not have a specific provision enabling the sentenced person to revoke consent, however art.9 provides as follows ‘</p> <p><i>9. (1) As long as the enforcement of the sentence has not begun in the executing State, the issuing State may withdraw the certificate from that State, giving reasons for doing so. ‘</i></p>	<p>Yes, there is no legal basis for this, however, in practice, if consent is revoked the process will be halted.</p>	<p>The Regulations make no mention of this possibility.</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</p>	<p>Yes – sentenced persons have access to their legal counsel who would explain the relevant implications.</p> <p>Moreover, Article 8 (3) (b) of Legal Notice 55/2012 provides that ‘<i>The opinion of the sentenced person shall be taken into account by the issuing State when deciding the issue of forwarding the judgment together with the certificate. Where the person has availed himself of the opportunity provided for in this sub- regulation, that opinion shall be forwarded to the executing State. If the sentenced person stated his opinion orally, the issuing State shall ensure that the written record of such statement is available to executing State. ‘</i></p> <p>Furthermore, the certificate included in Schedule II of Legal Notice 55/2012 includes a section that requires the person filling in the certificate to mark whether the opinion of the person has been obtained, which therefore imposes</p>		<p>No information on practice is available, and the Regulations do not refer to this situation.</p>

the option).	an obligation to seek to obtain such opinion. The opinion of the sentenced persons has to be attached to the certificate.		
<ul style="list-style-type: none"> When consent is not required)? 	<p>As per the Framework Decision.</p> <p>The certificate included in Schedule II of Legal Notice 55/2012 includes a section that requires the person filling in the certificate to mark whether the opinion of the person has been obtained, which therefore imposes an obligation to seek to obtain such opinion. The opinion of the sentenced persons has to be attached to the certificate – there is no distinction between cases where consent is required and cases where such consent is not required.</p>		
<ul style="list-style-type: none"> When consent is required, Article 6 (3) of FD 2008/909/JHA). 	<p>The certificate included in Schedule II of Legal Notice 55/2012 includes a section that requires the person filling in the certificate to mark whether the opinion of the person has been obtained, which therefore imposes an obligation to seek to obtain such opinion. The opinion of the sentenced persons has to be attached to the certificate – there is no distinction between cases where consent is required and cases where such consent is not required.</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</p>	<p>The relevant Legal Notice does not provide this right at law¹².</p> <p>Where consent is necessary in terms of the Arrangement, it is envisaged that this will impact the decision to transfer unless proceedings have reached a stage where it would not be practical or feasible to withdraw same.</p>		<p>The Regulations are silent on the matter.</p>

¹² Information confirmed by a practitioner (lawyer).

right exists and how this is implemented in practice.			
Q2.6. Is the suspect/sentenced person assisted by a legal counsel in the issuing state? If yes, please provide details (e.g. is this legal advice provided face-to-face or over the telephone)	Legal advice is obtained at any stage and includes both personal contacts as well as telephonic contact ¹³ .		
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.	Yes. Provisions of Article 534A and the following articles apply. The Criminal Code applies until final determination of judgment ¹⁴ .	Yes ¹⁵ .	The Regulations are silent on the matter. In relation to language, Regulation 5 states that the certificate shall be in either Maltese or

¹³ Information confirmed by a practitioner (lawyer).

¹⁴ Queries sent to the national probation services and the police headquarters and a correctional facility but no responses received to date.

¹⁵ Queries sent to the national probation services and the police headquarters and a correctional facility but no responses received to date.

			English, whilst the decision shall not necessarily be in either Maltese or English.
Q2.8. Does the suspect/sentenced person have the right to legal aid in the issuing state?	Yes ¹⁶ .	No	It is presumed that the national rules on access to legal aid would apply to these situations.
Q2.9. Is the suspect/sentenced person assisted by an interpreter in the issuing state, if required:	Yes, if so requested ¹⁷ .	Yes, if so requested	It is presumed that the national rules on interpretation and language services in Court would apply.
• While consenting to the	Yes, if so requested ¹⁸ .		

¹⁶ Queries sent to the national probation services and the police headquarters and a correctional facility but no responses received to date.

¹⁷ Queries sent to the national probation services and the police headquarters and a correctional facility but no responses received to date.

¹⁸ Queries sent to the national probation services and the police headquarters and a correctional facility but no responses received to date.

transfer?			
• While requesting the transfer?	Yes, if so requested ¹⁹ .		
Q2.10. Are these interpretation or translation services provided during a face-to-face consultation? Please provide brief information.	Yes, if so requested ²⁰ .		No information is available on practice as these Regulations have never been used.
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.	The transfer of probation based offenders is not available. Offenders based at the Corradino Correctional Facility can apply for such transfer through the prison authorities ²¹ .		The Regulations are silent on this matter, and no information is available on practice.
Q2.12. If the executing state adapts, before the transfer, the sentence or measure imposed		Yes, through the relevant probation officer.	The Regulations are silent on the matter. Adaptation

¹⁹ Queries sent to the national probation services and the police headquarters and a correctional facility but no responses received to date.

²⁰ Queries sent to the national probation services and the police headquarters and a correctional facility but no responses received to date.

²¹ Information supplied by a representative of Probation and Parole. Queries sent to the national probation services and the police headquarters and a correctional facility but no responses received to date.

<p>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>of measures is regulation through Regulation 12, and subsequent regulations speak of information to be shared between states, but not with the person.</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>If there is no ground for an appeal under the FD, no such ground exists.</p>	<p>No</p>	<p>The Regulations are silent on this matter.</p>
<p>Q2.14. Does the suspect/sentenced person have a</p>	<p>Prisoners are informed of the progress of their application. However to date no transfer has been made under this Decision²².</p>	<p>Yes – there is no legal basis for this, however in practice this is done through liaison with the relevant probation officer</p>	<p>The Regulations are silent on</p>

²² Information confirmed by a practitioner (lawyer).

<p>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>this matter.</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>Should an inmate wish to receive advice, nothing prevents it although generally when applying under the Council of Europe Convention (Malta's experience to date barring one case in 2013), prison officials offer guidance on the applicable procedures²³.</p>	<p>Yes (if private).</p>	<p>The Regulations are silent on this matter, yet it is presumed that national rules on access to legal aid would apply.</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</p>	<p>NIL- From the information gathered in the course of this research assignment, there have been no such instances</p>	<p>No</p>	<p>The Regulations have never been used in Malta.</p>

²³ Information confirmed by a practitioner (lawyer).

<p>varying extent under each FD? If so, please briefly provide details.</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>N/A</p>		<p>No.</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? 	The certificate included in Schedule II of Legal Notice 55/2012 contains an optional section in which any other further relevant information can be included ²⁴ .	Yes	No information is available as the Regulations have never been used.
<ul style="list-style-type: none"> Fundamental rights implications (such as the right to family life, right to education)? 	Yes – information regarding the persons’ family, social or professional ties to the executing State has to be included in the certificate in Schedule II of Legal Notice 55/2012 ²⁵ .	Yes	No information is available as the Regulations have never been used.
<ul style="list-style-type: none"> Others? Please specify. 	The certificate include in Schedule II of Legal Notice 55/2012 contains an optional section in which any other further information can be included ²⁶ .	All other aspects as determined on a case-by-case basis, such as the continuity of provision of health services, including mental health services.	No information is available as the Regulations have never been used.
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:	The certificate include in Schedule II of Legal Notice 55/2012 contains an optional section in which any other further information can be included ²⁷ .	No – these are determined on a case by case basis	
<ul style="list-style-type: none"> Family and social ties (e.g. accommodation, employment or other economic ties, linguistic and cultural links)? 	The certificate include in Schedule II of Legal Notice 55/2012 contains an optional section in which any other further information can be included ²⁸ .		No information is available as the Regulations have never been used.
<ul style="list-style-type: none"> Criminal history and criminal ties? 	The certificate include in Schedule II of Legal Notice 55/2012 contains an optional section in which any other further information can be included ²⁹ .		No information is available as the Regulations have never been used.

<ul style="list-style-type: none"> Humanitarian concerns (i.e. terminal illness of suspect/sentenced person or family members)? 	The certificate include in Schedule II of Legal Notice 55/2012 contains an optional section in which any other further information can be included ³⁰ .		No information is available as the Regulations have never been used.
<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) 	N/A		No information is available as the Regulations have never been used.
<ul style="list-style-type: none"> Others? 	N/A		No information is available as the Regulations have never been used.
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? 	Yes – on a case by case basis	Yes	No information is available as the Regulations have never been used.
<ul style="list-style-type: none"> The competent authorities in the executing state? 	Yes — on a case by case basis	Yes	No information is available as the Regulations have never been used.

²⁴ Custodial Sentences or Measures Involving Deprivation of Liberty Orders (Execution in the European Union) Regulations, 2012, Legal Notice 55 of 2012 available at: <http://www.doi-archived.gov.mt/en/legalnotices/2012/02/LN%2055%20Eng.pdf>

²⁵ Custodial Sentences or Measures Involving Deprivation of Liberty Orders (Execution in the European Union) Regulations, 2012, Legal Notice 55 of 2012 available at: <http://www.doi-archived.gov.mt/en/legalnotices/2012/02/LN%2055%20Eng.pdf>

²⁶ Custodial Sentences or Measures Involving Deprivation of Liberty Orders (Execution in the European Union) Regulations, 2012, Legal Notice 55 of 2012 available at: <http://www.doi-archived.gov.mt/en/legalnotices/2012/02/LN%2055%20Eng.pdf>

²⁷ Custodial Sentences or Measures Involving Deprivation of Liberty Orders (Execution in the European Union) Regulations, 2012, Legal Notice 55 of 2012 available at: <http://www.doi-archived.gov.mt/en/legalnotices/2012/02/LN%2055%20Eng.pdf>

²⁸ Custodial Sentences or Measures Involving Deprivation of Liberty Orders (Execution in the European Union) Regulations, 2012, Legal Notice 55 of 2012 available at: <http://www.doi-archived.gov.mt/en/legalnotices/2012/02/LN%2055%20Eng.pdf>

²⁹ Custodial Sentences or Measures Involving Deprivation of Liberty Orders (Execution in the European Union) Regulations, 2012, Legal Notice 55 of 2012 available at: <http://www.doi-archived.gov.mt/en/legalnotices/2012/02/LN%2055%20Eng.pdf>

³⁰ Custodial Sentences or Measures Involving Deprivation of Liberty Orders (Execution in the European Union) Regulations, 2012, Legal Notice 55 of 2012 available at: <http://www.doi-archived.gov.mt/en/legalnotices/2012/02/LN%2055%20Eng.pdf>

• The suspect/sentenced person?	Yes – on a case by case basis	Yes	No information is available as the Regulations have never been used.
• The family of the suspect/sentenced persons, especially with regard to child offenders?	Yes – on a case by case basis	Yes	No information is available as the Regulations have never been used.
• Any other person/entity?	Yes – on a case by case basis	Yes – as required on a case by case basis (ex : Health authorities such as the NHS)	No information is available as the Regulations have never been used.
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?	No	No	No information is available as the Regulations have never been used.
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.	N/A as FD not used yet. However it is envisaged that this would be determined on a case by case basis ³¹ .		No information is available as the Regulations have never been used.
Q3.6. If pre-sentence reports are forwarded by the issuing state, are they translated to the language of the executing state?	N/A as FD not used yet. However it is envisaged that this would be determined on a case by case basis ³² .		No information is available as the Regulations have never been used.
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	Yes – Article XX of Legal Notice 55/2012 includes a detailed Article on non-recognition : <i>II. (1) Subject to the provisions of</i>		

³¹ Information confirmed by a practitioner (lawyer)

³² Information confirmed by a practitioner (lawyer).

<p>the forwarding of the judgement and the certificate (where required)?</p>	<p><i>regulation 12, a judgment shall not be recognized by the Attorney General if:</i></p> <p><i>(a) the certificate provided for in Schedule II is not produced, is incomplete or manifestly does not correspond to the judgment and has not been completed or corrected within a reasonable deadline set by the competent authority of the executing State;</i></p> <p><i>(b) the provisions of regulation 6 are not satisfied;</i></p> <p><i>(c) enforcement of the sentence would be contrary to the principle of ne bis in idem;</i></p> <p><i>(d) the act on which the judgment is based is not one falling within the list of scheduled conduct and does not constitute an offence under the law of Malta;</i></p> <p><i>(e) the enforcement of the judgment is barred by prescription according to the law of Malta;</i></p> <p><i>(f) there is an immunity or privilege under the law of Malta which makes it impossible to enforce the judgment;</i></p> <p><i>(g) the sentence has been imposed on a person who, under the law of Malta, owing to his age, could not have been held criminally liable for the acts in respect of which the judgment was issued;</i></p> <p><i>(h) at the time the judgment was received less than six months of the sentence remain to be served;</i></p>		
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	<p><i>(i) according to the certificate provided for in Schedule II, the person did not appear personally at the trial resulting in the decision, unless the said certificate states that the person, in accordance with procedural requirements defined in the law of the issuing State:</i></p> <p><i>(i) in due time was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the judgment, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he was aware of the scheduled trial and was informed that a decision may be handed down if he does not appear for the trial, or</i></p> <p><i>(ii) being aware of the scheduled trial, had given a mandate to his legal counsel appointed by the said person or by the State, to defend him at his trial, and was indeed defended by the said legal counsel at the trial, or</i></p> <p><i>(iii) after being served with the decision and being expressly informed of the right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, he expressly stated that he does not contest the decision, or he did not request a</i></p>		
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	<p><i>retrial or an appeal within the applicable time-frame;</i></p> <p><i>(j) before a decision is taken on the recognition of the judgment a request is made to the issuing State in terms of Article 18(3) of the Arrangement, and the issuing State does not consent, in accordance with Article 18(2)(g) of the Arrangement, to the person concerned being prosecuted, sentenced or otherwise deprived of his liberty in the executing State for an offence committed prior to the transfer other than that for which the person was transferred;</i></p> <p><i>(k) the sentence imposed includes a measure of psychiatric or health care or another measure involving deprivation of liberty, which, notwithstanding the provisions of regulation 14(3) cannot be executed in Malta in accordance with its legal or health care system;</i></p> <p><i>(l) the judgment relates to criminal offences which:</i></p> <p><i>(i) under the law of Malta, are regarded as having been committed wholly or partly within its territory, or</i></p> <p><i>(ii) were committed outside the territory of the issuing State, and the law of Malta does not permit legal proceedings to be taken in respect of such offences where they are committed outside the Maltese territory;</i></p> <p><i>(2) Before a decision is taken by the</i></p>		
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	<p><i>Attorney General to refuse recognition of the judgment in cases referred to in sub- regulation (1) (a), (b), (c), (i), (k) and (l), the competent authority of the executing State shall be consulted and shall, where appropriate, be requested to supply any necessary additional information without delay:</i></p> <p><i>Provided that any decision under sub- regulation (1)(l) shall be taken by the Attorney General in exceptional circumstances and on a case-by-case basis, having regard to the specific circumstances of the case, and in particular to whether a major or essential part of the conduct in question has taken place in the issuing State.</i></p> <p><i>(3) The competent authority of the issuing State may also be consulted by the Attorney General in cases where it is deemed possible to give partial recognition to the judgment and enforcement of the sentence with a view to finding an agreement as provided for under this sub- regulation:</i></p> <p><i>Provided that if agreement is reached to give partial recognition and enforcement of the sentence in accordance to</i></p> <p><i>conditions set out by them, such recognition and enforcement does not result in the aggravation of the duration of the sentence, and in the absence of such agreement, the certificate shall be withdrawn.</i></p>		
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	<i>12. The Attorney General may postpone recognition of the judgment where the certificate referred to is incomplete or manifestly does not correspond to the judgment, until such reasonable deadline set by him for the certificate to be completed or corrected.</i>		
Q3.8. Are there formal and clear rules regarding data protection in the information exchange between:	All processing of data has to be done in accordance with the Data Protection Act and relevant subsidiary legislation. The information submitted would be that required under the relevant instrument.	All processing of data has to be done in accordance with the Data Protection Act and relevant subsidiary legislation.	No information is available as the Regulations have never been used.
<ul style="list-style-type: none"> National authorities (consulted in the evaluation of the likelihood of social rehabilitation) in the issuing state? 	All processing of data has to be done in accordance with the Data Protection Act and relevant subsidiary legislation.	All processing of data has to be done in accordance with the Data Protection Act and relevant subsidiary legislation.	
<ul style="list-style-type: none"> Authorities in the issuing and executing state? 	All processing of data has to be done in accordance with the Data Protection Act and relevant subsidiary legislation.	All processing of data has to be done in accordance with the Data Protection Act and relevant subsidiary legislation.	

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>In accordance with Article 6 of the newly enacted Victims of Crime Act³³, victims have a right to receive information about the relevant criminal proceedings, including information enabling the victim to know about the state of the criminal proceedings. Furthermore, a victim has the right to be notified <i>‘when the person remanded in custody, prosecuted or sentenced for criminal offences concerning the said victim is released from or has escaped detention and of any relevant measures</i></p>	<p>In accordance with Article 6 of the newly enacted Victims of Crime Act, victims have a right to receive information about the relevant criminal proceedings, including information enabling the victim to know about the state of the criminal proceedings. Furthermore, a victim has the right to be notified <i>‘when the person remanded in custody, prosecuted or sentenced for criminal offences concerning the said</i></p>	<p>The Regulations are silent on this matter.</p>

³³ Chapter 539 of the Laws of Malta, available at <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12306&l=1>

	<p><i>issued for his protection in case of <u>release or escape of the offender</u>. ' It is unclear whether a transfer would be considered as a form of 'release' and therefore whether the duty of notification would apply in such cases. This law has only been enacted in April 2015 and it has not yet started being applied in practice.</i></p>	<p><i>victim is released from or has escaped detention and of any relevant measures issued for his protection in case of <u>release or escape of the offender</u>. ' It is unclear whether a transfer would be considered as a form of 'release' and therefore whether the duty of notification would apply in such cases.</i></p>	
<ul style="list-style-type: none"> • The status of the transfer 	<p>In accordance with Article 6 of the newly enacted Victims of Crime Act, victims have a right to receive information about the relevant criminal proceedings, including information enabling the victim to know about the state of the criminal proceedings. Furthermore, a victim has the right to be notified <i>'when the</i></p>	<p>In accordance with Article 6 of the newly enacted Victims of Crime Act, victims have a right to receive information about the relevant criminal proceedings, including information enabling the victim to know about the state of the criminal proceedings.</p>	<p>The Regulations are silent on this matter.</p>

	<p><i>person remanded in custody, prosecuted or sentenced for criminal offences concerning the said victim is released from or has escaped detention and of any relevant measures issued for his protection in case of <u>release or escape of the offender</u>. ' It is unclear whether a transfer would be considered as a form of 'release' and therefore whether the duty of notification would apply in such cases.</i></p>	<p>Furthermore, a victim has the right to be notified 'when the person remanded in custody, prosecuted or sentenced for criminal offences concerning the said victim is released from or has escaped detention and of any relevant measures issued for his protection in case of <u>release or escape of the offender</u>. ' It is unclear whether a transfer would be considered as a form of 'release' and therefore whether the duty of notification would apply in such cases.</p>	
<ul style="list-style-type: none"> Other? Please specify. 	N/A	N/A	The Regulations are silent on this matter.
<p>Q4.2. Is there any procedure in place to provide this information as issuing or executing state? If yes, please specify:</p>			The Regulations are silent on this matter.
<ul style="list-style-type: none"> Is the information provided upon request of the victim? 	N/A	N/A	The Regulations are silent on this matter.

• Who responsible for providing this information?	N/A	N/A	The Regulations are silent on this matter.
• Is it a verbal or written communication?	N/A	N/A	The Regulations are silent on this matter.
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	No	The Regulations are silent on this matter.
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	No	The Regulations are silent on this matter.
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)?	N/A	N/A	The Regulations are silent on this matter.
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)?	Yes	Yes	The Regulations are silent on this matter.