

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

May 2015

Country: Spain

FRANET Contractor: Universidad Pontificia de Comillas

Author(s) name: Marcos Baras González

Reviewed by: Cristina Gortázar Rotaeché

DISCLAIMER: This document was commissioned under contract as background material for comparative analysis by the European Union Agency for Fundamental Rights (FRA) for the project 'Rehabilitation and mutual recognition- practice concerning EU law on transfer of persons sentenced or awaiting trial'. The information and views contained in the document do not necessarily reflect the views or the official position of the FRA. The document is made publicly available for transparency and information purposes only and does not constitute legal advice or legal opinion.

Contents

Section A: General information on existing situation: probation measures, alternative sanctions and supervision measures as an alternative to pre-trial detention	3
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	3
Q2. Please outline the specific supervision measures as alternatives to pre-trial detention that are available in the Member State	4
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)?	5
Section B: Transfer of suspects/sentenced persons	6
Q1. Availability of information	6
Q2. Informed consent of the suspect/sentenced person	10
Q3. Decision on transfer	18
Q4. Victims	24

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

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

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

In the current Spanish Criminal Code (amended by Law 1/2015¹, which entered into force on 1 July 2015) we find the following²:

- The suspension of the prison sentence by which judges or courts, provided that certain conditions and obligations are fulfilled: (1. primary offender; 2. no conviction to sentences of over two years; 3. payment for civil responsibilities and confiscation) will put on hold the execution of the custodial sentences.
- Substitution of conviction or security measures imposed on a foreign citizen by their expulsion from Spain.
- Probation is a mode of suspension of the sentence which occurs once the execution of the deprivation of liberty has started and only when the conditions and circumstances, as indicated by the Criminal Code, prevail: (1. in the category of semi-liberty regime; 2. having completed three-quarters of sentence; 3. Good conduct in prison. For cases in which the convicted person carried out work, occupational or cultural activities during the sentence, conditions are less demanding. The conditions for those cases serving their first sentence in prison are also less demanding, provided that the sentence is not more than three years)
- Review of revisable permanent prison sentence (Article 92 of the Spanish Criminal Code), after 25 or 35 years of deprivation of liberty, that would establish a period of suspension of the privation of liberty, and during which the sentenced person could be subject to conditions such as prohibition of approaching certain people or places, prohibition of communicating with certain persons, obligation to maintain their place of current residence, prohibition of living in a particular place, appear personally before the Court, the police or the Administration, participate in educational, occupational, cultural programmes or similar, participate in programmes relating to drugs or alcohol, ban on driving motor vehicles (Articles 80.1, 83, 86, 87 and 91 of the Spanish Criminal Code).

¹ Spanish Official State Gazette (*Boletín Oficial del Estado (BOE)*) of 31 March 2015.

² Articles 80 to 94 bis of the Spanish Criminal Code published in the Spanish Official State Gazette (*Boletín Oficial del Estado (BOE)*) of 24 November 1995, updated subsequently by numerous laws.

Probation after serving a prison sentence for cases indicated in the Criminal Code (crimes against freedom and sexual indemnity and terrorist offences).- This section excludes information relating to security measures under the directions of the Research objectives of the Short thematic report FRANET GUIDELINES.

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

We have found these supervision measures as alternatives to pre-trial detention in Spain:

- A provisional prison sentence which is served at the home of the indicted person and not in prison, if there is serious danger to the health of the person indicted. (Article 508.1 of Spanish Criminal Procedure Law³).
- A provisional prison sentence that is served in an official institution or a legally recognised organisation for the treatment of addiction to narcotic substances or detoxification (Article 508.1 of Spanish Criminal Procedure Law)
- Provisional release, which is the situation in which the accused does not enter prison, provided that they meet certain conditions to ensure their presence in a future criminal procedure. These conditions include: bail, the obligation to appear in court on the days indicated, the withdrawal of their passport, the loss of their motor vehicle driving licence, the prohibition of residing in certain places, or the prohibition of approaching victims of gender-based violence, and the prohibition of communicating with certain persons, through a protection order (Article 528 et seq. of Spanish Criminal Procedure Law).

³ Spanish Official State Gazette (*Boletín Oficial del Estado (BOE)* of 17 September 1882, updated subsequently by numerous laws.

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)?

There is the possibility of suspending the sentence, with fewer requirements than for other accused persons, such as in the case of incurable illnesses, or when the crime has been committed because of the accused's dependence on drugs, (Article 80.4 and 5, Spanish Criminal Code). There is a special and more flexible regulation (Article 91.1, Spanish Criminal Code) for the granting of probation to a prisoner of seventy years or over, as well as to those who are very seriously ill. In relation to the provisional prison sentence, this will be served at the home of the indicted person if there is danger for their health, or in an official institution or an organisation for the treatment of drug addicts. In the case of pregnant women, or mothers with children, and the disabled, the courts and the prison authority will take into account their circumstances (Article 502.3, Spanish Criminal Procedure Law). In the case of minors, the legislation provides for the application of Law 5/2000⁴ (*ley orgánica*) and not the criminal code, for infringements by minors over 14 years and under 18 years of age. According to this law, it is possible to apply alternative measures to prison (such as semi-freedom, internment in a therapeutic institution, deprivation of liberty during the weekend, conditional release, living together with the family or educational group, working activities in benefit of the community, conducting socio-educational tasks, verbal reprimand, deprivation of driving license, carry firearms or hunting and disqualification) before and after the court case or sentence.

⁴ Law 5/2000 (*ley orgánica*) in the Spanish Official State Gazette, (*Boletín Oficial del Estado* (BOE)) of 13 January, regulating the criminal responsibility of minors.

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>At the moment the documentation is made public by Law 23/2014, 20 November⁵, on mutual recognition of criminal decisions in the European Union. In relation to this information we can highlight:</p> <ul style="list-style-type: none"> .- The issue and required recording of the orders and sentences to be executed on the basis of the principle of mutual recognition. (Article 7, Law 23/2014). .- The mode of transmission of orders and sentences to be executed on the basis of the principle of mutual recognition. (Article 8, Law 23/2014). 	<p>At the moment the documentation is made public by Law 23/2014, 20 November, on mutual recognition of criminal decisions in the European Union. In relation to this information we can highlight:</p> <ul style="list-style-type: none"> .- The issue and required recording of the orders and sentences to be executed on the basis of the principle of mutual recognition. (Article 7, Law 23/2014). .- The mode of transmission of orders and sentences to be executed on the basis of the principle of mutual recognition. (Article 8, Law 23/2014). 	<p>At the moment the documentation is made public by Law 23/2014, 20 November, on mutual recognition of criminal decisions in the European Union. In relation to this information we can highlight:</p> <ul style="list-style-type: none"> .- The issue and required recording of the orders and sentences to be executed on the basis of the principle of mutual recognition. (Article 7, Law 23/2014). .- The mode of transmission of orders and sentences to be executed on the basis of the principle of mutual recognition. (Article 8, Law 23/2014). .- Mandatory information to Eurojust concerning mutual recognition instruments. (Article 9, Law 23/2014).

⁵ Spanish Official State Gazette (*Boletín Oficial del Estado (BOE)*) of 21 November 2014.

	<p>.- Mandatory information to Eurojust concerning mutual recognition instruments. (Article 9, Law 23/2014).</p> <p>.- Description of the crime and the sentence. (Article 10, Law 23/2014).</p> <p>.- Sudden loss of the possibility of executing the order that has been transmitted. (Article 11, Law 23/2014).</p> <p>.- Appeals against the decisions concerning the transmission of instruments of mutual recognition. (Article 13, Law 23/2014).</p> <p>.- Lack of control over dual criminality and its exceptions. (Article 20, Law 23/2014).</p> <p>.- Competent judicial authorities in Spain who may transmit a judgment imposing a sentence or custodial measure of freedom. (Article 64, Law 23/2014).</p> <p>.- Who can apply for the transmission. (Article 65, Law 23/2014).</p>	<p>.- Mandatory information to Eurojust concerning mutual recognition instruments. (Article 9, Law 23/2014).</p> <p>.- Description of the crime and the sentence. (Article 10, Law 23/2014).</p> <p>.- Sudden loss of the possibility of executing the order that has been transmitted. (Article 11, Law 23/2014).</p> <p>.- Appeals against the decisions concerning the transmission of instruments of mutual recognition. (Article 13, Law 23/2014).</p> <p>.- Lack of control over dual criminality and its exceptions. (Article 20, Law 23/2014).</p> <p>.- Scope of the resolution of probation and measures susceptible of transmission in another Member State. (Article 94, Law 23/2014).</p> <p>.- Competent judicial authorities in Spain who may transmit a</p>	<p>.- Description of the crime and the sentence. (Article 10, Law 23/2014).</p> <p>.- Sudden loss of the possibility of executing the order that has been transmitted. (Article 11, Law 23/2014).</p> <p>.- Appeals against the decisions concerning the transmission of instruments of mutual recognition. (Article 13, Law 23/2014).</p> <p>.- Lack of control over dual criminality and its exceptions. (Article 20, Law 23/2014).</p> <p>.- Surveillance measures capable of transmission to another Member State of the European Union. (Article 110, Law 23/2014).</p> <p>.- Competent authorities in Spain, as issuing State, to issue an alternative to pre-trial detention measure. (Article 111, Law 23/2014).</p> <p>.- Requirements for transmitting a judgment on alternative measures to pre-trial detention. (Article 112, Law 23/2014).</p> <p>.- How to perform consultations and exchange of information between competent authorities. (Article 113, Law 23/2014).</p>
--	---	---	---

	<p>.- Requirements to transmit the judgment. (Article 66, Law 23/2014).</p> <p>.- Whether consent of the convicted person is required or not. (Article 67, Law 23/2014).</p> <p>.- Possible consultations between States. (Article 68, Law 23/2014).</p> <p>.- Initial documentation required for the execution of the sentence. (Article 69, Law 23/2014).</p> <p>.- Notification of transmission of the judgment (Article 70, Law 23/2014).</p> <p>.- Member States to which the judgment can be transmitted (Article 71, Law 23/2014).</p> <p>.- Possible precautionary measures for the convicted person in the executing State (Article 72, Law 23/2014).</p> <p>.- Time to give effect to the transfer (Article 73, Law 23/2014).</p>	<p>judgment of probation. (Article 95, Law 23/2014).</p> <p>.- Requirements for issuing a judgment of probation (Article 96, Law 23/2014).</p> <p>.- Documentation for the transmission of the European order of probation. (Article 97, Law 23/2014).</p> <p>.- Possible executing Member State for probation. (Article 98, Law 23/2014).</p> <p>.- Consequences for the judgment on probation: loss of competence for the Spanish authority, and communication of the maximum term of imprisonment in the event of non-compliance in the executing State (Article 99, Law 23/2014).</p> <p>.- Reasons for the possible return of judgment of probation (withdrawal of certificate) by Spain before the start of the execution and within 10 days from the judgment of the executing State. (Article 100, Law 23/2014).</p>	<p>.- People authorised for the transmission and procedure. (Article 114, Law 23/2014).</p> <p>.- Documentation of the judgment. (Article 115, Law 23/2014).</p> <p>.- Supervision period of the measures, maximum term and possible extension, renewal or periodic confirmation of the measures. (Article 116, Law 23/2014).</p> <p>.- Reasons and procedure for the withdrawal of the judgment. (Article 117, Law 23/2014).</p> <p>.- Time when the possibility of the Spanish authority supervising comes to a close. (Article 118, Law 23/2014).</p> <p>.- Recovery of the competence of the Spanish authorities. (Article 119, Law 23/2014).</p> <p>.- Possibility of further action by the Spanish authority, such as modification, renewal, revocation or revision of the measure, as well as the eventual issue of a European arrest warrant. (Article 120, Law 23/2014).</p>
--	---	--	---

	<p>.- Cases of withdrawal of the judgment (Article 74, Law 23/2014).</p> <p>.- Consequences in the Spanish court proceedings for the execution in another Member State. (Article 75, Law 23/2014).</p> <p>.- Consequences of the escape of the convicted person. (Article 76, Law 23/2014).</p> <p>.- Application of the principle of speciality. (Article 92, Law 23/2014).</p>		
<ul style="list-style-type: none"> • How is the information made publically available (tools, or networks used)? 	<p>By a law of transposition of framework decisions.</p> <p>Information about the possibility of a transfer of the convicted person is provided by the Prison Administration to prisoners through the penitentiary institution lawyer/functionaries.</p> <p>By Information Services offering free legal assistance in prison and by private lawyers.</p>	<p>By a law of transposition of framework decisions.</p> <p>Information about the possibility of a transfer of the convicted person is provided by the Prison Administration to prisoners through the penitentiary institution lawyer/functionaries.</p> <p>By Information Services offering free legal assistance in prison and by private lawyers.</p>	<p>By a law of transposition of framework decisions.</p> <p>Information about the possibility of a transfer of the convicted person is provided by the Prison Administration to prisoners through penitentiary institution lawyer/functionaries.</p> <p>By Information Services offering free legal assistance in prison and by private lawyers.</p>
<ul style="list-style-type: none"> • In which languages is the information provided? 	<p>Spanish.</p>	<p>Spanish.</p>	<p>Spanish.</p>

<p>Q1.2. Apart from the competent authorities required by the FDs, is there any other national office or point of contact responsible for leading initial discussions about potential transfers (as issuing and executing state)? If yes, please provide brief details.</p>	<p>No.</p>	<p>No.</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)? If yes, specify the information gathered.</p>	<p>The Spanish Transposition Act (Law 23/2014) does not regulate anything and because of the short time elapsed since the adoption of the Spanish Transposition Act, there is no consolidated practice.</p>	<p>The Spanish Transposition Act (Law 23/2014) does not regulate anything and because of the short time elapsed since the adoption of the Spanish Transposition Act, there is no consolidated practice.</p>	<p>The Spanish Transposition Act (Law 23/2014) does not regulate anything and because of the short time elapsed since the adoption of the Spanish Transposition Act, there is no consolidated practice.</p>
<p>TOPIC</p>	<p>FD 2008/909</p>	<p>FD 2008/947</p>	<p>FD 2009/829 (ESO)</p>
<p>Q2. INFORMED CONSENT OF THE SUSPECT/SENTENCED PERSON</p>			
<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>The Spanish Transposition Act does not regulate anything specific. However, as already mentioned, the suspect or the convicted person is informed by the Prison Administration, through the penitentiary institution lawyer/functionaries, of the possibility of the transfer, and is also informed by the Information Services of free legal assistance in prison and by private lawyers.</p>	<p>The Spanish Transposition Act does not regulate anything specific. However, as already mentioned, the suspect or the convicted person is informed by the Prison Administration, through the penitentiary institution lawyer/functionaries, of the possibility of the transfer, and is also informed by the Information Services of free</p>	<p>The Spanish Transposition Act does not regulate anything specific. However, as already mentioned, the suspect or the convicted person is informed by the Prison Administration, through the penitentiary institution lawyer/functionaries, of the possibility of the transfer, and is also informed by the Information Services of free legal assistance in prison and by private lawyers.</p>

		legal assistance in prison and by private lawyers.	
<p>Q2.2. Is there a procedure in place in the issuing state to obtain the informed consent of the suspect/sentenced person before forwarding the judgment or decision to the executing state? (e.g. a pre-prepared written explanation of the process available in a number of languages). If yes, please briefly specify what information the suspect/sentenced person receives (e.g. information on appeal and release possibilities).</p>	<p>Yes, there is a procedure in the presence of the judicial authority. For this purpose the suspect or convicted person must be assisted by a lawyer and interpreter. The person convicted must be informed in clear and understandable terms of the purpose of the hearing and of giving consent. This informed consent even if expressed verbally, will always be documented by the judge. Moreover, the judge will give the opportunity to the person convicted in Spain of formulating his or her opinion orally or in writing. When the convicted person, because of his or her age or physical or mental state, cannot give his or her opinion, the same shall be sought through their legal representative. (Articles 67.1 and 3, Law 23/2014).</p>	<p>Before the transmission of the judgment of probation, the judicial authority will ask the convicted person if he or she wants to return, or remain in their State of residence, giving them a period of thirty days within which to notify the authority. If the convicted person wants to comply with the measure in another State, the judicial authority shall request from the competent authority of that State consent to the transmission of the judgment. This informed consent, even if expressed verbally, will always be documented by the judge. (Article 98.2, Law 23/2014).</p>	<p>Before the transmission of the resolution of probation, the judicial authority will ask the convicted person, if he or she wants to return, or remain in their State of residence, giving them a period of thirty days within which to notify the authority. If the accused person wants to comply with the measure in another State, the judicial authority shall request from the competent authority of that State consent to the transmission of the judgment.</p> <p>If the proceedings were followed in various courts, the consent of the accused in one case means it is extensive to all others. If the procedure is carried out on the occasion of the arrest, the consent of the accused will be in the form regulated by the Spanish Criminal procedural law. The consent of the accused may be given simultaneously at any other hearing that takes place during the procedure. (Articles 114.3 and 4, Law 23/2014)</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>When consent is required, Spanish legislation does not provide for the possibility of revocation. (Article 67, Law 23/2014).</p>	<p>This possibility is not expressly provided for in Spanish law.</p>	<p>This possibility is not expressly provided for in Spanish law.</p>
<p>Q2.4. Is there any procedure in place in the issuing state to obtain the opinion of the sentenced person concerning the following?: If yes, please briefly specify e.g. is it an oral or a written procedure, are there any checks on actual understanding of the option).</p>			
<ul style="list-style-type: none"> • When consent is not required)? 	<p>For the moment, Spanish legislation does not differ regarding the procedure, whether consent is required or not. Consent or opinion takes place before the prison surveillance judge. The suspect or sentenced person must be informed in clear and understandable terms of the purpose of the hearing and of consent. This informed consent, even if expressed verbally, will always be documented by the judge. Moreover, the judge will give the opportunity to the person convicted in Spain of formulating his or her opinion orally or in writing. When the sentenced person, because of their age or physical or mental state, cannot</p>		

	give his or her opinion, the same shall be sought through their legal representative ⁶ .		
<ul style="list-style-type: none"> • When consent is required, Article 6 (3) of FD 2008/909/JHA). 	<p>For the moment, Spanish legislation does not differ regarding the procedure, whether consent is required or not. Consent or opinion takes place before the prison surveillance judge. The suspect or sentenced person must be informed in clear and understandable terms of the purpose of the hearing and of consent. This informed consent, even if expressed verbally, will always be documented by the judge. Moreover, the judge will give the opportunity to the person convicted in Spain of formulating his or her opinion orally or in writing. When the sentenced person, because of their age or physical or mental state, cannot give his or her opinion, the same shall be sought through their legal representative.</p> <p>(Articles 67.1 and 3, Law 23/2014).</p>		
Q2.5. Does the suspect/sentenced person have the right to change his/her opinion on the transfer? If yes, please briefly	This possibility is not expressly provided for in Spanish law.		

⁶ Articles 67.1 and 3 Law 23/2014, 20 November, on mutual recognition of criminal decisions in the European Union, Spanish Official State Gazette (*Boletín Oficial del Estado (BOE)*) of 21 November 2014.

specify until which 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>Yes, consent is given in the presence of the judge and the suspect or sentenced person is assisted by a lawyer. Spanish legislation does not specify the form that this assistance may take. (Article 67.1, Law 23/2014).</p>	<p>Spanish legislation does not expressly provide for the obligation to be assisted by a lawyer (Article 98.2, Law 23/2014).</p> <p>Spanish legislation do not provide expressly the obligation to be assisted by counsel. The Spanish legislation do not provide expressly the obligation to be assisted by counsel, given in the presence of the judge and assisted by lawyer</p>	<p>In this case the Spanish Transposition Act does not make reference to legal aid, but the accused in criminal proceedings in Spain is always assisted by a lawyer.</p> <p>In this case the Spanish transposition Act does not make reference to legal aid,</p>
<p>Q2.7. Is there a procedure in place to ascertain that the legal counsel speaks and understands the suspect/sentenced person's language in the issuing state? If yes, please specify.</p>	<p>No.</p>	<p>As already indicated, Spanish legislation does not expressly order the obligation to be assisted by a lawyer. (Article 98.2, Law 23/2014).</p>	<p>No.</p>
<p>Q2.8. Does the suspect/sentenced person have the right to legal aid in the issuing state?</p>	<p>Yes, consent is given in the presence of the judge and the suspect/sentenced person is</p>	<p>As already indicated, Spanish legislation does not expressly order the obligation to be assisted by a lawyer. (Article 98.2, Law 23/2014).</p>	<p>As already indicated, in this case the Spanish Transposition Act does not make reference to legal aid, but the accused in criminal proceedings in Spain is always assisted by a lawyer.</p>

	assisted by a lawyer. ⁷ According to law 1/1996, 10 January, free legal assistance aid is to the suspect/sentenced person in Spain.		
Q2.9. Is the suspect/sentenced person assisted by an interpreter in the issuing state, if required:			
<ul style="list-style-type: none"> • While consenting to the transfer? 	Yes.	Not specified in Spanish law.	Yes, based on Spanish criminal procedural rules. (Articles 118, 123, 124, 125, 126, 127 and 520 Spanish Criminal Procedure, Article 231.5, Law 6/1985 (<i>ley orgánica</i>) of the Judicial Power ⁸ and Law 5/2015, of 27 April, by amending the law on Criminal Procedure and Law 6/1985, (<i>ley orgánica</i>) of 1 July, the Judicial Branch, to transpose Directive 2010/64/EU, concerning the right to interpretation and to translation in criminal proceedings and Directive 2012/13/EU, concerning the right to information in criminal proceedings.)
<ul style="list-style-type: none"> • While requesting the transfer? 	Yes.	Not specified in Spanish law.	Yes, based on Spanish criminal procedural rules.
Q2.10. Are these interpretation or translation services provided during a face-to-face consultation? Please provide brief information.	Not specified in Spanish law.	Not specified in Spanish law.	Not specified in Spanish law.

⁷ Law 1/1996, 10 January, on free legal assistance, published in the Spanish Official State Gazette (*Boletín Oficial del Estado (BOE)*) of 11 January 1996.

⁸ Spanish Official State Gazette (*Boletín Oficial del Estado (BOE)*) of 2 July 1985

<p>Q2.11. Is the suspect/sentenced person's full understanding of the transfer checked on a case by case basis in the issuing state? Please provide brief information.</p>	<p>Not specified in Spanish law, but the competent judicial authority shall never authorise a transfer without this conviction. According to Article 67.1 of Law 23/2014, the convicted person must be informed in clear and understandable terms about the purpose of the transfer. This consent will be advised by a lawyer and a judge who shall control the legality.</p>	<p>Not specified in Spanish law, but the competent judicial authority shall never authorise a transfer without this conviction.</p>	<p>Not specified in Spanish law, but the competent judicial authority shall never authorise a transfer without this conviction.</p>
<p>Q2.12. If the executing state adapts, before the transfer, the sentence or measure imposed by the issuing state (as authorised by Article 8.3 of FD 909, Article 9 of FD 947 and Article 13 of FD 829), does the suspect/sentenced person receive any updated information?</p>	<p>The law of transposition of FD 2008/909 does not indicate anything expressly. However, given that there is an obligation always to inform the convicted person of the transfer and any implications arising, this information should include the possible adaptation of the sentencing to the law of the executing State. (Article 68, Law 23/2014).</p>	<p>The law of transposition of FD 2008/947 does not indicate anything expressly. However, given that there is an obligation always to ask the convicted person if they want to return, or remain in their State of residence, they should have been informed of the impact of the transfer beforehand. (Article 98, Law 23/2014).</p>	<p>The law of transposition of FD 2009/829 does not indicate anything expressly. However, given that there is an obligation always to ask the convicted person if they want to return or remain in their State of residence, they should have been informed of the impact of the transfer beforehand. (Article 114, Law 23/2014).</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>Yes. Article 13 of Law 23/2014 gives the possibility to appeal the decisions on transfers according to Spanish law, but the law does not specify any judicial remedy.</p>	<p>Yes. Article 13 of Law 23/2014 gives the possibility to appeal the decisions on transfers according to Spanish law, but the law does not specify any judicial remedy.</p>	<p>Yes. Article 13 of Law 23/2014 gives the possibility to appeal the decisions on transfers according to Spanish law, but the law does not specify any judicial remedy.</p>

<p>Q2.14. Does the suspect/sentenced person have a right to a regular review of the decision on the transfer in the issuing state? If yes, please briefly provide information (e.g. how often he/she can exercise this right)</p>	<p>The law does not indicate anything expressly, and so it will be practice or jurisprudence which shall determine whether the suspect/sentenced person be entitled to regular review of the decision on the transfer in the issuing state. However, the convicted person has the right to be informed of the loss of enforceability of the order or judgment whose implementation was to have been transmitted. (Article 11, Law 23/2014). Moreover, in the case of granting clemency, the Spanish authority shall immediately inform the authority of this execution. (Article 13, Law 23/2014).</p>	<p>The law does not indicate anything expressly, and so it will be practice or jurisprudence which shall determine whether the suspect/sentenced person be entitled to regular review of the decision on the transfer in the issuing state. However, the convicted person has the right to be informed of the loss of enforceability of the order or judgment whose implementation was to have been transmitted. (Article 11, Law 23/2014). Moreover, in the case of granting clemency, the Spanish authority shall immediately inform the authority of this execution. (Article 13, Law 23/2014).</p>	<p>The law does not indicate anything expressly, and so it will be practice or jurisprudence which determine whether the suspect/sentenced person be entitled to regular review of the decision on the transfer in the issuing state. However, the accused person has the right to be informed of the loss of enforceability of the order or judgment whose implementation was to have been transmitted. (Article 11, Law 23/2014).</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>Nothing is specified in Spanish Law 23/2014, on mutual recognition of criminal decisions in the European Union, but, yes, they would be assisted by a lawyer in application of other rules of other rules of Spanish law, such as payment for time served or for appeal. (Article 24, Law 23/2014).</p>	<p>Nothing is specified in Spanish Law 23/2014, on mutual recognition of criminal decisions in the European Union, but, yes, they would be assisted by a lawyer in application of other rules of Spanish law, such as payment for time served or for appeal. (Article 24, Law 23/2014).</p>	<p>Nothing is specified in Spanish Law 23/2014, on mutual recognition of criminal decisions in the European Union, but, yes, they would be assisted by a lawyer in application of other rules of Spanish law, such as payment for time served or for appeal. (Article 24, Law 23/2014).</p>

<p>Q2.16. Have there been instances where the Member State has refused a transfer based on a pre-determined ground of refusal, as permitted to a varying extent under each FD? If so, please briefly provide details.</p>	<p>As a result of the short time elapsed since the transposition of FD 2008/909, there are no official data on the issue.</p>	<p>As a result of the short time elapsed since the transposition of FD 2008/909, there are no official data on the issue.</p>	<p>As a result of the short time elapsed since the transposition of FD 2008/909, there are no official data on the issue.</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>When the sentenced person, because of his or her age or physical or mental state, can not give his or her opinion, the same shall be sought through their legal representative. (Article 67.3, Law 23/2014).</p>	<p>Not specified in Spanish law.</p>	<p>Not specified in Spanish law.</p>
<p>TOPIC</p>	<p>FD 2008/909</p>	<p>FD 2008/947</p>	<p>FD 2009/829 (ESO)</p>
<p>Q3. DECISION ON TRANSFER</p>			
<p>Q3.1. Are the following factors considered while deciding on forwarding a judgment or decision in the issuing state?</p>			
<ul style="list-style-type: none"> The likely impact on the social rehabilitation of the suspect/sentenced person? 	<p>Yes, one of the requirements to transfer a judgment is that the Spanish judicial authority considers that the execution of the sentence in another Member State will facilitate the rehabilitation of the convicted person (Article 66.1.b, Law 23/2014). If the aim of rehabilitating the convicted person is not achieved, this can be reason for the withdrawal of the certificate</p>	<p>Yes, given that a possible executing State is one in which the convicted person has their legal or habitual residence. (Article 96.1.b, Law 23/2014) .</p>	<p>Yes, given that a possible executing State is one in which the accused person has their legal or habitual residence. (Article 112.1.a, Law 23/2014).</p>

	(Article 74.1.b, Law 23/2014). The same requirement concurs to make Spain the executing State (Article 78.3, Law 23/2014).		
<ul style="list-style-type: none"> • Fundamental rights implications (such as the right to family life, right to education)? 	Any decision concerning the transfer of persons convicted or awaiting trial, must consider their fundamental rights. (Article 3, Law 23/2014).	Any decision concerning the transfer of persons convicted or awaiting trial, must consider their fundamental rights. (Article 3, Law 23/2014).	Any decision concerning the transfer of persons convicted or awaiting trial, must consider their fundamental rights. (Article 3, Law 23/2014).
<ul style="list-style-type: none"> • Others? Please specify. 	The existence of a sentence pending against the person who can be transferred. (Article 66.3, Law 23/2014).	No.	The competent authority will ask the accused about their intention to return or remain in their State of residence. (Article 114.3, Law 23/2014).
<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>			

<ul style="list-style-type: none"> • Family and social ties (e.g. accommodation, employment or other economic ties, linguistic and cultural links)? 	<p>No. Since there are no criteria/guidelines followed by the competent authorities, and because it is still too early to identify established practices.</p>	<p>No. Since there are no criteria/guidelines followed by the competent authorities, and because it is still too early to identify established practices.</p>	<p>No. Since there are no criteria/guidelines followed by the competent authorities, and because it is still too early to identify established practices.</p>
<ul style="list-style-type: none"> • Criminal history and criminal ties? 	<p>No.</p>	<p>No.</p>	<p>No.</p>
<ul style="list-style-type: none"> • Humanitarian concerns (i.e. terminal illness of suspect/sentenced person or family members)? 	<p>No.</p>	<p>No.</p>	<p>No.</p>
<ul style="list-style-type: none"> • Detention conditions (e.g. issues of overcrowding or availability of courses, such as the <i>Modulos</i> in Spain which has separate units to promote a progressive accountability of inmates) 	<p>No.</p>	<p>No.</p>	<p>No.</p>
<ul style="list-style-type: none"> • Others? 	<p>No.</p>	<p>No.</p>	<p>No.</p>

Q.3.3. Are the following persons/entities consulted in the evaluation of the likelihood of social rehabilitation by the issuing state:			
<ul style="list-style-type: none"> Probation agencies or similar entities in the issuing state? 	No.	No.	No.
<ul style="list-style-type: none"> The competent authorities in the executing state? 	Yes. Before transmitting the judgment, the competent judicial authority may consult with the competent authority in the executing State on whether the transmission will contribute or not to the rehabilitation of the convicted person (Article 68.1, Law 23/2014). The consultation is mandatory if the executing State is different to the State of residence or nationality or to the one from which they are going to be deported when they are released (Article 68.2, Law 23/2014).	No.	No.
<ul style="list-style-type: none"> The suspect/sentenced person? 	The consent of the convicted person, subject to exceptions, is always required. However, the convicted person will always have the opportunity to express their opinion about the transfer. (Article 67, Law 23/2014). The consent of the sentenced person is not necessary when the executing State is (Article 67.1): a) The State of which the convicted person is a national; b) The Member State to which the sentenced person will be deported; c) The Member State to which the sentenced	Before transmission of the judgment of probation, the judicial authority will ask the condemned if they want to return, or remain in their State of residence, giving them thirty days for consultation. (Article 98.2, Law 23/2014).	The judicial authority will ask the accused about their intention to return, or remain in their State of residence. (Article 114.3, Law 23/2014).

	person has fled or to which he/she has returned.		
<ul style="list-style-type: none"> The family of the suspect/sentenced persons, especially with regard to child offenders? 	Not in application of Law 23/2014, although this consultation could take place, if the judge sees fit for the social rehabilitation of the sentenced person.	Not in application of Law 23/2014, although this consultation could take place, if the judge sees fit for the social rehabilitation of the sentenced person.	Not in application of Law 23/2014, although this consultation could take place, if the judge sees fit for the social rehabilitation of the accused person/suspect.
<ul style="list-style-type: none"> Any other person/entity? 	No.	No.	No.
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.
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	No.	No.	No.

judgment or decision? If yes, please specify if pre-sentence reports are forwarded.			
Q3.6. If pre-sentence reports are forwarded by the issuing state, are they translated to the language of the executing state?	No.	No.	No.
Q3.7. Are there specific measures, as required by Article 4 (6) FD 909, which constitute the basis on which the competent authorities in the executing State have to take their decisions whether or not to consent to the forwarding of the judgement and the certificate (where required)?	<p>The following circumstances have to exist:</p> <ul style="list-style-type: none"> - The convicted person must be resident in Spain and Spanish. - When the convicted person is Spanish and will be deported to Spain for their sentence. - Even if these conditions are not met, the Spanish judicial authority can allow the transfer, except when this consent is not necessary following the statements made by Spain (Article 77, Law 23/2014). 		
Q3.8. Are there formal and clear rules regarding data protection in the			

information exchange between:			
<ul style="list-style-type: none"> National authorities (consulted in the evaluation of the likelihood of social rehabilitation) in the issuing state? 	This framework decision does not include any forecast in this respect, but Council Framework Decision 2008/977/JAI of 27 November 2008 about the protection of personal data processed in the framework of police and judicial cooperation in criminal matters could be applied.	This framework decision does not include any forecast in this respect, but Council Framework Decision 2008/977/JAI of 27 November 2008 about the protection of personal data processed in the framework of police and judicial cooperation in criminal matters could be applied.	This framework decision does not include any forecast in this respect, but Council Framework Decision 2008/977/JAI of 27 November 2008 about the protection of personal data processed in the framework of police and judicial cooperation in criminal matters could be applied.
<ul style="list-style-type: none"> Authorities in the issuing and executing state? 	This framework decision does not include any forecast in this respect, but Council Framework Decision 2008/977/JAI of 27 November 2008 about the protection of personal data processed in the framework of police and judicial cooperation in criminal matters could be applied.	This framework decision does not include any forecast in this respect, but Council Framework Decision 2008/977/JAI of 27 November 2008 about the protection of personal data processed in the framework of police and judicial cooperation in criminal matters could be applied.	This framework decision does not include any forecast in this respect, but Council Framework Decision 2008/977/JAI of 27 November 2008 about the protection of personal data processed in the framework of police and judicial cooperation in criminal matters could be applied.
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 	Not in application of this Framework Decision, but, yes, the victim could have the right to be informed according to Articles 7 and 13, of Law 4/2015, of 27 April, on the status of the	Not in application of this Framework Decision, but, yes, the victim could have the right to be informed according to Articles 7 and 13, of Law 4/2015,	If the decision about the transfer takes place on the occasion of the arrest of the accused, the hearing at the Public Prosecutor's Office with the parties, will follow the format provided for in the Criminal Procedure Law

	victim of a crime. The right to be informed about the transfer is not specifically mentioned in these articles, but in the future this right could be implemented through case law or established practice.	of 27 April, on the status of the victim of a crime.	(Article 114.4, Law 23/2014). Victims are permitted to intervene during these hearings. Victims could have the right to be informed according to Articles 7 and 13 of Law 4/2015 ⁹ , of 27 April, on the status of the victim of a crime.
<ul style="list-style-type: none"> • The status of the transfer 	Not in application of this FD, but, yes, the victim could have the right to be informed according to Articles 7 and 13 of Law 4/2015, of 27 April, on the status of the victim of a crime.	Not in application of this FD, but, yes, the victim could have the right to be informed according to Articles 7 and 13 of Law 4/2015, of 27 April, on the status of the victim of a crime.	Not in application of this FD, but, yes, the victim could have the right to be informed according to Articles 7 and 13 of Law 4/2015, of 27 April, on the status of the victim of a crime.
<ul style="list-style-type: none"> • Other? Please specify. 	In relation to the possibility of the withdrawal of the certificate before the beginning of the execution of the sentence, the issuing State, by a motivated resolution, and after hearing the parties and the victims, can withdraw the certificate. (Article 74, Law 23/2014).	Once the judgment of probation has been transmitted, and in the event of non-compliance, the judge or issuing court, ex officio, or at the request of any of the parties and the victims, can request to be informed of the maximum duration of the deprivation of liberty provided for in the national law of the executing State. (Article 99.2, Law 23/2014).	The provisions of Law 23/2014, indicate that one of the objectives is to "improve the protection of victims". (Article 109.2). If the supervision period of the surveillance measures were to expire and they remained necessary, the judge or issuing Spanish Court will hold a further hearing at the Public Prosecutor's Office with the parties and the victims, and decide whether or not to extend the period of supervision. Victims may also be parties in the case. (Article 116.2, Law 23/2014).

⁹ Spanish Official State Gazette (*Boletín Oficial del Estado (BOE)*) of 28 April 2015.

Q4.2. Is there any procedure in place to provide this information as issuing or executing state? If yes, please specify:			
<ul style="list-style-type: none"> Is the information provided upon request of the victim? 	No. The right to be informed about the transfer is not specifically mentioned in the articles 7 and 13, of Law 4/2015, of 27 April, on the status of the victim of a crime but in the future this right could be implemented through case law or established practice. According to the article 7.1 information is provided by e-mail, mail, through his or her procurator or through communication to the diplomatic or consular office of Spain in the country of residence for the publication.	No. The right to be informed about the transfer is not specifically mentioned in the articles 7 and 13, of Law 4/2015, of 27 April, on the status of the victim of a crime but in the future this right could be implemented through case law or established practice. According to the article 7.1 information is provided by e-mail, mail, through his or her procurator or through communication to the diplomatic or consular office of Spain in the country of residence for the publication.	No. The right to be informed about the transfer is not specifically mentioned in the articles 7 and 13, of Law 4/2015, of 27 April, on the status of the victim of a crime but in the future this right could be implemented through case law or established practice. According to the article 7.1 information is provided by e-mail, mail, through his or her procurator or through communication to the diplomatic or consular office of Spain in the country of residence for the publication.
<ul style="list-style-type: none"> Who responsible for providing this information? 	No.	No.	No.
<ul style="list-style-type: none"> Is it a verbal or written communication? 	No.	No.	No.
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.	In the case of probation, victims can request measures to ensure their safety and they must be heard. (Article 13, Law 4/2015)	Not in application of this FD, but, yes, the victim could have the right to be heard in application of the Spanish criminal procedural rules.
Q4.4. Do the victims have any other rights concerning the transfer (in the state you	Any information that may be relevant to the execution of the	Any information that may be relevant to the execution of the	They may apply for free legal aid. (Article 16, Law 4/2015)

<p>are describing, as issuing or executing state)? Please specify.</p>	<p>sentence imposed must be facilitated to the Court, with civil responsibilities arising from the offence or confiscation. (Article 13.2.b, Law 4/2015)</p> <p>They may apply for free legal aid. (Article 16, Law 4/2015)</p>	<p>sentence imposed must be facilitated to the Court, with civil responsibilities arising from the offence or confiscation. (Article 13.2.b, Law 4/2015)</p> <p>They may apply for free legal aid. (Article 16, Law 4/2015)</p>	
<p>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)?</p>	<p>No.</p>	<p>Yes, in application of Article 9, Law 4/2015</p>	<p>Yes, in application of Article 9, Law 4/2015</p>
<p>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)?</p>	<p>Yes, when their safety is at risk (Article 7, Law 4/2015)</p>	<p>Yes, when their safety is at risk (Article 7, Law 4/2015)</p>	<p>Yes, when their safety is at risk (Article 7, Law 4/2015)</p>