

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

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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)?	4
Section B: Transfer of suspects/sentenced persons	6
Q1. Availability of information	6
Q2. Informed consent of the suspect/sentenced person	9
Q3. Decision on transfer	20
Q4. Victims	26

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:

According to the Criminal Code (*Codul penal*) the court can issue suspended or conditional sentences, applying several measures (Articles 85 and 93).¹

In both, the convict has to: go to the probation services according to a schedule; receive visits of the probation officer supervising him; notify changes of his residence or any leave longer than five days, in advance; notify the change of employment; communicate information and documents on his means of existence. For suspended sentences, the convict has to serve 60 to 120 days of community work. In addition he may have to: attend school or vocational training; attend one or more social reintegration programmes; follow measures of control, treatment or medical care; leave Romania only with the prior consent of the court. For conditional sentences, in addition to the previously mentioned measures, the convict may have to: serve 30 to 60 days of community work; not communicate with or approach the victim, the victim's family, the co-participants to the crime or other persons; not go to certain places or attended certain events; not drive certain vehicles; not possess, use or carry any weapon; not perform the function, profession or activity used for committing the crime.

Specific probation measures and alternative sanctions (non-custodial/educational measures) as well as the detailed mechanisms of implementation both in case of individuals and in case of legal persons are further provided in specific legislation, Law no, 253/2013.²

¹ Romania/ Criminal Code, Law 286/2009 (*Legea nr. 286/2009 privind noul Cod Penal*), 24 July 2009. Translation available on the website of the Ministry of Justice, at: www.legislationline.org/.../Romania_Criminal_Code_am2012_EN.pdf. All hyperlinks were last accessed on 18 June 2015.

² Romania, Law no. 253/2013 on execution of sentences, educational measures and other measure not depriving of liberty ordered by judiciary during the criminal trial (*Legea nr.253 privind executarea pedepselor, a măsurilor educative și a altor măsuri neprivative de libertate dispuse de organele judiciare în cursul procesului penal*), 19 July 2013.

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

According to the Criminal Procedure Code (*Codul de procedură penală*) the alternatives to detention are: judicial control and judicial control under bail. (Article 202§4).³ House arrest is also available, but is considered a form of deprivation of liberty. Further details on the process of providing alternatives to pre-trial detention and the actual steps are spelled out in specific legislation, Law no.253/2013 in Articles 82-84.⁴

The defendant under judicial control with or without bail has to: come before the prosecutor/police/judge/court any time he is summoned (also for house arrest); immediately inform on changes of his residence; go to the police precinct supervising him according to a schedule or any time he is summoned. In addition, he may have to: not overpass a certain territorial limit without prior consent; not go in certain locations or to go only in certain locations; permanently wear an electronic tag; not return to his family's home, to not approach the victim, the victim's family, other participants to the crime, witnesses, experts or other certain persons and to not communicate with these persons in any way (also for house arrest); not perform the function, profession or activity used for committing the crime; periodically provide information on his means of existence; observe measures of control, treatment or medical care, especially for detox; not attend public gatherings or events; not drive certain vehicles; not possess, use or carry any weapon; not issue checks (Articles 215 and 217§3).⁵

³ Romania, Law no. 135/2010 on the Code of Criminal Procedure (*Legea nr. 135/2010 privind Noul Cod de Procedură Penală*), 1 July 2010. Translation available on the website of the Ministry of Justice, at www.just.ro/LinkClick.aspx?fileticket=uoJx07a1STU%3d&tabid=89.

⁴ Romania, Law no. 253/2013 on execution of sentences, educational measures and other measure not depriving of liberty ordered by judiciary during the criminal trial (*Legea nr.253 privind executarea pedepselor, a măsurilor educative și a altor măsuri neprivative de libertate dispuse de organele judiciare în cursul procesului penal*), 19 July 2013.

⁵ Romania, Law no. 135/2010 on the Code of Criminal Procedure (*Legea nr. 135/2010 privind Noul Cod de Procedură Penală*), 1 July 2010. Translation available on the website of the Ministry of Justice, at www.just.ro/LinkClick.aspx?fileticket=uoJx07a1STU%3d&tabid=89.

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)?

Specific provisions regarding non-custodial alternatives at the pre- and post-trial stage are available only in relation to minors following the adoption of the new Criminal Code. According to Title V, Chapter 4, Articles 114-123 of the new Criminal Code (*Codul penal*), which entered into force on 1 February 2014, the persons who were aged 14 to 18 when committing a crime have to be sanctioned with an educative measure without deprivation of liberty.⁶ Article 66 of Law no. 253/2013 further provides details on this new approach of non-custodial sanctions in case of minors.⁷ In cases when the person has previously committed a crime or the punishment for the crime is higher than 7 years or life imprisonment, an educative measure with deprivation of liberty can be imposed. Prison terms can no longer be applied to persons under 18 at the time of the crime (Article 114). The newly introduced educative measures without deprivation of liberty are: civic education training; supervision; end of week curfew; daily assistance (Article 115§1).⁸ The legislation on the rights of children, Law no. 272/2004 also introduces an obligation to counselling and assistance to juveniles.⁹

The new Criminal Procedure Code (*Codul de procedură penală*), which entered into force on 1 February 2014, provides that, at pre-trial stage, deprivation of liberty of persons under 18 (remand or arrest) can only be order on by way of exception, if the effects on the minor are not disproportionate to the aim pursued (Article 243§2).¹⁰ The provisions on pre-trial alternatives to detention (judicial control and judicial control under bail), as well as house arrest, applicable to adults, are equally applicable to minors, just as the possibility that no preventive measures are applied at all.

⁶ Romania/ Criminal Code, Law no. 286/2009 (*Legea nr. 286/2009 privind noul Cod Penal*), 24 July 2009. Translation available on the website of the Ministry of Justice, at: www.legislationline.org/.../Romania_Criminal_Code_am2012_EN.pdf.

⁷ Romania, Law no. 253/2013 on execution of sentences, educational measures and other measure not depriving of liberty ordered by judiciary during the criminal trial (*Legea nr.253 privind executarea pedepselor, a măsurilor educative și a altor măsuri neprivative de libertate dispuse de organele judiciare în cursul procesului penal*), 19 July 2013.

⁸ Romania/ Criminal Code, Law 286/2009 (*Legea nr. 286/2009 privind noul Cod Penal*), 24 July 2009. Translation available on the website of the Ministry of Justice, at: www.legislationline.org/.../Romania_Criminal_Code_am2012_EN.pdf.

⁹ Romania, Law no. 272/2004 on the protection and promotion of child rights (*Legea nr. 272/2004 privind protecția și promovarea drepturilor copilului, republicata 2014*), 5 March 2014.

¹⁰ Romania, Law no. 135/2010 on the Code of Criminal Procedure (*Legea nr. 135/2010 privind Noul Cod de Procedură Penală*), 1 July 2010. Translation available on the website of the Ministry of Justice, at www.just.ro/LinkClick.aspx?fileticket=uoJx07a1STU%3d&tabid=89.

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>Law no.302/2004 on the international judicial cooperation in criminal matters (<i>Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>)¹¹ transposes the Council Framework Decision 2008/909/JHA and provides information on the procedure of transfer of persons when Romania is both the issuing and the executing state, such as who initiates the procedure, the necessary documents and verification, when the request may be denied, when the consent of the transferred person is required, the procedure applied when the</p>	<p>Law no.302/2004 on the international judicial cooperation in criminal matters (<i>Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>) transposes the Council Framework Decision 2008/947/JHA and provides information on the procedure or probation and alternative measures when Romania is both the issuing and the executing state, such as the type of measures, competent domestic authorities, grounds for recognizing or not recognizing judgments or decisions on probation and alternative measures or for requesting</p>	<p>Law no.302/2004 on the international judicial cooperation in criminal matters (<i>Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>) transposes the Council Framework Decision 2009/829/JHA and provides information on the procedure of monitoring supervisions measures for suspects when Romania is both the issuing and the executing state, such as the types of supervision measures, the Romanian competent authorities, the applicable law, the court and administrative procedures.¹³</p> <p>No other information, such as guides, explanatory notes etc., have</p>

¹¹ Romania, Law 302/2004 on the international judicial cooperation in criminal matters (*Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală*), 1 February 2014.

¹³ Romania, Law no. 302/2004 on the international judicial cooperation in criminal matters (*Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală*), 1 February 2014.

	<p>executing states has not transposed the FD 2008/909 etc.</p> <p>No specific information on various executing states have been identified as publicly available in Romania.</p>	<p>recognition, the court and administrative procedures.¹²</p> <p>No other information, such as guides, explanatory notes etc., have been identified as publicly available in Romania.</p>	<p>been identified as publicly available in Romania.</p>
<ul style="list-style-type: none"> How is the information made publically available (tools, or networks used)? 	<p>Law no.302/2004 on the international judicial cooperation in criminal matters (<i>Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>) is published in the Official Gazette. and can be obtained from the publisher, bearing the costs. In addition, the law is available online, free of charge, on the web-page of the Ministry of Justice, of the National Administration of Penitentiaries and on various private sites publishing Romanian legislation.</p> <p>In addition, the Ministry of Justice (<i>Ministerul Justiției</i>) has compiled a guide on international judicial cooperation in criminal matters, available online¹⁴. The guide is</p>	<p>Law no.302/2004 on the international judicial cooperation in criminal matters (<i>Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>) is published in the Official Gazette, and can be obtained from the publisher, bearing the costs. In addition, the law is available online, free of charge, on the web-page of the Ministry of Justice, of the National Administration of Penitentiaries and on various private sites publishing Romanian legislation.No other information regarding the content and implementation of the law (secondary norms, practitioners' guides, handbooks or explanatory</p>	<p>Law no.302/2004 on the international judicial cooperation in criminal matters (<i>Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>) is published in the Official Gazette, and can be obtained from the publisher, bearing the costs. In addition, the law is available online, free of charge, on the web-page of the Ministry of Justice, of the National Administration of Penitentiaries and on various private sites publishing Romanian legislation.</p> <p>No other information regarding the content and implementation of the law (secondary norms, practitioners' guides, handbooks or explanatory or promotional</p>

¹² Romania, Law no. 302/2004 on the international judicial cooperation in criminal matters (*Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală*), 1 February 2014.

¹⁴Information available at:

http://www.just.ro/Sectiuni/Cooperarejudiciar%C4%83interna%C5%A3ional%C4%83/Cooperarejudiciar%C4%83interna%C5%A3ional%C4%83_penala/tabid/606/Default.aspx.

	<p>partially out-dated and the information on the transfer of detainees is based only on the Council of Europe Convention on the Transfer of Sentenced Persons of 21 March 1983 which Romania signed on 30 June 1995 and ratified on 23 August 1996.¹⁵ The introduction to the on-line guide contains a hyper-link to the Law no.302/2004 on the international judicial cooperation in criminal matters (<i>Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>).¹⁶</p> <p>The National Administration of Penitentiaries (<i>Administrația Națională a Penitenciarelor</i>) also provides an online copy of the Council Framework Decision 2008/909/JHA on its website without further details.¹⁷</p>	or promotional documents) had been publicly identified.	documents) had been publicly identified.
<ul style="list-style-type: none"> In which languages is the information provided? 	Romanian	Romanian	Romanian
Q1.2. Apart from the competent authorities required by the FDs, is there any other national office or point of contact	No.	No	No

¹⁵ Information available at: <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=112&CM=&DF=&CL=ENG>.

¹⁶ Information available at: http://www.just.ro/Sectiuni/Cooperarejudiciar%C4%83interna%C5%A3ional%C4%83/Cooperarejudiciar%C4%83interna%C5%A3ional%C4%83_penala/Introducere_penal/tabid/607/Default.aspx.

¹⁷ Information available: <http://www.anp.gov.ro/documents/10180/1863054/Decizie+cadru+recunoastere+hotarari.pdf/44f3a0ac-a915-4bdf-8cd6-1433ecf4a8d4>.

responsible for leading initial discussions about potential transfers (as issuing and executing state)? If yes, please provide brief details.			
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.	No information was identified in public sources suggesting that the authorities collect information regarding transfers.	No information was identified in public sources suggesting that the authorities collect information regarding transfers.	No information was identified in public sources suggesting that the authorities collect information regarding transfers.
TOPIC	FD 2008/909	FD 2008/947	FD 2009/829 (ESO)
Q2. INFORMED CONSENT OF THE SUSPECT/SENTENCED PERSON			
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.	Yes. According to Article 143§3a of the Law no.302/2004 on the international judicial cooperation in criminal matters (<i>Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>), the National Administration of Penitentiaries (<i>Administrația Națională a Penitenciarelor</i>) has the legal obligation to inform the sentenced person on his right to ask for the transfer in the executing state. ¹⁸	No. According to Article 176 ³⁶ of the Law no.302/2004 on the international judicial cooperation in criminal matters (<i>Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>), if, at the time of the sentencing, before the court, or at a later stage, before the probation officer, the sentenced person declares he wants to leave Romania or already left Romania, the executing judge starts the procedure on the	No. Law no.302/2004 on the international judicial cooperation in criminal matters (<i>Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>) does not provide for the option of the suspect to request the transfer the supervision measures to another state. ²⁰

¹⁸ Romania, Law 302/2004 on the international judicial cooperation in criminal matters (*Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală*), 1 February 2014.

²⁰ Romania, Law 302/2004 on the international judicial cooperation in criminal matters (*Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală*), 1 February 2014.

		transfer of judgment. ¹⁹ Nevertheless, there is no consistent procedure requiring the sentencing judges or the probation officers to inform or to ask the sentenced person for his declaration.	
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).	Yes. According to Article 167 of the Law no.302/2004 on the international judicial cooperation in criminal matters (<i>Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>), in the preliminary procedure carried out by the delegate judge supervising the execution of sentences in prison, the sentenced person is heard to the aim of obtaining the consent, in the presence of a lawyer of choice or <i>ex officio</i> , and, if so requested, of a consular or diplomatic representative of the executing state. The consent is provided in written and signed by the sentenced person, the judge and the lawyer.	No. Law no.302/2004 on the international judicial cooperation in criminal matters (<i>Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>) does not expressly require the consent of the sentenced person; the existence of consent is implied from the declaration of the person he wants to leave Romania or already left, or his request for the transfer, when he asks for the transfer to a different state than the one he resides in.	No. Law no.302/2004 on the international judicial cooperation in criminal matters (<i>Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>) does not require the consent of the suspect, before the Romanian issuing authorities forward the decision to another executing Member State.
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	No. According to Article 167§1b of the Law no.302/2004 on the international judicial cooperation	No. Law no.302/2004 on the international judicial cooperation in criminal matters (<i>Legea</i>	No. Law no.302/2004 on the international judicial cooperation in criminal matters (<i>Legea</i>

¹⁹ Romania, Law 302/2004 on the international judicial cooperation in criminal matters (*Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală*), 1 February 2014.

<p>briefly specify until which stage of the procedure this right exists.</p>	<p>in criminal matters (<i>Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>), the consent is non-revocable.²¹</p>	<p><i>nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>) does not require the consent of the sentenced person, before the execution judge initiate the procedure or during the procedure.</p>	<p><i>nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>) does not require the consent of the suspect, before the Romanian issuing authorities forward the decision to another executing Member State.</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>No. The Criminal Procedure Code (<i>Codul de Procedură Penală</i>) does not provide for any procedure for obtaining the opinion of the sentenced person on the transfer at sentencing. Neither the Law no.302/2004 on the international judicial cooperation in criminal matters (<i>Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>) provides for a procedure on obtaining the opinion of the sentenced person on the transfer, although annex 5 to the law – the certificate – does require checking appropriate boxes on the opinion.</p>		

²¹ Romania, Law 302/2004 on the international judicial cooperation in criminal matters (*Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală*), 1 February 2014.

<ul style="list-style-type: none"> When consent is required, Article 6 (3) of FD 2008/909/JHA). 	<p>No. The Criminal Procedure Code (<i>Codul de Procedură Penală</i>) does not provide for any procedure for obtaining the opinion of the sentenced person on the transfer at sentencing. Neither the Law no.302/2004 on the international judicial cooperation in criminal matters (<i>Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>) provides for a procedure on obtaining the opinion of the sentenced person on the transfer, although annex 5 to the law – the certificate – does require checking appropriate boxes on the opinion.</p>		
<p>Q2.5. Does the suspect/sentenced person have the right to change his/her opinion on the transfer? If yes, please briefly specify until which stage of the procedure this right exists and how this is implemented in practice.</p>	<p>No.</p>		
<p>Q2.6. Is the suspect/sentenced person assisted by a legal counsel in the issuing state? If yes, please provide details (e.g. is this legal advice provided face-to-face or over the telephone)</p>	<p>The presence of the lawyer is mentioned only during the preliminary procedure - according to Article 167 of the Law no.302/2004 on the international judicial cooperation in criminal matters (<i>Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>), in the preliminary procedure carried out by the delegate judge supervising the execution of</p>	<p>Yes, in certain cases when the procedure is initiated by the sentencing judges, at the moment they deliver the sentence. Given the fact the he is under trial in Romania, he can exercise his right to legal assistance in accordance with the general provisions of the Criminal Procedure Code (<i>Codul de</i></p>	<p>Yes. Given the fact the he is a suspect/defendant in a criminal procedure in Romania, he can exercise his right to legal assistance in accordance with the general provisions of the Criminal Procedure Code (<i>Codul de</i></p>

	<p>sentences in prison, the sentenced person is heard to the aim of obtaining the consent, in the presence of a lawyer of choice or <i>ex officio</i>, and, if so requested, of a consular or diplomatic representative of the executing state.</p> <p>The sentenced person has the right to challenge the decision of the delegate judge before a court of law. Although the Law no.302/2004 on the international judicial cooperation in criminal matters (<i>Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>) has no specific provisions on the right to legal assistance during the procedure before the court, the general provisions of the Criminal Procedure Code (<i>Codul de Procedură Penală</i>) on the right to legal assistance are applicable.</p>	<p><i>Procedură Penală</i>).²² He may hire a lawyer or have <i>ex officio</i> counsel, when legal assistance is compulsory (he is a minor, he is deprived of liberty in another case, the police/prosecutor/court considers he cannot defend himself, the law provides a punishment higher than five years imprisonment for the crime he is accused of).</p> <p>After the procedure is initiated or when the procedure is initiated by the probation officer, the legal assistance is not compulsory.</p>	<p><i>Procedură Penală</i>).²³ He may hire a lawyer or have <i>ex officio</i> counsel, when legal assistance is compulsory (he is a minor, he is deprived of liberty in another case, the police/prosecutor/court considers he cannot defend himself, the law provides a punishment higher than five years imprisonment for the crime he is accused of).</p>
Q2.7. Is there a procedure in place to ascertain that the legal counsel speaks and understands the suspect/sentenced person's	No particular procedure is provided. During the preliminary procedure an interpreter might	No	No

²² Romania, Law no. 135/2010 on the Code of Criminal Procedure (*Legea nr. 135/2010 privind Noul Cod de Procedură Penală*), 1 July 2010. Translation available on the website of the Ministry of Justice, at www.just.ro/LinkClick.aspx?fileticket=uoJx07a1STU%3d&tabid=89.

²³ Romania, Law no. 135/2010 on the Code of Criminal Procedure (*Legea nr. 135/2010 privind Noul Cod de Procedură Penală*), 1 July 2010. Translation available on the website of the Ministry of Justice, at www.just.ro/LinkClick.aspx?fileticket=uoJx07a1STU%3d&tabid=89.

language in the issuing state? If yes, please specify.	participate if needed as mentioned by Article 167. ²⁴		
Q2.8. Does the suspect/sentenced person have the right to legal aid in the issuing state?	<p>Yes, at the stage the law requires the presence of a lawyer and before the court. The presence of the lawyer is mentioned only during the preliminary procedure - according to Article 167 of the Law no.302/2004 on the international judicial cooperation in criminal matters (<i>Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>), in the preliminary procedure carried out by the delegate judge supervising the execution of sentences in prison, the sentenced person is heard to the aim of obtaining the consent, in the presence of a lawyer of choice or <i>ex officio</i>.</p> <p>The sentenced person has the right to challenge the decision of the judge supervising the execution of sentences in prison before a court of law. Although the Law no.302/2004 on the international judicial cooperation in criminal</p>	<p>Yes, but only at the moment of his declaration that he wants to leave/has already left Romania, before the sentencing judges. <i>Ex officio</i> counsels are appointed when legal assistance is compulsory according to the Criminal Procedure Code (<i>Codul de procedură penală</i>): the suspect is a minor, he is deprived of liberty in another case, the police/prosecutor/court considers he cannot defend himself, the law provides a punishment higher than five years imprisonment for the crime he is accused of.²⁵</p>	<p>Yes. <i>Ex officio</i> counsels are appointed when legal assistance is compulsory according to the Criminal Procedure Code (<i>Codul de procedură penală</i>): the suspect is a minor, he is deprived of liberty in another case, the police/prosecutor/court considers he cannot defend himself, the law provides a punishment higher than five years imprisonment for the crime he is accused of.²⁶</p>

²⁴ Romania, Law no. 302/2004 on the international judicial cooperation in criminal matters (*Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală*), 1 February 2014.

²⁵ Romania, Law no. 135/2010 on the Code of Criminal Procedure (*Legea nr. 135/2010 privind Noul Cod de Procedură Penală*), 1 July 2010. Translation available on the website of the Ministry of Justice, at www.just.ro/LinkClick.aspx?fileticket=uoJx07a1STU%3d&tabid=89.

²⁶ Romania, Law no. 135/2010 on the Code of Criminal Procedure (*Legea nr. 135/2010 privind Noul Cod de Procedură Penală*), 1 July 2010. Translation available on the website of the Ministry of Justice, at www.just.ro/LinkClick.aspx?fileticket=uoJx07a1STU%3d&tabid=89.

	<p>matters (<i>Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>) has no specific provisions on the right to legal assistance during the procedure before the court, the general provisions of the Criminal Procedure Code (<i>Codul de Procedură Penală</i>) on the right to legal assistance are applicable. <i>Ex officio</i> counsels are appointed when legal assistance is compulsory according to the Criminal Procedure Code (<i>Codul de procedură penală</i>): the suspect is a minor, he is deprived of liberty in another case, the police/prosecutor/court considers he cannot defend himself, the law provides a punishment higher than five years imprisonment for the crime he is accused of.</p>		
<p>Q2.9. Is the suspect/sentenced person assisted by an interpreter in the issuing state, if required:</p>			
<ul style="list-style-type: none"> • While consenting to the transfer? 	No particular procedure provided.	No	No
<ul style="list-style-type: none"> • While requesting the transfer? 	No	Yes, but only when the sentenced person requests for the transfer before the sentencing judges. According to the Criminal Procedure Code (<i>Codul de procedură penală</i>), there is a	No

		right for interpretation during the criminal trial. ²⁷	
Q2.10. Are these interpretation or translation services provided during a face-to-face consultation? Please provide brief information.	No particular procedure provided. As a principle, interpretation in criminal matter is done face-to-face.	Yes, the right to interpretation during the criminal trial also applies to consultations with the legal counsel of the defendant.	No
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.	No	No	No
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?	No	No.	No
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)	Yes. According to Article 167§4 of the Law no.302/2004 on the international judicial cooperation in criminal matters (<i>Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>), the decision of the judge supervising the execution of sentences in prison (positive or negative) is communicated to the sentenced person within two days,	No	No

²⁷ Romania, Law no. 135/2010 on the Code of Criminal Procedure (*Legea nr. 135/2010 privind Noul Cod de Procedură Penală*), 1 July 2010. Translation available on the website of the Ministry of Justice, at www.just.ro/LinkClick.aspx?fileticket=uoJx07a1STU%3d&tabid=89.

	the person having the right to challenge it within three days since communication. The appeal is judged by the local court, with the summoning of the sentenced person. ²⁸		
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)	Yes. According to Article 167§3 of the Law no.302/2004 on the international judicial cooperation in criminal matters (<i>Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>), if the judge supervising the execution of sentences in prison decides the conditions for transfer are not met, he sets a deadline for review, which cannot be shorter than one year. ²⁹	No	No
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?)	Yes, when the person is in Romania. According to Article 154§2 of the Law no.302/2004 on the international judicial cooperation in criminal matters (<i>Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>), the court procedure in Romania, as the executing state, does not	Yes. According to Articles 170 ²⁵ of the Law no.302/2004 on the international judicial cooperation in criminal matters (<i>Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>), the sentenced person is summoned before the court deciding on the recognition	No. According to Articles 173 ¹³ and 173 ¹⁴ of the Law no.302/2004 on the international judicial cooperation in criminal matters (<i>Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>), the suspect is summoned by the prosecutor (if he is under investigation) or by the court (if he

²⁸ Romania, Law 302/2004 on the international judicial cooperation in criminal matters (*Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală*), 1 February 2014.

²⁹ Romania, Law 302/2004 on the international judicial cooperation in criminal matters (*Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală*), 1 February 2014.

	<p>involve the summoning of the sentenced person, when he is detained in another Member State. In case the person is in Romania, he is summoned to the court procedures (Article 160§2), but the law does not provide any provision on legal assistance of the sentenced person.³⁰ The general provisions of the Criminal Procedure Code (<i>Codul de procedură penală</i>) on legal assistance should apply.³¹ An <i>ex officio</i> lawyer will be appointed if there is no legal counsel of choice and the sentenced person is arrested before the judgment is recognized in the executing state or in other cases of compulsory legal assistance (the sentenced person is a minor, he is deprived of liberty even in another case, the police/prosecutor/court considers he cannot defend himself, the law provides a punishment higher than</p>	<p>of the judgment.³² The general provisions of the Criminal Procedure Code (<i>Codul de procedură penală</i>) on legal assistance should apply. An <i>ex officio</i> lawyer will be appointed if there is no counsel of choice and the legal assistance is compulsory (the sentenced person is a minor, he is deprived of liberty in another case, the police/prosecutor/court considers he cannot defend himself, the law provides a punishment higher than five years imprisonment for the crime he is accused of).³³</p>	<p>is on trial).³⁴ If he participates to the procedure, the prosecutor or the court may allow the suspect to be assisted by legal counsel, in person. There is no obligation to allow the legal assistance, as long as the suspect is not a party to a criminal procedure in Romania and the provisions of the Criminal Procedure Code (<i>Codul de procedură penală</i>) are not applicable.³⁵</p>
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³⁰ Romania, Law 302/2004 on the international judicial cooperation in criminal matters (*Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală*), 1 February 2014.

³¹ Romania, Law no. 135/2010 on the Code of Criminal Procedure (*Legea nr. 135/2010 privind Noul Cod de Procedură Penală*), 1 July 2010. Translation available on the website of the Ministry of Justice, at www.just.ro/LinkClick.aspx?fileticket=uoJx07a1STU%3d&tabid=89

³² Romania, Law no. 302/2004 on the international judicial cooperation in criminal matters (*Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală*), 1 February 2014.

³³ Romania, Law no. 135/2010 on the Code of Criminal Procedure (*Legea nr. 135/2010 privind Noul Cod de Procedură Penală*), 1 July 2010. Translation available on the website of the Ministry of Justice, at www.just.ro/LinkClick.aspx?fileticket=uoJx07a1STU%3d&tabid=89

³⁴ Romania, Law no. 302/2004 on the international judicial cooperation in criminal matters (*Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală*), 1 February 2014.

³⁵ Romania, Law no. 135/2010 on the Code of Criminal Procedure (*Legea nr. 135/2010 privind Noul Cod de Procedură Penală*), 1 July 2010. Translation available on the website of the Ministry of Justice, at www.just.ro/LinkClick.aspx?fileticket=uoJx07a1STU%3d&tabid=89

	five years imprisonment for the crime he is accused of).		
Q2.16. Have there been instances where the Member State has refused a transfer based on a pre-determined ground of refusal, as permitted to a varying extent under each FD? If so, please briefly provide details.	No such instances have been identified.	No such instances have been identified.	No such instances have been identified.
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)	No	No	No

TOPIC	FD 2008/909	FD 2008/947	FD 2009/829 (ESO)
Q3. DECISION ON TRANSFER			
Q3.1. Are the following factors considered while deciding on forwarding a judgment or decision in the issuing state?			
<ul style="list-style-type: none"> The likely impact on the social rehabilitation of the suspect/sentenced person? 	<p>Yes. According to Article 166§4a) of the Law no.302/2004 on the international judicial cooperation in criminal matters (<i>Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>), Romania will not forward the judgment if, after consulting with the competent authorities in the executing state, the executing state or the competent Romanian authorities consider that the transfer will not facilitate the rehabilitation of the sentenced person.</p>	<p>Yes. According to Article 170⁴⁴§1 of the Law no.302/2004 on the international judicial cooperation in criminal matters (<i>Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>), the Romanian judge supervising the execution of the sentence is in constant contact with competent authorities in the executing state, since the initiation of the procedure and during the enforcement of the measures in the executing state. If it results from the competent authorities in the executing state that the probation measures in the executing state are not apt to ensure the rehabilitation of the sentenced person, the Romanian judge will revoke the certificate within 10 days (Article 170³⁹).</p>	Not mentioned
<ul style="list-style-type: none"> Fundamental rights implications (such as the right to family life, right to education)? 	Not mentioned	Not mentioned	Not mentioned
<ul style="list-style-type: none"> Others? Please specify. 	Not mentioned	Not mentioned	According to Article 170 ⁴⁴ §1 of the Law no.302/2004 on the international judicial cooperation in criminal matters (<i>Legea</i>

			<i>nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>), the decision of Romanian issuing authorities to forward a decision on supervising measures are the good administration of the criminal trial or reducing the risk of absconding. ³⁶
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:			
<ul style="list-style-type: none"> Family and social ties (e.g. accommodation, employment or other economic ties, linguistic and cultural links)? 	No	No	No
<ul style="list-style-type: none"> Criminal history and criminal ties? 	No	No	No
<ul style="list-style-type: none"> Humanitarian concerns (i.e. terminal illness of suspect/sentenced person or family members)? 	No	No	No
<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) 	No	No	No
<ul style="list-style-type: none"> Others? 	No	No	No

³⁶ Romania, Law no. 302/2004 on the international judicial cooperation in criminal matters (*Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală*), 1 February 2014.

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	Yes. According to Article 170 ³⁵ §1d of the Law no.302/2004 on the international judicial cooperation in criminal matters (<i>Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>), the evaluation report of the probation services on the sentenced person, pre- or post-sentencing, must be included among the documents the decision on transfer is based on. ³⁷	No
<ul style="list-style-type: none"> • The competent authorities in the executing state? 	Yes. According to Article 165 of the Law no.302/2004 on the international judicial cooperation in criminal matters (<i>Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>), the Ministry of Justice must consult the competent authorities in the executing state whenever it is deemed necessary. Consultation is compulsory when: the sentenced person is a citizen of and is not living in the executing state, but will be expelled in the executing state; the sentenced person requested to be transferred to the executing state, even if he is	Yes. According to Article 170 ⁴⁴ §1 of the Law no.302/2004 on the international judicial cooperation in criminal matters (<i>Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>), the Romanian judge supervising the execution of the sentence is in constant contact with competent authorities in the executing state, since the initiation of the procedure and during the enforcement of the measures in the executing state. If it results from the competent authorities in the executing state	No

³⁷ Romania, Law 302/2004 on the international judicial cooperation in criminal matters (*Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală*), 1 February 2014.

	not a citizen of the executing state, nor does he live in the executing state.	that the probation measures in the executing state are not apt to ensure the rehabilitation of the sentenced person, the Romanian judge will revoke the certificate within 10 days (Article 170 ³⁹).	
• The suspect/sentenced person?	No	No	No
• The family of the suspect/sentenced persons, especially with regard to child offenders?	No	No	No
• Any other person/entity?	According to Article 167§2a of the Law no.302/2004 on the international judicial cooperation in criminal matters (<i>Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>), during the preliminary procedure, the judge supervising the execution of sentences in prison may ask the reintegration department of the prison for an evaluation report. ³⁸	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

³⁸ Romania, Law 302/2004 on the international judicial cooperation in criminal matters (*Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală*), 1 February 2014.

<p>Q3.5. Is additional information, other than that required in the certificate (for which the standard form is given in Annex I of the three FDs), provided to the competent authorities of the executing state while forwarding the judgment or decision? If yes, please specify if pre-sentence reports are forwarded.</p>	<p>No</p>	<p>Yes. According to Article 170³⁷§2 of the Law no.302/2004 on the international judicial cooperation in criminal matters (<i>Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>), the certificate must be accompanied by the judgment and the evaluation reports of the probation services, if available.³⁹</p>	<p>No</p>
<p>Q3.6. If pre-sentence reports are forwarded by the issuing state, are they translated to the language of the executing state?</p>	<p>No</p>	<p>Yes. According to Article 170³⁷§3 of the Law no.302/2004 on the international judicial cooperation in criminal matters (<i>Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală</i>), the documents forwarded to the executing state must be translated into the language of the executing state or in any other language the executing state officially declared as accepted.⁴⁰</p>	<p>No</p>
<p>Q3.7. Are there specific measures, as required by Article 4 (6) FD 909, which constitute the basis on which the competent authorities in the executing State have to take</p>	<p>No</p>		

³⁹ Romania, Law 302/2004 on the international judicial cooperation in criminal matters (*Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală*), 1 February 2014.

⁴⁰ Romania, Law 302/2004 on the international judicial cooperation in criminal matters (*Legea nr.302/2004 privind cooperarea judiciară internațională în materie penală*), 1 February 2014.

their decisions whether or not to consent to the forwarding of the judgement and the certificate (where required)?			
Q3.8. Are there formal and clear rules regarding data protection in the information exchange between:	No	No	No
<ul style="list-style-type: none"> National authorities (consulted in the evaluation of the likelihood of social rehabilitation) in the issuing state? 	No	No	No
<ul style="list-style-type: none"> Authorities in the issuing and executing state? 	No	No	No

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:			
• The decision to transfer	No	No	No
• The status of the transfer	No	No	No
• Other? Please specify.	No	No	No
Q4.2. Is there any procedure in place to provide this information as issuing or executing state? If yes, please specify:	No	No	No
• Is the information provided upon request of the victim?	No	No	No
• Who responsible for providing this information?	No	No	No
• 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	No	No
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	No
Q4.5. Do the victims have access to translators/interpreter in order to be kept fully informed of the transfer (in the state you are describing, as issuing or executing state)?	No	No	No

Q4.6. Do the victims have the right to be informed of the suspect/sentenced person's release (in the state you are describing, as issuing or executing state)?	No	No	No
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