



Council of the  
European Union

Brussels, 2 December 2022  
(OR. en)

11929/1/22  
REV 1

CATS 50  
JAI 1108  
DROIPEN 111  
COPEN 295  
EUROJUST 80  
EJN 27  
EVAL 16

**NOTE**

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From:	General Secretariat of the Council
To:	Delegations
Subject:	<b>Evaluation Report on the Ninth Round of Mutual Evaluations on Mutual Recognition Legal Instruments in the Field of Deprivation or Restriction of Liberty REPORT FOR SPAIN</b>

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**EVALUATION REPORT ON THE  
NINTH ROUND OF MUTUAL EVALUATIONS**

**9th round of Mutual Evaluation on Mutual recognition legal instruments in the  
field of deprivation or restriction of liberty**

**REPORT FOR SPAIN**

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## **1. EXECUTIVE SUMMARY**

The evaluation visit to Spain was very well prepared and organised by the Spanish authorities and also included a visit to a detention facility in Madrid. The evaluation team particularly appreciated the spirit of goodwill, openness and cooperation that characterised the meetings with the Spanish authorities.

The evaluation team was able to meet with representatives of the judicial authorities and of all the national bodies that could potentially be involved in the application of the mutual recognition instruments covered by the ninth round of mutual evaluations, namely Framework Decisions 2002/584/JHA, 2008/909/JHA, 2008/947/JHA and 2009/829/JHA.

During the visit, the presentations given by the various authorities competent for applying the abovementioned mutual recognition instruments showed the serious commitment of the Spanish authorities to implementing those instruments in the best possible way.

The Spanish authorities provided the evaluation team with the relevant national legislation on the transposition of the legal instruments which are the subject of the ninth round of mutual evaluations and comprehensive information on their application.

In Spain, the legal instruments in question have been transposed into national legislation by Law 23/2014 of 20 November 2014 on the Mutual Recognition of Judicial Decisions in Criminal Matters in the European Union (LMR), which in general transposes the relevant EU legal instruments correctly. However, the evaluation team has also observed some inconsistencies between the Spanish law and the EAW FD, as well as with the case-law of the CJEU, as the LMR provides for general mandatory grounds for refusal going beyond the scope of the EAW FD. The evaluation team also finds that Article 52(2) LMR, though never implemented in practice, should be amended, to replace the requirement, when Spain is the executing State, for the competent authority of the issuing State to travel to Spain pending the decision on the surrender, with more efficient and less cost and time-consuming solutions.

When Spain is the issuing State, the competence to issue EAWs or certificates under 2008/909/JHA is completely decentralised whereas, when it is the executing State, the competence to execute EAWs or recognise and enforce a judgement under 2008/909/JHA is centralised through the Central Investigative Courts within the National High Court.

The evaluation team acknowledges that the mechanism regarding the EAW and the transfer of the sentenced persons functions very well in Spain, and that all the stakeholders involved make great efforts to implement Framework Decisions 2002/584/JHA and 2008/909/JHA in an appropriate and effective manner. However, it believes that Spain, as issuing State of an EAW or of a certificate under FD 909, should ensure better coordination among the competent national authorities, especially in cases of multiple requests issued for the same person with a view to ensuring that all requests are received by the executing State. The evaluation team observes that coordination is also necessary when the requests under execution are related to the EIO.

The Spanish authorities attach great importance to the principle of mutual trust, though they have experienced a certain level of distrust in a few recent cases, as they believe that the executing authorities of other Member States sometimes analyse cases from a perspective that goes beyond the spirit of the EAW FD, by assessing the merits of the case. The Spanish authorities also pay great attention to the principle of proportionality, which is subject to several checks before an EAW is issued. Furthermore, the threshold of proportionality applied by the Spanish courts is even higher than the threshold established in the EAW FD.

The Spanish legislation provides for direct contacts between the competent authorities of the issuing and the executing Member State, while implementing the four Framework Decisions subject to this evaluation; however, in practice this is done only in urgent cases and the Spanish practitioners met by the evaluation team consider Eurojust and EJN to be the most efficient channels of communication in related cross-border proceedings, and use them accordingly.

Article 6(3) of Law 23/2014 provides that the Ministry of Justice (MoJ) is the central authority, although it only carries out the functions described in Article 7(1) and is therefore responsible for assisting the judicial authorities to resolve problems that may arise in matters related to all the mutual recognition instruments referred to in the Law. The role of the MoJ in dealing with EAWs has declined given the experience gained by the Spanish courts and the existence of various networks, and its contacts with its counterparts in other Member States in matters relating to EAWs are rare. However, the MoJ is also responsible for the collection of statistics under the general reporting obligation for judges or courts and prosecutors wherever they are competent-that transmit or execute a decision on the basis of all the mutual recognition instruments referred to in the LMR to send a copy to the MoJ, which the evaluation team considered to be good practice.

There are several internal cooperation networks for all those who may be involved in processing mutual recognition instruments: judges, public prosecutors and judicial officers (*letrados de la administración de Justicia*). These networks operate at provincial level and within specialist bodies such as the National High Court.

Spain has no experience of cases where, as the issuing State of an EAW, the executing authorities of other Member States have raised any issues concerning prison conditions in Spain. Similarly, when Spain is the executing State of an EAW, there have been few cases where fundamental rights issues have been raised in relation to detention conditions in the issuing State.

Although judgments ‘in absentia’ are allowed by Spanish law in very limited cases, this is not an obstacle to the application of Article 4(a) of FD 2002/584/JHA in cross-border cases related to the execution of judgements ‘in absentia’ issued by other Member States. However, the Spanish authorities underlined that, as executing authorities, they encounter certain practical difficulties due to insufficient information in section d) of the EAW form, which involve the need to request supplementary information from the issuing authorities.



As regards FD 2008/909/JHA, both as issuing and as executing authorities, the Spanish authorities have neither encountered any cases in which the certificate was withdrawn because of the applicable provisions on early or conditional release in the executing State nor cases of partial recognition of judgments. As regards adaptation, they have encountered some cases as executing authorities and, more rarely, as issuing authorities.

When Spain is the executing State under FD 2008/909/JHA, the main practical problem encountered by the Spanish authorities relates to deficiencies in the content of the certificate (information about the conviction and its duration or on the period during which the sentenced person has been deprived of liberty in the issuing State or on early or conditional release).

The Spanish legislation transposes FDs 2008/947/JHA in an almost fully correct manner, though the evaluation team could not find a specific provision in the LMR on the consultations provided for in Article 15 FD 2008/947/JHA. However, the general and common provisions of the LMR, provide for consultations in Articles 8.1 and 30.

Based on the statistics provided by the Spanish authorities, the evaluation team observes that FDs 2008/947/JHA and 2009/829/JHA are rarely used in Spain. In the opinion of the Spanish authorities, the limited use of these Framework Decisions is the consequence of the complexity of these instruments, little use in practice and therefore lack of knowledge among practitioners, not only judges and prosecutors, but also defence lawyers; furthermore, they believe that the use of these Framework Decisions in certain cases may not be useful: the sentences imposed may be short, the accused is not required to be present at the trial or the case does not have cross-border implications. Furthermore, the measures covered by these Framework Decisions may not exist in national legislation. More generally, the diversity of the probation measures and alternatives to detention in the national legal systems makes it difficult to transfer such measures to another Member State.

Taking into account the statistical data and the opinion expressed by the Spanish practitioners interviewed, the evaluation team believes that raising awareness of FDs 2008/947/JHA on probation measures and alternative sanctions and 2009/829/JHA on the European Supervision Order among all relevant stakeholders is essential in order to ensure the optimal effectiveness of these instruments.

Spain has a very comprehensive and well-structured system for the training of practitioners in the field of judicial cooperation. It takes great advantage of new and modern IT tools, in particular by organising a lot of different educational courses online, what makes the training process cost-effective and easily accessible to those who are interested. In Spain, continuous training is not mandatory either for prosecutors or for judges, but it is a requirement to obtain a specialisation in a specific field. The evaluation team believes that language training on legal terminology should continue to be provided to all relevant practitioners by the Spanish authorities and that joint training activities could be organised.

The Spanish authorities are familiar with the tools available on the European Judicial Network website, but they do not make use of the Europris platform and tools. According to the evaluation team, it would be advisable for them to do so.

The evaluation team identified a number of best practices that could be shared with other Member States: the high level of attention to the protection of fundamental rights; the obligation for the Spanish judicial authorities to send each EAW issued to the central authorities (Ministry of Justice) for information and statistical purposes; the extensive number of practical tools available to practitioners, such as the guidelines on the EAW, the ‘Prontuario’, a user-friendly tool covering international judicial cooperation activities, both in active terms (issuing a request within the framework of proceedings brought by a Spanish legal body) and passive terms (receiving a request from another State); the various networks among practitioners, which are very efficient and helpful; the extensive use by the Spanish judicial authorities of the possibilities offered by Eurojust and EJN; the comprehensive and well-structured system for training in the field of judicial cooperation; the databases used by the Spanish authorities to record and share information on judicial cases, accessible to all relevant actors, such as Spain’s system of administrative records for judicial use (‘SIRAJ’), which includes all warrants, precautionary measures and sentences. The evaluation team is of the opinion that it would be useful to further develop the interoperability of the existing databases.

Overall, the general impression of the evaluation team as to the functioning of the legal instruments subject to this evaluation in Spain is very positive. In particular, the Spanish authorities attach great importance to the principle of mutual trust, which is the basis for the principle of mutual recognition. They have also developed some good practices that can be shared with other Member States, as referred to above and in point 9.3. However, further steps, including some legislative amendments as referred to in this report and some measures referred to in the recommendations under point 9.2.1, could contribute to a further improvement of the Spanish system and to ensuring the smoother functioning of mutual recognition, which remains the cornerstone of judicial cooperation in criminal matters in the EU.

## 2. INTRODUCTION

Following the adoption of Joint Action 97/827/JHA of 5 December 1997, a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime was established.

In line with Article 2 of Joint Action 97/827/JHA of 5 December 1997, CATS decided at its meeting on 21 November 2018 that the ninth round of mutual evaluations would be devoted to the principle of mutual recognition.

Due to the broad range of legal instruments in the field of mutual recognition and their wide scope, it was agreed at the CATS meeting on 12 February 2019 that the evaluation would focus on the following mutual recognition instruments:

- Framework Decision 2002/584/JHA on the European Arrest Warrant and the surrender procedures between Member States ('EAW'),
- Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union ('Custodial sentences'),
- Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions ('probation and alternative measures'),
- Framework Decision 2009/829/JHA on the application, between Member States of the European Union, of the principle on mutual recognition to decisions on supervision measures as an alternative to provisional detention ('ESO').

At the above CATS meeting, it was also agreed that the evaluation would focus only on those specific aspects of such instruments which Member States felt warranted particular attention, as set out in detail in 6333/19, and on the legal and operational links between FD 2002/584/JHA on EAW and FD 2008/909/JHA on custodial sentences.

With regard to FD 2008/947/JHA on probation and alternative measures and FD 2009/829 on ESO, it was decided that the evaluation would be of a rather general nature and would endeavour to establish the reasons that have led to those two Framework Decisions being applied only infrequently.

The aim of the ninth mutual evaluation round is to provide real added value by offering the opportunity, via on-the-spot visits, to consider not only the legal issues but also - and in particular - relevant practical and operational aspects linked to the implementation of those instruments by practitioners in the context of criminal proceedings. This would allow both shortcomings and areas for improvement to be identified, together with best practices to be shared among Member States, thus contributing to ensuring a more effective and coherent application of the principle of mutual recognition at all stages of criminal proceedings throughout the Union.

More generally, promoting the coherent and effective implementation of this package of legal instruments at its full potential could make a significant contribution to enhancing mutual trust among the Member States' judicial authorities and ensuring a better functioning of cross-border judicial cooperation in criminal matters within the area of freedom, security and justice.

Furthermore, the current process of evaluation could provide useful input to Member States which may not have implemented all aspects of the various instruments.

Spain was the 18<sup>th</sup> Member State to be evaluated during this round of evaluations. The order of visits to the Member States adopted by CATS on 13 May 2019, and subsequently amended on the proposal of certain Member States and in the absence of any objections (ST 9278/19 REV 2), has been modified in practice due to the health situation in the EU, with several on-the-spot visits having been postponed.

In accordance with Article 3 of the Joint Action, the Presidency has drawn up a list of experts for the evaluations to be carried out. Member States have nominated experts with substantial practical knowledge in the field pursuant to a written request sent on Friday 17 May 2019 to delegations by the Secretariat of the Council of European Union.

The evaluation team consists of three national experts, supported by one or more members of staff from the General Secretariat of the Council and observers. For the ninth round of mutual evaluations, it was agreed that the European Commission and Eurojust should be invited as observers.

The experts entrusted with the task of evaluating Spain were Ms Katarzyna Naszczynska (PL), Ms Ruta Kavaliauskiene (LT) and Mr Jan-Peter van Bodegraven (NL). Observers were also present: Ms. Leonie Luijt (Eurojust) and Ms Jana Bambic (Commission), together with Ms Giovanna Giglio from the General Secretariat of the Council.

This report was prepared by the team of experts with the assistance of the General Secretariat of the Council, based on findings arising from the evaluation visit that took place in Spain between 25 and 29 October 2021, and on Spain's detailed replies to the evaluation questionnaire together with its detailed answers to the ensuing follow-up questions.

### 3. FRAMEWORK DECISION 2002/584/JHA ON THE EUROPEAN ARREST WARRANT (EAW)

#### *Overview of the Spanish judicial system*

The Spanish judicial system is organised territorially (municipalities, judicial districts, provinces, Autonomous Communities and the State) and by subject-matter (ordinary: civil, criminal, contentious-administrative, social; special: military; and specialised: courts dealing with violence against women, juvenile courts, etc.). It consists of the following courts:

□ The Supreme Court (Tribunal Supremo), exercising jurisdiction over all of Spain, is the highest judicial body in all areas of law, except in relation to constitutional rights. It has five divisions: civil, criminal, contentious-administrative, social and military.

□ Below the Supreme Court is the National High Court (Audiencia Nacional), which also has jurisdiction over all of the nation's territory. The National High Court has competence in three jurisdictions:

A) Criminal: the Central Investigative Courts are responsible for investigating crimes of terrorism, crimes against the Crown, large-scale drug trafficking, economic crimes that cause serious damage to the national economy, crimes committed abroad where Spain holds jurisdiction, among others, as well as extraditions and Euro-orders. The Criminal Chamber is responsible for prosecuting the abovementioned crimes and for reviewing the decisions adopted by the Central Investigative Courts as an Appeal Chamber. The Appeal Chamber reviews the judgments of the Criminal Chamber. The criminal order and the structure of the National High Court also includes the Central Criminal Court for the prosecution of crimes with lighter sentences, the Central Juvenile Court for the prosecution of terrorist crimes committed by juveniles of between 14 and 18 years of age, as well as the Central Prison Surveillance Court, which is responsible for the jurisdictional control of prisoners whose crimes fall within the jurisdiction of the National High Court.

B) Contentious-administrative, which hears appeals against the acts and provisions of the public administration and

C) Social, which is responsible, essentially, for objections to collective agreements of a territorial scope larger than that of an Autonomous Community or which are to take effect in a territorial scope larger than that of a Community.

□ The Higher Regional Courts (Tribunales Superiores de Justicia) are the highest courts within each Autonomous Community. They have three chambers: civil and criminal, contentious-administrative, and social chambers. They constitute the final appellate court in relation to the application of the law of the Autonomous Community in question.

□ The Provincial Court (Audiencia Provincial) has jurisdiction over a Province. It tries criminal and civil cases.

- District Courts (Juzgados de lo Penal) have jurisdiction to try less serious cases in the first instance; the different types of district courts are detailed as follows:

- Examining Courts (Juzgados de Instrucción) investigate and prepare criminal cases for other courts.

- Courts of First Instance (Juzgados de Primera Instancia) hear civil cases that are not designated by law to be heard by a higher court and hear appeals against judgments made by the Justice of the Peace.

- The Justice of the Peace (Juzgados de Paz) deals with minor civil and criminal cases.

- Criminal Courts (Juzgados de lo Penal) try crimes prepared and investigated by Examining Courts.

- Contentious-administrative Courts (Juzgados de lo Contencioso-Administrativo) hear administrative appeals.



- Social Courts (Juzgados de lo Social) have jurisdiction over work-related cases.
- Prison Surveillance Courts (Juzgados de Vigilancia Penitenciaria) have jurisdiction over prisons and detainees.
- Juvenile Courts (Juzgados de Menores) try criminal cases committed by minors over 14 years and under 18 years of age; they may have jurisdiction over several provinces in an Autonomous Community.
- Domestic Violence Courts (Juzgados de Violencia de Género) hear criminal cases involving domestic violence against women.

Commercial Courts (Juzgados de lo Mercantil) hear all matters in connection with insolvency proceedings.

As regards the single judge or collegiate nature of the aforementioned courts, all are single judge courts, with the exception of the Supreme Court, the National High Court, the Higher Courts of Justice and the Provincial Courts. Collegiate courts decide by majority vote. In order to ensure the principles of impartiality and of a fair trial, the Spanish system has a clear separation of investigation and adjudication functions. A strict incompatibility regime to shelter the judicial profession from any improper influence is required by the Constitution (Article 127) and subsequently developed by Organic Law 6/1985 on the Judiciary (LOPJ), the latter being the key instrument regulating the judiciary in detail.

The General Council for the Judiciary (Consejo General del Poder Judicial, CGPJ) is a constitutional body, which performs strategic, administrative, inspection and managerial functions with the final aim of guaranteeing judicial independence. It is chaired by the President of the Supreme Court and is composed of 20 members elected by Parliament, twelve of whom must be members of the judiciary, while the other eight are jurists with well-established expertise. The Constitution (Article 122) specifies the core functions of the CGPJ, i.e. appointment, promotion and discipline of judges. Over the years, the CGPJ's duties have extended to virtually all organisational matters relating to the judiciary. All administrative decisions of the CGPJ can be subject to judicial review by the Administrative Division of the Supreme Court.

## Overview of the prosecution service

The State Prosecution Service (SPS) (*Fiscalia General del Estado, FGE*) is a constitutional, single body for the entire State, with legal personality and incorporated with functional autonomy within the judiciary. Article 124 of the Constitution provides that the SPS has the mission of promoting justice in defence of the law, the rights of the citizens and the general interest, as well as of contributing to guaranteeing the independence of the courts. It also states that members of the Prosecution Service act in accordance, on the one hand, with the principles of unity of action and hierarchical subordination and, on the other hand, with those of legality and impartiality. Under the principle of legality, the Prosecution Service acts subject to the rule of law; under the principle of impartiality, the Prosecution Service acts with full objectivity and independence in the defence of the interests entrusted to it. The basic regulations governing the Spanish prosecution service are set out in the Organic Statute of the Prosecution Service (OSPS) approved by Law 50/1981, as amended in 2007. The OSPS contains the basic regulations concerning functions, organisation, structure and principles, rules of action, acquisition and loss of the status of prosecutor, rights and duties of prosecutors, and the disciplinary system. The Organic Law 6/1985 of the Judiciary (LOPJ) supplements its provisions, notably for a number of career-related issues.

The SPS consists of the following bodies:

- ☐ The Prosecutor General
- ☐ The Prosecution Council (Consejo Fiscal)
- ☐ The Board of High Prosecutors (Junta de Fiscales de Sala)
- ☐ The Board of Superior Prosecutors of the Autonomous Communities (Junta de Fiscales Superiores de las Comunidades Autónomas)
- ☐ The Prosecutor's Office at the Constitutional Court
- ☐ The Prosecutor's Office at the Supreme Court
- ☐ The Prosecutor's Office at the National High Court
- ☐ The Prosecutor's Office at the Court of Audit
- ☐ Special Prosecutor's Offices:
  - o Special Prosecutor's Office against Illegal Drug Trafficking
  - o Special Prosecutor's Office against Corruption and Organised Crime
- ☐ Territorial Prosecutor's Offices
  - o Prosecutor's Office at an Autonomous Community
  - o Provincial Prosecutor's Offices
  - o Area Prosecutor's Office

The Prosecutor General is the head of the SPS and has public authority throughout the whole Spanish territory. Pursuant to Article 124(4) of the Constitution, the Prosecutor General is appointed by the King, on a proposal from the Government, after hearing the General Council of the Judiciary and scrutiny of the Parliament.

In Spain, the investigation is carried out by the examining magistrate although the investigation measures are often requested by the prosecutor, except in the case of the Organic Law on the criminal liability of minors where the investigation is carried out by the prosecutor.

Article 3.15 of the Organic Statute of the Prosecution Service lays down that the Prosecution Service shall promote or, where appropriate, provide international legal cooperation, as established in the law and in international treaties and conventions. There is a special unit - the International Cooperation Unit - within the State Prosecutor General's Office, which is responsible for the coordination of the Network of International Judicial Cooperation prosecutors, the members of which are the prosecutors of each territorial Prosecutor's Office and are responsible, among other tasks, for dealing with the international judicial assistance requests received by the Prosecutor's Office and for collaborating with other prosecutors in drafting the international assistance requests. It also acts as a single point of contact for Spanish prosecutors in respect of international cooperation issues.

There is a representative of the Spanish State Prosecutor's Office in the EJN, Iber-Red, AIAMP, including many liaison officers and contact points of various networks, not only within the EU but also in the broader international context.

#### *The Spanish legal framework on mutual recognition*

In Spain, the legal instruments which are the subject of the ninth round of evaluations are regulated by Organic Law 23/2014 of 20 November on the Mutual Recognition of Judicial Decisions in Criminal Matters in the European Union (LMR), published in Official State Gazette No 282 of 21 November 2014.

Prior to the adoption of this Law, Framework Decisions on mutual recognition had been transposed into Spanish law by means of sector-specific laws (e.g. Law 3/2003 of 14 March 2003 on the European arrest warrant, and the accompanying Organic Law 2/2003 of 14 March 2003).

However, given the large number of Framework Decisions and Directives adopted since 2008, it was decided to change the legislative approach and opt for a single law that would consolidate all these legal instruments. After 2014, all European instruments were included in this law, integrating the legislation of the different EU instruments on mutual recognition into a single act. The aim was to avoid disparities in the legislation, ensure legal certainty and facilitate the work of the legal professionals responsible for applying the law. From 2014 onwards, every EU mutual recognition instrument has been transposed by an amendment to the above-mentioned LMR.

As a result, the LMR's introduction and Title I include provisions on the general system of mutual recognition of decisions in criminal matters in the European Union, and on the transmission, recognition and execution of mutual recognition requests. The subsequent titles of the Law each regulate one of the other mutual recognition instruments, including those instruments which are subject to the ninth round of mutual evaluations. Thus, Title II (Articles 34 to 62) concerns the EAW (Framework Decision 2002/584/JHA), Title III (Articles 63 to 92) regulates judgments imposing a custodial sentence (Framework Decision 2008/909/JHA), Title IV (Articles 93 to 108) concerns probation decisions (Framework Decision 2008/947/JHA), and Title V (Articles 109 to 129) concerns measures as an alternative to provisional detention (Framework Decision 2009/829/JHA). Each of these titles contains three chapters: the first covers general provisions, the second deals with transmission of a decision by Spain to another Member State of the European Union, and the third deals with the execution in Spain of a decision issued by another Member State of the European Union.

Spain has also a tool called the International Judicial Assistance Guide (Prontuario de Auxilio Judicial Internacional), which aims at serving the needs of judges, prosecutors and other legal practitioners as regards international judicial cooperation.<sup>1</sup>

The Guide offers practitioners a simple and user-friendly tool or handbook for participating in international judicial cooperation activities, in both active terms (issuing a request within the framework of proceedings brought by a Spanish legal body) and passive terms (receiving a request from another State).

This tool was developed jointly by the Ministry of Justice, the Prosecutor-General’s Office and the CGPJ and aims to answer the questions that come up most frequently in the day-to-day work of judicial staff. It allows users to identify the international conventions and other legal regulations applicable in this area. It contains not only information regarding the Spanish legal regulations, but also information regarding the relevant legal provisions of other countries, as well as their legal structure.

The ‘Prontuario’ also provides information about the different institutions that can offer additional support (European, Spanish and Ibero-American judicial networks, Eurojust, etc.), including a list of contacts, for example, contact information of the Spanish liaison judges in the different Member States and vice-versa.

### **3.1. Authorities competent for the European Arrest Warrant (EAW)**

Article 6(3) of Framework Decision 2002/584/JHA (EAW FD), requiring Member States to inform the General Secretariat of the Council of the judicial authority which is competent to issue a European arrest warrant, has been enacted by Article 35 of Law 23/2014, pursuant to which:

- when Spain is the issuing State, the competence to issue an EAW is decentralised.

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<sup>1</sup> <http://www.prontuario.org/portal/site/prontuario>.

Pursuant to Article 35(1) LMR, the judge or court that presided over the case is competent to issue a European arrest warrant, to the extent that this type of order is appropriate. Therefore, all criminal judges/courts competent to hear the case and impose a sentence may issue an EAW, but the initiative to do so always comes from the competent prosecution office/private prosecution. EAWs for the purpose of criminal prosecution may be issued only if the prosecution service and, where appropriate, the private prosecution request it. The judge may reject a request from the prosecutor to issue an EAW, and this decision may be appealed. Public prosecutors are not competent to issue an EAW.

The Guide to the Issuing of EAWs specifies that if there is more than one accused person, an EAW must be issued for each requested person, identifying the facts and the alleged offences specific to each individual. If one accused person is sought in connection with a number of proceedings, an EAW must be issued for each of those proceedings.

Under the Spanish system, the competence to issue an EAW is completely decentralised: this means that there is no central coordination. Therefore, it can happen that several EAWs are issued in relation to the same person by different courts. While the information on the national arrest or any other enforceable judicial decisions on which the EAW is based can be checked in the SIRAJ (a system which includes all warrants, precautionary measures and sentences), the fact that several EAWs have been issued is known only to the Surrender Group within the SIRENE Office of the Spanish Police, as there is one form for each EAW for the purpose of entering the alerts for arrest with the view to surrender or extradition. If the judge wishes to know whether there have already been any EAWs issued in respect to that particular person, the most practical way is to check via National Police/SIRENE. In addition he or she may refer to the Ministry of Justice (MoJ), as the MoJ collects information on all EAWs for statistical reasons and manages the platform to which all EAWs are uploaded. The evaluation team was assured that the judges may check that platform and issue one EAW encompassing all the criminal offences attributed to the requested person. However, in general, this is not standard practice.

In the view of the above, and given the fact that the EAW FD allows the EAWs issued to be sent directly to the executing State (not necessarily through the SIRENE bureau), it may occur that the executing State does not receive all EAWs issued by Spain for the same requested person. Thus, with a view to fulfilling the main objective of the EAW FD, i.e. to facilitate and expedite surrender procedures between the judicial authorities of the Member States, the evaluation team is of the opinion that it would be advisable for Spain to have a mechanism to ensure that all EAWs issued for the same requested person are received by the executing State, thus preventing possible future requests from expanding the scope of criminal prosecutions and causing unnecessary delays in the execution of the EAWs.

In the Spanish system, if the location of the requested person is not known, the EAW is sent only in Spanish for entry in the SIS register.

When the location of the requested person in a specific Member State of the European Union is communicated, the Spanish authority sends the EAW again, this time duly translated into the language of the State in which the requested person is located and within the time limit indicated by the executing judicial authority.

When Spain is the executing State, the competence to execute an EAW is centralised through the Central Investigative Courts within the National High Court, which is located in Madrid and has jurisdiction throughout Spain. Pursuant to Article 35(1) LMR, the Central Investigative Courts within the National High Court are competent to execute a European arrest warrant in all cases, unless the warrant relates to a minor; in this case, the judges of the Central Juvenile Court are competent to execute the EAW. The Criminal Chamber of the National High Court hears only the appeal proceedings.

The LMR expressly states that the person must be brought before the judge of the Central Investigating Court within 72 hours of their arrest (Article 50(2) LMR), and not before the investigating judge for the place in which the arrest took place.



In the light of the recent decision of the CJEU in case C-510/19, when Spain is the executing State of an EAW, the competent authority to decide whether to consent to the request for prosecution for other offences (speciality principle) by the issuing State, in accordance with Article 27 of the EAW FD, is the same court that issued the initial decision.

The Spanish authorities highlight the benefits and convenience of a system such as the Spanish one, where the competence for executing EAWs is conferred on centralised judicial bodies: the Central Criminal Court / Chamber for Criminal Matters, both parts of the structure of the National High Court. This also allows the competent bodies to be given highly specialised training on the basis of a uniform approach, which makes the execution of EAWs more effective.

Direct contacts of the Spanish judicial authorities with the judicial authorities of other Member States are standard practice in the Spanish legal system. The general provisions of the LMR, which incorporated the relevant Framework Decisions into Spanish law, specify that:

- When, in order for a Spanish decision in criminal matters to take effect, procedural steps need to be taken in another Member State of the Union through the use of a mutual recognition instrument regulated by the LMR, the competent Spanish judicial authority shall document it in the mandatory form or certificate, which it sends to the competent authority of the other Member State for execution.
- Mutual recognition instruments, as well as any other notification made in accordance with this Law, shall be transmitted directly to the competent judicial authority of the executing State, by any means which results in a written record, the authenticity of which can be proved.
- All difficulties concerning the transmission or authenticity of any document needed for the execution of a mutual recognition instrument shall be addressed by means of direct communication between the judicial authorities of the issuing and of the executing Member State involved or, where appropriate, in relation to an EAW, with the involvement of the central authorities of those Member States.

– Where it is necessary for a Spanish judicial authority to communicate with the issuing authority of another Member State pursuant to the LMR, it shall do so directly.

– In cases where there may be justified grounds for non-recognition or non-execution, or deficiencies in issuing or transmission, which may be rectified, the competent executing authority may request additional information from the issuing State, setting a deadline by which the information must be provided.

With regard to the specific provisions concerning the EAW, reference is also made to direct communication in the rules on the transmission of the EAW, on the arrest and on the handing over to the judicial authority:

– When the whereabouts of the requested person are known, the Spanish judicial authority may communicate directly with the judicial authority competent to execute the EAW.

– (...) the arrested person shall be brought before the judge of the Central Investigative Court within the National High Court - who is on duty - (...); the issuing judicial authority shall be notified that the person has been handed over.

Article 7(1) of the EAW FD allows a central authority to be designated. Article 6(3) of Law 23/2014 provides that the Ministry of Justice (MoJ) will be the central authority. It carries out only the functions described in Article 7(1) and is therefore responsible for assisting the judicial authorities to resolve problems that may arise in matters related to all the mutual recognition instruments referred to in the Law, and in the transmission of related decisions, but is not competent for transmitting and receiving requests under these instruments.

In particular, the Law provides that all difficulties concerning the transmission or authenticity of any document needed for the execution of a mutual recognition instrument shall be addressed by means of direct communication between the judicial authorities involved or, where appropriate, in relation to an EAW or an EIO, with the involvement of the central authorities of the Member States.

The Ministry of Justice is also responsible for dealing with requests for transit through other Member States, both when Spain is the issuing or the executing State of an EAW or of a certificate under another mutual recognition instrument. For more details on relevant procedures for transit, see point 3.6.1.

The specific provisions on the EAW also impose reporting obligations on the central authority, as well as on the judicial authorities and the police:

- The Spanish judicial authority shall provide the Ministry of Justice with a copy of any EAWs sent.
- The Ministry of the Interior shall inform the Ministry of Justice of any arrests and surrenders carried out in the execution of an EAW.
- The Spanish judicial authority shall notify the Ministry of Justice of any failures to meet deadlines for surrender of a detained person, which are attributable to the executing State, and of any refusals or repeated difficulties concerning the recognition and execution of European arrest warrants issued by Spain.

In turn, the Ministry of Justice shall notify Eurojust of repeated non-compliance with deadlines referred to in the previous paragraph, in the execution of EAWs issued by Spain. However, the Spanish authorities stated that the MoJ has not yet notified Eurojust of any such situation.

Furthermore, it must be mentioned that the relevant internal cooperation networks are commonly called upon whenever complications arise in the execution of an EAW, on the basis of a legal requirement under Article 9 LMR.

There are separate internal cooperation networks for all those who may be involved in processing mutual recognition instruments: judges, public prosecutors and judicial officers, who are responsible for registration and/or procedural tasks. These networks operate at provincial level and within specialist bodies such as the National High Court.

They, in turn, consult the central units (the FGE's international cooperation unit and the CGPJ's international relations service) and the European Judicial Network contact points. However, contact with Eurojust in respect of EAWs depends on whether or not it is required by the circumstances of the case: the Spanish practitioners tend to prefer Eurojust as the most efficient channel of communication at EU level; they appreciate direct, personal contacts and the informal character of their mutual relations.

The central authority has very little contact with its counterparts in other Member States in matters relating to EAWs. The role of the central authority in dealing with EAWs has declined given the proven experience of the Spanish courts in issuing and executing EAWs and, in practice, it is very limited with regard to this specific instrument. This, together with the existence of the abovementioned networks, has also meant that the central authority is called on less often to provide advice and support to the courts.

The Ministry of Justice is also responsible for the collection of statistics. Firstly, pursuant to Article 6 LMR, there is a general reporting obligation in respect of the mutual recognition instruments regulated by the Law. Accordingly, judges or courts that transmit or execute a decision on the basis of all the mutual recognition instruments referred to in the Law record that information in the quarterly statistical bulletins and forward it to the Ministry of Justice. Every six months, the State's Prosecution Office sends the Ministry of Justice a list of the decisions related to those mutual recognition instruments issued or executed by representatives of the Public Prosecution Service.

Special tasks are performed by the Spanish SIRENE Bureau in relation to the surrender procedures. The tasks of the national SIRENE Bureau include, among others: entering the alerts; providing supplementary information on alerts; validating alerts on persons wanted for arrest; contacting the Member State that issued the alert when a match (hit) has been made and the required action has been taken; contacting the Member State that issued the alert when the required action cannot be taken; supervising data quality and compatibility of alerts, etc. The Surrender Group within the SIRENE Bureau is responsible for the smooth factual handover of the surrendered persons. In the context of the EAW proceedings, it is worth pointing out that the SIRENE Bureau does not perform any actions within the direct functions of the judicial authorities. It only serves as a fast and reliable channel for direct communication between the Spanish authorities and the judicial authorities of other Member States. All alerts and flags are entered, validated, changed or removed in the SIS II system only upon the instructions of the competent national judicial authority.

### 3.2. Statistics

The Spanish authorities have provided the Ministry of Justice with the following statistics:

<b>FRAMEWORK DECISION 2002/584/JHA ON THE EUROPEAN ARREST WARRANT (EAW)</b>										
	<b>Issued</b>					<b>Executed</b>				
	2016	2017	2018	2019	2020	2016	2017	2018	2019	2020
<b>Juzgado de lo Penal</b>	42	40	61	39	26					
<b>Audiencias provinciales</b>	116	127	96	103	74					
<b>Juzgados de instrucción y mixtos</b>	104	163	117	157	112					
<b>Juzgados violencia contra la mujer</b>	10	9	8	6	8					
<b>Juzgados de Menores</b>	2	1	1	3	2					
<b>Audiencia Nacional. Sala Penal</b>	21	22	11	21	4	2	5	0	6	0
<b>Juzgados centrales de instrucción</b>	232	190	173	123	85	1.048	1.033	1.268	1.170	843
<b>Juzgado Central penal</b>	0	0	0	0	0					
<b>Juzgado Central de menores</b>	0	1	0	0	0	9	8	3	0	5
<b>Tribunal Supremo. Sala</b>	0	0	10	0	0					

<b>Penal</b>										
<b>TOTAL</b>	<b>527</b>	<b>553</b>	<b>477</b>	<b>452</b>	<b>311</b>	1.05 9	1.0 46	1.2 71	1.1 76	848

These statistics show that Spain executes more EAWs than it issues. These statistics are also reflected in the Eurojust statistics, as was mentioned during the meetings of the evaluation team with the Spanish authorities.

### 3.3. The principle of proportionality

The Spanish legislation incorporates the principle of proportionality into the conditions for issuing an EAW through Article 39 LMR, which, in addition to the conditions already laid down in the EAW FD, restricts Spanish judicial bodies' competence to issue an EAW to cases involving the most serious crimes and the most severe penalties.

An EAW may therefore be issued at the initiative of the public prosecutor and/or private prosecution (except in cases where the prosecution is brought by a party unaffected by the offence), in the following circumstances:

(a) For the purposes of conducting a criminal prosecution for offences punishable by a custodial sentence of at least 12 months, provided that those offences also meet the conditions allowing for provisional custody under the Spanish criminal procedure legislation (Code of Criminal Procedure, LECRIM) or for preventive detention in accordance with Organic Law 5/2000 of 12 January 2000 on the criminal liability of minors.

(b) For the enforcement of a custodial sentence or detention order of more than four months where an alternative or suspension are not possible (Article 39(2) LMR).

Before issuing an EAW, a report from a State Prosecutor's Office is required. The prosecutor studies the evidence in the file, considers the seriousness of the offence for which the person is requested, as well as whether other means of international cooperation have been used to bring the requested person back to Spain. If the criminal proceedings are in the hands of the trial court, the prosecutor's report is essential and fundamental. Besides assessing the evidence, the prosecutor requires a court decision demanding imprisonment.

The principle of proportionality is applied in as much as the competent national authorities must comply with the legal provisions referred to above.

As indicated above, Article 39(1) LMR provides that, in order to issue an EAW for the purposes of conducting a criminal prosecution, it is necessary to meet the conditions laid down in the Code of Criminal Procedure, namely, that in Spanish proceedings the preventive measure of provisional detention may be applied, therefore, pursuant to 503(1) of the Code of Criminal Procedure, for cases concerning offences punishable by a maximum penalty of two or more years in prison, or a shorter term where the accused has a criminal record which has not been and is not likely to be cancelled, arising from a conviction for a premeditated crime. If the case concerns an offence for which provisional detention is not an appropriate measure, an EAW may not be issued either.

EAWs for the purposes of enforcement are subject to the additional requirement that there must be no possibility of an alternative to, or suspension of, the custodial sentence to be handed down to the requested person. In both cases, a reasoned order must be handed down, which will be open to appeal, in accordance with the general system of remedies provided for in Spanish law (Article 13 LMR).



A further condition is that the EAW must be requested by the Public Prosecution Service or, where relevant, by the private prosecution in cases where the prosecution has been brought by a party affected by the offence. However, it should be noted that the judge may refuse it and decide the use of alternative possibilities under the LMR, e.g. issuing an EIO; the judge's decision to refuse to issue an EAW is subject to appeal. Article 38 LMR specifies that a MLA request can be issued for the purpose of taking the accused person's statement, pursuant to Directive 2014/41/EU on the European Investigation Order (EIO), provided that this step is taken before the EAW is issued (because it may render arrest unnecessary). In some cases, the courts may order that a person's international domicile and whereabouts be ascertained; this order is registered in Spain's system of administrative records for judicial use ('SIRAJ'), so that the police will provide information on the accused person's whereabouts via this channel, and then a MLA request is issued, so that the accused person can be heard. This clearly shows that it is always the court that makes the final decision on the issuance of the EAW, whether for the purposes of criminal prosecution or for sentence execution.

These rules create a dual requirement for issuing EAWs for the purposes of a prosecution, which have been the most controversial in the past in terms of compliance with the principle of proportionality, as sometimes, the surrender of a person under investigation was requested only to be heard (and this could have been avoided by issuing an EIO). meaning that the threshold of proportionality applied by the Spanish courts is even higher than the threshold set forth in the EAW FD, and it also encompasses a double control of proportionality. This dual requirement means that: (1) a request must have been made by the public prosecutor or private prosecution; and (2) the offences concerned must be serious enough that the requested person can be placed in provisional detention once he or she has been transferred to Spain (which is always assessed on a case-by-case basis).

Pursuant to Article 39(3) LMR, the judge can only issue an EAW at the request of the prosecutor. In practice, public prosecutors request an EAW only when there is a clear intention to have the requested person placed in custody once he or she has been surrendered and brought before the issuing judicial authority.

This guarantees the principle of proportionality and prevents the kind of situations that used to arise before the LMR came into force, in which an EAW was issued without the knowledge of the prosecutor, who did not request provisional detention following the first appearance of the surrendered person, or merely with the intention of taking an accused person's statement in order to then provisionally release him or her, to the manifest detriment of the person concerned.

In these very exceptional cases prior to the entry into force of Law 23/2014, the aim of the EAW was to ensure the hearing of the person under investigation when it could not be obtained in any other way because the person under investigation had escaped and his or her whereabouts were unknown. Most of the times, the prosecutor was aware of this situation.

Even the Guide to the Issuing of the European Arrest Warrants (under Title II of Law 23/2014 on LMR) notes that since the new legislation lays down stricter requirements for issuing EAWs, it is advisable for each judicial body to review previously issued EAWs and check whether or not they comply with the new proportionality criteria set out in Articles 37 and 39 LMR.

The legislator's intention with this article seems to be to prevent the practice, which occurred relatively frequently under the previous legislation, of issuing an arrest warrant solely for the purpose of hearing the accused person, a prerequisite for the criminal proceedings to continue. In such situations, an EIO (European investigation order) is now issued for the purposes of taking a statement, which may be done by videoconference. In fact, the LMR itself provides that, when seeking to take a statement from the person concerned, the possibility of issuing a request for judicial assistance should be explored before considering issuing an EAW.

In respect of EAWs for the purpose of enforcement, the requirement that it must not be possible to replace the custodial sentence with an alternative sentence (e.g. a fine), or to suspend the sentence, also aims at preventing the arrest and transfer of a person who could benefit from such measures. This is without prejudice to the issuing of the relevant instrument for the recognition of the alternative measures. As a result, EAWs are now only issued following a detailed analysis of all the relevant circumstances of the case, thus allowing full compliance with the principle of proportionality.

The guidelines provided in in the Commission's 'Handbook on how to issue and execute a European arrest warrant, which essentially refer to the bounds of proportionality or to the possibility and advisability of using alternative measures to the EAW, are taken into account by the Spanish authorities when applying the existing legal framework described in the previous paragraphs.

With regard to the EAW execution stage, the Spanish authorities underlined the core principle of the EAW mechanism - the mutual trust -, meaning that the Spanish police are basically obliged to arrest the wanted persons no matter what the charges are, even in petty cases. In certain cases, it becomes a problematic issue, as some Member States are using the EAW to pursue people for relatively minor offences. The Spanish judicial authorities believe that the principle of proportionality must be assessed by the issuing State carefully and in line with the requirements of the EAW FD.

### 3.4 Exchange of information

Spain is keen on reinforcing mutual trust and recognition without prejudice to human rights. This means that requests for supplementary information in terms of the execution of EAW are not frequent and relate only to very important aspects.

When Spain is the executing Member State of an EAW, the issues that require most requests for further information are those concerning cases of prosecution ‘in absentia’, in which the corresponding part of the form has not been properly completed or has even been left blank. The Spanish authorities admit that section d) of the EAW form is rather complicated, especially when it concerns not only one judgment, but several consecutive decisions issued as part of an appeal procedure.

In other cases, the description of the facts is not clear enough, which also creates a need to request clarifications in order to ascertain the double criminality or territorial jurisdiction over the crime for the commission of which the surrender of the person concerned is requested.

In some situations, the detained persons (requested for prosecution) claim that they have already been prosecuted in the issuing State. This leads to the need to consult the competent authority of the issuing Member State. If this information is confirmed, the EAW should have been removed from the SIS by that authority and, if it has not been done, the detention is then deemed inappropriate.

The mechanism for the request for additional information is indeed based on Article 15(2) of the EAW FD. The consultations are carried out through various channels. The channel considered most efficient is always used in each specific case. In this context, SIRENE Spain, which has a very robust organisational structure, is used by the competent courts for communication; it transmits the information requests immediately to the competent SIRENE office in the other Member State involved. This system has been acknowledged by the Spanish authorities as the fastest and most secure way of exchanging information.

Eurojust has been involved in exceptional instances. In line with the criteria featured in the national guide, which will be further discussed below, urgency is considered a sufficient ground for requesting the assistance of Eurojust.

With the aim of complying with the deadlines set out in the EAW FD for the surrender of the requested persons, the time limits set for the provision of the required further information are short, but reasonable, giving the issuing authority the time to respond to the request. The time limit is usually seven calendar days. Deadlines are normally complied with by the issuing authorities, when they are asked for additional information.

When Spain is the issuing State of an EAW, it is not common for the executing authorities to routinely request additional information such as judgments or supporting documentation.

Previously, there was a requirement in the Spanish Guide to the Issuance of EAWs for the information in the EAW form to be concrete and concise, setting out the facts relating to the person actually requested, with a view to simplifying the drafting. This helps with the translation of the EAW form and facilitates a better understanding by the foreign judicial authorities of the facts giving rise to the issuance of the EAW. However, it was also necessary to be concise in describing the circumstances of the crime, due to the need to condense the information into 1024 characters, which was the maximum number of symbols allowed by the IT system at that time. The system has now been updated and the limit of 1024 characters has been abolished, leaving the suggestion to be concise simply to facilitate translation and a better understanding of the reasons.

The Spanish authorities believe that requesting information on supporting documentation for the issuing of the EAW could undermine the principle of mutual recognition.

However, the Spanish authorities admit to having noticed breaches in mutual trust in recent times, as they believe that executing States often analyse the case from a perspective that goes beyond the spirit of the EAW FD. They underlined in this respect that, in accordance with the principle of mutual recognition, a decision made by a judicial authority in one Member State must be recognised and enforced by the judicial authorities in the other Member States, without enquiring into the merits of the decision.

In recent times, the Spanish authorities have observed a certain amount of distrust, undermining the principle that judicial decisions from another Member State should have the same effect and value as national judicial decisions. In particular, they believe that certain Member States in few relevant cases go beyond mutual trust by assessing the merits of the case: the evidence available, questions on a national warrant, the competence of the Spanish judiciary, etc.

Nevertheless, in certain cases of exceptionally important investigations, it has happened that information on the evidence forming the basis of a given allegation has been requested by the executing authorities and also that such a request has been admitted. However, this is an exceptional situation. Direct requests have been made for specific items of evidence, such as videos of the acts committed, which are assessed by the Spanish authorities as unnecessary and as exceeding the limits of what the executing authority can reasonably require.

However, requests for further information, even if considered superfluous, are usually complied with by the Spanish authorities; such information may pertain to the facts of the case in ways that do not relate to their classification, to items of evidence (as already mentioned), or to points missing from one or another section of the form.

In this regard, in order not to undermine the principle of mutual trust and to extend the success story of the EAW mechanism, the evaluation team believes that there should be a common approach among the EU Member States regarding the extent to which they analyse the elements of the EAW in question, and that this type of assessment of the merits of the case should in principle be avoided.

When Spain has been the executing State, no cases have been identified in which requests for additional information were sent to the issuing authorities and the execution deadlines were not met. If the deadlines cannot be met, the LMR lays down an obligation to inform the issuing authority of the reasons for the delay. However, the conditions necessary for surrender have to be fulfilled.

The executing authorities (Central Investigative Courts and Criminal Chamber of the Audiencia Nacional (in case of appeal) are specialist bodies with the sole competence for executing EAWs and extraditions. The Spanish authorities underlined that, consequently, these authorities are accustomed to dealing with these matters on a daily basis and the procedure is usually handled very efficiently. As a result, they point out that it is unlikely that execution would take longer than the time limits laid down, with the possibility of extension, under Article 17 of the EAW Framework Decision.

When Spain is the executing State, the Spanish authorities inform the issuing authorities about the necessary follow-up information after a decision on the EAW has been taken; in particular, the decision agreeing to the surrender of the requested person clearly includes the full period of deprivation of liberty on account of the EAW. The central investigating judge informs the issuing authority of the period for which the requested person has already been deprived of liberty as a result of the EAW and of whether he or she has renounced entitlement to the speciality rule. A judicial decision is handed down, and is notified to the issuing State when the surrender is decided or executed.

Specifically, in relation to the execution of an EAW, Article 58(6) LMR lays down that: *‘In all cases, at the time of surrender the officer of the court shall inform the issuing judicial authority of the period of deprivation of liberty that the person to whom the European Arrest Warrant refers has undergone, so that it can be deducted from the custodial sentence or detention order imposed, and whether the detained person has or has not waived the rule of speciality’.*

The Spanish authorities, as the executing authorities, transmit such information ‘ex officio’. Occasionally, information on this matter has been requested by the issuing authorities; in such cases, the information has been transmitted by the Spanish authorities as quickly as possible. If the request is received through Eurojust, the correspondents or contact points of the European Judicial Network are contacted and the information is sent swiftly, by various means including e-mail. According to the Spanish practitioners, communication through Eurojust works very smoothly, and is preferred in many cases.

The normal scenario is that such a request for information is sent directly from the issuing authority to the executing authority (SIRENE has also been used for this purpose). If necessary or due to language issues, Eurojust or the EJM contact points are contacted in order to facilitate these requests.

When Spain is the issuing State, given the diversity of courts and tribunals that can issue an EAW, the Spanish authorities were not in a position to affirm, with total certainty, that the follow-up information from the executing authorities (i.e. together with the decision which agrees to the surrender, information on the duration of the deprivation of liberty) is always, and in all cases, received. However, they pointed out that, in general, this information is received and that, in any case, it would not be difficult to obtain it either by requesting additional information from the executing authorities or through Eurojust, the EJM or the SIRENE office.

The judges executing EAWs communicate with the judicial authority of the issuing States directly. SIRENE is used a channel for speedy and effective communication, but if a Spanish judge knows English or French, he or she communicates directly. An electronic form of correspondence is acceptable by the Spanish judicial authorities. Sometimes, the liaising judge acts as interpreter. Eurojust channels are used in exceptional cases, e.g. for solving jurisdiction conflicts; instead, the contact points of the EJM are referred to for resolving the supplementary information issues. The Spanish authorities acknowledge the great added value of the coordination meetings organised by Eurojust, especially in cases where different EU legal instruments are applicable. Problems with different EU judicial cooperation instruments may arise due to the fact that they are received and/or executed by different national institutions (e.g. EAWs by courts and EIOs by prosecution offices or courts not competent for the execution of the EAW wherever there is a need for simultaneous and coordinated execution of EAWs and EIOs). Usually, other instruments that accompany an EAW are executed once the person is detained under the EAW and all other issues to be resolved are dealt with through inter-institutional coordination (in exceptional cases with the involvement of Eurojust).



However, the Spanish authorities admit that the foreign language training organised both at national and EU level, as well as periodical meetings in person with counterparts from the other EU Member States, are essential to strengthen direct communication and reinforce mutual trust.

### **3.5 Grounds for refusal**

#### *3.5.1- Refusal in the event of a potential risk of violation of fundamental rights in relation to detention*

When Spain is the issuing State of an EAW, the Spanish authorities are not aware of the executing authorities of other Member States having raised any questions concerning prison conditions in Spain. The expert team had the possibility to visit one of the Madrid prisons, and the general impression is that the prison conditions are good and the staff are dedicated and passionate about their work, thus fully substantiating the Spanish position that almost no enquiries about prison conditions have been received from the issuing States.

The Spanish authorities also stated that, when Spain is the executing State of an EAW, the doctrine established by the CJEU in cases Aranyosi/ Căldăraru (Joined Cases C-404/15 and C-659/15 PPU) and Dorobantu (Case C-128/18,) has not caused any problems with respect to surrender to the issuing Member States affected by those procedures, apart from a few consultations in relation to the first cases of surrender immediately after those judgments. In addition, they believe that the Member States concerned have made efforts to improve the conditions in their prisons to meet the standards established by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Consequently, since those initial consultations, they consider that the situation in those Member States has improved and that surrenders are not affected by issues relating to detention conditions.

Without prejudice to the fact that in other subsequent mutual recognition instruments, the potential risk of violation of fundamental rights in relation to detention conditions has been given as a reason for refusing execution, since the EAW FD does not specifically incorporate this basis for rejection in EAW proceedings, the Spanish authorities, as executing authorities, carry out this assessment from the perspective of the generic reference in Article 1(3) of that Framework Decision, and within the boundaries set by CJEU case-law: exceptionality and the two-steps test. Systemic risk is not considered by the Spanish authorities as sufficient; instead, there is a requirement for real exposure to a risk of violation of fundamental rights in the specific circumstances of the particular case.

The Spanish authorities also recall the prior case-law of the CJEU (such as case *Melloni*, C-399/11) to the effect that a Member State may not require from another Member State a level of protection of fundamental rights higher than that provided for by EU legislation, which is merely a specific expression of the principle of the primacy of Union law.

The Spanish authorities consider that engaging in general assessments based on non-specific reasons or in a fragmentary analysis of the elements of the case, at least as long as the verification and sanction mechanism set out in Article 7 TEU has not been activated, would be contrary to the principle of mutual trust, which is a constitutive principle of the European Union.

The Spanish authorities underline that it is also worth noting that the CJEU judgment of 25 July 2018 (case *LM*, C-216/18), which followed the lines set by earlier decisions of the Court, as regards possible risks of breach of the fundamental right to a fair trial on account of deficiencies as regards the independence of the issuing State's judiciary, caused some concern, though it did not ultimately lead to any action by the Spanish courts. They recalled that, in the above-mentioned case, the Irish executing authority agreed in the end to surrender to Poland.

Article 50(2) LMR provides that the hearing of the detained person before the Central Investigative Judge must be held within no more than seventy-two hours from the time that the detained person's lawyer is made available, as well as an interpreter, if applicable, with the assistance of the Prosecution Service; and that, in the first instance, the detained person must be heard as to the granting of his or her irrevocable consent to the surrender.

Nevertheless, Article 51(3) of the same law further provides that, even if the detained person consents, the judge of the Central Investigative Court must confirm whether the detained person's consent to the surrender was given freely and in full knowledge of its consequences and, even then, the judge must also examine whether there are reasons for refusing the surrender or making it conditional, and must ensure that the fundamental rights and freedoms, including in relation to detention conditions in the issuing State, are fully observed.

Thus, in practice, the person sought is brought, after being detained, to the competent court and is questioned, in the presence of his or her lawyer, on his or her consent to the surrender and on the possible waiver of the rule of speciality, and can in the course of that appearance make any statements that he or she considers relevant. The defence lawyer can also make any statements relevant to the assessment of a ground for refusal of surrender. In addition, the submission of evidence may be proposed by the defence; this has to be carried out within three days of that initial appearance and such evidence may also be related to the infringement of fundamental rights due to the conditions in the prisons of the issuing State.

It is common practice in Spain that, during the EAW execution procedure, the defence lawyers raise questions in relation to the case law of the CJEU and of the ECHR (for example, the independence of judicial authorities or prison conditions in the issuing State). Thus, the Spanish judicial authorities think that it would be good to have general and uniform guidance on such issues at EU level. They underlined that the principle of mutual trust is a key element of successful cooperation in terms of mutual recognition instruments and it implies that all Member States need to respect that principle in the same way.

In general, when Spain is the executing State, the Spanish authorities pointed out that there are not many concrete cases where fundamental rights issues are raised in relation to detention conditions in the issuing State by the detained person's lawyers or by the prosecutors: they therefore underlined that this is a ground for refusal that can only be asserted on an extremely restricted basis, as referred to above.

The criteria for the assessment of such potential violations are based on any judgments of the European Court of Human Rights that may have been handed down against the issuing State, and the sources of information that the Spanish authorities would use in such situations would be the European Prison Rules of the Council of Europe, as well as reports from observatories such as the European Prison Observatory or the European Union Agency for Fundamental Rights (FRA). In addition, these sources of information would be supplemented by requesting reports from the issuing State.

The legal defence of the detained person may request that a three-day period for producing evidence be granted and provide documentation in support of any grounds for refusal or suspension of the surrender.

On this point, the Spanish authorities noted that Spain's procedural legislation has transposed Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in EAW proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with the consular authorities while deprived of liberty.

Consequently, persons detained under an EAW are always informed of their right to appoint a lawyer in the issuing State, in line with Directive (EU) 2016/1919 on legal aid. For such cases, the executing authority would contact the issuing authority via SIRENE. In Spain, however, there is a lack of practical experience of actual cases in which such assistance has been requested. On some occasions, the arrested person already had a lawyer in the issuing State.

Within the general mutual recognition system, the Spanish authorities indicated that in cases where there may be justified grounds for non-recognition or non-execution, or deficiencies in issuing or transmitting requests, which may be rectified, the Spanish authorities, as executing authorities, request additional information from the issuing State, setting a deadline by which the information must be provided. As previously indicated, the period usually granted for transmitting additional documentation is seven days.

When Spain is the issuing State, Article 41 LMR lays down that, after the EAW has been sent, the Spanish issuing judicial authority may transmit to the executing judicial authority any additional information relevant to the execution of the EAW, whether automatically, at the request of the Prosecution Service or, where applicable, at the request of the private prosecution, as well as at the request of the executing authority.

The additional information requested by the executing authorities may also concern detention conditions and guarantees. However, except for one case, the Spanish authorities as issuing authorities are not aware of any request having been received from any executing authority of another Member State for information on prison conditions in Spain.

No cases have been encountered by the Spanish authorities as executing authorities in which a negative assessment resulting from the two-steps test on detention conditions in the issuing Member State, as referred to in the Aranyosi/Căldăraru judgment, has led to a refusal of a surrender from Spain to any other Member State.

### *3.5.2 Refusal in the event of a judgment in absentia*

Spanish law is very restrictive with respect to prosecution ‘in absentia’, which is possible in Spain only for offences where the sentence sought is no longer than two years in prison or, in the case of non-custodial sentences, no longer than six years in duration. In the past, this strict limitation, specifically as regards custodial sentences, generated problems in the execution of EAWs issued by other Member States (including with respect to extradition) arising from proceedings where the person was not present.

In 2014, the Spanish Constitutional Court handed down its judgment in the Melloni case (STC 26/2014), by which it changed its doctrine to bring it into line with EU case-law. The case concerned the differing levels of protection of fundamental rights at national and EU level in relation to the execution of an EAW. Before adopting that decision, the Spanish Constitutional Court (SCC) referred to the CJEU for a preliminary decision (Case C-399/11), and afterwards the Spanish Constitutional Court lowered the degree of protection afforded by the Spanish Constitution in line with EU case-law (as under Spanish constitutional case law, if the authorities give effect to a foreign authority's decision that infringes the 'absolute content'<sup>2</sup> of a fundamental right, they breach the Constitution). Thus, the evaluation team was assured that the Melloni doctrine has brought more clarity to the execution of EAWs in relation to judgments 'in absentia' and there is no reluctance by the Spanish authorities with regard to the execution of such EAWs, provided that all other criteria are met. In 2015, an amendment was made to the LMR and, since then, Spain effectively executes EAWs issued in relation to judgments 'in absentia', despite the fact that Spanish law does not allow criminal prosecution 'in absentia'.

It should be noted that, according to the Spanish law, appeal is possible whenever the person is returned to Spain, even if he or she had been properly summoned and, being aware of the scheduled trial, had given a mandate to a lawyer, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that lawyer at the trial. A very high level of guarantees is provided to persons surrendered under EAWs 'in absentia' under the Spanish national legislation.

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After the clarification of the European legal framework on prosecution ‘in absentia’ through Framework Decision 2009/299/JHA, enhancing the procedural rights of persons in this respect, the mutual recognition system applicable in Spain in this kind of prosecution has been strengthened. Thus, the Spanish authorities indicated that the absence of correspondence with the national system in respect of judgements ‘in absentia’ is not a ground for refusal when Spain is the executing Member State <sup>3</sup>, provided that some of the conditions indicated in the EAW FD are applicable.

The Spanish authorities underline that, however, in many cases, the application of Article 4(a) of the EAW FD leads to numerous practical and legal problems. The main problems are that the issuing authorities do not fill in part d) of the EAW form or provide unclear or contradictory information. The Spanish authorities admitted that the EAWs issued for sentence execution where judgments had been rendered ‘in absentia’, increase the need to request supplementary information, especially at the stage of appeal against this type of judgement. The practice of Spain acting as an executing State confirms that, if the judgement is delivered ‘in absentia’, none of the subparagraphs of section d) of the EAW form are completed. This requires the executing judicial authority to request the issuing judicial authority to clear up matters, which leads to delays and extra costs for both countries.

The absence of the information on the national legislation of the issuing State in judgements ‘in absentia’ often complicates issues with the defence lawyers, especially taking into account that there is a condition for Spain to execute such judgements, i.e. that the judgement has to be final. If that information is not provided, the Spanish authorities will definitely request additional information.

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The absolute content of the right to a fair trial (Article 24(2) of the Spanish Constitution) included the right to be physically present at the hearing in criminal proceedings related to serious offences. Previously, according to the SCC, this entailed that, in EAW cases, people convicted in their absence had to be granted the possibility to challenge their conviction when they were surrendered to the requesting State, even if they had been properly summoned and represented at trial by a lawyer of their choice.

Thus, the Spanish judicial authorities are of the opinion that it is better for the issuing State to provide its relevant legislation in advance, e.g. by providing an extract from the relevant provisions of the Code (as some Member States already do in practice), thus ensuring a speedy and effective EAW execution procedure from the very beginning and avoiding requests for supplementary information.

The Spanish authorities indicated that, when Spain is the executing State, in principle the updated form received from the issuing authority lays down all the circumstances that allow for recognition and execution of an EAW in cases of trials ‘in absentia’. However, the Spanish authorities believe that it would certainly be helpful if the issuing authorities included additional information in the appropriate space of the EAW form whenever Article 4(a) applies, in order to provide details of the summons, as this is not usually done.

Consequently, once information has been provided depending on which of the cases mentioned under letter (d) of the EAW form applies, no problems have been identified in relation to execution by the Spanish authorities. However, as stated above, the information sometimes appears incomplete, which makes it necessary to activate the mechanism for consulting the issuing authority.

Clearly, in the opinion of the evaluation team, such problems not only do not contribute to the objective of the EAW FD of facilitating judicial cooperation in criminal matters, but they also have a negative effect on the high level of mutual trust that should exist between the judicial authorities of the Member States.



The Tupikas<sup>4</sup> (on cumulative sentences); Zdziaszek<sup>5</sup> (summons complying with standards of the EAW FD in the final judgment giving rise to the determination of final guilty) and Ardic<sup>6</sup> (revocation of conditional sentence) cases have not led to any increase in requests for further information in proceedings dealt with by the Spanish authorities as executing authorities. No changes to its national legislation are envisaged by Spain to take account of those judgments.

### *3.5.3 Other grounds for refusal*

Article 29 LMR specifies that the recognition or execution of a mutual recognition instrument that has been correctly transmitted by the competent authority of another Member State may only be refused, explaining the reasons, when one of the grounds provided for in that Law apply.

The mandatory and optional grounds for refusal to execute an EAW, set out in Article 48 LMR, are the following:

Mandatory - a) the offence is covered by amnesty in Spain; b) the person has already been sentenced in Spain for the same act; c) the person has already been sentenced in another Member State for the same act; d) the person has already been sentenced in a third country for the same offence; e), the penalty has been served or can no longer be served according to the laws of the sentencing state; f) the person is under the age of criminal liability.

Optional - a) the person is prosecuted by Spain for the same offence; b) Spain takes over execution of the sentence; c) the extraterritoriality clause or refusal ground of double jurisdiction apply.

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4 CJEU: Tupikas, C-270/17 PPU, 10 August 2017, ECLI:EU:C:2017:628.

5 CJEU: Zdziaszek, C-271/17 PPU, 10 August 2017, ECLI:EU:C:2017:629.

6 CJEU: Ardic, C-571/17PPU, 22 December 2017, ECLI:EU:C:2017:1026.

However, apart from these grounds for refusal, Article 32.1 LMR provides for the following mandatory general grounds to refuse recognition or execution of the orders or decisions transmitted in the cases regulated by all mutual recognition instruments: a) breach of the ‘ne bis in idem’ principle; b) Spain has jurisdiction over the trial and, if the sentence had been handled by Spain, the penalty imposed would have expired; c) when the form or the certificate are incomplete, manifestly incorrect, do not refer to the measure or are missing in general, and d) the execution is prevented due to immunity. The grounds for refusal set forth in Article 4(a) of the EAW FD (judgements ‘in absentia’) are almost word by word transposed into Article 33 LMR.

The optional general grounds (Article 32 (2-3)) of the LMR for refusing recognition or execution of the transmitted order or decision are: a) lack of double criminality, and b) Spain’s territorial jurisdiction over the crime.

In the opinion of the evaluation team, as regards grounds for refusal, some inconsistencies with respect to the EAW FD can be identified, as it seems that the Spanish implementing law extends the scope of the Framework Decision. The same issue was raised by the representative of the Bar Association met by the expert team, who said that Spanish courts refuse to execute mutual recognition instruments based on grounds which are not specifically provided for in the relevant Framework Decisions.

The evaluation team believes that the grounds for refusal of an EAW set forth in the Spanish law are not entirely in line with the case-law of the CJEU, which states that the executing judicial authorities may, in principle, refuse to execute such a warrant only on the grounds for non-execution exhaustively listed by the EAW Framework Decision. Accordingly, while the execution of the EAW constitutes the rule, refusal to execute is intended to be an exception, which must be interpreted strictly (C-354/20 PPU and C-412/20 PPU).

As regards the other grounds for refusal to execute an EAW, e.g. *ne bis in idem*, some situations have been detected by the Spanish authorities, as issuing authorities, in terms of one Member State not surrendering its nationals.

In line with the practice in that Member State, as soon as it is known that one of its nationals is being investigated for an offence (through the EAW itself, prior letters rogatory or an EIO), the competent authorities of that Member State launch a procedure against that person, even if the facts of the case are not related to that Member State. The fact that a case is pending in relation to the same facts is then used as a ground for refusal, which, in the opinion of the Spanish authorities, is in serious conflict with the spirit of the EAW FD. They stress that the most serious manifestation of this scenario is in investigations of organised crime, in which the refusal to surrender nationals leads to unwanted fragmentation of proceedings. When Spain is the executing State, these situations do not occur.

Conversely, where Spain is the executing Member State, parallel proceedings are sometimes initiated in Spain, as a result of the execution of an EIO in Spain (e.g. arising from a drug seizure in the course of a house search). These parallel procedures make it difficult or impossible to execute an EAW, unless at the end of the process it has been deemed that one or the other jurisdiction involved is better placed for a combined prosecution. In multiple cases, Eurojust has been asked to mediate and advise in these matters.

There have been cases in which EAWs were rejected due to the fact that the issuing State failed to provide the requested guarantees set forth in Article 5 of the EAW FD. As the issuing State failed to provide such guarantees (even with the involvement of Eurojust in relation to the guarantee specified under Article 5(2)), concerning the condition that the issuing Member State has provisions in its legal system for a review, the execution of those EAWs was rejected.

As for double criminality, the Spanish authorities point out that in some Member States there is an entrenched judicial habit involving the examination of double incrimination through full application of the specific parameters of national legislation, for which purpose the substance of the case is examined, in their opinion in an inevitably fragmentary and incomplete fashion. The Spanish authorities believe that in such cases, mutual trust - which is a fundamental element of the system of mutual recognition instruments in the UE - could be exposed to the risk of being weakened. As some Spanish practitioners stated, the lack of mutual trust and some uncertainty as to the outcome of the case assessment by other Member States could negatively influence future cooperation across the EU in the field of mutual recognition of judgements.

According to the Spanish authorities, this judicial approach goes beyond the strict terms of the EAW FD and deviates from the interpretation that the CJEU has formulated on this issue, whereby the criminal offences themselves are not to be compared, but rather the interests protected under the law on those offences (see, for instance, the judgment of the CJEU in case C -289/15, Grundza. (...). The Spanish authorities in particular recalled that, on the basis of this case-law, ‘the competent authority of the executing State must ascertain, not whether an interest protected by the issuing State has been infringed, but whether, in the event that the offence at issue were committed in the territory of the executing State, it would be found that a similar interest, protected under the national law of that State, had been infringed’.

The Spanish authorities indicated that, as issuing authorities, they usually provide descriptions of the facts relating to the suspected offences in a detailed and itemised fashion, in order to facilitate their understanding by the competent authorities of the executing State.

With respect to their role as executing authorities, the Spanish authorities indicated that, as mentioned above, at times the descriptions of the facts relating to the suspected offences by the issuing authorities are somewhat defective, and it is therefore difficult to determine whether they correspond to acts that are criminal offences in Spain. In such cases, they establish contacts with the issuing authorities in order to obtain the necessary clarifications. Rejections by the Spanish authorities for offences of drug consumption, which is not a crime in Spain, have been common, as have rejections for offences that would be considered petty in Spain and which fall below the minimum criminal-law threshold.

### 3.6 Further challenges

#### *3.6.1 .Practical and legal problems related to transit (Article 25 EAW FD)*

In line with Article 25 of the EAW FD and pursuant to Article 27 of Law 23/14, the Ministry of Justice is the Spanish authority responsible for receiving transit requests and, at the request of the issuing judicial authority, for requesting authorisation from the transit State concerned.

– When the Spanish judicial authority which has issued an EAW, a decision imposing a custodial sentence or measures involving deprivation of liberty, or an EIO, is aware that the requested person must transit through a Member State other than the executing State, it must ask the Ministry of Justice to request authorisation from the transit State, providing a copy of the judicial decision and the certificate issued, the latter having been translated into a language accepted by the transit State.

The judicial authority forwards to the Ministry the decision to issue the EAW and the related form, with the latter translated into a language accepted by the State of transit.

The MoJ will request information from the transit State on whether it can guarantee that the sentenced person will not be prosecuted, detained or otherwise subject to any restriction of his or her liberty in its territory for any offence committed or sentence imposed prior to transit. Where appropriate, and when asked to do so by the issuing judicial authority, the Ministry of Justice may withdraw the request.

In turn, the MoJ is competent to authorise the transit through Spanish territory of a person being transferred to the issuing State from the State executing an EAW, a decision imposing a custodial sentence or measure involving deprivation of liberty, or an EIO, provided that the executing State submits the request for transit accompanied by a copy of the certificate issued for the purposes of executing the decision. The Ministry of Justice will request from the issuing State a copy of the form or certificate translated into Spanish.

- The MoJ must inform the issuing State if it cannot guarantee that the sentenced person will not be prosecuted, detained or otherwise subject to any restriction of his or her liberty in Spain for any offence committed or sentence imposed prior to departure from the executing State.
- The MoJ will claim reimbursement from the issuing State of any sums which, under the Spanish law, have had to be paid by way of compensation for damage caused to third parties, provided that Spain is not solely responsible for the damage due to irregularities in the administration of justice or to a miscarriage of justice.

The main difficulties encountered by the Spanish authorities in relation to transit are, on the one hand, identifying the competent authority of the other Member State in charge of transit at a given time (postal address) and the various central or judicial authorities' documentary requirements for authorising the transit, and on the other hand, the frequent delays in response times: they underline that transit authorisation requests should be answered more promptly.

*3.6.2. Practical and legal problems related to the hearing of a requested person pending the decision (Article 18 and 19 EAW FD)*

Articles 18 and 19 of the EAW FD have been transposed into Article 52 LMR, which stipulates that, in the case of an EAW issued for the purposes of criminal prosecution, 'if the judicial authority so requests, the Central Judge of Criminal Investigation shall order, having heard the Public Prosecutor within the term of 3 days, for a statement to be taken from the requested person, or for that person to be temporarily transferred to the issuing State'. The law also states that 'taking the declaration from the requested person shall be performed by the judicial authority issuing the order stating that the requested person shall travel to Spain, with the assistance, where appropriate, of the person it appoints pursuant to the law of the issuing State <...>'.

Although Spain has not had any practical experience in relation to the implementation of this provision, the evaluation team believes that the present wording of Article 52(2) LMR may cause practical and legal problems.

Article 19 of the EAW FD does not lay down the specific rules relating to such hearings. It is left to the national authorities to decide how this hearing will be carried out in practice. The Member States retain, in accordance with their procedural autonomy, the right to adopt rules in that regard, which may differ from one Member State to another. However, it is clear from the case-law of the CJEU that the right to be heard, which is an integral part of the right to an effective legal defence, guarantees that every person must have the opportunity to make his or her views known properly and effectively in the proceedings in question. Thus, the Member States must ensure that those rules do not infringe the requirements of the EAW FD, in particular as regards the judicial protection guaranteed by Article 47 of the Charter (C - 648/20 PPU).

Furthermore, despite the fact that the EAW FD does not specifically set out rules governing the hearing of the requested person pending the decision, the executing judicial authority and the issuing judicial authority must ensure that the procedure does not undermine the objective pursued by that FD, which is to facilitate and expedite surrenders between Member States. Although the CJEU does not require the direct involvement of the executing judicial authority in such hearings (C-428/21 PPU and C-429/21 PPU), in view of the spirit of the EAW FD, these provisions cannot be transposed in a way that undermines this objective.

Thus, in the opinion of the evaluation team, the Spanish requirement for the competent issuing authority to personally travel to Spain for the purpose of such a hearing pending the decision does not seem to be in line with the objective of the EAW FD. The evaluation team also understands that, from a practical point of view, this provision is unlikely to be ever implemented and the reason why it has never been exercised in practice could be that it is very costly and time-consuming and that, in addition, it would prolong the duration of the execution procedure. Therefore, the expert team believes that the current provisions implementing Articles 18 and 19 of the EAW FD should be revised with a view to finding more efficient and less costly and time-consuming solutions.

### *3.6.3 Other challenges*

The CJEU's case-law on the EAW has not required any changes in the Spanish legislation transposing the EAW FD, though practice in issuing and executing EAWs has adapted to the interpretations of the CJEU, where necessary.

According to the Spanish authorities, this has been possible because both the initial wording of the LMR and its subsequent amendment (Law 3/2018 of 11 June, amending Law 23/2014 of 20 November, on mutual recognition of decisions in criminal matters in the European Union, to regulate the European Investigation Order) were based on the principles of good regulation, including the principle of necessity and effectiveness in fulfilling the requirement for faithful transposition of the text, and on the principles of proportionality and of legal certainty, with the aim of keeping the regulatory framework stable, predictable, integrated and clear.

In general, the Spanish authorities pointed out that they have observed a weakening of mutual trust between Member States as regards each others' judicial systems, with a consequent negative impact in terms of mutual recognition in criminal matters, including as regards the EAW.

As already indicated, the Spanish authorities have identified two main problems: on the one hand, the monitoring by the executing judicial authority with respect to proportionality and respect for human rights on the part of the issuing judicial authority; and, on the other hand, the interpretation of the principle of double criminality by the judicial authorities of some Member States, which in their opinion leaves the issuing authority completely helpless, especially as in some Member States there is no appeal against a decision to refuse surrender.



The Spanish authorities are of the opinion that the verification of double criminality should be restricted to determining whether the facts described in the EAW constitute an offence in the executing State, whether or not the legal definitions of the alleged offence coincide. Furthermore, it can occur that, in the process of verification of double criminality, an assessment is made of the intention or will of an accused person whom it has not even been possible to question or interview. This refers to the practice of some Member States which, when acting as executing Member States, evaluate double criminality according to their national standards and assess the will of the accused and other circumstances that, in fact, are evidence to be presented in and studied by the court of the issuing State.

In the opinion of the Spanish authorities, this judicial approach goes beyond the strict terms of the EAW FD and deviates from the interpretation that the CJEU has already formulated on this issue. The Spanish authorities stressed that the executing authority should refrain from assessing the merits of the case, including the assessment of how the issuing authority has come to *the prima facie* conclusion that the requested person knew or had a concrete intention.

Another major practical problem in relation to the application of the EAW FD identified by the Spanish authorities is that some Member States regularly fail to meet the deadlines.

An additional major practical difficulty identified by the Spanish authorities relates to the validity of the EAW and the request for surrender in respect of other Member States, when it has been rejected by one Member State on the basis of a lack of double criminality. Clearly, if double criminality has been deemed to be lacking, that is a circumstance that specifically allows a Member State to reject the request, but that cannot affect the validity of the EAW for the other Member States, if the requested person decides to move to another Member State. In practice, however, the Spanish authorities have encountered non-validity ‘flags’ being immediately added by Member States other than the Member State that first issued the refusal.

As executing authorities, the assessment of double criminality is made by the Spanish authorities taking account of the description of the facts, regardless of the *nomen iuris*.

A further practical problem involves the execution of an EAW when the issuing authority has, at the same time, issued an EIO to obtain additional evidence that cannot be obtained using the EAW. Examples of this include requests to enter and search the address at which the persons to whom the EAW applies are located, the freezing of bank accounts, requests for bank details, etc.

The Spanish authorities pointed out that, as regards the EIO, neither the form annexed to Directive 2014/41/EU nor the LMR contain a specific section for indicating the temporal or material relationship between the two instruments; as a result, the judicial or prosecuting authority responsible for executing an EIO is very often not aware of the existence of an EAW, and vice versa.

In the Spanish system, Article 187(2) LMR stipulates that the Prosecution Service is the receiving authority. In cases in which the issuing authority does not take into account the fact that the competence for processing EAWs (Article 35(2) LMR – central investigating magistrates) does not relate to the competence for recognising and executing EIOs (Article 187(2) and (3) LMR) - the Prosecution Service, or the competent judge in the event of proceedings affecting fundamental rights, based essentially on territorial criteria – see Article 187(3)(a), problems arise and this can cause coordination problems. ,

The Spanish authorities underline that this can create serious coordination problems, as there are procedures that have to be carried out on a specific day in order for them to be effective (freezes, entry and search operations) and, if there have been no cross-checks, the execution of the EIO may not coincide with the arrest. This can also jeopardise the preservation of evidence and even serve as a tip-off to individuals that they are going to be arrested.

The Spanish authorities propose, as good practice, a broad interpretation of Section D of the EIO form, ‘Relation to an earlier EIO’, so as to include any connection to a parallel EAW or even, where appropriate, to police investigations in the executing State, in order to help determine the competent authority. In the same way, contact between the authorities issuing the EIO and those executing it is considered desirable so as to allow the use of both instruments to be coordinated from the executing State.

Finally, other problems have also been identified by the Spanish authorities, such as EIOs being sent to the judicial authority responsible for EAWs pursuant to Article 6 of the EAW FD, which confers on each Member State the right to determine its judicial authority competent to issue and execute an EAW.

### ***3.7 Conclusions***

- The evaluation team acknowledges that the EAW mechanism functions very well in Spain, and that all the stakeholders involved make great efforts to implement Framework Decision 2002/584/JHA (EAW FD) in an appropriate and effective manner. The statistics provided by the Spanish authorities show that Spain executes more EAWs than it issues.
- When Spain is the issuing State, the competence to issue EAWs is completely decentralised. The evaluation team therefore suggests that the Spanish authorities could introduce a centralised mandatory mechanism for the judiciary, with a view to ensuring that, in cases of multiple EAWs issued for the same person in Spain, all such EAWs are received by the executing State from the very moment when a person is arrested with the view to his or her surrender, thus avoiding possible future requests that would expand the scope of criminal prosecutions and cause unnecessary delays in the execution of the EAW.
- When Spain is the executing State, the competence to execute EAWs is centralised through the Central Investigative Courts within the National High Court, which has jurisdiction throughout Spain, and this ensures uniform practice and high standards and quality at the execution stage. However, some problems may occur when an EAW under execution is related to other mutual recognition instruments, e.g. a EIO, to be carried out in parallel or immediately after the requested person's arrest, or simultaneously, as the different instruments are dealt with by different authorities. The expert team was assured by the Spanish authorities that in practice such problems are resolved through cooperation, usually by the Prosecution Office and via Eurojust. However, it remains an issue that requires efficient coordination among all the actors involved.

- Although Spanish law provides for direct contacts with the judicial authorities of the other Member States when implementing a mutual recognition instrument, the Spanish practitioners tend to prefer Eurojust or EJM as the most efficient channels of communication with other Member States in EAW proceedings;
- The Spanish authorities clearly understand that mutual trust is key to the successful application of mutual recognition instruments in practice. However, they admit having observed breaches in mutual trust in recent times, as the executing authorities of other Member States sometimes analyse cases from a perspective that goes beyond the spirit of the EAW FD and the relevant case-law of the CJEU, by assessing the merits of the case or the internal distribution of competences within the Judiciary.
- Great attention is given by the Spanish authorities to the principle of proportionality, which is subject to several checks before an EAW is issued. The threshold of proportionality applied by the Spanish courts is even higher than the threshold set forth in the EAW FD, and it also encompasses a double control of proportionality.
- When Spain is the issuing State of an EAW, the Spanish authorities are not aware of the executing authorities of other Member States having raised any questions concerning prison conditions in Spain. When Spain is the executing State, the Spanish authorities pointed out that there have not been many concrete cases where fundamental rights issues have been raised in relation to detention conditions in the issuing State by the detained person's lawyers or by the prosecutors.

- Although judgments ‘in absentia’ are allowed under Spanish law in very limited cases, this is not an obstacle to the application of Framework Decision 2009/299/JHA in cross-border cases related to the execution of judgements ‘in absentia’ issued by other Member States. However, experience shows that certain difficulties in applying Article 4(a) of the EAW FD arise in a substantial number of EAWs issued following this type of judgement, due to unclear or contradictory information in the EAW form; this leads to complications as the executing authorities need to request supplementary information from the issuing authorities. In this respect, the Spanish authorities believe that it could be useful if a common approach were followed by Member States in completing section d) of the EAW form.
- The evaluation team observed a number of inconsistencies in relation to the EAW FD and the case-law of the CJEU in terms of the grounds for refusal under Spanish legislation. Apart from the grounds for refusal set forth in relation to a specific mutual recognition instrument, including the EAW, Article 32.1 of the LMR provides for mandatory general reasons to refuse recognition or execution of the orders or decisions transmitted in the cases regulated for all mutual recognition instruments, which leads to the scope of the EAW FD being extended.
- The expert team found that the provisions of Article 52(2) LMR implementing Articles 18 and 19 of the EAW FD are unlikely to be ever implemented in practice, as the requirement for the competent authority of the issuing State to travel to Spain in person for a hearing pending the decision on his or her surrender can be very costly and time-consuming and, of course, can prolong the duration of the execution procedure. Therefore, the expert team believes that the abovementioned provisions of the LMR should be revised with a view to providing for more efficient and less costly and time-consuming solutions.

- The evaluation team identified in Spain a number of best practices that could be shared with other Member States: the high level of attention given to the protection of fundamental rights; the obligation for the Spanish judicial authorities to send each EAW issued to the central authorities (MoJ) for information and statistical purposes; the extensive number of practical tools available to the practitioners – the guidelines on the EAW, the ‘Prontuario’-, as well as various networks and the regular training, which are very efficient and helpful; the extensive use by the Spanish judicial authorities of the possibilities offered by Eurojust and EJNI; the databases used by the Spanish authorities to record and share information on judicial cases, accessible by all relevant actors.

#### **4. FRAMEWORK DECISION 2008/909/JHA ON THE APPLICATION OF THE PRINCIPLE OF MUTUAL RECOGNITION TO JUDGMENTS IN CRIMINAL MATTERS IMPOSING CUSTODIAL SENTENCES OR MEASURES INVOLVING DEPRIVATION OF LIBERTY FOR THE PURPOSE OF THEIR ENFORCEMENT IN THE EUROPEAN UNION**

##### **4.1. Authorities competent for the recognition of the judgment and execution of the sentence**

As with other mutual recognition instruments, Framework Decision 2008/909/JHA (FD 909) has also been transposed into the LMR. Originally, this Framework Decision had to be transposed by Member States into national law by December 2011, but the Spanish implementation law 23/2014 (LMR) was finally approved in 2014. The LMR confers on the judicial authorities the competence for both forwarding and executing decisions imposing a custodial sentence or measure involving deprivation of liberty, in line with Article 2(1) of FD 2008/909/JHA.

Article 64 of Law 23/2014 provides that, when Spain is the issuing State, the competent authorities for forwarding a decision imposing a custodial sentence or measure involving deprivation of liberty are the judges of the Prison Surveillance Courts. Where measures are imposed regarding custody to which the Organic Law on Criminal Responsibility of Children applies, this competence belongs to the Judges for Children. In the event that the serving of the sentence has not begun, pursuant to Article 65 (2) of Law 23/2014, the competent authority for forwarding the decision imposing the sentence will be the court or judge that handed down the sentence at first instance.

Article 77 of Law 23/2014 provides that, when Spain is the executing State, the competent authority for recognising and ordering the execution of a decision imposing a custodial sentence or a measure involving deprivation of liberty and for ordering its enforcement is the judge of the Central Criminal Court. The judge of the Central Prison Surveillance Court is competent to carry out the execution of such a decision. As previously mentioned, the Central Courts form part of the National High Court. The competence for decisions involving the secure detention of a minor lies with the judge of the Central Juvenile Court.

The competent Spanish authorities have direct contacts with other Member States' competent authorities in the context of proceedings based on FD 2008/909/JHA, especially in urgent cases and almost always when additional information is necessary. Generally speaking, however, the channels used to establish contacts with other Member States' authorities are most often the European Judicial Network or Eurojust, since this is considered a more efficient way to avoid occasional translation problems. During the meetings with the Spanish authorities, the latter indicated to the evaluation team that they do not use the expertise of the Europris Network.

As already indicated in relation to the EAW, Article 6(3) of Law 23/2014 provides that the Ministry of Justice (MoJ) will be the central authority, although it performs only the functions described in Article 7(1) and is therefore responsible for assisting the judicial authorities to resolve problems that may arise in matters relating to all the mutual recognition instruments referred to in the Law, including for FD 2008/909/JHA.

In its specific provision relating to this instrument, Article 64 (3) LMR requires the judicial authority to send to the Ministry of Justice (the central authority), within three days of a decision being issued or being recognised and executed, a copy of the certificates forwarded by or recognised in Spain. For more details, see point 3.1.



#### **4.2. Documents required for recognising the judgement and executing the sentence**

When Spain is the executing State, Spanish legislation requires a written judgment. If the issuing State does not provide for this requirement, the trial record is taken into consideration, assuming that the content of the certificate referring to that record is accurate. A flexible criterion for recognition is thus applied by the Spanish authorities in these cases.

On the other hand, when Spain is the issuing State, Spanish legislation provides for the transmission of the judgment and of the certificate; thus, once the competent judicial authority has decided that the sentence should be executed in another Member State, it transmits the judgment to the competent authority of that State, together with the certificate set out in Annex II of the LMR, duly completed.

When Spain is the issuing State, Spanish legislation provides for the certificate or form to be translated into the official language, or one of the official languages, of the Member State to which it is addressed or, where applicable, into an official language of the Union which is accepted by that State, unless the terms of an agreement permit it to be sent to that State in Spanish. The criminal judgment is only translated if the executing judicial authority so requires.

When Spain is the issuing State, the most common situation in which additional documents are requested from the executing State is when the link to the State needs to be ascertained in cases where nationals of the executing State are concerned.

In accordance with Article 23(3) of FD 2008/909/JHA, Spain informed the General Secretariat of the Council that Article 17 of Law 23/2014 provides that, when Spain is the executing Member State, it will not be obligatory for the ruling on which the certificate is based to be received in Spanish, without prejudice to the judicial authority's option to request a translation where it considers this essential to enforce the ruling.

However, in practice, the Central Criminal Court generally requests such a translation from the issuing State, which is usually sent; in other cases, the Central Criminal Court itself requests a translation of the judgment from the National High Court's translation service.

#### **4.3. Criteria for assessing the facilitation of social rehabilitation**

Article 66 LMR stipulates that, in order for the competent Spanish judicial authority to forward a decision imposing a custodial sentence or measure involving the deprivation of liberty to the competent authority of another Member State, the following requirements must be met:

- (a) the sentenced person must be in Spain or in the executing State;
- (b) the Spanish judicial authority must be of the opinion that the execution of the sentence by the executing State will serve the purpose of facilitating the sentenced person's social rehabilitation, after, where appropriate, having consulted the executing State;
- (c) the sentenced person's consent must be obtained, except where this is not necessary under the terms set out in Article 67 LMR.

Article 66(3) LMR establishes that, before forwarding the decision, the Spanish judicial authority must ensure that there is no condemnatory sentence that is not yet final in relation to the sentenced person. The Spanish judicial authorities stated that in practice this is done by means of the SIRAJ (System of Administrative Registers to support the Administration of Justice). If they find there is another sentence pending execution, the two courts involved are required by law to coordinate their actions, so as not to send a certificate until both judgments have become final. However, the law does not clarify what should be done if the judge finds in the SIRAJ that there is a provisional measure imposed on that person in other criminal proceedings which has not yet been finalised, and that the judgment to be handed down is still pending.

The expert team believes that in this case there is a need for mandatory coordination between the two judges, so as not to transfer the custodial sentence already imposed in Spain to the executing State, and then request the temporary surrender of that person for the criminal prosecution for which the judgment is still pending.

The law does not contain any provisions that determine which court should take the lead when multiple sentences by various judges have been passed. The evaluation team believes that general coordination is also important in these cases, which may result in situations in which the executing State receives multiple certificates for one person.

Another problem arises when the sentence concerns not only the custodial sentence but also a financial sanction (e.g. confiscation of assets). The LMR does not provide for coordination between the supervision judge and the judge who adopted the judgment of conviction. In practice, this coordination is performed with the assistance of the public prosecution. However, it may be difficult for the prosecutor to follow the procedure in cases in which the sentence has already been rendered. Thus, the Spanish authorities often replace the financial sanction by the custodial sentence, so that it can be transferred for execution to another Member State.

Article 68 LMR stipulates that, before forwarding the decision imposing a custodial sentence or measure involving deprivation of liberty, the competent judicial authority may consult the competent authority of the executing State, by any appropriate means, regarding those factors that indicate that forwarding the decision will contribute to facilitating the rehabilitation of the sentenced person. This consultation is obligatory in cases in which the decision is being forwarded to an executing State other than the State in which the sentenced person lives and of which he or she is a national, or the State to which he or she will be deported once they are released.

Lastly, before the sentence is executed, the judge of the Prison Surveillance Court may, after hearing the Prosecution Service and the parties to the proceedings within five days, decide to withdraw the certificate. This can occur, inter alia, where there has been no prior consultation and the executing authority submits an opinion or decision stating that serving the sentence in the executing State will not serve the purpose of facilitating the sentenced person's social rehabilitation or his or her successful reintegration into society.

Neither FD 909 nor the Spanish LMR define the meaning of ‘social rehabilitation’; therefore, it is up to the judge to decide whether the circumstances seem to facilitate social rehabilitation in each individual case. In practice, when assessing the facilitation of social rehabilitation, before issuing a certificate, the following factors are taken into account by the Spanish judges: the linguistic aspect, the place of residence of the sentenced person’s family, family and social ties, the ability to find employment, other social and economic links to the executing State, etc. The Spanish judicial authorities pointed out that they assess the criteria for better social rehabilitation not from a purely formal point of view, but also by analysing the actual roots of the person to be transferred. In addition to considering the report provided by the national institutions, the Spanish judges stated that the opinion of the sentenced person has the greatest weight with respect to the final decision on the transfer of the sentence.

#### *4.3.1. Exchange of information between the issuing State and executing State*

The Spanish authorities consider the information included in the certificate or accompanying the certificate, required on the basis of FD 2008/909/JHA, to be generally sufficient to make a decision, but sometimes additional information is requested, usually reports from the police or social services, depending on the prisoner’s background. The same information is generally requested, regardless of the executing Member State.

When Spain is the issuing State, the competent authorities tend to consult with the competent authority of the executing State on the basis of Article 4(3) FD 909, in order to establish whether the sentence would serve the purpose of facilitating the social rehabilitation and the successful reintegration of the sentenced person into society. This is usually done if the sentenced person has not spent a long and continuous period residing in the executing State and the sentenced person requests that the certificate be issued.

When Spain is the issuing State, reasoned opinions and/or requests to forward the judgements and the certificate have been received from the executing States on the basis, respectively, of Article 4(4) and (5) FD 909, and in those cases they were taken into consideration.

The competent judicial authorities of the executing State usually comply with the obligation laid down in Article 21 FD 909 by providing information to Spain as issuing State without delay.

No practical arrangements or protocols have been established by Spain on a bilateral basis with other Member States for facilitating the application of FD 2008/909/JHA, but bilateral and multilateral meetings have been held – within the framework of the EJM (regional meetings) or of programmes supported by the European Commission –, “inter alia” in order to address common problems and streamline the processing. Those countries include the Netherlands, Italy and Romania.

In addition, it is worth pointing out that Article 65(2) LMR encourages direct communication and establishes that the decision ordering the transfer of enforcement of the sentence to another Member State may be forwarded directly by the sentencing court or via the judge responsible for the supervision of prison sentences.

#### *4.3.2. Opinion and notification of the sentenced person*

In line with Article 6 of FD 909, the Spanish law states that in order for a decision imposing a custodial sentence or measure involving deprivation of liberty to be forwarded by the competent Spanish judicial authority to another Member State for the recognition of the judgement and the execution of the sentence, the consent of the sentenced person must first be obtained before the competent judicial authority. The sentenced person must, to that effect, be assisted by a lawyer and, where necessary, by an interpreter, and must have been informed in plain and intelligible language of the purpose of the hearing and of their consent. The LMR does not specify whether there is a possibility of revoking the consent, but the Spanish authorities clarified that in practice it can be revoked. .

However, the consent of the sentenced person is not necessary where the executing State is:

(a) the sentenced person’s State of nationality, to which they have a connection by virtue of their habitual residence and their family, and occupational or professional ties;

(b) the Member State to which the sentenced person will be deported once he or she is released on the basis of an expulsion or deportation order included in the judgment or in a judicial or administrative decision consequential to the judgment;

(c) the Member State to which the sentenced person has fled or otherwise returned in view of the criminal proceedings pending against them in Spain or following their conviction in Spain.

As already stated, the consent of the sentenced person is required except in the circumstances listed in points (a) to (c). In all cases, Article 67(3) LMR provides that before a decision to forward the judgement and the certificate is taken, the competent judicial authority gives any sentenced person in Spain the opportunity to state his or her opinion either orally or in writing. Indeed, the Spanish authorities consider the sentenced person's opinion essential to the decision on whether or not to issue a certificate. Where the sentenced person cannot give an opinion due to age or physical or mental state, an opinion is obtained through his or her legal representative. The opinion of the sentenced person is taken into consideration when a decision is being taken regarding the forwarding of the decision, and it is sent to the executing State's competent authority, together with the other documents.

The opinion of the issuing Spanish judicial authority on whether the transmission will favor social reintegration is partly based on the statements of the convicted person and sometimes by questioning him or her. There is no standardised questionnaire for this purpose. The procedure is carried out either before the trial judge or before the judge of the Prison Surveillance Court, depending on which is the competent issuing authority. Penitentiary Surveillance Judges sometimes visit the prison where the convicted person is serving the sentence for that purpose.

In addition, the Spanish issuing authorities request reports from the convicted person and from the authorities of the executing State, mainly from the police, social services and local authorities of the convicted person's place of residence, etc. These reports are used by the issuing judicial authority to formulate its opinion on the transmission (or otherwise) of the certificate.

The Spanish authorities noted that, in practice, certificates are generally not issued without the sentenced person's consent, as that would be considered not to facilitate their rehabilitation.

The decision by which the competent judicial authority authorises the transmission of the judgment imposing a custodial sentence or measure involving deprivation of liberty is served personally on the sentenced person, in accordance with Article 6(4) of FD 909, with the assistance of an interpreter if necessary, using a standardised template (certificate).

If the sentenced person is in the executing State when the decision is issued, the certificate is transmitted to the competent judicial authority of that State in order for the service to be effected.

In addition to receiving the certificate, the sentenced person is informed of the law of the executing State governing the execution of the sentence and of the competences of the authorities of the executing State, which:

- (a) will be competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for early or conditional release;
- (b) have to deduct the full period of deprivation of liberty already served in connection with the sentence from the total duration of deprivation of liberty to be served;
- (c) may only adapt the sentence if it is incompatible with the law of that State in terms of its duration or nature. The adapted sentence must not aggravate the sentence passed in the issuing State in terms of its nature or duration.

The Spanish legislation always provides for a remedy in the form of an application for amendment of a decision and of an appeal to a higher body (normally the Provincial Court) against the order granting or refusing the transfer. Legal aid is provided for in any case under Law 1/1996 of 10 January 1996 on Legal Aid.

When Spain is the issuing State, remedies can be sought against the decisions authorising the transmission of a mutual recognition request as provided for in Spanish law (application to the judge who issued the decision, seeking its amendment, or appeal to an appeal court); these appeals are dealt with and decided on exclusively by the Spanish judicial authority which is competent under Spanish law.

If an appeal is successful or if a pardon is granted which affects the decision appealed against, the Spanish judicial authority immediately notifies the authority responsible for execution.

Remedies can be sought against decisions handed down by the Spanish judicial authority, when Spain is the executing State, in accordance with the general rules laid down in the current Code of Criminal Procedure. However, if the person has consented and the judge understands that there are no grounds for refusal, the decision taken by the judge is final and no appeal is possible.

The substantive grounds on which the order or decision was adopted can only be contested by an appeal brought in the Member State of the issuing judicial authority.

The competent judicial authority notifies the judicial authority of the issuing State of any remedy sought, and of the grounds on which it is based, as well as of the decision handed down concerning it.

When seeking a remedy, the sentenced person is assisted by a lawyer, who prepares the defence (*abogado*), and represented in court by a barrister (*procurador*). Provision is also expressly made for a lawyer to assist the sentenced person when the latter's consent to transfer is sought, and also with regard to the possible waiver of the speciality rule by a sentenced person who has been transferred to Spain.



#### **4.4. Adaptation of the sentence**

The Spanish authorities as executing authorities have encountered cases in which the adaptation of the sentence was applied because of incompatibility of the duration or nature with Spanish law, and sentences have been adapted on the basis of Article 8(2) and (3) LMR by the Central Criminal Court, especially in drug trafficking cases.

The adaptations occurred because the sentence imposed in the issuing State included a penalty longer than the maximum penalty that could be imposed for that crime in Spain. This occurs mainly in crimes related to drug trafficking, especially in Romania where custodial sentences for trafficking crimes tend to be longer.

Furthermore, in the case of other measures involving deprivation of liberty (custodial security measures) in some issuing States, the period of stay in a psychiatric centre is indeterminate, while in Spain it has to be determined and cannot exceed the maximum time established for the crime committed.

When Spain is the executing State, in order to determine if similar offences (as referred to in Article 8 of FD 909) are concerned or not, the Central Criminal Court takes into consideration the facts of the case as described in the certificate, the constituent elements of the offence, and the legal classification of the offence according to the issuing State.

The sentenced person receives the information about the adaptation of the relevant sentence, together with service of the decision authorising the execution in Spain of a judgment imposing a custodial sentence or measure involving deprivation of liberty. There is no special procedure for providing this information to the sentenced person. The judicial decision on the adaptation of the sentence is notified either through the legal representative or directly at the convicted person's legal address or through the penitentiary center where he or she is serving the sentence. In any case, the sentenced person needs to be personally informed.

When Spain is the issuing State, the Spanish authorities have rarely encountered cases of adaptation or cases in which certificates were withdrawn owing to an excessively lenient sentence. The Spanish authorities met by the evaluation team during the visit referred to a couple of cases in which the transfer of the sentenced person was rejected by the executing State as a result of adaptation, one of which involved the Netherlands, which refused to recognise a judgement and execute the sentence, namely a hospital order, as no similar treatment existed under Dutch law.

#### **4.5. Grounds for non-recognition or non-enforcement**

The Spanish authorities pointed out that the two main grounds for non-recognition or non-enforcement under Article 9 FD 909 are the absence of a link to the executing State (point (b) of Article 9(1) of FD 909) and that less than six months of the sentence remain to be served (point (h) of Article 9(1) of FD 909).

When Spain is the issuing State, the Spanish authorities reported no cases where a transfer under FD 2008/909/JHA has not been initiated or finalised as a result of prison conditions in the executing State not being considered satisfactory.

The Spanish authorities have not encountered any particular challenges since FD 2008/909/JHA entered into force with regard to grounds for non-recognition or non-enforcement in the event of judgments ‘in absentia’, as in such cases, the facts of the case as set out in the certificate are accepted.

In order to check whether the person in question was represented and was aware of the procedure against him or her, the Spanish authorities, as executing authorities, rely on Section (d) of the EAW form, which should be filled in by the issuing authority; if it is not, they would ask for the necessary information. They stressed that the Spanish executing authorities would not check whether the information provided under section (d) of the EAW form was correct or not, as they believed this would be contrary to the mutual recognition principle.

The Spanish authorities have encountered no cases in which a detention order was transmitted as regards criminal irresponsibility and imposition of psychiatric care.

#### **4.6. Partial recognition**

Article 80 LMR, which transposes Article 10 of FD 2008/909/JHA, states that, if the competent Spanish executing authority deems it appropriate to consider the recognition of the judgment and the enforcement of the sentence only in part, before deciding to refuse it in its entirety, it must consult the competent authority of the issuing State ,with a view to reaching an agreement.

The competent Spanish issuing and executing authorities may agree, on a case-by-case basis, to the partial recognition and enforcement of a sentence, provided that such recognition and enforcement do not result in the aggravation of the duration of the sentence. If such an agreement cannot be reached, the certificate will be returned to the issuing State (Article 80(2) LMR).

On the basis of this provision, when Spain is the executing State, partial recognition of a judgment and partial enforcement of a sentence are theoretically possible, following discussions with the issuing Member State with a view to reaching a consensus.

However, the Spanish authorities informed the evaluation team that they have encountered no cases of partial recognition of judgments pursuant to Article 10 FD 2008/909/JHA, either as issuing State or as executing State.

Despite the absence of practical experience on the part of the Spanish authorities as regards partial recognition, the evaluation team observed that they were aware of the procedure to be followed pursuant to Article 10 of Framework Decision 2008/909/JHA, including possible consultation with the competent authorities of the issuing Member State and the need to agree with the latter on the conditions of partial recognition and enforcement, subject to the condition of the sentence not being aggravated.

#### **4.7. Challenges relating to compliance with the deadline for recognition and enforcement**

The Central Criminal Judge must adopt a decision on the recognition or refusal of enforcement within ninety days, and send it to the Central Penitentiary Surveillance Judge for execution of the custodial sentence or measure of deprivation of liberty. Article 22 (2) of the LMR provides for a general obligation of the Spanish judiciary, when Spain is the executing State, to inform the issuing State of the decision on whether to recognise the judgment and enforce the sentence, as provided for in Article 12(1) of FD 909.

The Spanish authorities report that, in general, both when Spain is the issuing State and when it is the executing State, they comply with the 90-day deadline provided for in Article 12(2) FD 2008/909/JHA, except when additional information is requested by direct communication with the authorities of the other Member State, which occurs in approximately 10 % of cases.

The Spanish authorities do not provide information concerning delays, either when Spain is the issuing State or when it is the executing State; in cases where additional information is requested, they assume that the issuing authority is aware of the reasons for the delay.

Thus, the evaluation team understands that the deadlines are respected and, in practice, when Spain acts as the executing State, the issuing States are informed in due time of the Spanish decisions on recognition or refusal of enforcement.

On the other hand, the evaluation team is aware that some Member States often fail to comply with the established time limits, not only due to the need for supplementary information, but also because of translation issues.

#### **4.8. Law governing the enforcement of the sentence**

As issuing authorities, the Spanish authorities have not encountered any cases pursuant to Article 17(3) FD 2008/909/JHA in which they have decided to withdraw the certificate because of the applicable provisions on early or conditional release in the executing State.

As regards the provisions of Article 17(4) FD 2008/909/JHA, Spanish law provides that, when the executing State so requests, the judge of the Prison Surveillance Court may inform the executing authority of the applicable provisions under Spanish law on early or conditional release of the sentenced person. The judge may also request information from the executing authority concerning the applicable provisions in this regard in the law of the executing State. The judge of the Prison Surveillance Court, after receiving this information and after hearing the parties to the proceedings within five days, issues a reasoned decision within a further five days. The decision contains the provisions to be applied by the executing authority, or authorises the withdrawal of the certificate.

As executing authorities, the Spanish authorities have not encountered any cases in which the certificate was withdrawn by the issuing State because of the applicable provisions on early or conditional release in Spain.

There have occasionally been problems related to the deduction of a period of deprivation of liberty already served in the issuing State owing to insufficient information in the certificate concerning the periods previously served, since the periods of remand in custody or detention are sometimes counted together with other periods served.

## **4.9. Further challenges**

### *4.9.1. Practical and legal problems related to transit*

As already indicated, Spanish legislation provides that the Ministry of Justice (MoJ) is competent for receiving transit requests and, at the request of the issuing judicial authority, for requesting authorisation from the transit Member State concerned. The MoJ is responsible for authorising transit through the Spanish territory of a person being transferred to the issuing State from the State executing a decision imposing a custodial sentence or measure involving deprivation of liberty, provided that the issuing State submits the request for transit accompanied by a copy of the certificate issued by the issuing State and a copy of the certificate translated into Spanish for the purposes of executing the decision.

The MoJ informs the issuing State if it cannot guarantee that the sentenced person will not be prosecuted, detained or otherwise subjected to any restriction of his or her liberty in Spain for any offence committed or sentence imposed prior to departure from the executing State.

The MoJ communicates its decision to the competent authority of the issuing State within one week of receiving its request, except where a translation of the certificate has been requested, in which case it may postpone the decision until it has received the translation.

In no event can the person be detained for longer than the time strictly necessary for their transit to be carried out.

No transit request is required in cases of air transit without stopovers, except in the event of a forced landing, in which case the MoJ gives its authorisation within 72 hours.

Apart from that case, when transit is required for a person requested by another Member State on the basis of a decision imposing a custodial sentence or measure involving deprivation of liberty, the Spanish executing judicial authority informs the issuing judicial authority, so that that authority may request the relevant authorisation from the authorities of the State of transit.

For more details see point 3.6.1.

#### *4.9.2. Further challenges*

For the Central Criminal Court, as the competent authority for execution, the main practical problem related to the application of FD 2008/909/JHA arises from deficiencies in the content of the certificate. Such deficiencies occur both in section I of the certificate (information about the conviction and, especially, on its duration or the period during which the sentenced person was deprived of liberty in the other State) and in section J of the certificate (information related to early or conditional release).

According to the Spanish authorities, the procedure for issuing the certificate and, more fundamentally, the procedure for recognising and executing the judgment, would be facilitated enormously if there was greater clarity in the certificate about the periods of remand in custody and the corresponding period to be deducted, for the purposes of determining the remainder of the sentence to be served.

#### 4.10. Statistics

The Spanish authorities have provided the Ministry of Justice with the following statistics.

FRAMEWORK DECISION 2008/909/JHA ON THE APPLICATION OF THE PRINCIPLE OF MUTUAL RECOGNITION TO JUDGMENTS IN CRIMINAL MATTERS IMPOSING CUSTODIAL SENTENCES OR MEASURES INVOLVING DEPRIVATION OF LIBERTY FOR THE PURPOSE OF THEIR ENFORCEMENT IN THE EUROPEAN UNION										
	Issued					Executed				
	2016	2017	2018	2019	2020	2016	2017	2018	2019	2020
<b>Juzgado de lo Penal</b>	7	14	3	11	6					
<b>Audiencias provinciales</b>	4	7	8	12	6					
<b>Juzgados de instrucción y mixtos</b>	1	1	1	1	2					
<b>Juzgados violencia contra la mujer</b>	0	2	0	0	0					
<b>Juzgados de Menores</b>	2	4	0	0	0					
<b>Audiencia Nacional. Sala Penal</b>	0	0	0	0	0					
<b>Juzgados centrales de instrucción</b>	0	0	0	0	0					
<b>Juzgado Central penal</b>	0	0	0	0	0	228	159	204	200	144



<b>Juzgado Central de menores</b>	0	0	0	0	0	3	0	0	0	0
<b>Juzgado Central Vigilancia Penitenciaria</b>	7	6	3	4	0	68	45	27	20	18
<b>Juzgado Vigilancia Penitenciaria</b>	239	148	142	157	140					
<b>TOTAL</b>	<b>260</b>	<b>182</b>	<b>157</b>	<b>185</b>	<b>154</b>	<b>299</b>	<b>204</b>	<b>231</b>	<b>220</b>	<b>162</b>

According to data produced by the CGPJ's Judicial Statistics Service, in the period 2016-2018 the Central Criminal Court, as executing authority, received 734 transfer requests, of which between 15 % and 20 % were refused.

The main reasons for which transfer requests were refused are:

- Lack of roots in Spain
- Crimes that are not provided for under the Spanish Penal Code, such as non-payment of the expenses of the proceedings
- Less than six months of the custodial sentence remains to be served
- Measures involving deprivation of liberty not provided for in the Spanish penal system.

As issuing State, during the same period, the Spanish authorities issued 599 certificates, 90 % of which were issued by the Prison Surveillance Courts.

#### 4.11. Conclusions

- Although the number of transfers is relatively low due to the low number of foreigners serving a custodial sentence in Spain, the mechanism for the transfer of the sentenced persons under FD 2008/909/JHA functions very well in Spain.
- As with the EAW, when Spain is the issuing State, the competence to issue a certificate for the recognition and enforcement of a sentence in another Member State is completely decentralised; the evaluation team suggests that the Spanish authorities could introduce a centralised mandatory coordination mechanism for the judiciary, with a view to ensuring that all the certificates issued for a particular person, when multiple sentences by various judges have been passed against him or her in Spain, are received by the executing State, in such a way as to prevent possible future requests from expanding the scope of criminal prosecutions and causing unnecessary delays in execution terms.
- When Spain is the executing State, the competence to recognise a judgement and enforce a sentence under FD 2008/909/JHA is centralised through the Central Courts within the National High Court, which has jurisdiction throughout Spain, thus making it possible to ensure unified practice and maintain high standards and quality at the execution stage.
- Direct contacts between the Spanish judicial authorities and the judicial authorities of the other Member States are standard practice in the Spanish legal system. However, the Spanish practitioners tend to prefer Eurojust or EJM as the most efficient channel of communication across the EU; they appreciate direct, personal contacts and the informal character of their mutual relations. The evaluation team was informed that the Spanish authorities do not use the Europris network and encourages them to do so.

- In order to assess the prospects for social rehabilitation and reintegration into society, in the context of proceedings under FD 2008/909/JHA, the Spanish authorities pointed out that the opinion of the sentenced person has the greatest weight in the final decision on whether or not to transfer the execution of the sentence to another Member State.
- The Spanish authorities stated that, in general, both when Spain is the issuing and when it is the executing State, the 90-day deadline provided for in Article 12(2) FD 2008/909/JHA is respected, except in some cases where additional information is requested.
- Both as issuing and as executing authorities, the Spanish authorities have not encountered any cases, pursuant to Article 17(3) FD 2008/909/JHA, in which the certificate was withdrawn because of the applicable provisions on early or conditional release in the executing State.
- The Spanish authorities have encountered no cases of partial recognition of judgments pursuant to Article 10 FD 2008/909/JHA, either as issuing State or as executing State, but are aware of the procedure to be followed.
- When Spain is the issuing State, the Spanish authorities have rarely encountered cases of adaptation or cases in which certificates were withdrawn due to an excessively lenient sentence, whereas as executing authorities they have encountered cases in which the adaptation of the sentence has been applied because the duration or the nature was incompatible with Spanish law.
- When Spain is the executing State under FD 2008/909/JHA, the main practical problem encountered by the Spanish authorities relates to deficiencies in the content of the certificate (information about the conviction and its duration or on the period during which the sentenced person has been deprived of liberty in the issuing State or on early or conditional release).

## **5. LINK BETWEEN FD 2002/584/JHA ON EAW AND FD 2008/909/JHA ON CUSTODIAL SENTENCES**

### **5.1. Problems relating to the link between FD 2002/584/JHA on EAW and FD 2008/909/JHA on custodial sentences**

When dealing with decisions to execute a sentence against a person staying in, or who is a national or a resident of, the executing State, the Spanish authorities as issuing authorities, in the vast majority of cases, issue a certificate under Framework Decision 2008/909/JHA in line with the ‘recommendations’ of the Handbooks on how to issue and execute a European Arrest Warrant and on the transfer of sentenced persons and custodial sentences in the EU. Issuing an EAW would be really a marginal option limited to exceptional cases; in addition, the execution of the EAW might be refused.

Spanish legislation provides that, when the execution of an EAW is refused under Articles 4(6) of Framework Decision 2002/584/JHA, or made conditional under Article 5(3) of the same Framework Decision, the competent authority must apply the provisions of Framework Decision 2008/909/JHA relating to the execution of a decision imposing a custodial sentence or measure involving deprivation of liberty for the purpose of the enforcement of the sentence imposed in the other Member State, in order to avoid the impunity of the sentenced person.

Under the Spanish legal framework, the situation in which the EAW has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a resident of, the executing Member State and that State undertakes to execute the sentence or detention order in accordance with its domestic law on the basis of Article 4(6) EAW FD, is an optional ground for refusal.

When Spain is the executing State of an EAW, the sentence is not executed in Spain only on the basis of the information contained in the EAW: the certificate must always be transmitted by the issuing State. According to the Spanish authorities, although this practice can delay the execution of the judgment, it provides guarantees that ‘direct’ execution without a certificate does not.

In these cases, the Spanish authority competent for the execution of the EAW (Central Investigating Court) informs the Central Criminal Court (which is the Spanish executing authority in the transmission of a decision imposing a custodial sentence) that surrender within the framework of the EAW has been denied, in order to initiate the procedure for transmitting the sentence, and the Central Criminal Court requests the transmission of the certificate.

Spanish law does not provide for the possibility for the executing State to execute the sentence for which surrender has been refused without a certificate. On the contrary, the law provides that, for the execution of the sentence in another Member State, the competent issuing authority must transmit the judgment in question to the competent authority of the executing State, together with the specific certificate provided for in Framework Decision 2008/909/JHA, duly completed. Thus, the certificate is transmitted, in every case, as soon as it is known that the surrender within the framework of the EAW has been refused.

Regarding precautionary measures involving deprivation of liberty, the circumstances of each case determine whether, while waiting for the certificate to be sent, provisional detention is imposed or whether liberty is maintained with or without alternative measures. Such measures can be requested by the issuing authority.

The Spanish authorities have no information about the possible existence of situations involving problems as executing State in receiving a certificate, or as issuing State in sending a certificate of the type referred to in the Popławski case.

The abovementioned legal provisions also apply to cases in which conditional surrender is granted on the basis of Article 5(3) of Framework Decision 2002/584/JHA, where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the executing Member State, subject to the condition that the person, after being heard, is returned to the executing Member State in order to serve there the custodial sentence or detention order passed against him in the issuing Member State.

The Spanish judicial authorities, when taking their decisions, assess elements such as the sentenced person's possibilities of rehabilitation outside Spain and, fundamentally, the wish expressed by the sentenced person.

In these cases, however, a certificate under Framework Decision 2008/909/JHA is not used; the matter is handled as a stage in the EAW procedure. In compliance with the guarantees given, the issuing authority should notify the executing authority with regard to the sentence passed by the competent court.

## 5.2. Conclusions

- In cases where the execution of an EAW is refused under Articles 4(6) of Framework Decision 2002/584/JHA, or made conditional under Article (5)(3) of the same Framework Decision, the decision as to whether to issue an EAW or a certificate under FD 2008/909/JHA is taken by the Spanish authorities on a case-by-case basis.
- When Spain is the executing State of an EAW, the sentence is not executed in Spain under FD 2008/909/JHA only on the basis of the information contained in the EAW, but also taking into consideration other elements, such as the sentenced person's possibilities of rehabilitation outside Spain and the wish expressed by the sentenced person.
- When Spain is the issuing State of an EAW, Spanish law does not provide for the possibility for the executing State to execute the sentence for which surrender has been refused without a certificate under FD 2008/909/JHA. In every case, the certificate is transmitted to the competent authorities of the other Member State, as soon as it is known that surrender within the framework of the EAW has been refused by the executing State. The Spanish authorities believe that, although this practice can delay the execution of the judgment, it provides more guarantees than 'direct' execution without a certificate.
- Similarly, when Spain is the executing State of an EAW, the Spanish authorities always request the competent authority of the issuing State of the EAW to issue the certificate provided for in FD 2008/909/JHA, duly completed, together with the judgement, with a view to the execution of a decision imposing a custodial sentence or measure involving deprivation of liberty for the purpose of the enforcement of the sentence imposed in the other Member State.

## **6. FRAMEWORK DECISION 2008/947/JHA ON PROBATION AND ALTERNATIVE SANCTIONS**

### **6.1. Authorities competent for Framework Decision 2008/947/JHA**

Article 95 of Law 23/2014 designates the judge or court that presided over the enforcement of a judgment or probation decision on the basis of Article 3(2) FD 2008/947/JHA as the issuing authorities competent to forward the probation decision to the executing Member State (in the case of judgements involving a suspended sentence). In the case of decisions on conditional release, the Prison Surveillance Court is competent, since those courts are responsible for ruling on the granting and revocation of conditional release under the General Penitentiary Law.

The judge of the Central Criminal Court is the executing authority competent, on the basis of Article 3(2) FD 2008/947/JHA, to recognise and order the enforcement of a probation decision transmitted by the competent authority of another Member State. Where the probation decision transmitted relates to a minor, the judge of the Central Juvenile Court is competent. As already indicated, the Central Courts form part of the structure of the National High Court.

Spanish legislation provides for direct contacts between the competent authorities of the issuing and the executing Member States, both in the case of a probation decision and in the case of a decision on an alternative measure to provisional detention. In practice, there is direct contact, especially in urgent cases, but in general the channels used by the Spanish authorities for contacting the competent authorities in other Member States are Eurojust and EJP. The evaluation team underlines in this respect that both Eurojust and EJP can help out or assist the competent national authorities in the event of language or communication issues. Therefore, these channels are often used when direct contacts are difficult or problematic, including for linguistic reasons.



The LMR does regulate what happens if, once the enforcement of the probation decision has begun in another Member State, it is established that new criminal proceedings are ongoing against the sentenced person in Spain, since it allows the Spanish judge as issuing authority to request that the probation decision be returned (Article 100(2) LMR). However, the evaluation team believes that, precisely in order to avoid this possibility, it is advisable to make use of the system of prior consultation referred to in Article 15 FD 2008/947/JHA, between the competent authorities of the issuing and executing States, with a view to facilitating the smooth and efficient application of this legal instrument (see also point 6.2).

On this point, it is worth drawing attention to the provisions of Article 96(2) LMR, which states that the fact that a financial penalty or penalty involving confiscation of property has been imposed ,but not yet executed or enforced, does not prevent the passing of the probation decision; however, other instruments on confiscation orders or financial penalties may also be used by the sentencing court.

The Ministry of Justice is the central authority responsible for assisting the judicial authorities in the application of FD 2008/947/JHA.

Article 5(4) of FD 2008/947/JHA requires Member States to declare to the General Secretariat of the Council the conditions under which its competent authorities, at the request of the sentenced person, may consent to the forwarding to another Member State (other than the Member State in which the sentenced person resides ordinarily) of a judgment and, where applicable, of a probation decision.

In compliance with this obligation, Article 102 of Law 23/2014 establishes that, where the sentenced person does not legally and ordinarily reside in Spain, the Central Criminal Court, which receives the request for its consent to the probation decision being forwarded to the issuing authority, may give its consent only if the conditions laid down in Article 101(2)(b) are fulfilled.

For its part, this provision provides that probation decisions may only be recognised where, in spite of the sentenced person not being legally and ordinarily resident in Spain, their ascendants, descendants, siblings or spouse, or an individual with whom they are in a relationship of an analogous nature, have legally and ordinarily resided in Spain for at least five years, and on the further condition that the sentenced person would have secured an employment contract, or had requested that the probation decision be enforced in Spain.

Article 14(6) FD 2008/947/JHA allows Member States to give notification to the General Secretariat of the Council as to the conditions under which they may refuse to assume the responsibility of adopting certain subsequent decisions when acting as executing State. In this respect, by virtue of Article 106(1) LMR, Spain declared that the issuing authority, rather than the Spanish court responsible for enforcement, will be competent to adopt subsequent decisions in relation to the three scenarios set out in Article 14(3) of FD 2008/947/JHA.

Other than the designation of the competent authorities mentioned above, there were no changes in the Spanish institutional organisation as a result of the implementation of FD 2008/947/JHA.

## **6.2. Problems relating to the failure to apply Framework Decision 2008/947/JHA**

The evaluation team acknowledges that the way in which the Spanish legislation transposes FD 2008/947/JHA is almost fully correct, though with some slight shortcomings, as consultation is foreseen only where deadlines cannot be met (Art. 103.3, before grounds for refusal are applied (Art. 105.2, 3). In addition, there is a general provision in Art. 22.3 related to the obligation of the Spanish executing authorities to inform the issuing authority of any difficulties arising from the execution of the certificates and orders received.

According to the Spanish authorities, the question is not so much whether the legislation is comprehensive and clear, but whether it is useful, and if so, why it is little used. They are of the opinion that what needs to be considered in this respect is the typical profile of the cases investigated in the Member States and whether, in view of that profile, the measures provided for in FD 2008/947/JHA are useful.

In this regard, the Spanish authorities refer to two variables to be taken into account in evaluating the limited use made of the instrument in question (and also, to a large extent, also of Framework Decision 2009/829/JHA): on the one hand, whether the probation or alternative measures exist as part of the purely national procedures (many of the measures provided for in Article 4 of Framework Decision 2008/947/JHA may not be provided for under national procedures, and it may thus be difficult to transfer them to another Member State); on the other hand, the profile of the cases investigated in each Member State: not all Member States have the same level of transnational organised crime, as it is possible, in some Member States, that the investigations tend to concern individuals who are nationals of, and resident in, that State, with few transnational implications. In the case of Spain, although there are many investigations with a transnational profile, probation and alternative measures are not transferred, possibly because the need has not arisen for various reasons, e.g. because the sentenced person continues to reside in Spain for the duration of the conditional sentence or probation measure.

Moreover, unlike citizens of third States, EU citizens can only be deported in strictly defined cases (where the person is deemed to be a serious threat to public order or public safety in the light of the circumstances of the case). These circumstances are even more restrictive if the EU citizen has been resident in Spain for the 10 years prior to committing the offence (in such cases, deportation is only possible for stipulated offences).

In addition, custodial sentences can be replaced by deportation (with the circumstances depending on the length of the sentence) for a period of time during which the sentenced person cannot return to Spanish territory. In such cases, neither the conditional sentence nor probation measures apply, as the prison sentence is replaced by deportation.

Lastly, account needs to be taken of the wide range of legal arrangements within the European Union as regards probation measures, and of the fact that the rules governing conditional release in the Member States vary; in the absence of harmonisation, making use of this Framework Decision with the transmission of the certificate may be complicated.

With regard to the diversity of probation measures in the different Member States, the Spanish authorities suggest that it would be useful to draw up a practical guide at EU level for the application of FD 2008/947/JHA, setting out the equivalences between the measures, to be distributed to the competent authorities and professionals of the Member States.

Furthermore, the Spanish authorities point out that there is a major lack of familiarity with this instrument on the part of prosecutors and judges who could otherwise consider applying it, since its utility is obvious in terms of the social rehabilitation of offenders. In particular, given that such measures are adopted in the interests of the detained person, the Spanish authorities believe that defence lawyers should be familiar with this instrument, and should actively request its application if it is in the interest of the person concerned. They believe it is essential in this regard for the Bar Associations to take steps to make information available to defence lawyers.

Furthermore, the Spanish authorities point out that the question of disqualification from driving is not adequately addressed in Framework Decisions 2008/947/JHA and 2009/829/JHA. There is no provision regarding the obligation not to drive as a supervision measure in FD 2008/947/JHA. Although there is scope for deeming that measure to be included (taking the text together with the recitals), they believe this would be a questionable interpretation; according to the Spanish authorities, FD 2008/947/JHA should therefore be revised to include disqualification from driving, as it is a measure that could have a major cross-border impact. As regards FD 2009/829/JHA, see point 7.2.

The Spanish authorities also underline that the adaptation of the sentence, especially in the case of offences which do not fall within the ‘Eurocrimes’ category, for which harmonised rules governing the sentences have to be provided for in national legislation, is also an obstacle if the length of the sentences in the issuing and executing States differs significantly.

Lastly, the Spanish authorities are of the opinion that it needs to be borne in mind that the monitoring of compliance with the probation measures by the executing Member State is not straightforward, as it requires the use of a range of resources (e.g. tracking devices) involving costly infrastructure.

The International Relations Service of the CGPJ has circulated information to judges and magistrates with competence to issue certificates under FD 2008/947/JHA, notifying them the usefulness to use this Framework Decision. In addition, the International Judicial Assistance Guide contains an updated guide on the application of this mutual recognition instrument.

### 6.3. Statistics

The Spanish authorities have provided the Ministry of Justice with the following statistics:

<b>FRAMEWORK DECISION 2008/947/JHA ON PROBATION AND ALTERNATIVE SANCTIONS</b>										
	<b>Issued</b>					<b>Executed</b>				
	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
<b>Juzgado de lo Penal</b>	6	2	1	1	3					
<b>Audiencias provinciales</b>	0	2	2	3	1					
<b>Juzgados de instrucción y mixtos</b>	0	0	0	2	0					
<b>Juzgados violencia contra la mujer</b>	0	0	0	0	0					
<b>Juzgados de Menores</b>	0	0	0	0	0					
<b>Audiencia Nacional. Sala Penal</b>	0	0	0	0	0					
<b>Juzgados centrales de instrucción</b>	0	0	0	0	0					
<b>Juzgado Central penal</b>	0	0	0	0	0	5	5	5	3	0
<b>Juzgado Central de menores</b>	0	0	0	0	0	0	0	0	1	0
<b>TOTAL</b>	<b>6</b>	<b>4</b>	<b>3</b>	<b>6</b>	<b>4</b>	<b>5</b>	<b>5</b>	<b>6</b>	<b>3</b>	<b>0</b>

Between 2016 and 2018, the Spanish competent authorities issued 13 certificates and the Central Criminal Court, as the centralised competent executing authority, received 16 certificates under FD 2008/947/JHA.

#### **6.4 Conclusions**

- The Spanish legislation transposes FD 2008/947/JHA in a manner which is almost fully correct, though with some slight shortcomings, as the expert team could not find a specific provision in the LMR on the consultations between the competent authorities of the issuing and executing States, as set forth in Article 15 FD 2008/947/JHA. However, the general and common provisions of the LMR, provide for consultations in Articles 8.1 and 30.
- The Spanish legislation provides for direct contacts between the competent authorities of the issuing and executing Member States under FD 2008/947/JHA, both in the case of a probation decision and in the case of a decision on an alternative measure to detention. In practice, there is direct contact, especially in urgent cases, but in general the channels used by the Spanish authorities to contact the competent authorities of other Member States are Eurojust or the EJN.
- Based on the statistics provided by the Spanish authorities, the evaluation team observes that FD 2008/947/JHA is rarely used in Spain; only a few outgoing requests have been issued and the number of executed requests is low as well.
- In the opinion of the Spanish authorities, the limited use made of FD 2008/947/JHA is above all the consequence of a lack of knowledge on the part of practitioners, not only judges and prosecutors, but also defence lawyers; furthermore, they believe that the use of this Framework Decision in certain cases may not be useful as the sentences imposed are short, or the accused is not required to be present at the trial, or the case does not involve cross-border implications.

- In addition, the Spanish authorities underline that the diversity of the probation measures and alternatives to detention in national legal systems makes it difficult to transfer such measures to another the Member State. In this respect, the Spanish authorities suggest that it would be useful if a practical guide for the application of FD 2008/947/JHA were drawn up at EU level, setting out the equivalences between the different national measures.
- Taking into account the statistical data and the opinions expressed by the Spanish practitioners interviewed, the evaluation team concludes that raising awareness among all relevant stakeholders of FD 2008/947/JHA is needed in order to ensure the optimal effectiveness of this post-trial mutual recognition instrument.



## **7. FRAMEWORK DECISION 2009/829/JHA ON THE EUROPEAN SUPERVISION ORDER (ESO)**

### **7.1. Authorities competent for Framework Decision 2009/829/JHA**

On the basis of Article 111 of Law 23/2014, the authorities competent to issue a ruling on alternative measures to provisional detention pursuant to Article 6(2) FD 2009/829/JHA on the European Supervision Order (ESO) are the judges or courts that issued the decision ordering the provisional release of the person concerned in criminal proceedings. The procedure may be initiated automatically, at the request of the Prosecution Service and at the request of the accused person.

On the other hand, the authorities competent to recognise and enforce a ruling on alternative measures to provisional detention are the examining magistrates or the Judges for Violence Against Women of the place where the person concerned has his or her established residence, depending on the type of offence for which those authorities have jurisdiction.

The Spanish legislation also provides for direct contacts between the Spanish competent authorities and other Member States' competent authorities in the case of a decision on alternative measures to provisional detention. In practice, there is direct contact, especially in urgent cases, but in general the channels used by the authorities for contacting the competent authorities of other Member States are the EJM or Eurojust. The evaluation team underlines that both Eurojust and EJM can help out or assist the competent national authorities in the event of language or communication issues. As a result, these channels are often used when direct contact is difficult or problematic, including for linguistic reasons.

Pursuant to Article 7(3) of FD 2009/829/JHA on the European Supervision Order (ESO) and in accordance with Article 6(3) of Law 23/2014, the Ministry of Justice is the central authority for the purposes of Article 7(1) of this Framework Decision, and is thus responsible for assisting the judicial authorities in its application.

Article 9(4) of FD 2009/829/JHA requires Member States to declare to the General Secretariat of the Council the conditions under which their competent authorities may, at the request of the person concerned, consent to the forwarding to another Member State (other than the Member State in which the person resides ordinarily) of rulings on supervision measures.

Pursuant to this requirement, Article 112 of Law 23/2014 provides that the competent judge or court will forward the decision on alternative measures to provisional detention to the competent authority of the Member State when either of the following circumstances arises:

- (a) The person concerned is legally and habitually resident in the executing State and agrees to return to that State;
- (b) The person concerned asks to go to a different State to the one in which he or she is normally resident, and the competent authority of that State agrees to the request.

The LMR does not expressly stipulate that the Prosecution Service should participate when Spain acts as the issuing State. However, the expert team was informed that it is compulsory for the judge to notify the Prosecution Service the decision whereby the certificate is issued. This is because, in practice, the Prosecution Office can act as an intermediary with respect to other courts that have adopted all the judgments to be enforced against the same sentenced person, under the terms referred to in Article 98(2) LMR on prior consultation. This is a logical step, as Article 114 (2) LMR provides that prior to issuing a decision on alternative measures to provisional detention, the competent court must verify whether other decisions on alternative measures to provisional detention had already been issued in relation to the same accused person in different cases. If one of the courts decides not to issue a certificate, and not to forward the judgement, to another Member State, with a view to the supervision of such measures under FD 2009/829/JHA, it must notify other courts, so that the procedure is suspended or cancelled if the decision has already been issued, without prejudice to the possibility of re-starting such proceedings at a later stage (Article 114(2) LMR).

## **7.2. Problems relating to the failure to apply Framework Decision 2009/829/JHA**

The Spanish legislation transposes Framework Decision 2009/829/JHA correctly.

With regard to the procedure to be followed for issuing requests for the recognition of supervision measures as an alternative to provisional detention in another Member State, the Spanish authorities recall that it needs to be borne in mind that:

1. Not all Member States have transposed FD 2009/829/JHA and the transpositions have not been carried out uniformly; this means that the judicial authority has to verify the information regarding the transposition in the other Member State to which it intends to transfer the supervision of the measure before launching the mechanism.
2. In order to request recognition, the issuing authority has to complete the certificate and forward it to the executing State, translated into the official language or one of the official languages of the latter, together with the original of the probation decision; although, in principle, the original decision does not need to be translated, where necessary, the competent executing authority can request a translation from the issuing authority. The translations sometimes take a considerable amount of time. The issuing authority directly contacts the executing authority, whose contact details may be found by means of the EJN Atlas.
3. The time required to perform these formalities means that the procedure is frequently incompatible with the usual duration of supervision measures under Spanish legislation and, in particular, with the ground for refusal as set forth in Article 105(1)(b) LMR, i.e. where the length of the sentence is less than six months.

Most considerations referred to in point 6.2 with regard to the limited use of Framework Decision 2008/947/JHA are also relevant to FD 2009/829/JHA.

In this regard, according to the Spanish authorities, there are two factors to be taken into account in evaluating the limited use of these two instruments: firstly, the existence or otherwise of such measures in the purely national procedures (many of the measures under Article 8 of the FD may not be provided for and, consequently, it is difficult to transfer them to another Member State); secondly, the nature of the cases investigated in each Member State: not all Member States have the same level of transnational organised crime; in some Member States, the investigations tend to concern individuals who are nationals of, and resident in, that State, with few cross-border implications.

In relation to the supervision measures applicable to the person concerned, specifically the measure under Article 8(1)(e), namely the obligation to report at specified times to a specific authority, which is the most frequently used measure, the need for the person being investigated to be available throughout the proceedings has a bearing on the decision as to whether to transmit the measure. This depends on the procedural requirements in the national legislation and, in particular, on the provisions governing the need for the person concerned to be present at the trial. The Spanish authorities indicated that these procedures involve that issuing and executing authority should be well coordinated throughout all the supervision period, the need for the latter to notify any irregularity in the compliance with the obligation to report before the designated authority.

In the Member States in which the accused is not required to be present at the trial, the supervision of a measure alternative to detention may not be considered necessary, when the person concerned is permitted to leave the country in which the trial is to take place. In the case of Spain, in view of the limited scope for trials ‘in absentia’, as already mentioned above, it is advisable for the measure to be agreed with the executing State in cases in which foreign citizens or Spanish nationals resident in other Member States request a transfer to their place of origin, and are summoned to trial in Spain in the meantime.

Moreover, account needs to be taken of the diversity of legal arrangements within the European Union as regards probation measures, a factor which may discourage the transmission of the certificate to another Member State where the same measure imposed by the issuing State does not exist. The evaluation team believes that fostering harmonisation could facilitate more frequent use of this instrument. In addition, as highlighted by the Spanish authorities, Framework Decision 2009/829/JHA is a particularly complex legal instrument.

Lastly, as mentioned above, the Spanish authorities believe that the question of disqualification from driving is not adequately addressed in Framework Decision 2008/947/JHA. There seems to be an asymmetry between FD 2009/829/JHA, which expressly foresees disqualification from driving and FD 2008/947/JHA, which does not.

It is included in the alternative measures to pre-trial detention (Article 110) but it has not been configured as a precautionary measure in the list of Article 94, (Scope of application of the probation decision).

FD 2009/829/JHA on the ESO has been used very infrequently in Spain. In the 2016-2018 period, 6 certificates were issued by the Spanish authorities and 3 were received from other Member States.

As for FD 2008/947/JHA, the Spanish authorities note that there is also a major lack of familiarity with FD 2009/829/JHA, both on the part of prosecutors and judges and of the defence lawyers. See point 6.2 for more details.

The previously mentioned International Judicial Assistance Guide contains an updated guide for the application of Framework Decision 2009/829/JHA on the ESO.

Other than the designation of the competent authorities mentioned above, there have been no changes in Spain in institutional organisation as a result of the implementation of FD 2009/829/JHA.

The Spanish authorities pointed out that the monitoring of compliance with measures alternative to provisional detention by the executing Member State is not straightforward, as it requires the use of a range of resources (e.g. tracking devices) that entail costly infrastructure.

Moreover, the Spanish authorities underline that, unlike Framework Decision 2008/947/JHA on probation and alternative measures, in which the transfer of the implementation of the sentence or measure affects the execution phase of the sentence, in the case of Framework Decision 2009/829/JHA on the European Supervision Order, which is a pre-trial instrument, possible complications in the implementation of the measures imposed may have a direct impact on the outcome of the trial in the issuing State and, consequently, on the successful conduct of the criminal proceedings.

Accordingly, any complication in the supervision of the measures that could have a direct and immediate impact on the investigation in the issuing State should be notified immediately by the executing authority; this need, however, does not appear to follow clearly from the text of FD 2009/829/JHA.

Finally, in the opinion of the Spanish authorities, one of the reasons for the limited application of FD 2009/829/JHA is that it is normally applied in proceedings involving offences that are not particularly serious, since the investigating magistrate would otherwise order unconditional remand in custody without bail. In the case of minor offences, it is generally decided to go ahead with the investigation and hold the trial, with the sentence being transmitted subsequently to the State of which the sentenced person is a national or resident.

### 7.3. Statistics

The Spanish authorities have provided the Ministry of Justice with the following statistics:

<b>FRAMEWORK DECISION 2009/829/JHA ON THE EUROPEAN SUPERVISION ORDER</b>										
	<b>Issued</b>					<b>Executed</b>				
	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
<b>Juzgado de lo Penal</b>	0	2	1	0	0					
<b>Audiencias provinciales</b>	0	0	0	0	0					
<b>Juzgados de instrucción y mixtos</b>	1	0	0	7	9	0	3	0	2	12
<b>Juzgados violencia contra la mujer</b>	1	0	0	0	0	0	0	0	0	0
<b>Juzgados de Menores</b>	0	0	0	0	0					
<b>Audiencia Nacional. Sala Penal</b>	0	0	0	0	0					
<b>Juzgados centrales de instrucción</b>	1	0	0	0	0					
<b>Juzgado Central penal</b>	0	0	0	0	0					
<b>Juzgado Central de menores</b>	0	0	0	0	0					
<b>TOTAL</b>	<b>3</b>	<b>2</b>	<b>1</b>	<b>7</b>	<b>9</b>	<b>0</b>	<b>3</b>	<b>0</b>	<b>2</b>	<b>12</b>

## 7.4 Conclusions

- Spanish legislation transposes Framework Decision 2009/829/JHA correctly.
- Spanish legislation provides for direct contacts between the Spanish competent authorities and other Member States' competent authorities under FD 2009/829/JHA in the case of a decision on the supervision measures as an alternative to provisional detention imposed on a person subject to criminal proceedings. In practice, there is direct contact, especially in urgent cases, but in general the channels for contacting the competent authorities of other Member States are Eurojust or the EJM.
- Based on the statistics provided by the Spanish authorities, the evaluation team observes that the practical application of FD 2009/829/JHA on the European Supervision Order, as with FD 2008/947/JHA (point 6.3.), is also very limited in Spain.
- As for FD 2008/947/JHA, in the opinion of the Spanish authorities, limited use is also made of FD 2009/829/JHA because this instrument is not well known, the sentences imposed are short, there is no provision for the measures in question in national legislation, or the accused is not required to be present at the trial. Furthermore, the diversity of alternative measures to provisional detention in national legal systems, including as regards their duration, makes it difficult to transfer such measures to another Member State. The costs of supervision measures, recourse to such measures only for minor offences and the impact of possible complications on the proceedings in the issuing State have also been mentioned by the Spanish authorities as reasons for the infrequent use of FD 2009/829/JHA.
- Taking into account the statistical data and the opinions expressed by the Spanish practitioners interviewed on-site, the evaluation team believes that a greater effort should be made by the Spanish authorities to promote familiarity with FD 2009/829/JHA among all relevant stakeholders, with a view to extending the application of this specific pre-trial mutual recognition instrument.



## **8. TRAINING RELATING TO FDS 2002/584/JHA, 2008/909/JHA 2008/947/JHA AND 2009/829/JHA**

### **8.1 Training relating to FDs 2002/584/JHA and 2008/909/JHA**

Spain has a wide range of training activities on the EAW, which are adapted to the different professional actors.

The Judicial College (*Escuela Judicial*), a centre for the selection and training of judges and magistrates under the General Council for the Judiciary (CGPJ), aims at providing comprehensive, specialised and high-quality training for members of the legal professions, as well as for those hoping to enter them.

The Judicial College coordinates and delivers both initial training and continuous training. It is also active within the framework of, among others, the European Judicial Training Network (EJTN).

As far as the Framework Decisions within the scope of this evaluation are concerned, in 2021 the judiciary had a three-day course on the EAW and FD 909, as well as a course for the supervision judges.

Moreover, the Continuous Training Service of the General Council for the Judiciary (CGPJ) organises an annual specialised classroom course in international judicial cooperation, attended by 30 judges and magistrates. One section of this course focuses specifically on developments in the field of the EAW. A 100-hour online course on judicial cooperation in criminal matters in Europe, which covers the EAW in one of its modules, is also available for 30 criminal court judges and magistrates.

The CGPJ's International Relations Service offers information and direct support to magistrates involved in the issuing or execution of an EAW. This assistance is provided either directly or via the criminal division of the national network of experts in international cooperation (Red Judicial Española de Cooperación Judicial Internacional, REJUE), which is composed of 30 magistrates, 5 of whom are specialists in the EAW, in accordance with Regulation 1/2018 on international judicial assistance.

The CGPJ's International Relations Service also carries out dissemination activities relating to information about the EAW and to developments in relevant case-law.

In addition, there is a network of experts in European Union law (*Red de Especialistas en Derecho de la Unión Europea*, REDUE), made up of six divisions, attached to the CGPJ's International Relations Service. One of these divisions – the criminal law division – reports promptly via webmail on any relevant CJEU judgments relating to the EAW.

Approximately 50% of the penitentiary surveillance judges in Spain, that is, about 25 judges (who, are the ones who issue all the certificates regarding the transmission of custodial sentences), meet annually for training, which includes problems raised by the application of Framework Decision 2008/909/JHA.

The continuous training service of the General Council of the Judiciary organises an annual training course, aimed at 30 judges, on international judicial cooperation in the European Union, which includes training on Framework Decision 2008/909/JHA.

At the Judicial School of Barcelona, students take an initial international cooperation course with special emphasis on European Union instruments.

Courses on the application of the mutual recognition instruments in the different Autonomous Communities are also given within the regional training plans.

Currently, training for prosecutors is organised by the Centre for Judicial Studies (*Centro de Estudios Juridicos* , CEJ), an autonomous body under the Ministry of Justice, which organises training for the different members of judicial staff: prosecutors, judicial officers, forensic doctors, state prosecutors and others. It offers both initial training (for prosecutors, judicial officers and forensic doctors only) and continuous training (for all).

Training activities for prosecutors are always organised by the CEJ in coordination with the Prosecutor General's Office. However, the Spanish authorities informed the evaluation team that the idea of an independent body responsible both for the initial (which last for two years) and continuous training of prosecutors is being considered.

The initial training for prosecutors always includes a module on international cooperation, which covers various instruments, including the EAW and all other MR instruments falling within the scope of this evaluation. In 2019, 108 Spanish prosecutors were given this training, as well as 21 newly appointed prosecutors from other EU Member States, who received the training as part of the EJTN AIAKOS Programme.

As regards continuous training, conferences and workshops in different specialist areas are organised every year. The network of prosecutors specialising in international cooperation organises an annual meeting where the most recent developments in the field of judicial cooperation are addressed and which serves as a forum for discussion on practical problems and sharing best practices (54 prosecutors attended in 2019), which usually includes one or several sessions on the EAW and other MR instruments. The conclusions of the meetings are drafted and agreed upon after the end of the activity and shared with all prosecutors through the dedicated section on mutual legal assistance in the webpage [www.fiscal.es](http://www.fiscal.es). This specialised network is coordinated by the International Cooperation Unit of the Prosecutor General's Office, which holds competence for providing guidance and assisting practitioners in issuing and executing mutual legal assistance requests.

In 2017, the CEJ gave a course on the EAW and all aspects related to it, including the case-law of the CJEU. The case-law of the CJEU is also studied in various training sessions.

In recent years, the CEJ, in addition to initial and continuous training on international cooperation, has provided training specifically on Framework Decision 2008/909/JHA. In 2019, this training was provided for 34 prosecutors; in 2016, for 43 prosecutors; in 2015, for 36 prosecutors.

With regard to online learning, the CEJ has created a number of courses on cooperation in criminal matters, with two levels (general and specialised), which include specific modules on the EAW and on the other mutual recognition instruments. An online course on judicial cooperation and one on Eurojust was launched in 2020.

In the context of international cooperation in criminal cases, in 2021 the following online training courses were held for prosecutors: long-term training on EU case-law, a course on the application of the EAW, a course on parallel proceedings, training on the transfer of proceedings. Training courses on EPPO are planned for 2022. Although the general number of training courses has decreased, the number of international training courses has increased. The online training is usually organised in two ways: at a national level and in a decentralised manner.

It should be noted that continuous training is not mandatory either for prosecutors or for judges. However, if they want to specialise in a specific field, it is a legal requirement to have attended the course relating to the area of specialisation sought. The same situation applies to promotion, where attendance at special training is considered to be a ‘bonus’.

All matters of interest in this area are discussed at the annual meetings of the network of prosecutors specialising in cooperation, including developments in both legislation and case-law (of national courts, the CJEU or the ECHR). It should be noted that it is not an easy task to determine the training needs of about 5600 practitioners and draw up a training programme for the year to come. In assessing training needs, practitioners are usually asked to put forward their proposals. Proposals for training are then received from universities, other bodies that provide training and general counsellors of the judiciary. Lastly, those proposals are assessed by the continuous training centre.

At the end of every CEJ course, participants are given a satisfaction survey (created by an external provider). The responses are taken into account when the continuous learning programme for the following year is drawn up. The written content provided by the speakers is checked for quality assurance purposes and published on the CEJ's virtual platform to make it as widely available as possible.

The training offered by the EJTN in the form of exchanges, language courses and stints with EU institutions or bodies such as the CJEU or Eurojust, as well as with international organisations such as the ECHR, are advertised through the CEJ and the Judicial College; there are always interested candidates, so there is an assessment procedure for granting places. These training courses or exchanges abroad are considered by the Spanish authorities to be very important and are offered on a regular basis.

Spanish practitioners take part in activities organised by the EJTN and ERA, including courses relating to international judicial cooperation, which cover aspects of the EAW. The training provided by the EJTN is primarily aimed at prosecutors, and the training provided by ERA is primarily aimed at judicial officers and state prosecutors. However, following the recent decision to include court staff as a target group for EJTN activities, their training will also be offered to judicial officers.

Participation figures have varied over the years, depending on the number of training sessions being organised in this field. There are several courses on international judicial cooperation that may also cover the EAW.

In 2019, 22 prosecutors took part in courses on international judicial cooperation, with two of them also attending a specific course on the EAW delivered by the EJTN.

As far as 2020 is concerned, it should be noted that most of the training (including training on international cooperation in criminal matters) shifted to online platforms. As the circumstances of pandemic situation have improved, it has been decided that in 2022 Spain will continue with in-person, face-to-face training. There is an increasing demand for topics relating to EU law and fundamental rights, and the case law of the CJEU.

Spanish practitioners believe that the most effective training incorporates both practical implementation and theory relating to specific international cooperation instruments (such training courses are organised by the EJTN and ERA, as well as by the national training institutions). The exchange programme for prosecutors has also turned out to be successful, as it facilitates an understanding of foreign legal systems and their approach to specific instruments.

The Ministry of Justice is also responsible for sending updated information regarding the application of the EAW to both the CGPJ and the FGE for distribution to the different practitioners.

The CEJ distributes any material provided through the EJTN and other institutions.

In addition, the CGPJ draws up, updates and circulates, within the International Judicial Assistance Guide, practical guides on mutual recognition instruments. They include the practical guide on the transmission of decisions imposing a custodial sentence or measures involving deprivation of liberty, which is a very useful aid to correct issuance. This guide contains numerous links, including links to the EJN website.

Spain also has a tool called the International Judicial Assistance Guide (Prontuario de Auxilio Judicial Internacional), which aims to serve the needs of judges, prosecutors and other practitioners as regards judicial cooperation. <http://www.prontuario.org/portal/site/prontuario>.

The Guide offers judges, prosecutors, judicial officers and other legal practitioners a simple and user-friendly tool or handbook for participating in international judicial cooperation activities, in both active terms (issuing a request within the framework of proceedings brought by a Spanish legal body) and passive terms (receiving a request from another State).

This tool was developed jointly by the Ministry of Justice, the Prosecutor-General's Office and the CGPJ, and aims to answer the questions that come up most frequently in the day-to-day work of judicial staff. It allows users to identify the international conventions and other legal regulations applicable in this area and provides information about the different institutions that can offer additional support (European, Spanish and Ibero-American judicial networks, Eurojust, etc.), including a list of contacts.

The International Cooperation Unit of the State Prosecution Service (FGE) has a CJEU case-law database. This database is composed of files containing brief notes on each judgment passed related to mutual legal assistance in criminal matters, in particular MR instruments,, in addition to a copy of the full judgment. The files and judgments are distributed through the network of prosecutors specialising in cooperation in criminal matters.

In addition to providing detailed information about bilateral cooperation with all States, be they members of the EU or not, this site also allows users to access documents of interest. As mentioned previously, the CGPJ has created a handbook for each mutual recognition instrument; these handbooks are available in the private section of the site and are updated frequently, to ensure the proper issuing of the EAW and use of the other legal instruments subject to this evaluation. These handbooks contain numerous links to, among other sources, the European Judicial Network (EJN) website.

The ‘Best practice guide for Spanish judicial authorities seeking assistance from Eurojust, the European Judicial Network, liaison magistrates, IberRed and the Office for Asset Recovery and Management’ can also be found in this section.

The International Relations Service of the General Council of the Judiciary makes available to the sentencing judges and Penitentiary Surveillance Judges, which are the competent issuing authorities under FD 2008/909/JHA, the ‘Vademecum of Mutual Legal Assistance’, which includes a practical guide on the issuance of certificates that contains, in addition to solutions to practical problems, specific instructions on how to fill in the certificate.

At the same time, the CGPJ’s International Relations Service, directly or via the criminal section of REJUE, which comprises 30 magistrates, offers information to directly support magistrates involved in the issuing or execution of a certificate for the recognition of measures involving deprivation of liberty. Some of the members of the network specialise in such measures.

Lastly, the specialist prosecutors working in each provincial prosecutor's office or in special prosecutors' offices, who have the competence to implement international assistance, or to intervene in that assistance when competence lies with the examining magistrates, have a huge amount of theoretical and – most importantly – practical experience to help other prosecutors who may need to request international assistance. All the materials available to these specialist prosecutors are distributed to all of the prosecutors in the offices where they work.

## **8.2 Training on Framework Decisions 2008/947/JHA and 2009/829/JHA**

No specific training on Framework Decisions 2008/947/JHA and 2009/829/JHA is provided in a systematic and regular manner to practitioners in Spain. However, it is included in the general training on judicial cooperation referred to above.

The Prosecution Service and the CGPJ participated in the REPERS project (Mutual Trust and Social Rehabilitation in Practice) organised by the University of La Coruña on these instruments.

Likewise, representatives of the CGPJ and of the FGE are taking part in Loyola University's PONT project (Probation Observatory: Networking and Training), which aims at boosting cross-border cooperation between Member States through the use of these Framework Decisions. In this connection, the objective is to provide training for the competent authorities and for the probation services, and to establish a sustainable network of professionals.

A meeting was also held in Spain (organised by the Netherlands and financed by the EJM) to discuss these two Framework Decisions, with the participation of judges and prosecutors from the Netherlands, Italy and Spain.

Lastly, the Spanish authorities drew the attention of the evaluation team to the METIS project (Mutual Recognition in Europe Through Intervision Studies), which is aimed at improving the use of the Framework Decisions on the mutual recognition of judgments in the period after the sentence (2008/909/JHA, 2008/947/JHA and FD 2005/214/JHA), as regards measures involving deprivation of liberty, probation measures and alternative sanctions, as well as financial penalties, in which the Spanish Ministry of Justice is taking part, along with representatives from France, Belgium and the Netherlands.



The Spanish authorities do not consider that training at EU level would significantly increase the use of these Framework Decisions, though it would contribute to raising awareness of these instruments. They believe it makes more sense for such activities to be organised by the national authorities, as they are familiar with the specific features of their own substantive and procedural criminal legislation.

Initial training for judicial officers includes a specific module on international judicial cooperation. In 2019, 59 practitioners completed this module. There is also the annual meeting of the RECILAJ (the aforementioned network for international judicial cooperation in civil and criminal matters for judicial officers), which had 36 attendees in 2019.

### 8.3. EJM tools and networks

The Spanish judges, magistrates and prosecutors specialising in international cooperation in criminal matters are familiar with the tools provided for the competent authorities on the European Judicial Network website, particularly the Atlas. Those few judges who are not familiar with these tools, and any non-specialist prosecutors who need to identify an applicable instrument or the competent authority in a specific field of cooperation, can seek advice from contact-point magistrates or specialist prosecutors. These persons are always known to their colleagues in each province and are all available for any enquiries that may be necessary.

The Spanish authorities believe that the EJM Atlas should be reviewed by Member States, particularly with regard to the identification of competent authorities for the measures concerned, as some of the fields are incomplete. They also stress that it is important that the list of contact points be kept up to date; some Member States have identified several contact points without giving any clear information about their specific areas of competence, which makes it difficult to determine where to send a particular query.

In general, Spanish judges and/or prosecutors are not aware of the EuroPris platform.

## 8.4 Conclusions

- Spain has a very comprehensive and well-structured system for training in the field of judicial cooperation. It takes great advantage of new, modern IT tools, in particular by organising a lot of different educational courses online, which makes the training process cost-friendly and easily accessible to those who are interested
- In Spain, continuous training is not mandatory for either prosecutors or judges. However, if they wish to specialise in a specific field, it is a legal requirement for them to have attended the relevant course related to the specialisation sought.
- The Judicial College (Escuela Judicial) is the centre for the selection and training of judges and magistrates under the General Council for the Judiciary (CGPJ), which aims at providing comprehensive, specialised and high-quality training for members of the legal profession. The College coordinates and delivers both initial training and continuous training. It is active within the framework of, among others, the European Judicial Training Network. The CGPJ's Continuous Training Service organises an annual specialised classroom course in international judicial cooperation,
- Currently, training for prosecutors is organised by the Centre for Judicial Studies (*Centro de Estudios Juridicos* , CEJ), within the Ministry of Justice, though the training plan for prosecutors (which covers both initial and continuous training) is defined by the Technical Secretariat of the the State Prosecution Service (FGE) following a strategy-based program which takes into account the needs of the prosecutors, their requests and the recent developments in the field of judicial cooperation. However, the Spanish authorities are considering the establishment of an independent body for the training of prosecutors.

- Regular training activities mostly cover Framework Decisions 2002/584/JHA on the EAW and 2008/909/JHA on Custodial sentences. No specific training on Framework Decisions 2008/947/JHA and 2009/829/JHA is provided in a systematic and regular manner to practitioners in Spain; however, these legal instruments are included in the general training on judicial cooperation and in ad-hoc training events.
- Spanish practitioners also participate in training organised by the EJTN and ERA on international cooperation instruments. However, the Spanish authorities consider that training at EU level on Framework Decisions 2008/947/JHA and 2009/829/JHA, though useful for raising awareness of these instruments, would not significantly increase their use. They believe it makes more sense for such activities to be organised by the national authorities, as they are familiar with the specific features of their own substantive and procedural criminal legislation.
- The CGPJ's International Relations Service carries out dissemination activities relating to developments in case-law and information about the EAW. At the same time, the CJEU's jurisprudence is commonly disseminated by the Judicial Cooperation Unit of the FGE through the network of prosecutors specialising in cooperation in criminal matters.
- The expert team considers the International Judicial Assistance Guide (Prontuario de Auxilio Judicial Internacional), which aims to serve the needs of judges, prosecutors and other practitioners as regards judicial cooperation, to be an example of good practice, since it is a comprehensive and modern tool, easily updated and accessible by the practitioners in cases requiring international cooperation.
- Spanish judges, magistrates and prosecutors specialising in international cooperation in criminal matters are familiar with the tools provided for the competent authorities on the European Judicial Network website, in particular Atlas. Spanish judges and/or prosecutors are not familiar with the EuroPris platform.

## **9. FINAL REMARKS, RECOMMENDATIONS AND BEST PRACTICES**

### **9.1. Suggestions by Spain**

The Spanish authorities have suggested that:

1. it could be useful if a common approach were followed by Member States in filling in section d) of the EAW form;
2. it could be useful to draw up a practical guide at EU level for the application of FD 2008/947/JHA, setting out the equivalences between the probation measures and alternatives to detention in the different Member States;
3. it would be useful to revise FD 2008/947/JHA to include disqualification from driving, as it is a measure that could have a major cross-border impact.

### **9.2. Recommendations**

As regards the practical implementation and operation of the Framework Decisions subject to this evaluation, the team of experts involved in the evaluation of Spain was able to satisfactorily review the system in Spain.

Spain should conduct an 18-month follow-up to the recommendations referred to below after this report has been adopted by the Working Party concerned.

The evaluation team saw fit to make a number of suggestions for the attention of the Spanish authorities. Furthermore, based on the various good practices, related recommendations are also being put forward to the EU, its institutions and agencies, and to Eurojust and the EJM in particular.

### *9.2.1. Recommendations to Spain*

The Spanish authorities:

1. are advised to raise awareness among all relevant stakeholders of EU mutual recognition instruments, and in particular Framework Decisions 2008/947/JHA on probation and alternative measures and 2009/829/JHA on the European Supervision Order;
2. should consider establishing clear rules on internal coordination of relevant judicial authorities involved in the application of EU mutual recognition instruments, especially in cases of multiple EAWs and of multiple requests issued for the same person on the basis of the same or different legal instruments ( i.e. EAW and EIO, EAW and FD 909, etc.);
3. when acting as the executing authorities, are invited to find alternative solutions to avoid a person's impunity when an EAW is refused under Article 4(6) of the EAW FD, and the execution of the sentence cannot be taken over due to the time limitation mentioned in Article 9 (1)(h) of FD 909;
4. should consider amending Article 52(2) LMR to replace the requirement, when Spain is the executing State, for the competent authority of the issuing State to travel to Spain pending the decision on the surrender, with more efficient and less costly and time-consuming solutions;
5. are advised to make use of the system of prior consultation referred to in Article 15 of FD 2008/947/JHA, with a view to avoiding having to request that the probation decision be returned when new criminal proceedings are ongoing against the sentenced person in Spain;
6. when Spain is the executing State, should consider a more flexible approach to accepting requests related to EU mutual recognition instruments from the issuing States in English;

7. are invited to promote knowledge and use of the Europris platform and tools by the relevant judicial actors;
8. are encouraged to organise joint training activities, and to continue providing language training on legal terminology to all practitioners involved in the application of EU mutual recognition legal instruments;
9. are encouraged to further develop the interoperability of the existing databases used by the competent authorities implementing Mutual Recognition instruments.

#### *9.2.2. Recommendations to the other Member States*

- Member States are encouraged to make available their national legislation on mutual recognition, in particular the relevant provisions of their criminal procedure code, in English, to EJN.

#### *9.2.3. Recommendations to the European Union and its institutions.*

- The Commission is invited to:

1. provide adequate funding for training of the legal professions, including language training on legal terminology;
2. consider the review of box D of the EAW form, in order to allow for the inclusion of more extensive information in cases of judgements ‘in absentia’ in the issuing State.

#### *9.2.4. Recommendations to Eurojust/Europol/EJN/EJTN*


- EJN is invited to collect and upload to its website, Member States’ legislation regarding criminal procedure rules related to EU mutual recognition instruments in English.

### **9.3. Best practices**

1. The evaluation team has identified in Spain the following best practices that can be shared with other Member States:
2. The obligation for the Spanish judicial authorities to inform the central authority (Ministry of Justice ) about all mutual recognition instruments issued or executed by them for information and statistical purposes;
3. the high level of attention given by the Spanish authorities to the protection of fundamental rights;
4. the great attention given by the Spanish authorities to the principle of proportionality, which is subject to several checks before an EAW is issued;
5. the extensive number of practical tools available to the practitioners: the guidelines on EAW, the ‘Prontuario’;
6. the various networks, regular training, etc., which are very efficient and helpful for practitioners;
7. the extensive use by the Spanish judicial authorities of the possibilities offered by Eurojust and EJM;
8. the databases used by the Spanish authorities to record and share information on judicial cases, accessible by all relevant actors.



## Spain (ES)

SPAIN 	
<b>EAW</b>  -issuing of EAWs <i>(suspension; impact on already issued EAWs; prioritization in issuing new EAWs + criteria)</i>  - execution and postponement of the actual surrender <i>(legal basis, adequacy, release of surrendered persons, measures to prevent released persons from absconding)</i>  -expected resuming of surrenders  -transit	<p><b>Impact on the issuing of EAWs</b></p> <p>No particular guidelines have been issued. Decisions are being issued or executed on a regular basis similarly as in the pre-pandemic situation.</p> <p><b>Impact on the execution of EAWs and postponement of the actual surrender</b></p> <p>EAWs received in Spain are being processed normally and in a timely manner so far, most of them within a period of 10 days, according to the information provided by SIRENE Office, Spain. 90% of penitentiary population have received vaccination.</p> <p>However, whenever it is not possible to execute the surrender due to the restrictions established either in Spain or in the issuing country, surrender can be formally postponed in accordance with Article 23 of the FD.</p> <p><b>Impact on surrender, extradition, transfer by land</b></p> <p>For those countries with a common border, surrenders are conducted mainly by land (Portugal and France). According to our Prison Administration, transfers between penitentiaries only take place under extraordinary circumstances.</p> <p><b>Impact on surrender, extradition, transfer by air</b></p> <p>Most surrender procedures take place by air; they are carried out in a timely manner. Taking into account the pandemic situation, some MS impose certain measures for the escorting team and request that a PCR test made within the 72 hours prior to the flight is provided; courts are authorising the tests on the condition that the affected person accepts; other countries request that full identification and contact details of the police officers is provided. Quarantine is not imposed.</p> <p><b>Legal basis for postponing the actual surrender</b></p> <p>The competent courts took the decisions to temporarily postpone the surrender of requested individuals mostly on the grounds foreseen in Article 23(3) of the FD EAW due to the fact that the concept of “force majeure” fits more with the state of alarm and the consequences derived thereto.</p> <p>However, some incoming requests from competent authorities of other member States justify such the petition for postponement on the grounds foreseen in Article 23(4).</p> <p>In any case, the postponement has two consequences:</p> <ul style="list-style-type: none"> <li>- Impossibility/Difficulty to observe the deadlines set out in Article 23 of the FD;</li> <li>- The need to decide on the personal situation of the person concerned.</li> </ul>

	<p><b>Adequacy of these provisions</b></p> <p>The situations foreseen in Article 23 are considered to be sufficient legal provisions to tackle the consequences stemming from the COVID-19 pandemic and the current state of alarm; no particular additional legal measures are considered to be needed.</p> <p><b>Meaning of ‘circumstances beyond the control’</b></p> <p>See reply above.</p> <p><b>Releases of requested persons following the postponement of the surrender</b></p> <p>There are no recent cases of release due to the postponement of the surrender.</p> <p><b>Measures to prevent released persons from absconding</b></p> <p>N/A</p> <p><b>Expected resuming of the surrender</b></p> <p>The current legal framework on restriction measures that might eventually be adopted does not affect the surrender procedure. However, the postponement of surrender decisions might continue in exceptional cases as long as the current circumstances are not completely overcome.</p> <p><b>Transit</b></p> <p>Transits are possible during this exceptional situation, but no request has been received until now.</p>
<p><b>Precautionary measures for surrender, extradition and transfer</b></p> <ul style="list-style-type: none"> <li>- COVID19 test</li> <li>- health certificate</li> <li>- quarantine</li> <li>- facial masks</li> </ul>	<p><b>Precautionary measures</b></p> <p>There are protocols followed by law enforcement units competent for the surrender process and logistics. Protection equipment are provided to the surrendered person, as well as to the officials conducting him/her. In addition, the hearings before the judicial authority take place by means of videoconference unless they are arrested in Madrid, where the competent courts are based, but even in the latter situation videoconference may be considered</p> <p>Competent authorities should strive for shortening the transfer period and for air transportation the closest airports to the location of the issuing authorities should be chosen: on a number of occasions the requested persons land in airports which are distant from the issuing courts and long distance land transportation is then needed when a closer airport could have been used; this practice should be avoided.</p> <p>The minimum medical-sanitary requirements approved by our authorities must be met, temperature will be taken and it is mandatory the use of mask, etc. All guarantees are welcome.</p> <p><b>Need (or not) for further guidance on precautionary measures</b></p> <p>National authorities have different approaches with regard to the need of having guidelines at EU level; the fact that Interpol has issued guidelines on 26 March in relation to the surrender protocols to be adopted during the Covid pandemic has been highlighted. Also, the need for smooth and up to date exchange of information between issuing and executing authorities</p>

	<p>with regard to the health condition of the requested person and the protocols followed in the surrender process has been underlined.</p>
<p><b>Extradition</b></p> <ul style="list-style-type: none"> <li>-suspension</li> <li>-legal basis</li> <li>-third countries involved</li> <li>-expected duration of suspension</li> </ul>	<p><b>Impact on extradition procedures</b></p> <p>No general decision has been taken or can be taken to temporarily suspend extradition procedures. Such procedures are ongoing and the suspension of the effective surrender, once the governmental phase has been concluded, will be assessed on a case-by-case basis taking the needed steps to liaise with the central and competent authorities of the affected third State.</p> <p><b>Legal basis for postponing the actual surrender</b></p> <p>N/A</p> <p><b>Releases of requested persons following the postponement of the surrender</b></p> <p>As for the decision to remand the requested person, the Procedural Criminal Law criteria apply, these criteria do not vary from the EAW procedure. No particular case where the person in detention had to be released because of time limits being exceeded.</p> <p><b>Electronic transmission</b></p> <p>The use of electronic means for the transmission of requests for extradition and the relevant documentation on which such request is based is highly recommended due to the fact that the use of such means is not as usual as in the case of EAWs. <i>See</i> also below ‘recommended channels for transmission of urgent requests and information exchange’.</p>
<p><b>Transfer of sentenced persons</b></p> <ul style="list-style-type: none"> <li>-prioritization in issuing/execution</li> </ul>	<p><b>Impact on the issuing of requests for transfer of sentenced persons</b></p> <p>With regard to the issuance of mutual recognition instruments other than the EAW, no particular guidelines have been issued.</p> <p><b>Impact on the execution of transfers of sentenced persons</b></p> <p>The Criminal Central Court responsible for the recognition and execution of decision taken by courts in other MS is receiving decisions on transfer of sentenced persons similarly as in the pre-pandemic scenario.</p>

<p><b>SIRENE Bureaux</b></p> <ul style="list-style-type: none"> <li>-working of SIS bureau</li> <li>-exchange of information with other SIS Bureaux</li> </ul>	<p><b>Impact on the working of the SIRENE Bureau</b></p> <p>The operators of Spanish SIRENE Bureaux are working on full capacity. We don't have any challenges in ensuring the 24/7 availability.</p> <p><b>Impact on the exchange of information with other SIRENE Bureaux</b></p> <p>As a result of the reduction on the amount of daily communications this SIRENE Office normally has, it is hard to tell if this pandemic has influence on the response-time when answering requests from others SIRENE or Judicial Authorities, although the most problematic requests are given when the required information is not in our databases and has to be requested from third parties (judicial authorities for example) who are not working full time.</p>
<p><b>EIO and MLA</b></p> <ul style="list-style-type: none"> <li>-prioritization in issuing/execution</li> <li>-electronic transmission</li> <li>-whom to contact</li> </ul>	<p><b>Impact on the issuing of EIOs and MLA requests</b></p> <p>No particular guidelines have been issued. Decisions are being issued or executed on a regular basis similarly as in the pre-pandemic situation.</p> <p><b>Impact on the execution of EIOs and MLA requests</b></p> <p>As concerns EIOs, electronic formats are preferred, giving priority to urgent cases with a clear description of the reasons thereof. The difficulty of carrying out investigative measures involving transfer of persons or any other kind of physical contacts must be taken into account.</p> <p><b>Electronic transmission and contact details</b></p> <p>The use of electronic means to transfer the order has been strongly recommended. Incoming MLA requests from third States shall be sent to the following email address: <a href="mailto:rogatoriaspenal@mjusticia.es">rogatoriaspenal@mjusticia.es</a></p>
<p><b>Freezing and confiscation orders</b></p> <ul style="list-style-type: none"> <li>-prioritization in issuing/execution</li> </ul>	<p><b>Impact on the issuing of freezing and confiscation orders</b></p> <p>With regard to the issuance of mutual recognition instruments other than the EAW, no particular guidelines have been issued. With regard to freezing and confiscation orders, no particular information is to be added apart from the fact that such orders may be considered as intrinsically urgent by nature and are being issued and executed normally; no particular difficulties have been recently reported.</p> <p><b>Impact on the execution of freezing and confiscation orders</b></p> <p>See above.</p>
<p><b>JITs</b></p> <ul style="list-style-type: none"> <li>-prioritization and alternative telecommunication solutions</li> </ul>	<p><b>Impact on JITs</b></p> <p>N/A</p>
<p><b>Recommended channels for transmission of</b></p> <ul style="list-style-type: none"> <li>-urgent requests</li> <li>-information exchange</li> </ul> <p><b>Contact details</b></p>	<p><b>Direct contacts</b> between the judicial authorities concerned should be the essential tool, in line with the principle of direct communication between judicial authorities. Eurojust can play an important role to facilitate and speed up contacts between the judicial authorities concerned. In addition, for the enforcement of practical arrangements related to the EAWs the support and coordination with SIRENE is crucial.</p> <p><b>MLA requests:</b> <i>see</i> above under EIO/MLA.</p>

	<p><b>Extradition requests:</b></p> <p>All extradition requests are being processed. However, due to the still ongoing limitations, the request can be sent by electronic means, even though, physical transfer of convicted persons is still strongly limited and subject to the criteria and instructions given by the police and law enforcement forces.</p> <p>All requests shall be sent to the following e-mail address: <b>extradiciones@mjusticia.es</b></p> <p><b>Transfer of sentenced persons:</b></p> <p>All transfer requests are being processed, even though the Spanish central authority encourages to send the requests by electronic means. Requests shall be sent to the following email address: <a href="mailto:sgcjitraslados@mjusticia.es">sgcjitraslados@mjusticia.es</a>.</p>
<b>Any other relevant information</b>	<p>In general terms, as long as this crisis lasts, the Spanish central authority highly recommends to forward all requests by electronic means given the still ongoing limitations and travel difficulties.</p> <p>National authorities keep insisting in the need to resort to videoconferencing and other measures instead of issuing EAW; national authorities should be particularly keen on this approach.</p> <p>At national level, trials where the accused persons are in custody are being scheduled and taking place.</p> <p><b>Impact on the working of NCB INTERPOL Madrid</b></p> <p>Working of notices and exchange of information with other NCBs Police officers of NCB INTERPOL Madrid are working on full capacity I-24/7.</p>

## ANNEX B: PROGRAMME FOR THE ON-SITE VISIT AND PERSONS INTERVIEWED/MET

### 9ª Ronda de evaluaciones mutuas

**Instrumentos jurídicos de reconocimiento mutuo en el ámbito de la privación o restricción de la libertad**  
**(Madrid, 25 – 29 octubre 2021)**

### 9<sup>th</sup> Round of Mutual Evaluations

**Mutual recognition of legal instruments in the field of deprivation or restriction of liberty**  
**(Madrid, 25-29 October 2021)**

<b>Lunes, 25 de octubre / Monday, 25 October</b>		
<b>Llegada del equipo de evaluación a Madrid</b>  <b>Expertos:</b> <ul style="list-style-type: none"> <li>- Katarzyna Naszczyńska (PL)</li> <li>- Jan-Peter van Bodegraven (NL)</li> <li>- Rūta Kavaliauskienė (LT)</li> </ul> <b>Observadores:</b> <ul style="list-style-type: none"> <li>- Jana Bambic (Comisión Europea)</li> <li>- Leonie Luijt (Eurojust)</li> <li>- Giovanna Giglio (Secretaría General del Consejo)</li> </ul>		
<b>Martes, 26 de octubre / Tuesday, 26 October</b>		
10.00 -11:00	<b>Bienvenida. Presentación del equipo y del programa de la visita.</b>  [Información sobre el sistema español (estructura administrativa y organización judicial) si procede]	<b>Welcome. Presentation of the team and of the programme of the visit.</b>  [Information on the Spanish system (administrative structure and judicial organisation) if appropriate]
Ministerio de Justicia  (C/ San Bernardo, 62, Salón Romano)	<ul style="list-style-type: none"> <li>- Miriam Bahamonde Blanco, Fiscal, Dirección General de Cooperación Jurídica Internacional y Derechos Humanos</li> </ul>	<ul style="list-style-type: none"> <li>- Miriam Bahamonde Blanco, Prosecutor, Directorate-General for International Legal Cooperation and Human Rights</li> <li>- Silvia Villa Albertini, Assistant Deputy</li> </ul>

	<ul style="list-style-type: none"> <li>- Silvia Villa Albertini, Subdirectora General Adjunta de Cooperación Jurídica Internacional</li> <li>- Ana Andrés Ballesteros, Subdirectora General para Asuntos de Justicia en la UE y IIOO y DDHH</li> <li>- Luis de Arcos Pérez, Magistrado, Letrado Jefe de Sección, Servicio de Relaciones Internacionales, Consejo General del Poder Judicial (CGPJ)</li> <li>- Pedro Pérez Enciso, Fiscal, Unidad de Cooperación Internacional, Fiscalía General del Estado (FGE)</li> <li>- Borja Jiménez Muñoz, Fiscal, Unidad de Cooperación Internacional, FGE</li> </ul>	<p>Director-General for International Legal Cooperation</p> <ul style="list-style-type: none"> <li>- Ana Andrés Ballesteros, Deputy Director-General for Justice Affairs in the EU and IIOO and Human Rights</li> <li>- Luis de Arcos Pérez, Judge, Head of Section, International Relations Department, General Council for the Judiciary (CGPJ)</li> <li>- Pedro Pérez Enciso, Prosecutor, International Cooperation Unit, Prosecutor General's Office (FGE)</li> <li>- Borja Jiménez Muñoz, Prosecutor, International Cooperation Unit, FGE</li> </ul>
11.00-11.30	<b>Pausa café / Coffee break</b>	
11:30-13:00	<p><b>Decisión marco 2002/584/JAI relativa a la orden de detención europea y a los procedimientos de entrega entre Estados miembros ("OED") (Estado de emisión)</b></p> <p>Ministerio de Justicia</p> <p>(C/ San Bernardo, 62, Salón Romano)</p> <ul style="list-style-type: none"> <li>- Manuela Fernández Prado, Magistrada de la Sala de Apelaciones de la Audiencia Nacional</li> <li>- Joaquín Elías Gadea Francés, Magistrado del Juzgado Central de Instrucción número 6 de la Audiencia Nacional</li> <li>- Ana Cristina Sanz Álvarez, Fiscal delegada de cooperación internacional de la Fiscalía Provincial de Madrid</li> <li>- Ana Noé Sebastian, Fiscal de la sección de cooperación internacional de la Fiscalía de la Audiencia Nacional</li> <li>- Ángel Bodoque Agredano, Fiscal delegado de cooperación internacional de la Fiscalía Antidroga</li> <li>- Luis de Arcos Pérez</li> <li>- Pedro Pérez Enciso</li> <li>- Ana Andrés Ballesteros</li> <li>- Miriam Bahamonde Blanco</li> <li>- Antonio Romero Reinares, Jefe de Área de Extradiciones, SG de Cooperación Jurídica Internacional</li> <li>- Raquel de Miguel, Fiscal, Secretaría General Técnica</li> <li>- Borja Jiménez Muñoz</li> </ul>	<p><b>Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States ('EAW') (Issuing State)</b></p> <ul style="list-style-type: none"> <li>- Manuela Fernández Prado, Judge of the Appeals Chamber of the National High Court (Audiencia Nacional)</li> <li>- Joaquín Elías Gadea Francés, Judge of the Central Examining Court number 6 of the National High Court</li> <li>- Ana Cristina Sanz Álvarez, Prosecutor for mutual legal assistance matters, Madrid Prosecution Office</li> <li>- Ana Noé Sebastian, Prosecutor for mutual assistance matters, National High Court</li> <li>- Ángel Bodoque Agredano, Prosecutor for mutual assistance matters, Antidrug Prosecution Office</li> <li>- Luis de Arcos Pérez</li> <li>- Pedro Pérez Enciso</li> <li>- Ana Andrés Ballesteros</li> <li>- Miriam Bahamonde Blanco</li> <li>- Antonio Romero Reinares, Head of Area of Extraditions, SG for International Legal Cooperation</li> <li>- Raquel de Miguel, Prosecutor, Technical Secretariat General</li> <li>- Borja Jiménez Muñoz</li> </ul>

13:30-15:00	<b>Almuerzo ofrecido por el Ministerio de Justicia / Lunch offered by the Ministry of Justice</b>	
16:00-17:30	<b>Visita a la Oficina Sirene</b>  Ministerio del Interior  (Avda. Pío XII, 50)  <ul style="list-style-type: none"><li>- Inspector Ángel Luis Benitez Iglesias, Oficina SIRENE, Jefe de Grupo de Entregas</li><li>- Inspectora Rocío Corrochano López, Jefa de grupo Jurídico-Legal</li><li>- Inspectora Alma Herrera Panadés, Delegada del Grupo de Cooperación Policial (LEWP)</li><li>- Manuela Fernández Prado</li><li>- Luis de Arcos Pérez</li><li>- Pedro Pérez Enciso</li><li>- Miriam Bahamonde Blanco</li><li>- Antonio Romero Reinares</li></ul>	<b>Visit to the SIRENE Office</b>  <ul style="list-style-type: none"><li>- Inspector Ángel Luis Benitez Iglesias, SIRENE Office, Head of the Surrender Group</li><li>- Inspector Rocío Corrochano López, Head of the Legal and Judicial Group</li><li>- Inspector Alma Herrera Panadés, Delegate of the Police Cooperation Group (LEWP)</li><li>- Manuela Fernández Prado</li><li>- Luis de Arcos Pérez</li><li>- Pedro Pérez Enciso</li><li>- Miriam Bahamonde Blanco</li><li>- Antonio Romero Reinares</li></ul>
18:00	<b>Reunión Interna del equipo de evaluación / Internal meeting of the evaluation team</b>	
<b>Miércoles, 27 de octubre / Wednesday, 27 October</b>		
9.15-10.00	<b>Reunión con miembros de la subcomisión de Derecho Penitenciario del Consejo General de la Abogacía</b>  Ministerio de Justicia  (C/ San Bernardo, 62, Salón Romano)  <ul style="list-style-type: none"><li>- Cándida Fernández Bravo, diputada de la junta de gobierno del Colegio de Abogados de Alcalá de Henares</li><li>- Julián Cazorla, abogado del Colegio de Abogados de Almería</li></ul>	<b>Meeting with members of the Subcommittee on Prison Law of the General Council of the Bar Association</b>  <ul style="list-style-type: none"><li>- Cándida Fernández Bravo, member of the governing board of the Alcalá de Henares Bar Association</li><li>- Julián Cazorla, Lawyer of the Almería Bar Association</li></ul>



10.00 – 11.30	<p><b>Decisión marco 2002/584/JAI relativa a la orden de detención europea y a los procedimientos de entrega entre Estados miembros ("OED") (Estado de ejecución)</b></p> <p>Ministerio de Justicia</p> <p>(C/ San Bernardo, 62, Salón Romano)</p> <ul style="list-style-type: none"> <li>- Manuela Fernández Prado</li> <li>- Ana María Rubio Encinas, Magistrada de la Sección 3ª de la Sala de lo Penal de la Audiencia Nacional</li> <li>- María Tardón Olmos, Magistrada del Juzgado Central de Instrucción número 3 de la Audiencia Nacional</li> <li>- José Luis Castro de Antonio, Magistrado del Juzgado Central de vigilancia Penitenciaria y de Menores de la Audiencia Nacional</li> <li>- Ana Noé Sebastián</li> <li>- Emilio Miró Rodríguez, Fiscal de la sección de cooperación internacional de la Fiscalía de la Audiencia Nacional</li> <li>- Ángel Bodoque Agredano</li> <li>- Ignacio de Lucas Gálvez, Fiscal de la sección de cooperación internacional de la Fiscalía Antidroga</li> <li>- Luis de Arcos Pérez</li> <li>- Pedro Pérez Enciso</li> <li>- Ana Andrés Ballesteros</li> <li>- Miriam Bahamonde Blanco</li> <li>- Antonio Romero Reinares, Jefe de Área de Extradiciones, SG de Cooperación Jurídica Internacional</li> <li>- Raquel de Miguel</li> <li>- Borja Jiménez Muñoz</li> </ul>	<p><b>Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States ('EAW') (Executing State)</b></p> <ul style="list-style-type: none"> <li>- Manuela Fernández Prado</li> <li>- Ana María Rubio Encinas, Judge of Section 3 of the Criminal Division of the National High Court</li> <li>- María Tardón Olmos, Judge of the Central Examining Court number 3 of the National High Court</li> <li>- José Luis Castro de Antonio, Judge of the Central Court of Penitentiary Surveillance and Minors of the National High Court</li> <li>- Ana Noé Sebastián</li> <li>- Emilio Miró Rodríguez, Prosecutor for mutual legal assistance matters, National High Court</li> <li>- Ángel Bodoque Agredano</li> <li>- Ignacio de Lucas Gálvez, Prosecutor for mutual legal assistance matters, Antidrug Prosecution Office</li> <li>- Luis de Arcos Pérez</li> <li>- Pedro Pérez Enciso</li> <li>- Ana Andrés Ballesteros</li> <li>- Miriam Bahamonde Blanco</li> <li>- Raquel de Miguel</li> <li>- Borja Jiménez Muñoz</li> </ul>
11:30-12:00	<b>Pausa café / Coffee break</b>	
12:00-13:00	<p><b>Decisión Marco 2008/909/JAI relativa a la aplicación del principio de reconocimiento mutuo de sentencias en materia penal por las que se imponen penas de prisión o medidas de privación de libertad a efectos de su cumplimiento en la Unión Europea ("penas de prisión")</b></p> <p>Ministerio de Justicia</p> <p>(C/ San Bernardo, 62, Salón Romano)</p> <ul style="list-style-type: none"> <li>- Manuela Fernández Prado</li> <li>- Ana María Rubio Encinas</li> <li>- María Tardón Olmos</li> <li>- María del Carmen Rodríguez- Medel Nieto, Magistrada del Juzgado de Instrucción número 51 de Madrid</li> </ul>	<p><b>Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union ('custodial sentences')</b></p> <ul style="list-style-type: none"> <li>- Manuela Fernández Prado</li> <li>- Ana María Rubio Encinas</li> <li>- María Tardón Olmos</li> <li>- María del Carmen Rodríguez- Medel Nieto, Judge of the 51st Examining Court of Madrid</li> </ul>

	<ul style="list-style-type: none"> <li>- María Isabel Rodríguez Zulaica, Letrada de la Administración de Justicia del Juzgado Central de lo Penal de la Audiencia Nacional</li> <li>- José Luis Castro de Antonio</li> <li>- Mónica Marcos Almazán, Fiscal delegada de cooperación internacional de la Fiscalía Provincial de Barcelona</li> <li>- María Illán Medina, Fiscal delegada de cooperación internacional de la Fiscalía Provincial de Alicante</li> <li>- Ana Cristina Sanz Álvarez</li> <li>- Ángela Gómez-Rodulfo</li> <li>- Ángel Bodoque Agredano</li> <li>- Luis de Arcos Pérez</li> <li>- Pedro Pérez Enciso</li> <li>- Ana Andrés Ballesteros</li> <li>- Miriam Bahamonde Blanco</li> <li>- Borja Jiménez Muñoz</li> </ul>	<ul style="list-style-type: none"> <li>- María Isabel Rodríguez Zulaica, Judicial Counsellor at the Central Criminal Court of the National High Court</li> <li>- José Luis Castro de Antonio</li> <li>- Mónica Marcos Almazán, Prosecutor for mutual legal assistance matters, Barcelona Prosecution Office</li> <li>- María Illán Medina, Prosecutor for mutual legal assistance, Alicante Prosecution Office</li> <li>- Ana Cristina Sanz Álvarez</li> <li>- Ángela Gómez-Rodulfo</li> <li>- Ángel Bodoque Agredano</li> <li>- Luis de Arcos Pérez</li> <li>- Pedro Pérez Enciso</li> <li>- Ana Andrés Ballesteros</li> <li>- Miriam Bahamonde Blanco</li> <li>- Borja Jiménez Muñoz</li> </ul>
13:30-15:00	<b>Almuerzo ofrecido por el Ministerio de Justicia / Lunch offered by the Ministry of Justice</b>	
16:00-17:30	<p><b>Decisión Marco 2008/947/JAI relativa a la aplicación del principio de reconocimiento mutuo de sentencias y resoluciones de libertad vigilada con miras a la vigilancia de las medidas de libertad vigilada y las penas sustitutivas ("libertad vigilada y medidas alternativas")</b></p> <p><b>Decisión Marco 2009/829/JAI relativa a la aplicación, entre Estados miembros de la Unión Europea, del principio de reconocimiento mutuo a las resoluciones sobre medidas de vigilancia como sustitución de la prisión provisional ("orden europea de vigilancia")</b></p> <ul style="list-style-type: none"> <li>- Manuela Fernández Prado</li> <li>- Ana María Rubio Encinas</li> <li>- María Tardón Olmos</li> <li>- María Isabel Rodríguez Zulaica</li> <li>- Mónica Marcos Almazán</li> <li>- María Illán Medina</li> <li>- Ana Cristina Sanz Álvarez</li> <li>- Ángel Bodoque Agredano</li> <li>- Luis de Arcos Pérez</li> <li>- Pedro Pérez Enciso</li> <li>- Ana Andrés Ballesteros</li> <li>- Miriam Bahamonde Blanco</li> </ul>	<p><b>Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions ('probation and alternative measures')</b></p> <p><b>Framework Decision 2009/829/JHA on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention ('ESO')</b></p> <ul style="list-style-type: none"> <li>- Manuela Fernández Prado</li> <li>- Ana María Rubio Encinas</li> <li>- María Tardón Olmos</li> <li>- María Isabel Rodríguez Zulaica</li> <li>- Mónica Marcos Almazán</li> <li>- María Illán Medina</li> <li>- Ana Cristina Sanz Álvarez</li> <li>- Ángel Bodoque Agredano</li> <li>- Luis de Arcos Pérez</li> <li>- Pedro Pérez Enciso</li> <li>- Ana Andrés Ballesteros</li> <li>- Miriam Bahamonde Blanco</li> </ul>

17:30-18.30	Reunión interna del equipo de evaluación / Internal meeting of the evaluation team	
Jueves, 28 de octubre / Thursday, 28 October		
10:00-12:00	<b>Visita al centro penitenciario Madrid V, Soto del Real</b> <ul style="list-style-type: none"> <li>- Luis Carlos Antón, Director</li> <li>- Marta García, Subdirectora de Tratamiento</li> <li>- Ana Belén Milán, Subdirectora de Seguridad</li> <li>- Luis de Arcos Pérez</li> <li>- Pedro Pérez Enciso</li> <li>- Silvia Villa Albertini</li> <li>- Ana Andrés Ballesteros</li> </ul>	<b>Visit to the Madrid V penitentiary centre, Soto del Real (departure from the hotel)</b> <ul style="list-style-type: none"> <li>- Luis Carlos Antón, Director</li> <li>- Marta García, Deputy Director for Treatment</li> <li>- Ana Belén Milán, Deputy Director for Security</li> <li>- Luis de Arcos Pérez</li> <li>- Pedro Pérez Enciso</li> <li>- Silvia Villa Albertini</li> <li>- Ana Andrés Ballesteros</li> </ul>
13.30-15:00	Almuerzo / Lunch	
15.30-16.30  Ministerio de Justicia  (C/ San Bernardo, 62, Salón Romano)	<b>Formación impartida a los profesionales del Derecho</b> <ul style="list-style-type: none"> <li>- Félix Martín, Director de Formación Fiscal, Centro de Estudios Jurídicos (CEJ)</li> <li>- Isabel Labrador Gimeno, asesora de Letrados de la Administración de Justicia, CEJ</li> <li>- Clara Pascual Castroviejo, Jefa de Área de Formación Internacional, CEJ</li> <li>- María Jesús Millán de las Heras, Letrada, Servicio de Formación Continua, CGPJ</li> <li>- Luis de Arcos Pérez</li> <li>- Pedro Pérez Enciso</li> <li>- Miriam Bahamonde Blanco</li> </ul>	<b>Training provided to legal practitioners</b> <ul style="list-style-type: none"> <li>- Félix Martín, Director of training provided to Prosecutors, Centre for Legal Studies (CEJ)</li> <li>- Isabel Labrador Gimeno, adviser for Judicial Counsellors (Rechtspfleger), CEJ</li> <li>- Clara Pascual Castroviejo, Head of International Training, CEJ</li> <li>- María Jesús Millán de las Heras, Counsel Continuous Training Service, CGPJ</li> <li>- Luis de Arcos Pérez</li> <li>- Pedro Pérez Enciso</li> <li>- Miriam Bahamonde Blanco</li> </ul>
16:30-18.30	Reunión interna del equipo de evaluación / Internal meeting of the evaluation team	

Viernes, 29 de octubre / Friday, 29 October		
9:30-11:30	<b>Sesión de clausura</b> <ul style="list-style-type: none"> <li>- Miriam Bahamonde Blanco</li> <li>- Ana Andrés Ballesteros</li> <li>- Luis de Arcos Pérez</li> <li>- Pedro Pérez Enciso</li> <li>- Borja Jiménez Muñoz</li> </ul>	<b>Wrap up session</b> <ul style="list-style-type: none"> <li>- Miriam Bahamonde Blanco</li> <li>- Ana Andrés Ballesteros</li> <li>- Luis de Arcos Pérez</li> <li>- Pedro Pérez Enciso</li> <li>- Borja Jiménez Muñoz</li> </ul>
Ministerio de Justicia  (C/ San Bernardo, 62,  Salón Romano)		

## ANNEX C: PERSONS INTERVIEWED/MET

### Meetings on 26 October 2021

*Venue: Ministry of Justice*

Person interviewed/met	Organisation represented
Miriam Bahamonde Blanco	Ministry of Justice
Silvia Villa Albertini	Ministry of Justice
Ana Andrés Ballesteros	Ministry of Justice
Luis de Arcos Pérez	General Council for the Judiciary
Pedro Pérez Enciso	Prosecutor General's Office
Borja Jiménez Muñoz	Prosecutor General's Office
Manuela Fernández Prado	National High Court
Joaquín Elías Gadea Francés	National High Court
Ana Cristina Sanz Álvarez,	Madrid Prosecution Office
Ana Noé Sebastian,	National High Court
Ángel Bodoque Agredano	Antidrug Prosecution Office
Antonio Romero Reinares	Ministry of Justice
Raquel de Miguel	Ministry of Justice

*Venue: Ministry of the Interior*

Person interviewed/met	Organisation represented
Ángel Luis Benítez Iglesias	Ministry of the Interior
Inspectora Rocío Corrochano López	Ministry of the Interior
Inspectora Alma Herrera Panadés	Ministry of the Interior

## Meetings on 27 October 2021

*Venue: Ministry of Justice*

Person interviewed/met	Organisation represented
Cándida Fernández Bravo	Alcalá de Henares Bar Association
Julián Cazorla	Lawyer of the Almería Bar Association
Ana María Rubio Encinas	National High Court
María Tardón Olmos	National High Court
Emilio Miró Rodríguez	National High Court
Ángel Bodoque Agredano	Antidrug Prosecution Office
Luis de Arcos Pérez	General Council for the Judiciary
Pedro Pérez Enciso	Prosecutor General's Office
Silvia Villa Albertini	Ministry of Justice
Antonio Romero Reinares	Ministry of Justice
Miriam Bahamonde Blanco	Ministry of Justice
Raquel de Miguel	Ministry of Justice
María del Carmen Rodríguez- Medel Nieto	51st Examining Court of Madrid
María Isabel Rodríguez Zulaica	National High Court
Mónica Marcos Almazán	Barcelona Prosecution Office
María Illán Medina	Alicante Prosecution Office

Meetings on 28 October 2021

*Venue: Penitentiary center Madrid V*

Person interviewed/met	Organisation represented
Luis Carlos Antón	
Marta García,	
Ana Belén Milán	

*Venue: Ministry of Justice*

Person interviewed/met	Organisation represented
Félix Martín	Center for Legal Studies (CEJ)
Isabel Labrador Gimeno	Center for Legal Studies (CEJ)
Clara Pascual Castroviejo	Center for Legal Studies (CEJ)
María Jesús Millán de las Heras	General Council of the Judiciary
Luis de Arcos Pérez	General Council of the Judiciary
Pedro Pérez Enciso	Prosecutor General's Office
Miriam Bahamonde Blanco	Ministry of Justice

*Venue:*

Person interviewed/met	Organisation represented

## Meetings on

*Venue:*

Person interviewed/met	Organisation represented



## ANNEX D: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

<b>LIST OF ACRONYMS, ABBREVIATIONS AND TERMS</b>	<b>FULL WORDING (IN ENGLISH )</b>
EU	EUROPEAN UNION
FD	FRAMEWORK DECISION
EAW	EUROPEAN ARREST WARRANT
CJEU	COURT OF JUSTICE OF THE EUROPEAN UNION
EJN	EUROPEAN JUDICIAL NETWORK
EJTN	EUROPEAN JUDICIAL TRAINING NETWORK
LOPJ	ORGANIC LAW 6/1985 OF THE JUDICIARY
LMR	ORGANIC LAW 23/2014 OF 20 NOVEMBER 2014 ON THE MUTUAL RECOGNITION OF JUDICIAL DECISIONS IN CRIMINAL MATTERS IN THE EUROPEAN UNION
CGPJ	GENERAL COUNCIL FOR THE JUDICIARY
SPS	STATE PROSECUTION SERVICE
AIAMP	IBERO-AMERICAN ASSOCIATION OF PUBLIC PROSECUTORS
IBERRED	IBERO-AMERICAN NETWORK OF INTERNATIONAL LEGAL COOPERATION
SIRAJ	SYSTEM OF ADMINISTRATIVE REGISTERS TO SUPPORT THE ADMINISTRATION OF JUSTICE
REJUE	SPANISH NETWORK OF EXPERTS IN INTERNATIONAL JUDICIAL COOPERATION
REDUE	NETWORK OF SPECIALISTS IN EU LAW
CEJ	CENTRE FOR JUDICIAL STUDIES
ECHR	EUROPEAN COURT FOR HUMAN RIGHTS
ERA	ACADEMY OF EUROPEAN LAW