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**NOTE**

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From: Mr Alfonso Dastis, Ambassador and Permanent Representative,  
Permanent Representation of Spain to the European Union

On: 19 March 2015

To: Mr Rafael Fernández-Pita y González, Director-General, Council of the  
European Union

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Subject: Notifications made by Spain in relation to various Framework Decisions

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Dear Sir,

In accordance with the request made by the Ministry of Justice of the Kingdom of Spain, and as a result of the adoption of Organic Law 23/2014 of 20 November on the Mutual Recognition of Judicial Decisions in Criminal Matters in the European Union, published in Official State Gazette No 282 of 21 November 2014, Spain wishes to make the accompanying statements in relation to the following legal acts of the Union:

*Framework Decision 2002/584/JHA, Framework Decision 2008/909/JHA, Framework Decision 2008/947/JHA, Framework Decision 2009/829/JHA, Directive 2011/99/JHA, Framework Decision 2003/577/JHA, Framework Decision 2006/783/JHA, Framework Decision 2005/214/JHA, Framework Decision 2008/978/JHA, Framework Decision 2009/299/JHA.*

(Complimentary close)

(s.) Alfonso Dastis

STATEMENTS TO BE MADE BY THE SPANISH STATE AS A RESULT OF THE ADOPTION OF LAW 23/2014 OF 20 NOVEMBER ON THE MUTUAL RECOGNITION OF DECISIONS IN CRIMINAL MATTERS IN THE EUROPEAN UNION.

**I. Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States**

- In accordance with Article 34(2) of the Framework Decision, we hereby inform you that these obligations have been implemented under Title II of Law 23/2014.
- Article 6(3) of the Framework Decision requires Member States to inform the General Secretariat of the Council of the judicial authority which is competent to issue a European arrest warrant. This provision has been enacted by Article 35 of Law 23/2014, which designates the Judge or Court that presided over the case as competent to issue a European arrest warrant, to the extent that this type of order is appropriate, and the Central Examining Magistrate of the National High Court as competent to enforce a European arrest warrant. Where the warrant relates to a minor, the Central Juvenile Court Judge will be competent.
- Article 7(1) of the Framework Decision allows a central authority to be designated. Article 6(3) of Law 23/2014 provides that the Ministry of Justice will be the central authority, although it only carries out the functions described in Article 7(1) (including the statistics function) and not those described in Article 7(2).
- Article 25(2) of the Framework Decision requires Member States to notify the General Secretariat of the Council of the designation of the authority responsible for receiving transit requests. Accordingly, Article 27 of the Law designates the Ministry of Justice as competent to authorise the transit through Spanish territory of a person who is being transferred.

## **II. Council Framework Decision 2008/909/JHA of 27 November 2008 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**

- In accordance with Article 29(2) of the Framework Decision, we hereby inform you that these obligations have been implemented under Title III of Law 23/2014.
- Article 2(1) of the Framework Decision requires Member States to inform the General Secretariat of the Council of the authority which is competent according to the Framework Decision. Article 64 of Law 23/2014 provides that, in this area, the Judges responsible for the execution of sentences are competent to forward rulings which impose a sentence or custodial measure; where measures imposed in accordance with the Organic Law on Criminal Responsibility of Children are concerned, the Judges for Children are competent. In the event that the sentence to be served has not begun, the competent authority will be the Court that handed down the sentence at first instance. Furthermore, the Central Criminal Court will be competent to recognise and order the enforcement of rulings which impose a sentence or custodial measure. Finally, the Central Judges responsible for the execution of sentences will be competent to carry out the enforcement of the aforementioned rulings. The Central Juvenile Court Judge will be competent in relation to rulings involving the secure detention of a minor.
- In accordance with Article 23(3) of the Framework Decision, Spain informs the General Secretariat of the Council that Article 17 of Law 23/2014 provides that it will not be obligatory for the ruling on which the certificate is based to be received in a Spanish translation, without prejudice to the judicial authority's option to request its translation where it considers this essential to enforce the ruling.

### **III. Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions**

- In accordance with Article 25(2) of the Framework Decision, we hereby inform you that these obligations have been implemented under Title IV of Law 23/2014.
- Article 3 (1) imposes a duty on Member States to notify the General Secretariat of the Council of which authorities are competent to act according to the Framework Decision. Therefore, Article 95 of Law 23/2014 designates the Judge or Court that presided over the enforcement of a judgment or probation decision as competent to issue the probation decision. Furthermore, the Central Criminal Court is the authority that is competent to recognise and order the enforcement of a probation decision forwarded by the competent authority of another European Union Member State. Where the probation decision forwarded relates to a minor, the Central Juvenile Court Judge will be competent.
- Article 5(4) of the Framework Decision requires Member States to declare to the General Secretariat of the Council the conditions in which its competent authorities, upon request of the sentenced person, may consent to the forwarding to another Member State (other than the Member State in which the sentenced person is ordinarily residing) of a judgment and, where applicable, 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 only give its consent if the conditions contained in Article 101(2)(b) are fulfilled. This provision for its part 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, 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) of the Framework Decision allows Member States to give notification as to the conditions under which it 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) of Law 23/2014, Spain declares that the issuing authority, rather than the Spanish Court responsible for enforcement, will be competent to make subsequent decisions in relation to the three scenarios set out in Article 14(3) of the Framework Decision.

#### **IV. Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention**

- In accordance with Article 27(2) of the Framework Decision, we inform you that these obligations have been implemented under Title V of Law 23/2014.
- In compliance with the obligation to give notification of the competent authorities according to the Framework Decision, provided for in Article 6(1) thereof, we hereby inform you that, on the basis of Article 111 of Law 23/2014, the authorities competent to issue a ruling on alternative measures to provisional detention are the Judges or Courts that issued the decision to grant bail to the person concerned during criminal proceedings. On the other hand, the authorities that are 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 their established residence, according to the type of offence for which those authorities have jurisdiction. Pursuant to Article 7(3) of the Framework Decision and in accordance with Article 6(3) of Law 23/2014, the Ministry of Justice will be the central authority for the purposes of Article 7(1) of the Framework Decision.
- Article 8(2) of the Framework Decision obliges Member States to give notification of additional supervision measures they are prepared to monitor. We inform you that, in accordance with Article 110 of Law 23/2014, we are prepared to assume the following additional supervision obligations:

- (a) Disqualification from involvement in specified professions or activities linked to the offence allegedly committed.
  - (b) Obligation not to drive motor vehicles.
  - (c) Obligation to deposit a sum of money or to give another type of guarantee, either through specific instalments or entirely at once.
  - (d) Obligation to undergo drug treatment or treatment for addiction.
  - (e) Prohibition on owning and carrying arms or other specific objects in relation with the offence prosecuted.
- Article 9(4) of the Framework Decision 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 is ordinarily residing) 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 in which 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.
  - By virtue of Article 21(3) of the Framework Decision, Spain hereby gives notification that Article 2(1) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States will apply.

## **V. Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order**

- In accordance with the provisions of Article 21 (1) and (2) of the Directive, we hereby inform you that this Directive has been implemented under Title VI of Law 23/2014.
- In accordance with the requirements of Article 3(1) of the Directive, we hereby inform you that, for the purposes of the Directive, the authorities competent to issue and forward a European protection order will be the Judges or Courts presiding over the criminal proceedings in which the decision adopting the protection measure was issued. In addition, the authorities competent to recognise and execute the European protection order are the Examining Magistrates or the Judges for Violence Against Women for the place in which the victim resides or intends to reside, without prejudice to the provisions of Article 4. However, where decisions on probation or alternative measures to provisional detention have been issued, the same Judge or Court that has already recognised and executed those decisions will be competent to recognise and execute the European protection order.
- Pursuant to Article 4(3) of the Directive and in accordance with Article 6(3) of Law 23/2014, the Ministry of Justice will be the central authority for the purposes of Article 4(1) of the Directive.

## **VI. Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence**

- In accordance with Article 14(2) of the Framework Decision, we hereby inform you that these obligations have been implemented under Title VII of Law 23/2014.

## **VII. Council Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders**

- In accordance with Article 22(2) of the Framework Decision, we hereby inform you that these obligations have been implemented under Title VIII of Law 23/2014.
- Article 3(1) of the Framework Decision requires Member States to inform the GSC which authority is competent for the purposes of the Framework Decision. Under Article 158 of Law 23/2014, the authorities responsible for issuing a confiscation order are the Criminal Courts or Judges presiding over the enforcement of sentences where the confiscation of property is imposed as an additional consequence. The authority competent to recognise and execute the confiscation order is the Criminal Court for the place in which any of the property to be confiscated is located. Should the location of the property change, it will not result in loss of jurisdiction for the Criminal Court which ordered the recognition and execution of the confiscation order sent to Spain. If the certificate has been issued in respect of several items of property located in different districts, the Criminal Court which first received it and in whose district at least one of those items of property is located will be competent to preside over the confiscation of the rest. If the issuing authority does not know where the item to be confiscated is located but the certificate does indicate the place of residence or registered office of the person in respect of whom the decision has been issued, the Criminal Court for that place will be competent, even if it is later found that the property is located in a different district or that the person has moved. If a single certificate has been issued in respect of several people residing in several different places within Spanish territory, the Criminal Court which first received it and in whose district at least one of those residences or registered offices is located will be competent to preside over the confiscation ordered in respect of the rest of the people mentioned on the certificate.
- In accordance with Article 7(5) of the Framework Decision and Article 170(1)(b) of Law 23/2014, the competent Criminal Court will refuse to recognise and execute a confiscation order issued under the extended powers of confiscation referred to in Article 2(d)(iv) of the Framework Decision when it considers that order to be incompatible with the fundamental rights and freedoms recognised in the Spanish Constitution.



### **VIII. Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties**

- In accordance with Article 20(5) of the Framework Decision, we hereby inform you that these obligations have been implemented under Title IX of Law 23/2014.
- In accordance with Article 2(1) of the Framework Decision, we hereby inform you that, pursuant to Article 174 of Law 23/2014, the authority competent to issue a decision requiring a financial penalty to be paid by a natural or legal person who possesses property or receives income in another Member State of the European Union will be the criminal court competent to execute it in Spain.

The authority competent to recognise and execute the decision requiring a financial penalty to be paid is:

- (a) Primarily, the Criminal Court for the place in which the sentenced person is resident or, in the case of legal persons, in which their registered office is located.
- (b) Alternatively, the Criminal Court for the place in which any of the immovable property belonging to the natural or legal person subject to the financial penalty is located.
- (c) Finally, the Criminal Court for the place in which any of the sentenced person's sources of income are located in Spain.

Should any of these circumstances change as a result of a change in the sentenced person's residence or registered office, the sale of the immovable property or a change in the sentenced person's sources of income, it will not result in loss of jurisdiction for the Criminal Court which ordered the recognition and execution of the decision requiring a financial penalty to be paid that was sent to Spain.

In the event that a single certificate refers to several people and one of those persons meets one of the criteria laid down in this section, the competent Criminal Court will be able to assume responsibility for execution of the decision in respect of all of the sentenced persons, without the need to split a single decision requiring a penalty to be paid between a number of persons.

- Pursuant to Article 2(2) of the Framework Decision and in accordance with Article 6(3) of Law 23/2014, the Ministry of Justice will be the central authority responsible for assisting the judicial authorities.

### **IX. Council Framework Decision 2008/978/JHA of 18 December 2008 on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters**

- In accordance with Article 23(2) of the Framework Decision, we hereby inform you that these obligations have been implemented under Title X of Law 23/2014.
- In accordance with Article 3 of the Framework Decision, Article 188 of Law 23/2014 provides that in Spain, the authorities responsible for issuing European evidence warrants are the Judges or Courts presiding over the proceedings that require the document, object or data to be obtained, as well as the Public Prosecutors conducting the investigation proceedings in which the warrant is to be used.

The Prosecution Service is also an authority competent to recognise and execute European evidence warrants, provided it can obtain the objects, documents or data without adopting measures that restrict fundamental rights.

Otherwise, when the Prosecution Service considers that it must refuse to recognise or execute the warrant, the competent authority will be the Examining Magistrate for the place in which any of the objects, documents or data that the warrant is intended to obtain are located.

Should the location of the objects, documents or data change, it will not result in loss of jurisdiction for the Prosecution Service or the Examining Magistrate that ordered the recognition and execution of the European evidence warrant sent to Spain.

If the certificate has been issued in respect of several objects, documents or data located in different districts, the Public Prosecutor or, where appropriate, the Examining Magistrate who first received it and in whose district at least one of those objects, documents or data is located will be competent to preside over the acquisition of the rest.

- Pursuant to Article 8(2) of the Framework Decision and in accordance with Article 6(3) of Law 23/2014, the Ministry of Justice will be the central authority responsible for assisting the judicial authorities.
- Article 23(3) of the Framework Decision requires Member States to make a declaration if the grounds for refusing to recognise or execute the warrant laid down in Article 13(1)(f) of the Framework Decision are to be transposed into their national law. We therefore declare that both grounds have been transposed into Spanish law by means of Articles 32(3) and 198(1)(d) of Law 23/2014.

**X. Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial**

- In accordance with Article 8(6) of the Framework Decision, we hereby inform you that these obligations have been implemented under Articles 33 and 49 of Law 23/2014.

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