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NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	8138/15 COPEN 93 EUROJUST 76 EJN 33
Subject:	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 - Notification made by Spain

Delegations will find attached the notification made by Spain in relation to 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.

This notification is also included in doc 8138/15, comprising several notifications by Spain, but is distributed in this individual format at the request and for the convenience of delegations.

Notification made by Spain

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.
