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Subject: **9TH ROUND OF MUTUAL EVALUATION ON MUTUAL RECOGNITION  
LEGAL INSTRUMENTS IN THE FIELD OF DEPRIVATION OR  
RESTRICTION OF LIBERTY -  
REPORT ON PORTUGAL**

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

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

**REPORT ON PORTUGAL**

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## 1. EXECUTIVE SUMMARY

The evaluation visit to Portugal was very well prepared and organised by the Portuguese authorities and took place mostly in Lisbon, though it also included a one-day visit to Coimbra. The evaluation team was able to meet 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.

The evaluation team particularly appreciated the spirit of kindness, openness and cooperation that characterised the meetings with the Portuguese authorities.

During the visit, the presentations given by the various authorities responsible for applying the above-mentioned mutual recognition instruments showed a serious commitment to implementing those instruments as effectively as possible. The evaluation team was also very pleased to note that the Portuguese authorities viewed the evaluation process as a useful opportunity to reflect on the strengths and weaknesses of their system, so as to consider possible improvements where necessary.

They provided relevant national legislation on the transposition of the legal instruments in question. The information they provided on the application of the four framework decisions covered by the 9<sup>th</sup> evaluation round was precise and comprehensive. This gave rise to in-depth discussions on highly-specialised aspects of a technical legal nature, an account of which is given in this report.

The evaluation team finds that coordination and cooperation between practitioners in the area covered by this evaluation is functioning well in Portugal and considers the national network of magistrates - judges and public prosecutors - involved in international judicial cooperation, which holds regular meetings, to be a good practice that can be followed by other Member States.

The current national legislation allows prosecutors to issue EAWs, which is not in compliance with the jurisprudence of the CJEU, since prosecutors' decisions are not subject to appeal. Though in practice a solution has been found by asking judges to issue EAWs prepared by prosecutors, in the opinion of the evaluation team it would be preferable to reflect this practice in legislation.

Based on the information provided by the Portuguese authorities met by the evaluation team during the evaluation visit, issues concerning the potential risk of violation of fundamental rights in relation to detention conditions have so far never been raised in Portuguese courts during EAW proceedings, probably because the Portuguese authorities usually assess potential risks of violation of fundamental rights in relation to detention where the issue is raised by the defence. The evaluation team considers, in the light of the case-law of CJEU, that the Portuguese authorities should perform such assessments more proactively.

The Portuguese authorities pay due attention to the principle of proportionality in the context of EAW proceedings; as a national warrant needs to be issued before the issuing of an EAW and only where provisional arrest is admissible, this guarantees that an EAW is not issued for minor crimes.

Trials '*in absentia*' are allowed in Portugal, however a retrial, which was previously possible under the Portuguese system, is no longer allowed; however, according to the Portuguese authorities, this possibility could easily be re-introduced in the relevant legislation, in line with the CJEU case-law.

As regards trials '*in absentia*', the Portuguese authorities face some challenges due to their requirement for a statement of identity and residence (*termo de identidade e residência*, TIR), since other Member States' authorities are not aware that this must be signed by the defendant.

The Portuguese authorities encounter some difficulties due to the insufficient information in box (d) 4 of the EAW form received from the issuing authorities regarding trials in absentia and as regards the links between FD 2002/584/JHA and FD 2008/909/JHA (Article 4(6) of the EAW FD), which require the requesting of supplementary information pursuant to Article 15(2) of the EAW FD.

In cases referred to in Article 4(6) of 2002/584/JHA and in those referred to in Article 5(3) of FD 2002/584/JHA, the Portuguese judicial authorities issue or require a certificate under FD 2008/909/JHA. However, as the whereabouts of the convicted persons is not known, in most cases the Portuguese authorities issue an EAW.

In Portugal, proceedings under FD 2008/909/JHA to request the recognition of a judgment and the enforcement of a sentence by another Member State, are usually not initiated by the Portuguese authorities, but start only at the request of the sentenced person. The evaluation team considers that in order to respect the spirit of this framework decision in certain cases where it can be beneficial to the sentenced person with a view to his/her social rehabilitation, the Portuguese authorities should also start such proceedings ‘ex officio’.

As regards FD 2008/947/JHA, the Portuguese authorities suggest, and the evaluation team agree, that contacts between the probation services of all Member States should be enhanced at EU level.



Some common issues arising in the practical application of framework decisions 2002/584/JHA, 2008/909/JHA, 2008/947/JHA and 2009/829/JHA have been highlighted by the Portuguese authorities. One issue underlined by many members of the Portuguese judiciary when meeting the evaluation team concerns difficulties in identifying the competent authorities to contact and consult, when necessary during the procedures, in particular under FD 2008/909/JHA. As a result, there is a frequent need to request use of the tools and assistance provided by the European Judicial Network which are considered very useful by the practitioners. It was also stressed that linguistic barriers can be an obstacle to efficient direct contacts; since direct contacts are a core element of mutual recognition the evaluation team considers that the Portuguese authorities should look at measures to overcome such difficulties.

A further common issue identified by the evaluation team related to all the above-mentioned framework decisions is the lack of statistical data about outgoing and incoming requests collected at central level. A project is however on-going regarding the EAW, that the Portuguese authorities could consider, with appropriate adaptations if necessary, as a starting point to centralise the collection of statistics concerning the other mutual recognition instruments covered by this evaluation.

Another issue common to three of the framework decisions subject to the evaluation - 2008/909/JHA, 2008/947/JHA and 2009/829/JHA - is the lack of regular and systematic training on those FDs for all judicial actors involved in their application. The evaluation team considers that such training should be organised both at national and at EU level.

In Portugal, lawyers are appointed automatically using a digital platform run by the Ministry of Justice in cooperation with the Bar Association and are not specialised in a specific area of law. One concern that the evaluation team also wishes to underline is that lawyers in Portugal are often not aware about the EU legislation on mutual recognition and the related case/law of the CJEU. There are no related training measures or material available to them. It is therefore important that appropriate measures are taken in Portugal for ensuring the competence and knowledge of lawyers in this area, including consideration of the possible development of targeted training for them organised by the Centre for Judicial Studies.

Apart from the above considerations, the evaluation team was impressed by the good training activities organised in Portugal for magistrates - judges and prosecutors - and especially by the on-line training opportunities offered to them. However, the evaluation team strongly recommends that the Portuguese authorities offer some of these training activities systematically, in particular those related to framework decisions 2008/909/JHA, 2008/947/JHA and 2009/829/JHA, whilst including, in relation to the EAW, specific training on the CJEU case-law on fundamental rights in relation to detention conditions.

In addition, guidelines on several topics concerning the application of the EU mutual recognition instruments covered by this evaluation are distributed to practitioners by the Prosecutor General's Office, including: a National Handbook on procedures for issuing the European arrest warrant, a Guide on mutual legal assistance in criminal matters, new guidelines on human rights and international cooperation and a Handbook on the transfer of sentenced persons in the CPLP area. The evaluation team underlines that this is a good practice that could be followed by other Member States.

The Portuguese authorities have developed and use an electronic case file system, which includes all the documents and communication related to a case. All stakeholders including lawyers have access to this system, which is considered by the evaluation team to be a best practice, as it contributes to facilitating and speeding up the procedures.

The evaluation team was informed that Portuguese judges do not assess potential risks of violation of fundamental rights in relation to detention conditions in EAW proceedings, unless somebody raises the issue. This appears not to be in line with the relevant CJEU case-law and, in the opinion of the evaluation team, requires a change of the current practice towards a more proactive attitude in this respect.

Up to the time of the evaluation, FD 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions and FD 2009/829/JHA on the European Supervision Order, had had a very limited application in Portugal compared to that of FD 2002/584/JHA and FD 2008/909/JHA. As reasons for this, with regard to FD 2008/947/JHA, the Portuguese authorities cited the lengthy and complex procedure it involves and their preference to keep monitoring the execution of the penalties/measures they impose themselves. As regards FD 2009/829/JHA, the main reasons for its scarce use cited by the Portuguese authorities are the low number of cases where it would be useful and the complexity of the form.

There is a lack of awareness, experience and training in relation to both framework decisions. This is common to several Member States and indicates that initiatives are needed at both national and at EU level to promote knowledge and use of these FDs.

In general terms, the evaluation team found that Portugal has coped relatively well with the challenges arising from the complex legal instruments that are the subject of this evaluation round and has also developed some good practices which can be shared with the other EU Member States, as listed under point 9.3. However, further efforts, including the legislative changes mentioned above and some measures referred to in the recommendations under point 9.2.1, would help to further improve the Portuguese system and ensure a better functioning of the principles of mutual recognition and mutual trust – the cornerstones 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 had been 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 FD'),
- 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 FD').

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 the 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/JHA on the European Supervision Order ('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, through 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 between Member States, thus contributing towards 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 to its full potential could make a significant contribution towards enhancing mutual trust among the Member States' judicial authorities and ensuring a better functioning of crossborder 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.

Portugal was the 14<sup>th</sup> Member State to be evaluated during this round of evaluations, due to the postponement of the dates of the visit, as provided for in the order of visits to the Member States adopted by CATS on 13 May 2019 and subsequently amended at the request of certain Member States and in the absence of any objections (ST 9278/19 REV 2), owing to the pandemic.

In accordance with Article 3 of the Joint Action, the Presidency has drawn up a list of experts in 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 Portugal were Mr Peter Gehring (Germany), Ms Carmen Rodriguez-Medel Nieto (Spain), and Ms Piret Paukstys (Estonia). Observers were also present: Mr Erik Fagelsbo (Eurojust), and Ms Giovanna Giglio from the General Secretariat of the Council.

This report was prepared by the team of experts with assistance from the General Secretariat of the Council, based on findings arising from the evaluation visit that took place in Portugal between 27 September and 1 October 2021, and on Portugal'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)**

Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, and its amending acts, were transposed into the Portuguese legal system by Law 65/2003 of 23 August 2003, subsequently amended by Law No. 35/2015 of 4 May 2015 and Law No. 115/2019 of 12 September 2019.

#### 3.1. **Authorities with competence for the European arrest warrant (EAW)**

##### **Public Prosecution Service (PGR)**

The Public Prosecution Service is a constitutional body entrusted with powers to prosecute, to participate in the implementation of the criminal policy defined by the sovereign entities, to represent the State and to defend the democratic legality and the interests laid down by the law [Article 219(1) of the Constitution of the Portuguese Republic (*‘CRP’*)].

The Public Prosecution Service (*‘PGR’*) has its own statute and is considered an autonomous magistracy from a procedural standpoint. Although the PGR is granted competencies other than jurisdictional competencies or that go beyond those attributed to the courts, it belongs to the judiciary and participates autonomously in the administration of justice.

In the Portuguese system, the Public Prosecutor’s Office is the competent judicial authority in the investigative phase of criminal proceedings (*‘inquérito’*), and it is competent to prosecute based on the principle of legality, as well as to defend the democratic legality. The responsibility for the execution of the sentence also lies with the prosecutor.

There is a Public Prosecutor’s representation in all the criminal courts (the County courts, the appeal courts and the Supreme Court of Justice).

The Public Prosecutor's Office is an integral part of the judiciary, it is autonomous and characterised by its broad powers of initiative.

The Public Prosecutor's Office covers 3 main levels: the General Prosecutor's Office (national competence), the Regional Prosecutor's Offices (regional competence, in the areas of Porto, Coimbra, Lisbon and Évora) and the District Prosecutor's Offices (local competence, one for each of the 23 districts/counties). The Office of the Prosecutor General is the highest body of the Public Prosecutor's Office and is headed and directed by the Prosecutor General.

### **Judicial courts**

The judicial courts comprise three levels or instances: the courts of first instance, which are generally the county courts; the courts of second instance, which are the courts of appeal; and the Supreme Court of Justice.

### **First instance courts**

Usually a court case is initiated in the courts of first instance. The court responsible for the first instance is usually the district court. The geographical area under the jurisdiction of a court is called a district. Courts of extended territorial jurisdiction, which cover more than one county, may also be of first instance.

The Judicial Map encompasses 23 counties<sup>1</sup>. They correspond to the main courts whose seat conforms to the current administrative districts, except for Lisbon and Porto which are divided into three and two counties respectively. Each of the 23 counties is sub-divided into central and local instances.

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<sup>1</sup> *Açores; Aveiro; Beja; Braga; Bragança; Castelo Branco; Coimbra; Évora; Faro; Guarda; Leiria; Lisboa; Lisboa Norte; Lisboa Oeste; Madeira; Portalegre; Porto; Porto Este; Santarém; Setúbal; Viana do Castelo; Vila Real and Viseu.*



In short, the central instances have jurisdiction over the whole geographic area that corresponds to the county and are divided into civil and criminal sections. The latter prepare and hear proceedings of a criminal nature that fall within the competence of a three Judge Panel Court or of a jury. There are also sections with specialised jurisdiction, including the criminal instruction sections.

In turn, the local instances, which deal with and decide on matters other than those allocated to the central instance, include sections dealing with civil, criminal and small crime cases, as well as proximity sections.

### **Courts of Appeal**

The courts of appeal are usually courts of second instance. The appeal must be lodged with the court which is hierarchically subordinate to the court appealed against.

The courts of appeal have civil, criminal and social (labour) sections. There are currently five courts of appeal: Lisbon; Porto; Évora; Coimbra “and Guimarães. Their territorial jurisdiction covers clusters of counties.

### **Supreme Court of Justice**

The Supreme Court of Justice (‘*STJ*’) is the highest body in the hierarchy of the courts of law, without prejudice to the specific competence of the Constitutional Court [article 210 of the CRP and Article 31 of Law No. 62/2013 of 26 August 2013 on the organisation of the judicial system].

The Supreme Court of Justice sits in Lisbon and has nation-wide jurisdiction.

It is composed of sections dealing with civil, criminal and social matters, as well as one section for trials of appeals lodged against decisions taken by the High Council of the Judiciary [articles 45, 43(1) and 47(1), (2) of Law No. 62/2013 of 26 August 2013].

## **Constitutional Court**

It is specifically incumbent on the Constitutional Court ('TC') to administer justice on matters of a constitutional-law nature. The TC assesses unconstitutionality and illegality pursuant to articles 277 and 283 of the CRP and to its organic law, i.e. Law No. 28/82 of 15 November 1982 (articles 221 and 223 of the CRP; Article 30 of Law N° 62/2013 of 26 August 2013).

With its seat in Lisbon, the TC exercises its jurisdiction over the entire Portuguese legal system, and compliance with its decisions is compulsory for all public and private entities. The TC decisions prevail over those taken by other courts or by any other authority (articles 1 and 2 of Law No. 28/82 of 15 November 1982).

## **Central authorities**

The Portuguese central authority in EAW proceedings is the Prosecutor-General's Office, whose Department for International Cooperation is headed by a Deputy General Prosecutor, who is also a contact point of the EJP and the national correspondent for Eurojust. It is not, therefore, a typical administrative central authority. Under Article 9 of Law 65/2003, as amended by laws 35/2015 and 115/2019, 'the Prosecutor-General's Office' ('*Procuradoria-Geral da República*') is 'the designated Central Authority for the purpose of assisting competent judicial authorities and further purposes of the present law'. Accordingly, as the central authority, it does not intervene in specific cases, but rather provides broad support, responding to requests for assistance from the competent authorities, whether issuing or executing authorities.

The central authority provides a 24/7 helpline for judicial authorities, responds to emails and letters sent by judicial authorities, has a section dedicated to the EAW on the Prosecutor-General's Office portal and has a FAQs section in the intranet section specifically for prosecutors (known as the '*SIMP*'). Quite recently, taking into account the need for specific training on the CJEU's case law, some specific guidelines ('*fichas*') have been developed by the Prosecutor-General's Office.

Since the fourth round of mutual evaluations, the role of the central authority has decreased, for various reasons, including the fact that the first version of the abovementioned law included a specific role for the central authority (for instance, requests to waive the protection provided by the rule of specialty had to be presented by the central authority, as did requests for information on the sentence served, etc.).

Following the introduction of Law 35/2015, these competencies now lie with the judicial authorities.

### **Judicial Cooperation and International Relations Department (DCJRI)**

The Judicial Cooperation and International Relations Department (*‘DCJRI’*) operates under the Office of the Prosecutor General and is responsible for ensuring international judicial cooperation and for supporting the Office of the Attorney General on international relations. The DCJRI acts as the central authority in matters of international judicial cooperation in criminal matters; these functions are attributed to the Office of the Prosecutor General by Article 21, paragraph 1 of the International Judicial Cooperation in Criminal Matters Act (Law 144/99 of 31 August 1999).

More specifically, the DCJRI is responsible for: carrying out the administrative phase of these cases; ensuring the functions of national correspondent for Eurojust and point of contact for the European Judicial Network in criminal matters and other judicial cooperation networks; supporting public prosecutors with the preparation and execution of requests for international judicial cooperation; coordinating and animating the national network of magistrates involved in international judicial cooperation, and collecting and processing information on the application of international and EU legal instruments in this field.

The DCJRI also provides legal support, collects, processes and disseminates legal information and carries out studies, particularly in the fields of European Union law, foreign law, international law and human rights. It has a translation service that supports the activity of the Public Prosecutor's Office, in particular within the scope of international judicial cooperation procedures in criminal matters and the representation of the Portuguese State before the European Court of Human Rights. It also provides information on the Portuguese law applicable in a given criminal procedure when requested by a foreign judicial authority, or on foreign law at the request of a Portuguese judicial authority.

It provides information on applicable international instruments and Portuguese legislation, and on the bodies that facilitate international judicial cooperation in criminal matters, as well as specific information on each form of cooperation - both traditional types (extradition, mutual legal assistance and transfer of sentenced persons) and those more typical of the EU level (the European arrest warrant and mutual recognition and cooperation between asset recovery offices). A specific section of the DCJRI provides information on the legal framework in relation to comparative law and facilitates mechanisms for cooperation in civil and commercial matters.

### **Departments competent in the investigative phase**

In the area of criminal jurisdiction, there are three main departments involved in the investigative phase of criminal proceedings: at national level, the Central Department of Criminal Investigation and Prosecution ('*DCIAP*') has competence for investigations and prosecution of serious, organised, economic and financial crimes; at regional level, the regional departments of Criminal Investigation and Prosecution ('*DIAPs*') of Porto, Coimbra, Lisbon and Évora have the same competence as the DCIAP, but at regional level; and the DIAPs at district/county level have competence for all crimes and are divided into 'generic' and specialised sections.

## **Directorate-General for Reinsertion and Prison Services (DGRSP)**

The Directorate-General for Reintegration and Prison Services (*'DGRSP'*) is the body responsible for crime prevention, execution of sentences, social reintegration and management of the educational and prison systems.

The DGRSP has organic units whose attributions are focused on execution of sentences and measures, and on criminal and educational tutelage. These units are both central and decentralised services, which consist of prison establishments, regional reintegration delegations - which include social reintegration teams - electronic surveillance teams and education centres.

The DGRSP's operational activity is carried out by the organic units, which handle the execution of sentences and measures depriving freedom or requiring community service, either directly (prisons, social reintegration and electronic surveillance teams, educational centres) or indirectly (technical support for operational activities, coordination functions, design, monitoring and evaluation). It also has a set of instrumental units that support the development of its operational activity.

In the field of international judicial cooperation, in relation to FD 2002/584/JAI, the DGRSP is the entity that provides, when requested, additional information on detention conditions and guarantees such information. The information is always transmitted via the court that issued the judicial decision in question, or through Eurojust in specific cases. The administrative guarantee is given by the General Director, through a 'declaration of commitment' (Declaração), focusing on the adequacy of detention conditions that are normally in place.

## Police

The National Central Bureau (NCB) Lisbon is the entity of the Portuguese Police with operational competence for extradition and EAW procedures. When an EAW is not sent directly via the SIS, it arrives in Portugal, following its introduction in the SIRENE and NCB Lisbon databases by the issuing authorities. After the arrest, the NCB Lisbon has competence to obtain the authorisation for the practical arrangements necessary for the transfer of the person to another Member State or vice versa. The police are also competent to take the person to the border when Portugal is the executing Member State, and to travel to another Member State, when the latter is the issuing Member State, and bring the person to Portugal.

All the main police forces are represented in the SIRENE Bureau. SIRENE manages the SIS II and deals with outgoing and incoming requests for an EAW.

### *3.1.1. Competencies and procedures for issuing an EAW*

Pursuant to Article 36 of Law No. 65/2003, the competence for issuing European arrest warrants lies with the judicial authority which is competent to order the arrest or detention of the requested person under Portuguese law. Therefore, EAWs may be issued in Portugal by the competent judicial authority as indicated below, which depends on the status of the national criminal proceedings:

- The public prosecutors or examining judges - during the investigative phase (Inquérito);
- The examining judges- during the instruction phase (Instrução),
- The trial judges - during the Trial phase.

According to Portuguese legislation, public prosecutors are formally entitled to issue an EAW only for offences punishable with a prison term of over five years and in order to bring the person for interrogation before a judge (Article 257 of the Code of Criminal Procedure).

However, the evaluation team was informed that pursuant to the latest case-law of the CJEU, public prosecutors do not issue EAWs in practice, since decisions of public prosecutors cannot be appealed. Since the CJEU decided that decisions to issue an EAW must be subject to appeal, it appears that the Portuguese system is not in conformity with this case-law. The remedy adopted by the Portuguese authorities has been, in practice, to have EAWs issued by a judge, whose decision is subject to appeal, instead of by a public prosecutor, as was previously the case.

On this basis, the first step in the issuing procedure of an EAW remains with the public prosecutor in charge of the case, who checks if the form is correctly filled in, if the minimum penalty requirement is fulfilled and if the judgment is final, and may suggest to the judge to issue an EAW. The final step belongs to the judge (or to a panel of three judges for penalties of more than 5 years of imprisonment), who decides whether or not to issue an EAW. In theory, the judge is also entitled to issue an EAW ‘ex officio’, however in line with the principle of inquisition, which requires an initiative by a public prosecutor to condemn someone, this is not very frequent. Usually it’s the Prosecutor that requests or suggests the EAW to be issued; but in case when a final decision of conviction has been rendered or the application of a measure of provisional arrest has been already decided the Judge can “ex officio” issue an EAW.

Once the EAW has been issued, pursuant to Article 4 of Law No. 65/03, when the whereabouts of the person are known, the issuing judicial authorities may transmit the EAW directly to the competent authorities of the executing Member State. In any event, they may also decide to issue an alert for the requested person in the SIS II, which is considered to be equivalent to an EAW provided that it contains all the necessary information.

After receiving the EAW, the SIRENE's Legal Service makes a quality check and, if there are any inaccuracies or deficiencies in the EAW, asks for it to be amended. At the SIRENE Bureau, there is also a contact point from the Public Prosecutors Office for solving problems related to EAWs.

What is inserted in the SIS II is not the EAW itself, but a corresponding e-form containing all relevant information on the EAW and an alert (or a flag, if an EAW cannot be issued).

To help the issuing judicial authorities and public prosecutors with the completion and issuing of EAWs, the National SIRENE bureau has prepared, under the supervision of the Comparative Law and Judicial Cooperation Division of the PGR, a document with guidelines for completing the EAW form.

The criminal police authorities, which check an alert issued pursuant to the previous paragraphs, are responsible for arresting the requested person. Where the channel of connection cannot be SIS II (for example for contacts with Member States which are not connected), the issuing judicial authority may call on the services of INTERPOL to transmit the European arrest warrant.

Pursuant to Article 5 of Law 65/2003, the transmission of the European arrest warrant may also take place via the secure telecommunications system of the European Judicial Network or by any secure means capable of producing a written record under conditions allowing the Member State to establish its authenticity.

### *3.1.2. Competencies and procedures for executing an EAW*

When the whereabouts of the person are known an EAW is sent directly to the Portuguese authority by the issuing Member State, in other cases, the information is diffused via SIS.



Portugal has designated its second instance courts, the courts of appeal, as its executing judicial authorities. Pursuant to Article 15 of Law No. 65/2003, the jurisdiction for the execution of the European arrest warrant lies with the court of appeal of the area of the person's domicile, or, if there is no such court, of the area where the requested person was arrested. The trial comes under the competence of the criminal section. EAWs should be sent by the competent authorities in the issuing Member State to the public prosecutor attached to this criminal section.

In a very low number of cases, EAWs are transmitted directly by the issuing authorities to the competent court of appeal in Portugal and the court orders the arrest of the wanted person. In practice, most of the EAW procedures start after the person has been arrested based on information from the Schengen Information System (SIS II), i.e. a SIS alert. In most cases, the judicial police conduct the detention, though in a few cases the person is arrested by the gendarmerie.

EAW proceedings can start with the provisional arrest of the person even in cases where an EAW has not yet been received, on the basis solely of an SIS alert. The prosecutor presents the arrested person with the relevant information on the case to the court within 48 hours and can propose that a coercive measure be applied following the provisional arrest; this may be detention if there is a risk of the person leaving the country, or else a less restrictive measure. In certain cases, the prosecutor can propose that the person who was provisionally arrested be released. Defence lawyers do not intervene in the initial phase that can lead to the arrest, but may do so from the moment when the person is arrested.

In order to respect the 48-hour delay, as the court of appeal is not on duty during the weekend, in case where the presence, under custody, of the person is not possible during Friday afternoon, he/she is presented to the local judge, who takes a provisional decision on the measures to be applied until the following Monday, while waiting for a decision from the court.

At the hearing, the judge explains to the person the reasons for his/her arrest, requests his/her personal information and informs him/her about his/her rights: in particular, the possibility to give consent or not to the surrender and to oppose the decision, the rule of speciality and its consequences, and in particular that if he/she waives this benefit, he/she may be prosecuted for other offences. The judicial authorities interviewed by the evaluation team in Coimbra mentioned a checklist used by judges to check that all the conditions are met.

A lawyer is always present at the court hearing and, if the defendant does not have a lawyer, the court appoints one, through a request to the Bar Association. In these cases, the lawyer is appointed automatically using a digital platform run by the Ministry of Justice in cooperation with the Bar Association, which, according to the Portuguese authorities, ensures transparency and independence. According to Portuguese legislation, lawyers are not specialised in civil or criminal matters, or in a specific area of law, though they may acquire a specialisation in practice: this means that any lawyer can be appointed using the above system.

If the requested person consents to being surrendered, a single judge will immediately take the decision, which can be appealed. The evaluation team was informed that approximately 85% of persons arrested after the first hearing consent to being surrendered. In the opinion of the Portuguese authorities met by the evaluation team, in case of an EAW received for the purpose of enforcing the penalty in the issuing Member State, the main reason why consent to the surrender is given by the requested person in most cases, is lack of knowledge of the Portuguese system, leading people to believe it would be better to serve the sentence in the issuing State; they also mentioned that in some cases, persons who had not given their consent immediately, did so after having been informed about the relevant procedures in Portugal.

In the case of consent, the whole procedure is very quick and effective: the consent is approved and a decision on whether to execute the surrender is taken immediately by the judge. After the first hearing, the judge decides whether the person should stay in custody or if less intrusive measures are possible. The defence lawyer is always present in the surrender proceedings. If necessary, because the detainee does not know or master the Portuguese language, even if the entity that presides over the act or any of the procedural participants knows the language used by the detainee, pursuant to art. 92, paragraphs 1 and 2 of the Criminal Procedure Code, an interpreter, chosen from a public list, should also be present. In some cases and during the pandemic, hearings have also taken place by videoconference.

If the person does not consent to the surrender, he/she has eight days to present his/her arguments, to which the prosecutor can respond; then a panel of three judges makes the decision, which can be appealed. The Portuguese authorities pointed out that the time limits are always respected. If any questions need to be put to the issuing State because of unclear points, they must be answered within the eight days. Otherwise, the requested person will be released from detention immediately after the expiry of the eight days.

The Portuguese authorities stated that the reasons for refusing surrender to the issuing State are usually personal ones concerning the wanted person (illness, family circumstances, etc.). Up to now, when Portugal has been the executing State, poor prison conditions in other Member States<sup>2</sup> have not been grounds for refusing a surrender and have so far not been addressed by the defence lawyers of the wanted persons (see point 3.4.1 for more details).

Decisions of the courts of appeal can be challenged before the Supreme Court and, in exceptional cases, before the Constitutional Court.

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<sup>2</sup> CJEU: Aranyosi/Căldăraru, C-404/15, 5 April 2016, ECLI:EU:C:2016:198

The competent national judicial authorities have direct contacts with other Member States' competent judicial authorities. However, in practice, the Portuguese authorities informed the evaluation team that in certain cases they are discouraged from establishing such direct contacts due to language limitations, fear of not identifying the correct authority, etc. However, once the contact has been established, through the intervention of an EJM contact point for instance, direct cooperation proceeds smoothly.

### **3.2. The principle of proportionality**

The Portuguese judicial system is based on the principles of legality. However, the principle of proportionality is taken into account by the competent Portuguese authorities in practice, as EAWs can only be issued, for criminal proceedings, when a national warrant has also been issued (thereby ensuring non-discrimination) and in cases where provisional arrest is admissible. These limitations guarantee that an EAW is not issued for minor crimes. Even where the national arrest warrant has been issued and all the requirements for the issuing of the EAW exist, the judicial authorities can decide not to issue an EAW in certain cases if it is deemed not to be proportional. As regards the enforcement of judgments, limits established by FD 2002/584/JHA are complied with through Article 2(1) of Law 65/2003, which stipulates that EAWs may be issued for acts punishable by a custodial sentence or a detention order for a maximum period of at least twelve months or, where the aim is the enforcement of a sentence or a detention order, provided that the sentence imposed is for a period of at least four months.

The competent Portuguese authorities indicate that they take into account the guidelines provided in the Commission's 'Handbook on how to issue and execute a European arrest warrant' as regards the use, where applicable, of a different instrument, such as the European investigation order, to interrogate the suspect. The above handbook was preceded by a national handbook, which anticipated the conclusions in the Commission's handbook and made them familiar to all the competent national authorities. The national handbook has been withdrawn for updating, but the Commission Handbook is included in the EAW section of the Prosecution Service's portal and in the website of the EJM contact point for the judiciary.

The evaluation team was informed that the Portuguese authorities had had cases where defence lawyers raised issues regarding proportionality of the EAW issued by another Member State. However, the Portuguese authorities underline that the proportionality test should be performed by the issuing State and that these issues should be raised in the proceedings conducted by the issuing States.

The Portuguese authorities expressed the view that the entry into force of Directive 2014/41/EU on the EIO accelerated the deadlines for the execution of typical mutual legal assistance measures (e.g. interrogation of suspect or defendant), partly compensating for the use/abuse of EAWs to get results that could well be obtained via other mutual legal assistance instruments.

### 3.3. Exchange of information

The major information deficits highlighted by the Portuguese authorities as executing authorities are those related to the fulfilment by the issuing authorities of box (d)4 of the EAW form (explanation of the national system of the issuing Member State on judgments without the presence of the defendant) and the linkage between FD 2002/584/JHA and FD 2008/909/JHA (cause for refusal established by Article 4(6) combined with the enforcement of the judgment in the executing State).

Pursuant to Article 16 of Law No. 65/2003 and in line with Article 15(2) of the EAW FD, if the information communicated by the issuing Member State is insufficient to decide on the surrender, the necessary supplementary information is to be requested by e-mail by the prosecutor or by the judge as a matter of urgency, and a deadline may be set for its receipt. The deadline is set taking into account the time limit of 48 hours to present the person before a judge; according to the Portuguese authorities, the procedure is usually quite fast and no delays occur in receiving the information requested by the issuing State.

Direct contacts between the issuing and the executing authorities for requesting supplementary information are the rule, but in many cases the Portuguese authorities use other channels to facilitate the obtaining of information: frequently, they are supported or replaced by the intervention of the central authority, as an EJM contact point, or by Eurojust. When Portugal is the executing State, most cases involving such direct contacts concern difficulties in executing the EAW or lack of understanding by the issuing authorities.

Where there is a problem to identify the competent authorities in other Member States or to receive answers from them, the Portuguese authorities request assistance from the EJM contact point; they believe that this kind of cooperation works very effectively. The Portuguese authorities also know who the contact point is for the EJM and how to use EJM channel and the EJM-Atlas.

The Portuguese authorities underlined, furthermore, that the CJEU's case law has created the need for more contacts on cases where the Portuguese authority is the issuing authority (for prison conditions and EAWs issued by prosecutors), as well as for 'Petruhhin' cases (mostly when Portugal is the State of nationality); in these cases, there may be a need to request supplementary information. Deadlines set by the Portuguese authorities as executing authorities for obtaining such additional information are usually complied with by the issuing authorities; however, with regard to the link between FD 2002/584/JHA and FD 2008/909/JHA, the Portuguese authorities observed that procedures tend to be slower.

The Portuguese authorities stated that they do not usually encounter any difficulties in complying with the time limits when they are executing authorities, in cases where (repeated) requests for additional information are sent, especially when the person is under provisional arrest. Portuguese law establishes strict deadlines that keep the procedure under control in terms of time limits. However, surrenders were suspended during the pandemic (Article 23(4) of the EAW Framework Decision).

The Portuguese authorities expressed the view that the concept of '(un)necessary information' is often linked to the simple fact that legal systems and organisations are different, which leads the executing authority to seek clarification. They pointed out that they are not aware of cases that, on a regular basis, involve judgments or additional supporting documents being requested from the Portuguese authorities, as issuing authorities, by the executing authorities.

In any event, the Portuguese authorities stated that as executing authorities they tended to be very cooperative and to react as quickly as possible. When Portugal is the issuing State, the most frequent cases are requests for clarifications about procedures, such as where a trial has gone ahead without the presence of the person in question. In such cases, the judgment is not final until the person has been duly and personally notified. When the court decides to issue an EAW before the decision becomes final, doubts are raised by the executing authorities; this is because a trial is ongoing and the judgment is not final and cannot therefore be the basis for the arrest.

As executing authorities, the Portuguese authorities provide the follow-up information after a decision on the EAW has been taken (e.g. duration of the detention period in the executing Member State) to the issuing authorities *ex officio*. Article 10(2) of Law 65/2003 states that ‘for the purposes of the preceding paragraph, the executing judicial authority shall, at the time of surrender, transmit to the issuing judicial authority all the relevant information concerning the duration of the detention served by the requested person as a result of the European arrest warrant’. This information is not inferred from the judicial decision; the court informs the issuing authority, by official letter, immediately (and *ex officio*) after the surrender takes place. As issuing authorities, the Portuguese authorities pointed out that the interpretation of the concept of provisional arrest for the purposes of a surrender sometimes created difficulties in pre-Brexit cases with the UK (concept of curfew), but that these were solved via contacts between the Portuguese and the British central authorities.



### 3.4. Grounds for refusal

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

The Portuguese authorities, as issuing authorities, have occasionally been involved in EAW proceedings where detention-conditions<sup>3</sup>-related arguments were raised in the light of the CJEU case law, especially in relation to *Aranyosi/Căldăraru* case-law. In such cases, mostly with the Netherlands and Belgium, the Portuguese authorities were invited to present assurances relating to the stay of prisoners in a specific prison facility for no more than a certain number of days. In such cases, the intervention of the Directorate-General for Reinsertion and Prison Services (DGRSP) was needed; through a letter signed by the General Director, assurances were given to the executing State, deadlines were adhered to and there was no major delay in the surrender procedure.

As executing authorities, the Portuguese authorities underlined that the impact on EAW proceedings of arguments related to detention conditions<sup>4</sup> had been marginal, though sometimes such issues were raised in relation to extradition to third States.

The evaluation team acknowledged that Portuguese judges do not assess potential risks of violation of fundamental rights in relation to detention conditions, unless somebody raises the issue. Especially where there is consent, they do not usually check whether requested persons are aware of prisons conditions in their State, unless there are aspects of the case requiring special attention in this respect and the provision of additional information.

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3 CJEU: *Aranyosi/Căldăraru*, C-404/15, 5 April 2016, ECLI:EU:C:2016:198

4 CJEU: *Aranyosi/Căldăraru*, C-404/15, 5 April 2016, ECLI:EU:C:2016:198

The evaluation team also acknowledged that in practice, in EAW proceedings, nobody (neither arrested persons, nor public prosecutors nor defence lawyers) had ever raised any issues regarding a potential risk of violation of fundamental rights in relation to detention conditions. One of the reasons for this is the fact that for requests for the surrender of Romanians to Romania, for instance, the ground for refusal established in Article 4(6) is frequently used. As a consequence, the Portuguese authorities have never refused to execute EAWs on the grounds of a potential risk of violation of fundamental rights in relation to detention conditions.

However, during the discussions, judges acknowledged that, although they had not so far experienced any surrender cases with other Member States where issues related to potential risks of violation of fundamental rights in relation to detention conditions had been raised, this situation could change in the future, and in such a case they might need to examine these issues more thoroughly.

If that situation did occur, they would ask the issuing State to provide additional information showing that it would be safe to send the person to serve the sentence in that State. Each case is analysed on a case- by-case basis to assess if such information is needed. They do not spontaneously ask for specific information in a case; this is done only when the information received is not satisfactory and more detailed information is needed in order to assess the risk of breach of fundamental rights in relation to detention conditions.

With regard to the issue of prison conditions, the Portuguese judiciary operates on the basis of the guarantees that are generally given and on the principle of mutual trust. There are no specific training courses on this topic.

Bearing in mind this marginal impact, and to prepare the Portuguese authorities to be able to issue or respond quickly to requests for assurances related to prison conditions, the Prosecutor-General's Office developed guidelines with the title of 'Human Rights and International Cooperation –detention conditions'. The aim is for this to be a useful and accessible tool for assisting local judicial authorities with assessing how to obtain information, if necessary. The first set of guidelines relate to prison conditions: the first part includes a summary of the Aranyosi/Căldăraru case, the second explains how a local judicial authority can obtain information on the human rights situation in the issuing State, and the third, very practical part gives suggestions on how to respond, both as an issuing or executing authority. The evaluation team finds this approach very useful and recognises it as a good practice.

The Portuguese authorities stated that, to their knowledge, there had been no refusal of EAWs involving them, as either issuing or executing authorities, due to prison conditions in the issuing State. Taking Romania as an example over the last three years, 10 persons had been surrendered by the Portuguese courts of appeal (1 in 2018, 6 in 2019 and 3 in 2020).

The Portuguese authorities pointed out the lack of information on how to assess, as the executing State, a potential risk of violation of fundamental rights in relation to detention conditions in the issuing State in a specific case. Part 2 of the abovementioned guidelines highlights several ways of obtaining information in order to assist the local executing authority with obtaining information on the potential risk of violation of fundamental rights in relation to detention conditions.

So far, due to low levels of cooperation with States considered problematic, it is not possible to identify a pattern of questions posed by the Portuguese authorities as executing authorities to the competent authorities of the issuing State. For the same reasons, the Portuguese authorities stated that they could not identify enough cases where they had, as executing authorities, assigned deadlines to the issuing State when requesting additional information on detention conditions or guarantees; so they did not have much information about non-compliance with those deadlines and subsequent results. They only pointed out that there had not yet been a case where surrender had been refused or suspended owing to unsatisfactory prison conditions in the issuing State.

The national authority that provides such information is the DGRSP. When such guarantees are requested by the executing State – which is always done through the courts that issue the judicial decisions in question, or through Eurojust in specific cases – the administrative guarantees are given by the General Director, through a ‘declaration of commitment’ (Declaração), focusing on the detention conditions that are normally in place.

The Portuguese authorities stated that they had not encountered any legal difficulties in finding alternative solutions, so as to avoid impunity in cases where the application of the *Aranyosi/Căldăraru* two-step test on detention conditions has resulted in a decision to bring the surrender procedure to an end. In several cases related to requests for the surrender of Romanian citizens to Romania for the enforcement of judgments where the defendant had not given consent, the Portuguese authorities have tended to use the ground for refusal established by Article 4(6) of the EAW FD, resulting in the judgment being enforced in Portugal through application of the procedure set out in FD 2008/909/JHA.

As for practical difficulties, usually the assurances requested from the executing authorities in Portugal are related to a specific prison facility, in Lisbon, and include a particular request that the person will not stay longer than three weeks in that facility. More generally, and over a longer, earlier period, requests for assurances had resulted from the overcrowding of prisons in Portugal and the need to close some spaces that did not meet the requirements for detention conditions in terms of fundamental rights; however, the Portuguese authorities informed the evaluation team that this situation had been resolved.

The Portuguese authorities stated that they were familiar with diplomatic assurances in the field of extradition and surrender, which are mainly related to Portuguese constitutional restrictions as regards life imprisonment.

In the opinion of the Portuguese authorities, consent of the sought person to his/her surrender in the framework of carrying out checks on the possible risk of violation of fundamental rights in relation to detention conditions in the issuing State introduces a problematic element; while the fundamental-rights-related detention condition in the issuing State clearly cannot be ignored by the executing judicial authority, in line with CJEU case-law, the fact is that the consent of the person to be surrendered is strongly linked to the aim of social rehabilitation.

The Portuguese authorities believe that this justifies procedures for transfer of the person concerned or procedures for recognition of judgments, in order to enable the defendants to serve their sentence near their family, in their state of nationality. The Portuguese authorities tend to comply with this principle of social rehabilitation and would accept consent and allow surrender, even where prison conditions are defective. Taking as an example a case with Romania in 2019, four of the six persons in respect of whom requests had been made for surrender to that Member State, gave their consent to be surrendered and were subsequently surrendered.

#### 3.4.2. *Refusal in the event of a judgment in absentia*

The Portuguese judicial authorities reported that since FD 2009/299/JHA had entered into force, they had faced challenges relating to judgments '*in absentia*' owing to their system based on the *Termo de Identidade e Residência* ('TIR') (statement of identity and residence), of which a sample is set out in Annex 1. Pursuant to Article 196 of the Code of Criminal Procedure ('CPP'), the judicial authority or the criminal police body submit the TIR, drawn up during the proceedings, to whoever is constituted as the defendant.

The TIR is a compulsory mechanism when someone is made a defendant; a person may not be judged unless and until this procedural requirement has been discharged. The TIR is a coercive measure, albeit the least serious of the coercive measures, and may be applied by the judge, the Public Prosecutor's Office and the police.

The defendant is required to go to the court personally and sign the TIR, as the form cannot be sent by e-mail. If a person who is subject to criminal proceedings enters Portugal at an airport, a police officer notes his/her address, with a view to facilitating the relevant notifications that the competent judicial authorities will send personally to the defendant; if the person has no address in Portugal, such notifications are sent to the office of a defence lawyer, who can also authorise the trial in the absence of the person concerned.

During the evaluation visit, the Portuguese authorities stressed that some difficulties were experienced in respect of the TIR requirement, since the other Member States did not know that the defendant has an obligation to sign this in person. Member States notified relevant documents to defendants without asking them to sign the TIR, which is not sufficient under Portuguese law.

It is important to note that the CPP expressly establishes an authentic procedural status for the accused (Article 61(1)), on the basis of which the accused has both rights (Article 61(1)) and specific procedural duties (Article 61(3)), which restrict his or her freedom (Article 196 of the CPP).

These duties include the ‘duty to appear’ before the judicial authorities (paragraph (a)) and the obligation to ‘...provide proof of identity and residence’ (TIR) (paragraph (c)). The obligation to comply with the TIR also generates another set of duties, some of which coincide with those mentioned in Article 61(3), such as the duty to report (61(3)(a) and 196(3)(a)) and others which complement them, such as the duty not to change residence without notification of the competent authorities and the duty to communicate this new residence or place where one may be found (196(3)(b)).

The TIR also sets out a specific process for communication between the accused and the court, including the possibility of notification by normal post (196(3)(c)). The TIR is a very personal act, in the form of a binding declaration, which provides a secure means of communicating the procedural documents, and is applicable for all notifications made by the court to the indicated address, except in unforeseeable circumstances or cases of *force majeure*. The Portuguese authorities clarified that they will not confirm whether the address given by the accused actually exists or whether he or she lives there. Through the indication of the address in the TIR, any mail from the court is deemed to have been properly served.

Thus, from the legal status of the defendant, and taking account of their specific and complementary duty, there derives a general duty of diligence, not to cooperate, but rather to make that legal status operational; this precludes any procedural aloofness or violation of his or her procedural duties by the defendant.

Accordingly, the breach of such duties by the accused makes it legitimate for them to be represented by their defence in all the procedural acts in which they should to be present or in which they have the right to be present, and for those acts to take place in their absence (196(3)(d)), including the trial hearing, though in this case under the terms of Article 333.

The holding of a trial hearing without the presence of the accused under Article 333 is limited to two situations: (i) at the initiative of the court, due to the voluntary absence of the accused, which may be unjustified or justified, because they are unable to attend (paragraph 1); (ii) at the initiative of and with the consent of the accused (paragraph 4).

In these cases, the defendant can be tried without being present, since it is assumed that, following notification to the address he/she gave, he/she has knowledge about the facts, even if he/she does not appear.

It is important, therefore, to make sure that the defendant has understood the meaning of his/her rights and consequent obligations. If the defendant is a foreign citizen who does not know or speak Portuguese, an interpreter should be appointed for any procedural act at which he/she is present, namely when he/she is informed of his/her rights, in accordance with Article 92(2) of the CPP. This article states that ‘When a person who does not know or speak Portuguese is to take part in the proceedings, a suitable interpreter will be appointed, at no cost to him or her, even if the presiding officer or any of the participants in the proceedings know the language used by him or her’<sup>5</sup>.

The judgment given at the end of the trial must be notified in person to the defendant, who has the right to appeal. However, the CPP does not provide for a retrial.

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<sup>5</sup> NB: Notwithstanding the possible need for an interpreter, TIR is available on the issuing entities’ platform in Portuguese plus in German, Spanish, French, Italian, Dutch, Romanian, Russian and Georgian.

Although the Portuguese judicial authorities stated in the questionnaire that they face challenges related to judgments '*in absentia*', this does not seem to be a big problem in practice. During the on-the-spot visit, the Portuguese authorities did not report any refusals from the executing States on the grounds of judgments '*in absentia*'.

The major problem seems to be the correct completion of the EAW form and provision of sufficient information to the executing State, as well as explanations about the national system regarding trials '*in absentia*'. As it is perfectly possible to have trials without the presence of the defendant in Portugal, one solution to this problem could be to provide for a retrial. The Portuguese authorities explained to the evaluation team that there had been discussions regarding this possibility and that this would probably not be a very difficult change, since the possibility did exist previously in the Portuguese system.

When Portugal is the executing State, the Portuguese authorities take the view that in trials without the presence of the defendant, the issuing authority should as a rule provide more extensive information in the EAW, whenever Article 4a of FD EAW applies; particular attention must be paid to the information provided in box (d) 4 of the EAW form, in particular concerning the notification of the final decision and the possibility of a re-trial. In cases where doubts regarding the information in box (d) 4 are likely to be caused by an incorrect translation, the Portuguese authorities refer to the information contained in the original version of the EAW form.

However, cooperation with some Member States, such as Poland, whose systems allow for situations of judgments '*in absentia*', is not very frequent, so this does not create major problems. Portugal has a lot of cooperation with France, whose system also allows trials '*in absentia*', but as there is the possibility of a retrial in France, it has not created problems either. Overall, the evaluation team was informed that there had so far been no refusal of a transfer in an '*in absentia*' case.

The Prosecutor-General's Office has developed guidelines entitled '*Human Rights and International Cooperation – Judgments in absentia*', which contains a summary of the relevant CJEU case-law and of the ECHR case-law, as well as a section on the practical impact of such case-law on proceedings without the presence of the defendant.



### 3.4.3. Other grounds for refusal

According to the Portuguese authorities, situations where double criminality cannot be found or *ne bis in idem* can be identified are extremely rare. They stated that parental abduction is a civil violation, but can also be considered as a criminal offence. In such a situation, the EAW is sometimes used by the Portuguese authorities as a tool to solve a *de facto* situation, and either leads to a refusal due to the lack of double criminality, from the perspective of the executing authority, or is withdrawn by the issuing authority when the situation of the child is resolved.

In relation to the ground for refusal due to the lack of double criminality, as issuing authorities, the Portuguese authorities believe that quality control of the description of the facts is one of the major issues in the EAW, as the issuing authority has to make the case easily understandable by the executing authorities. In Portugal, a copy of the EAW is sent to the central authority for statistical purposes. In such cases, it is possible to detect deficiencies and to suggest modifications or improvements. Also, when the EAW is to be disseminated via SIS II, deficiencies are sometimes detected and the EAW is sent back to the courts for review.

On double criminality, no recurring problems have been reported by the Portuguese authorities as executing authorities. However, they informed the evaluation team that one of the courts of appeal had reported problems in the translated version of the EAW (offences referred to in the list and outside the list, while in the original version of the EAW such a difference did not exist; a need to check double criminality introduced) and two courts of appeal had mentioned occasional obscure or unclear descriptions of the facts.

More generally, the Portuguese authorities underlined that cases of refusals had been very rare; they referred to a case where Portugal as executing State had refused to execute an EAW issued by the UK for the purpose of criminal prosecution in a case of child sexual abuse, since according to the Portuguese law the deadline had elapsed.

### 3.5. Further challenges

The extensive jurisprudence of the CJEU on the EAW has not yet led to changes in the Portuguese legislation transposing the EAW FD. However, the Portuguese authorities anticipated that it might lead to such changes in the future.

In very specific cases, where proportionality is not an issue, Portuguese public prosecutors can issue arrest warrants. Article 36 of Law 65/2003 reads as follows: ‘The judicial authority that is competent to order the arrest or detention of the requested person by virtue of the Portuguese law is competent to issue the European arrest warrant’.

This means that public prosecutors are legally entitled to issue EAWs for offences punishable by imprisonment of over five years and in order to bring the person for interrogation before a judge (Article 257 of the CPP). Decisions by prosecutors cannot, however, be subject to appeal and since the CJEU decided that at least one of the decisions to issue a warrant – either a national warrant or an EAW – must be subject to appeal, it appears that the Portuguese system is not in conformity with this case law. The practical remedy adopted by the Portuguese authorities has been to substitute EAWs previously issued by a prosecutor by EAWs issued by judges, whose decisions are in theory subject to appeal. Although this problem has been solved in practice, the evaluation team takes the view that legal clarity is also needed in this matter, so as to avoid possible misunderstandings and refusals or delays from the executing States.

As regards transfer (Article 25 FD EAW), the police have competence for all practical arrangements related to transfer the person. If a transit via a third State is needed, it must be requested via the Central Authority.

The Portuguese authorities stated that they had not encountered any legal problems, but mainly practical problems: on many occasions, transits are scheduled with very little advance notice, due to the short time limits established in the EAW Framework Decision. They pointed out that for transit situations, the intervention of the EJN is unavoidable and very important, since it allows for very flexible and quick contacts with the competent authorities.

In some cases, where the transit State can only give permission for the transit following a judicial decision or where the central authority in Portugal does not have enough information about the EAW procedure (for cases where the EAW was sent directly and all cooperation was established without the intervention of the central authority as the EJM contact point) and needs to obtain it in a very short period of time, the procedure can be too tight. Also, new problems have arisen from the COVID situation, due to refusals by defendants to undergo testing, resulting in the need to transit by land (from France to Portugal, for instance).

In a recent case, surrender was obstructed because the executing State could not keep the person under provisional arrest any longer (the executing authority was Austria and, due to the very short time limit to remove the person, combined with the COVID situation, the person was released despite four requests for transit being made and then promptly accepted by the German and Spanish authorities).

More generally, the Portuguese authorities underlined that the EAW is a successful tool for cooperation, enabling solutions to be found to many unresolved situations. The Framework Decision has been updated in order to strengthen the procedural rights, in particular in relation to trials in absentia. Direct contacts between competent authorities, – via organisations such as the EJM or Eurojust if needed – are necessary, unavoidable and helpful. Mutual knowledge and trust can also be cultivated by means of international training activities, provided by the EJM or the ERA, in which judges and prosecutors can meet, get acquainted and learn how to work together.

### 3.6. Statistics

The Portuguese authorities do not collect centralised statistics about EAWs that have been issued and executed in Portugal or about grounds for refusals. However, the Portuguese Ministry of Justice is currently working on a project that will enable the automatic collection of this data through an interface with the Citius system (computer system used in courts). Under this project, the Portuguese Ministry of Justice has already made arrangements for a disaggregated collection of ‘European arrest warrant’ cases, so that in the near future it will be possible to provide statistical indicators on the latter.

### 3.7. Conclusions

- FD 2002/584/JHA has been implemented in Portugal properly and it works well in practice. 85% of the arrested persons consent to the surrender and all the EAW cases are solved within the time limits set in the EAW Framework Decision.
- The Portuguese central authority for the execution of EAWs issued by other Member States is the Prosecutor-General's Office, however it does not intervene in specific cases but instead provides broad support, responding to requests for assistance from the competent authorities, whether issuing or executing authorities.
- The Portuguese judicial authorities communicate directly with other Member States' competent authorities. However, in practice, as pointed out by the Portuguese authorities, such direct contacts are not easily established due to language limitations, fear of not identifying the correct authority, etc. The evaluation team considers direct contacts to be a core element of mutual recognition, so the Portuguese authorities should take measures to promote them further within the context of all EAW proceedings.
- Although public prosecutors are also entitled to issue EAWs in certain cases, this is not in conformity with the case law of the CJEU, since it is not possible to appeal a public prosecutor's decision to issue an EAW. As a solution to this problem, in practice it is only judges that issue EAWs in Portugal. The evaluation team believes, however, that this practice should also be reflected in Portuguese legislation.
- The principle of proportionality is always taken into account by the Portuguese authorities with due attention, and the circumstances of every case are thoroughly weighed by the Portuguese authority with competence for issuing an EAW.

- Currently, Portuguese legislation does not allow for a retrial. However, the evaluation team was informed that the reintroduction of this possibility, which existed previously under the Portuguese system, is being considered by the Portuguese authorities.
- The Portuguese authorities reported that they had not faced any major problems regarding trials ‘in absentia’. However, they had faced some challenges due to the requirement relating to the TIR (statement of identity and residence), which is submitted to the defendants in all proceedings, as the authorities of the other Member States are not aware of the need for the defendants to sign this document.
- Furthermore, as regards trials ‘in absentia’, the Portuguese authorities also believe that the issuing authority should, as a rule, provide more extensive information in the EAW whenever Article 4a of FD EAW applies, and that, to that end, particular attention must be paid to the information given in box (d)4 of the EAW form.
- The evaluation team could not find that issues relating to the potential risk of violation of fundamental rights in relation to detention conditions have never been raised so far in Portuguese courts during EAW proceedings. The evaluation team acknowledged that usually Portuguese judges do not assess the potential risk of violation of fundamental rights in relation to detention of their own initiative and unless the issue is raised by the defence. The evaluation team considers that this might not be in compliance with the case-law of the CJEU. Therefore, more awareness-raising should be organised by the Portuguese authorities (Centre for Judicial Studies and Bar Association) on this relevant topic.

- In Portugal, there are no specific training courses covering fundamental rights in the context of EAW proceedings. However, two guidelines on ‘*Human Rights and International Cooperation*, focusing respectively on *detention conditions* and “*on trials without the presence of the defendant*” were developed by the Prosecutor-General’s Office in order to assist local judicial authorities with requesting or obtaining relevant information from the issuing State, if necessary; the evaluation team regard these guidelines as a good practice.
- In Portugal there are no specialised lawyers for international judicial cooperation and lawyers are often not aware about the EU legislation on mutual recognition and the related case law of the CJEU. There are no guidelines or specific training activities for lawyers. No use is made of the possibility for lawyers to participate in the seminars of the Centre for Judicial Studies. The evaluation team takes the view that this lack of knowledge may, *inter alia*, impede protection of the fundamental rights of requested persons.
- Currently, the Portuguese authorities do not collect statistical data about outgoing and incoming EAWs at central level. However, the evaluation team was informed that a project was being developed for that purpose.

#### **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**

Framework Decision 2008/909/JHA of 27 November 2008 was transposed into the Portuguese legal system by Law 158/2015 of 17 September 2015, which established the ‘Legal Regime on the Transmission and Enforcement of Sentences in Criminal Matters’, subsequently amended by Law 115/2019 of 12 September 2019.

This law lays down the legal regime governing the Portuguese judicial authorities’ transmission of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their recognition and enforcement in another Member State of the European Union, as well as the recognition and enforcement in Portugal of judgments in criminal matters imposing custodial sentences or other measures involving deprivation of liberty taken by the competent authorities of the other Member States of the European Union. The legal regime aims to facilitate the social rehabilitation of the sentenced person and is intended to transpose Council Framework Decision 2008/909/JHA of 27 November 2008, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009.



#### **4.1. Authorities with competence for the transmission, the recognition of the judgment and the execution of the sentence**

In the Portuguese system, the procedure for the recognition of the judgment and the execution of the sentence under FD 2008/909/JHA is entirely judicial. Pursuant to Article 13 of Law 158/2015, the executing authorities competent to recognise the judgment, are, as in the EAW procedure, the five courts of appeal (Lisbon, Porto, Coimbra, Évora and Guimarães). The local court with jurisdiction in criminal matters in the area of residence or last residence of the sentenced person or, if this cannot be determined, the court in Lisbon, is competent to enforce the sentence and to provide for the transfer. The enforcement of the sentence is governed by Portuguese law.

The issuing authorities are the judges in the courts of first instance who, pursuant to Article 8 of Law 158/2015, sign the certificate and certify that its content is accurate. However, pursuant to Article 7 of Law 158/2015, it is the prosecutors in the Public Prosecutor's Office at the sentencing court who transmit the certificates, even though these are signed by the judge (Article 8(4)). The request for transmission of the judgment and of the certificate may also be made by the sentenced person.

Within the scope of application of Framework Decision 2008/909/JHA, the central authority is totally absent from a formal point of view. That does not mean, however, that the local competent authorities do not rely on the experience of the central authority; many requests for assistance from local judicial authorities are received by the central authority, and all interventions undertaken are performed by such authority in its role as EJC contact point.

The Portuguese authorities informed the evaluation team that the establishment of direct contacts with the authorities of other Member States is not very easy under Framework Decision 2008/909/JHA. As regards, for instance, the consultation procedure set out in Article 4(3) of FD 2008/909/JHA, aimed at assessing whether the enforcement of the sentence by the executing State would serve the purpose of facilitating the social rehabilitation of the sentenced person, the identification of the appropriate interlocutor is unavoidable. The Atlas provides the contact details of the issuing and executing authorities, however the identity of the appropriate local authority that is competent to be consulted is different.

In a recent case with France, as the person to be transferred was a Romanian citizen allegedly living in France, the Portuguese authorities tried, without success, to get the consultation procedure started, after they had finally been informed to send everything to the local competent authority. Pursuant to Article 8 of Law 158/2015, if the competent authority of the executing State is not known by the competent authority of the issuing State, the latter is to make all necessary inquiries, including via the contact points in the European Judicial Network. The Portuguese authorities believe that the intervention of the EJM is unavoidable in the context of application of this framework decision, since the intervention of a central authority is totally absent.

#### 4.2. Documents required for recognising the judgment and executing the sentence

As the executing State, in order to recognise the judgment and execute the sentence, the Portuguese legal system theoretically requires a written judgment and a certificate too. No difficulties have been encountered or reported by the Portuguese authorities in this respect, perhaps because there has never been a case where a written judgment was lacking.

The applicable Portuguese law does not require the judgment to be translated when Portugal is the issuing State. *Mutatis mutandis*, the same solution should apply when Portugal is the executing State. However, the Portuguese Procedural Code states that all procedural documents must be in Portuguese. Since the law does not state explicitly that judgments can or must be accepted without being translated, the Portuguese authorities said it was possible, in some cases, for a court to require the judgments to be translated in addition to the translated certificate. Information provided by the five courts of appeal shows different approaches: in Guimarães, the translation of all judgments is always requested and provided; in Coimbra the translation of judgments is usually not requested; in Porto it can be requested if the specific case so requires. However, the Portuguese authorities have not highlighted any problems concerning this issue.

No situations have been reported where the Portuguese issuing authorities have been requested by the executing authorities to produce additional documents on a regular basis.

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

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

The former practice, whereby the transfer of prisoners always depended on a request from or on the consent of the convicted person, has remained in place in Portugal, for various reasons, including the fact that Portugal is not a State Party to the Additional Protocol to the Convention on the Transfer of the Sentenced Persons. The Portuguese authorities pointed out that for this reason, the transmission of certificates is frequently preceded by a request from the convicted person. If the person is a national and a resident of the executing State, social rehabilitation is assumed.

However, sentences are also transferred if the convicted person is not a Portuguese national, but has a residence permit and a social background in Portugal. If the person is a Portuguese national, but not resident in Portugal, the Portuguese authorities will evaluate the possibility of social rehabilitation by taking into account the person's intention to serve the sentence in Portugal and by analysing the person's ties with Portugal (especially family ties). If the outcome of such analysis confirms that there are grounds for social rehabilitation, the request will not be opposed, however if it is ascertained that there are no ties with Portugal at all, the request will not be accepted.

When a certificate is received by Portugal as executing State, the prosecutor examines it carefully to check for possible mistakes, contradictions and missing information and presents the case to the judge only when the documents are complete. The Portuguese authorities stated that, as a rule, the certificates received are well presented and translated and that they were not aware of any specific information that was repeatedly missing from the certificate or the accompanying documents that prevented them from taking decisions as executing authorities.

However, in a few cases, shortcomings had been identified, such as requests for recognition not accompanied by a certificate or certificates not translated; in these cases, the conditions were not met to present the certificate to the judge and the prosecutor contacted the issuing authorities requesting them to remedy the deficiencies and establishing time-limits for doing so, however in some cases the requests had not been followed up; as a result the procedures could not continue and the defendant had to be released. In one case the documents arrived after the judge had refused the recognition of the sentence and the prosecutor had to make a new request with the full documentation to the judge, who recognised the sentence, since the Portuguese system does not prevent another ruling on the same issues.

Furthermore, some situations had been reported by the courts of appeal where supplementary information had been needed regarding: (a) certificates concerning penalties lower than 6 months (from Spain and France); (b) situations where the social link with Portugal and the convicted person had not been confirmed; (c) information on penalties that seemed incorrect or inconsistent (from Spain and France). In such cases, the information requested was provided by the issuing authorities quickly.

At this early stage, oral hearings are not mandatory and do not usually take place, unless it is considered necessary; however, when the prosecutor presents the case to the judge, the defendant is notified and can react, including with the possibility of lodging an appeal against the decision of the court. The Portuguese authorities clarified, however, that there had not been any cases of opposition, apart from situations where Portuguese nationals requested to return to Portugal.

As issuing authorities, the Portuguese authorities referred to some problems encountered in the consultation procedure with the executing authorities on the basis of Article 4(3) FD 2008/909/JHA, 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 the society. The consultation procedure was sometimes unsuccessful, in this type of procedure, as competencies were shared between numerous judicial authorities.

As issuing authorities, the Portuguese authorities also stated that they had never been presented with a reasoned opinion by an executing State, on the basis of Article 4(4) FD 2008/909/JHA, arguing that the enforcement of the sentence in the executing State would not serve the purpose of facilitating the social rehabilitation and successful reintegration of the sentenced person into society.

Regarding Article 4(5) FD 2008/909/JHA, the Portuguese authorities referred to a situation where the Romanian authorities sent a request directly to a local Portuguese court to start the transmission of a judgment with a view to its execution. The Portuguese authorities stressed that this had been quite a problematic procedure, with the Romanian authorities insisting on the matter repeatedly, via the EJN.

As regards the information always to be provided by the executing State to the issuing Member State without delay, as required by Article 21 of FD 2008/909/JHA, the Portuguese authorities underlined that this provision was applicable to multiple situations but stated that they were not aware of any major problems arising in these situations. They only referred to a recent misunderstanding between a Portuguese issuing authority and a French executing authority, which had been resolved due to the intervention of the EJN at the central authority level, which had been able to bring the two authorities together and find out where the problem was.

However, the Portuguese authorities were aware of some situations where there was no communication at all pursuant to Article 21(c) FD 2008/909/JHA, involving the sending of the certificate, so the issuing authority had continued to wait for a decision by the executing authority. As regards practical, bilateral arrangements with other Member States for facilitating the application of FD 2008/909/JHA, Portugal has arrangements with Spain concerning the removal of the person in question by land.

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

Prisoners are given a form, which is available in different languages, to make them aware of the possibility of a transfer under FD 2008/909/JHA, even if their consent is not requested.

The procedure followed in Portugal to allow the sentenced person to state his or her opinion in accordance with Article 6(3) of FD 2008/909/JHA, usually requires a written document, signed by the person requesting to be transferred. In such cases, courts consider it unnecessary to hear the person again. In any event, Article 10(2) of Law 158/2015 states that the consent of the person must be given before the sentencing court. The judicial authorities met by the evaluation team at the court of appeal in Coimbra pointed out that the person usually consents to be transferred to serve the sentence in the issuing State. It is only in a few cases that they oppose this possibility.

In conformity with Article 6(2) of FD 2008/909/JHA, pursuant to Article 10 of Law 158/2015, the consent of the sentenced person must be given before the sentencing court, unless the exceptions provided in paragraph 5 of the same provision, listing cases where the consent of the sentenced person is not required, apply.

In such cases where consent is not necessary, where the sentenced person is still in Portugal, he/she may be given the opportunity to present his/her opinion. For this purpose, the court will notify the person, provided that he or she is in Portugal, asking him/her to present his or her opinion, orally or in writing, within 10 days (Article 10(7) of Law 158/2015). Practical experience in the Central Criminal Chambers of Lisbon demonstrates that, even when the person has expressed his or her consent, and always when the consent is not necessary, the practice is to hear the person and inform him or her about relevant issues, such as the speciality rule.

As mentioned before, most cases start with a transfer request from the person in question. In such cases, the Portuguese courts start the procedure that will lead to the issuing of the certificate. This means that the opinion of the person concerned is taken into account when deciding on whether to issue the certificate and forward the judgment. Consent tends to be the starting point in most cases, in line with the 1983 Convention on the Transfer of Sentenced Persons.

The evaluation team observed that the proceedings under FD 2008/909/JHA are not initiated if the sentenced person or the executing State do not request this and that there is no initiative by the Portuguese judiciary to encourage the sentenced persons to apply for transfer to their home country; in the opinion of the evaluation team, this practice is not in line with the spirit of FD 2008/909/JHA.

In a case reported by the Central Criminal Chambers of Lisbon, a Polish woman requested to be transferred to Poland. When the procedure was nearing its end, the convicted person informed the court that she no longer wished to be transferred. In this specific case, the court decided to proceed anyway because, as the request had been made by a Pole for transfer to Poland, consent was not necessary. The person appealed this decision, and the relevant court of appeal revoked the decision of the court of first instance on the grounds that different and stricter rules on early release in Poland would harm the convicted person's prospects for release.



According to Article 10(9) of Law 158/2015, the transfer decision is communicated to the sentenced person in accordance with Article 6(4) of FD 2008/909/JHA. Courts use the information statement in Annex 2 to this framework decision to inform the person to be transferred, and that information is included in the Annex. The central courts of Lisbon have explained that, when the person is heard, just before sending the certificate, Annex 2 is provided to them, with all relevant information filled in.

The law does not mention specific possibilities for appeal or legal remedy against the decision to transmit the judgment for recognition and enforcement, especially in cases where there is no consent. However, general rules apply, with all decisions taken by judges being subject to appeal. This rule is demonstrated by the abovementioned case in which a decision to proceed with the removal of the person in the absence of his/her consent was appealed in the competent court of appeal. Since most procedures regulated by FD 2008/909/JHA start with a request by the convicted person, the Portuguese authorities have no major experience of decisions being appealed.

Throughout the criminal proceedings under FD 2008/909/JHA, the defendant is assisted by a lawyer. This is the case for proceedings where Portugal is the issuing State, but also where it is the executing State. Article 16-A of Law 158/2015 mentions the intervention of the defence lawyer; in case of consent, he or she represents the defendant; in case of opposition, he or she presents written allegations on behalf of the defendant within 10 days, before the executing court decides, and has the right to appeal to the Supreme Court, within five days, which is the same time limit as for the public prosecution. The assistance of the consular authorities is not established directly in the law, but is applied, as a rule, in practice.

Pursuant to paragraph 9 of Article 10 of Law 158/2015, the sentenced person is to be informed of the decision to forward the judgment by means of the standard form set out in Annex ii to the same law and of which it forms an integral part, in a language which he or she understands. That form is to be transmitted to the executing State, which is to inform the sentenced person accordingly.

#### 4.4. Adaptation of the sentence

In line with Article 8 of FD 2008/909/JHA and pursuant to Article 16 of Law 158/2015, the sentence may, under certain conditions, be adapted by the executing State, if its duration and/or its nature are incompatible with the domestic law of that Member State. The adapted sentence must not aggravate the sentence passed in the issuing State

In Portugal, as an issuing State, there have been no cases reported where the adaptation of the sentence has been applied by the executing State because its duration or its nature were incompatible with the law of the executing State.

As executing authorities, the Portuguese courts of appeal have stated that it is not a frequent situation, but there have been cases where adaptation had to be decided on: (a) where the prison term was above the maximum one possible under the Portuguese rules of procedure (a prison term of 30 years, in a case with France); (b) material aggregation of penalties versus aggregation of penalties (in the first situation, Spanish courts add penalties, something which is not possible under the Portuguese system); (c) a situation of combined penalties in the same judgment (the French authorities requested a procedure of recognition and enforcement of a judgment that included in part imprisonment plus suspension of execution concerning another part and finally another part to be under supervision). The Portuguese authorities adapted and produced a single judgment covering the suspension.

In one case where the penalty was not foreseen in Portuguese legislation, the sentence was adapted.

The Portuguese authorities, as executing authorities, assess what constitutes a ‘similar offence’ as referred to in Article 8 of FD 2008/909/JHA, identifying the offence that is applicable to the facts summarised in the certificate. Since FD 2008/909/JHA has been in force, no such cases have been reported, unlike the previous situation, when the transfer of sentenced persons required clarifications in order to verify what constituted a similar offence.

When Portugal is the issuing State, the person is notified by the executing State about the adaptation of the relevant sentence; when Portugal is the executing State, the issuing authority deals with the notification of the person concerned about the adaptation. However, there is no substantial experience of Portuguese decisions being subject to adaptation.

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

As executing authorities, the Portuguese authorities do not keep statistics on the grounds for non-recognition or non-enforcement, however the grounds for refusal mentioned in Article 9(1)(a) and (h) of FD 2008/909/JHA have already been used. Specifically, courts of appeal have reported cases where, after repeated requests for complementary information, the certificate was not sent in Portuguese (with Spain and France: in these cases, when the certificates were subsequently presented with translations, the procedure for recognition was restarted) and one case where the certificate did not match the judgment (with France). There was also a case where the remainder of the sentence was less than six months (with France).

As issuing authorities, the Portuguese authorities reported that there were no cases where transfer procedures had not been initiated or finalised due to unsatisfactory prison conditions in the executing State, probably owing to the fact that the consent of the person concerned remains an important part of the procedure.

So far, no cases have been reported by the Portuguese authorities as issuing authorities in which they faced challenges with regard to grounds for non-recognition or non-enforcement in the event of judgments 'in absentia', since the entry into force of FD 2008/909/JHA. As executing authorities, they reported cases from France and Italy with the following comment: 'the convicted persons were aware of the trial'.

The Portuguese authorities reported that there had so far been almost no cases concerning challenges faced as regards decisions on criminal irresponsibility and imposition of psychiatric care. One case with the UK was reported and there is also a pending case with Belgium. The latter gave rise to a request for complementary information, since there was no fixed maximum limit for the execution. The issuing authority reported that there was a review procedure on the security measure and later went on to report that the measure had been ‘ceased’.

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

In line with Article 10 of FD 2008/909/JHA, pursuant to Article 18 of paragraph 1 of Law 158/2015, if the competent judicial authority considers the recognition of the judgment and the partial enforcement of the sentence, it may, before deciding to refuse recognition of the judgment and enforce the sentence as a whole, consult the competent authority of the issuing State in order to reach an agreement. The competent judicial authority may decide, in agreement with the competent authority of the issuing State, to partially recognise and enforce a sentence, subject to the conditions set out between themselves, provided that this does not aggravate the duration of the sentence.

Portugal had had only one case of partial recognition of judgments under FD 2008/909/JHA, namely with Spain, where the prison sentence was recognised but not the part of the judgment concerning a prison term as an alternative to the payment of a fine.

The Portuguese authorities stated that the difficulties they encountered with the consultation process established under Article 10(1) FD 2008/909/JHA, with a view to finding an agreement on partial recognition, were akin to those in other consultation procedures; in these cases, the intervention of the EJM contact points as facilitators was again crucial.

When the Portuguese authorities are the executing authorities, if the general criteria to decide to recognise the judgment and execute the sentence are met only in part, the judgment is recognised and sent to the court for enforcement. If the criteria are met only in respect of some of the criminal offences, the judgment will be partially recognised and sent to the court for partial execution. When Portugal is the issuing State, the decision to accept a partial recognition or to withdraw the certificate is based on a case-by-case assessment of the given circumstances.

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

The Portuguese authorities reported that, as issuing authorities, they had experienced several cases where the procedure in the executing State took too long and the time limits of 90 days, provided for in Article 12(2) FD 2008/909/JHA for taking the final decision on the recognition of the judgment and the enforcement of the sentence, were not respected.

They believe that in some cases, even the intervention of the EJC contact points does not suffice to get the procedure moving. In other cases, the intervention of the EJC contact points is crucial to resolving certain issues arising from misunderstandings between the issuing and the executing States that may slow down the procedure and result in the time limits not being respected.

As executing authorities, all the Portuguese courts of appeal reported that deadlines are respected even though, in cases where the recognition is linked to the execution of an EAW (Article 25 of FD 2008/909/JHA), the certified judgments sometimes arrive late.

As executing authorities, the Portuguese authorities stressed that they tended to be cooperative and to respond to requests without delay. As issuing authorities, the Portuguese authorities referred to some pending cases and to a lack of communication and information from the executing authorities on the reasons for the delay and the estimated time needed for making the final decision.

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

The Portuguese authorities reported they had had no cases so far as issuing authorities where they had withdrawn the certificate owing to the applicable provisions on early or conditional release in the executing State.

No cases were reported by the Portuguese authorities of issuing authorities of other Member States withdrawing their certificates, owing the applicable Portuguese provisions on early or conditional release. No cases of application of the legal solution provided for by Article 17(4) FD 2008/909/JHA, as regards the possibility of agreeing to apply the provisions in national law indicated by the issuing State, were reported either.

The Portuguese authorities, as executing authorities, reported that they had not encountered any problems relating to the deduction of a period of deprivation of liberty already served in the issuing State<sup>6</sup>.

#### **4.9. Further challenges**

No legal problems relating to the application of FD 2008/909/JHA were reported by the Portuguese authorities; however, they did report some practical problems, already mentioned in relation to the EAW, concerning difficulties with establishing a consultation mechanism and with identifying the appropriate counterpart in the other Member State. This leads, not very frequently, but occasionally, to situations where a particular case takes too long or remains in a kind of limbo.

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<sup>6</sup> CJEU: C-614/14, Ognyanov, 5 July 2016, ECLI:EU:C:2016:514

The Portuguese authorities do not encounter any legal or practical problems relating to transit, apart from the temporary suspension of transfers during the pandemic. Owing to its geographical location Portugal is not a transit State and Interpol, together with the Penitentiary Department, handles the transfer of sentenced persons from Portugal to the executing State. Where there is need for transit, Interpol asks the central authority to obtain permission for it to take place. In the specific case of transfer of sentenced persons, no difficulties were reported; the Portuguese authorities explained that this is because time limits are more flexible than in extradition cases, where detention in the requested State is always provisional.

To improve cross-border cooperation and the procedure for issuing the certificate, with a view to recognising the judgment and enforcing the sentence, the Portuguese authorities suggested that international training was needed specifically on the enforcement of FD 2008/909/JHA. In addition, they considered that notification of a national contact point for each State, which could facilitate the consultation procedures, could be beneficial.



#### 4.10. Statistics

No annual statistics are kept by the Portuguese authorities as regards requests based on Framework Decision 2008/909/JHA when Portugal is the issuing State. The courts of appeal did not report any case of refusal of recognition. The Portuguese authorities did not provide any statistics on how many cases they had had where they required a certificate pursuant to FD 2008/909/JHA or on how many EAWs were refused on that ground. However, when Portugal is the executing State, they did provide the following data:

2018: **29** requests received (Spain:12; France:3; UK: 6; Sweden:1; Denmark:1; Germany: 3; Hungary: 1; Austria: 1; Luxembourg: 1).

2019: **48** requests received (Spain: 12; Romania: 1; France: 5; UK: 20; Germany: 4; Denmark: 1; Italy: 1; Austria: 2; Luxembourg: 1; The Netherlands: 1).

2020: **24** requests received (Spain: 6; Luxembourg: 2; Belgium: 3; UK: 5; France: 3; Denmark: 2; Sweden: 2; The Netherlands: 1).

Refusals: **14** requests were refused. For some, the penalty to be enforced was of less than six months; in some cases, besides requests for a translation or complementary information, the issuing authority did not provide an answer; in two cases a lack of double incrimination was the cause for refusal; in at least two cases the judgment was not final; and in one case the time limit for the penalty had elapsed.

#### 4.11. Conclusions

- In the Portuguese system, the procedure for the transfer of the judgment and the execution of the sentence under FD 2008/909/JHA to an authority of the State where a person is staying in, or is a national or a resident of the executing State, is entirely judicial and there is officially no role for the central authority. Assistance to the local judicial authorities in proceedings related to this Framework Decision is provided by the central authority in its role as the EJM contact point.
- In Portugal, although the certificates under FD 2008/909/JHA are prepared by the prosecutors in the Public Prosecutor's Office, they are transmitted to the judges/ courts of first instance, who, as issuing authorities, sign them before their transmission to the executing authorities.
- Within FD 2008/909/JHA-related proceedings, when in custody the persons concerned are informed of the possibility of being transferred to another Member State by means of a form, which is available in different languages, even if their consent is not requested.
- Similarly to what occurs in the context of EAW proceedings, in proceedings under FD 2008/909/JHA, the Portuguese authorities also experience problems in establishing direct contacts with their counterparts in other Member States, in the context of the procedures of consultation prior to the sending of the Certificate, mainly due to difficulties in identifying the competent authorities; as a result they often use EJM channels.
- In most cases, proceedings under FD 2008/909/JHA to request the recognition of the judgment and the enforcement of a sentence by another Member State, when Portugal is the issuing State, start at the request of the sentenced person. There is no practice by the Portuguese judiciary to encourage the convicted persons to apply for a transfer to their home country. Many of them are probably not even aware of this possibility. The evaluation team believes that the Portuguese authorities should, where applicable in order to facilitate the sentenced person's social rehabilitation, consider starting such proceedings 'ex officio'.

- As executing authorities, the Portuguese authorities have reported that the deadlines provided for in FD 2008/909/JHA are respected, whereas, as issuing authorities, they have experienced cases where such time-limits are not complied with by the executing authorities of other Member States.
- Currently, the Portuguese authorities do not collect statistical data at central level about outgoing and incoming requests under FD 2008/909/JHA. In this respect, the evaluation team considers that initiatives similar to the project being developed for the EAW could be considered by the Portuguese authorities for this Framework Decision too.

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

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

In line with Article 4(6) of FD 2002/584/JHA and pursuant to Article 12(1)( g) and (3) of Law 65/2003, if the requested person is in Portugal, has Portuguese nationality or resides in Portugal, provided that the arrest warrant has been issued for the purposes of execution of a sentence or detention order and the Portuguese State undertakes to execute the sentence or detention order in accordance with Portuguese law, the execution of the EAW may be refused.

Pursuant to article 12 n°1 g) of Law 65/2003, refusal of enforcement, in this case, is dependent on a decision by the court of appeal - in the process of execution of the European arrest warrant at the request of the Public Prosecutor's Office - declaring the sentence enforceable in Portugal by confirming the sentence imposed. This decision is to be included in the decision refusing the execution, and the regime on recognition of criminal sentences imposing custodial sentences or measures depriving liberty within the European Union is applicable, with the necessary adaptations; for this purpose, the executing judicial authority must request that the sentence be forwarded.

The above provisions are to be read in conjunction with Article 26 of Law 158/2015 on the legal regime for the transmission and enforcement of sentences in criminal matters, which has transposed FD 2008/909/JHA and provides that it applies where:

a) The European arrest warrant has been issued for the purpose of serving a custodial sentence or a deprivation of liberty measure, where the requested person is in the executing State, is a national of or is resident in that State and where that State undertakes to enforce said enforcement or security measure under its national law; or

b) The European arrest warrant has been issued for the purposes of criminal proceedings, where the requested person is a national of or resident in the executing State and this State has established as a condition for surrender that the requested person, after having been tried, be returned to the executing Member State to serve there the custodial sentence or deprivation of liberty measure issued against him in the issuing Member State.

When the Portuguese authorities need to decide whether to issue an EAW or a certificate for the recognition of a judgment and the execution of a sentence under FD 2008/909/JHA, where a person is staying in, or is a national of or a resident in the executing State, they reported that the usual practice is to issue an EAW because, in the majority of cases, the whereabouts of the convicted persons is not known.

In principle, therefore, an EAW is issued in all cases, even if, on a case-by-case basis, a certificate for the recognition of a judgment and the execution of a sentence can be considered and sent, as has often happened following requests to that effect from the executing authorities (mainly with France).

When Portugal is the issuing State of an EAW and the convicted person requests the judgment to be recognised and executed in the State where he or she is resident, the judicial authorities issue a certificate under FD 2008/909/JHA, instead of an EAW. When the executing State establishes contacts with a view to possible use of the ground for refusal referred to in Article 4(6) of 2002/584/JHA, the certificate is issued.

Under Portuguese legislation, in cases that fall under Article 4(6) of FD 2002/584/JHA, the sentence is executed on the basis of a separate certificate pursuant to FD 2008/909/JHA. The certificate and a copy of the judgment are necessary; the EAW form itself would not be sufficient to execute the sentence.

When Portugal is the executing State of an EAW, the Portuguese authorities informed the evaluation team that in the last three years there had been no cases where a Portuguese national living in Portugal requested to serve the sentence in Portugal, whereas such cases had occurred previously. In that event, the prosecutor presents the case with his/her opinion and suggestions concerning the possibility to serve the sentence in Portugal or in the issuing Member State to the judge, who takes the decision in this respect. The same procedure is followed in cases where another Member State requests Portugal to issue a certificate under FD 2008/909/JHA, with a view to recognising the judgment and executing the sentence.

The Portuguese authorities reported no cases where they encountered problems as executing authorities in receiving a certificate or, as the issuing Member State, in sending a certificate similar to those referred to in the Popławski case. However, as there are strict and short time limits for the detention period during surrender proceedings, this may lead to the release of the person if the certificate does not arrive in time.

The Portuguese law states that for the execution of a sentence for which the surrender has been refused on the basis of Article 4(6) of FD 2002/584/JHA, sending a certificate under FD 2008/909/JHA is necessary. While waiting to receive the certificate, the person may be provisionally arrested, but if in the meantime the time-limits for executing the EAW are exceeded, he/she has to be released. Also where there is a reason to predict that such time-limits will not be respected or to believe that detention is not to be recommended (which according to the Portuguese authorities seems to be quite frequent), the person has to be released and may be subject to a different measure.

The Portuguese authorities as issuing authorities are prepared to send the certificate, when invited to do so by the executing authorities. However, there is a practical issue here, since the lack of mutual understanding of what is needed often slows down the procedure for sending the certificate.

According to the Portuguese authorities, cooperation with the French authorities is a case in point; as executing authorities, the French authorities sometimes inform the Portuguese authorities that the EAW trial has been adjourned to a specific date, to allow the Portuguese authorities to send the certificate and the judgment. However, this communication is done in French; the Portuguese courts must then order translations, which takes time, and also obtain a translation of the certificate, which takes more time.

The Portuguese authorities again consider the assistance of the EJN contact points to be crucial to facilitating consultations/information sharing and thereby shortening this period of cooperation between the issuing and executing authorities, with a view to the subsequent application of the relevant legal instrument, either FD 2002/584/JHA or FD 2008/909/JHA.

When the surrender is granted on the basis of Article 5(3) of FD 2002/584/JHA in cases where such surrender is subject to the condition that the person, after being heard in the issuing Member State, is returned to the executing Member State in order to serve there a custodial sentence or detention order, the Portuguese law states that the return is to be carried out on the basis of a certificate under FD 2008/909/JHA.

## 5.2. Conclusions

- If there is need for the recognition of a judgment and the execution of a sentence, the Portuguese authorities usually issue an EAW because, in the majority of cases, the whereabouts of the convicted persons is not known.
- When the convicted person requests the judgment to be recognised and executed in the State where he or she is resident, and when the executing State so requests, or else notifies a possible use of the ground for refusal referred to in Article 4(6) of 2002/584/JHA, the Portuguese judicial authorities issue a certificate under FD 2008/909/JHA instead of an EAW.
- Where Portugal is the executing state, in cases referred to in Article 4(6) of 2002/584/JHA, the Portuguese legislation requires a separate certificate for the execution of the sentence delivered in the issuing Member State pursuant to Council Framework Decision 2008/909/JHA.
- Also where the surrender is granted on the basis of Article 5(3) of FD 2002/584/JHA under the condition of return, the Portuguese law states that the return is to be carried out on the basis of a certificate under FD 2008/909/JHA.
- The Portuguese authorities underlined that the communication and consultations with the competent authorities of other Member States in order to clarify which instrument should be used, whether FD 2002/584/JHA or FD 2008/909/JHA, and what information is needed, are often complicated. According to the Portuguese authorities, the intervention of the EJN contact points has been crucial to facilitate these consultations.



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

Council Framework Decision 2008/947/JHA of 27 November 2008 was transposed into the Portuguese legal system by Law 158/2015 of 17 September 2015, which established the ‘Legal Regime on the Transmission and Enforcement of Sentences in Criminal Matters’, subsequently amended by Law 115/2019 of 12 September 2019. The implementation of FD 2008/947/JHA did not require any institutional reorganisation in Portugal.

The national legislation transposing FD 2008/947/JHA is considered to be comprehensive and clear by Portuguese practitioners and is, in fact, quite close to the text of the Framework Decision.

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

In accordance with Article 28 of Law 158/2015 of 17 September 2015, when Portugal is the issuing State, on the basis of Article 3(2) FD 2008/947/JHA, the Portuguese authorities with competence to forward the judgment to another Member State are those with competence for issuing sentences that apply alternative sanctions to imprisonment and for issuing decisions regarding probation, namely:

- (a) the Public Prosecutor’s Office, at the competent sentencing court, for sentences that apply alternative sanctions to imprisonment;
- (b) the Public Prosecution Service, at the competent sentencing court, for decisions on conditional release.

During the evaluation visit, the Portuguese authorities explained the crucial role of the Public Prosecution Service in the execution of sentence. In addition, sometimes the social reintegration teams of the Directorate-General for Reintegration and Prison Services (*‘DGRSP’*) promotes the use of Framework Decision 2008/947/JHA.

Under Article 34(1) of Law 158/2015, when Portugal is the executing State, the court of appeal in whose area of competence the sentenced person has his or her legal and habitual residence, has competence to recognise the sentence or decision on conditional release, provided that the sentenced person has his or her legal and habitual residence in Portugal, and has returned or intends to return there, or where he or she has residence in Portugal for other reasons. Pursuant to Article 34(2) of Law 158/2015, under the provisions of the preceding paragraph, the local court that has competence on criminal matters in the area where the sentenced person resides has jurisdiction to enforce the sentence and is competent to execute the judgment that applies alternative sanctions to imprisonment and to supervise those alternative sanctions.

Under Article 34(3) of Law 158/2015, the court with competence to execute the decision on probation and to supervise the probation measures is the court with competence for the enforcement of sentences in whose area of jurisdiction the sentenced person resides.

It should be noted that in Portugal non-judicial authorities are not appointed as competent authorities under Article 3(2) FD 2008/947/JHA.

The Portuguese authorities are well aware that cooperation based on FD 2008/947/JHA requires the establishment of direct contacts between judicial authorities; however, they stressed that for this Framework Decision, too, the intervention of the EJC contact points is crucial to helping identify the local competent executing authority and establish effective communication by circumventing language barriers and lack of training.

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

The Portuguese authorities believe that the importance and the practical application of Framework Decision 2008/947/JHA are far more limited compared to those of FD 2002/584/JHA and FD 2008/909/JHA.

In particular, the Portuguese authorities underlined that they had not had many cases related to FD 2008/947/JHA and felt that more practical experience was needed in the application of this Framework Decision. In the few situations they had experienced as executing authorities, the Portuguese authorities explained that they had not encountered many cases where the major issue preventing the execution of the sentence concerned a lack of correspondence between the measure requested and those available in the Portuguese system.

The DGRSP is not a central authority under FD 2008/947/JHA. According to its representatives, met by the evaluation team, the system works more efficiently in Member States who have a central authority under this Framework Decision, and this would be the same in Portugal if the DGRSP were to be designated as the central authority. Its social reintegration teams frequently receive requests from the courts to enforce sentences/measures in the community (suspension of execution of sentence, parole, provisional suspension of the procedure, etc.) applying to defendants/convicts residing abroad, specifically in the Member States that have transposed this Framework Decision.

If the residence in another Member State is not known by the judges, the DGRSP, after obtaining information on where the person lives and contacting him/her, sends a letter to the judge to provide that information, with the suggestion to enforce the sentence in the State where the person lives. In many cases, at the time of the request, the courts are already aware of this situation, but have not resorted to the transmission of sentences or decisions that apply alternative sanctions to imprisonment for the purposes of their supervision in another Member State, in accordance with Law 158/2015.

The DGRSP has involved some of its professionals in European projects, expert groups and training activities related to the application of Framework Decision 2008/947/JHA. However, its knowledge is still local in nature, and not shared to the same extent by all the social service practitioners. Accordingly, most judicial requests concerning people residing abroad are analysed at central level, to ensure the accuracy and uniformity of the answers.

In response to some requests, the DGRSP has suggested that the courts have recourse to Law 158/2015, which transposed FD 2008/947/JHA. Despite this and the constraints that residence abroad places on the supervision of and support provided to defendants/convicts by the social reintegration services, many Portuguese courts prefer to keep the execution of the penalty/measure, even at a distance, under the responsibility of services in Portugal, as they find that monitoring of the measures may be difficult and involve establishing cooperation with the probation services in other Member States.

Against this background, the DGRSP has started suggesting that courts transfer the execution of the sentence in cases where social rehabilitation and reintegration into society could be facilitated.

Many courts also request that the DGRSP establish connections with similar entities in the countries of residence of the defendants/convicts, as a way to obtain information and/or promote compliance with legal obligations, however the DGRSP can only do so on the basis of application of an international instrument (e.g. a treaty or convention), which rarely occurs.

Furthermore, the evaluation team considers that in order to promote the use of FD 2008/947/JHA in Portugal, regular meetings between the DGRSP, public prosecutors and the judiciary are advisable.

The Portuguese authorities have not observed any initiative by defence counsels to propose the transmission of the sentences or of other decisions concerning constituents residing abroad. The authorities have observed, rather, that defence counsels have merely informed courts and the DGRSP of the residence situation, as a way to justify the impossibility of attending services or complying with court orders. They have also noted that FDs 2008/947/JHA and 2008/909/JHA get mixed up in some requests, possibly because the transposition of both FDs was carried out jointly through the same Law (Law 158/2015 of 17 September 2015).

In view of the above, the Portuguese authorities expressed the view, supported by the evaluation team, that there is a need for greater awareness of and greater clarity with regard to FD 2008/947/JHA among professionals in the sector, in particular the competent authorities, lawyers and entities that provide advice to the courts.

Portugal does not have an entity or department that records national data on FD 2008/947/JHA for statistical purposes, so currently there are no data available on the use of this Framework Decision. The DGRSP has been trying to centralise data collection, asking the courts to report on cases, but its requests are not acted on by the courts. The DGRSP's social reintegration teams only receive some sentences or decisions relating to penalties/measures of execution in the community transferred for the purpose of their execution, the precise number of which is not known by the Portuguese authorities, as there is currently no registration of either outgoing or incoming cases based on FD 2008/947/JHA.

By way of example, in 2019 the DGRSP received a decision handed down by the Court of Rotterdam, which was recognised by the Lisbon Court of Appeal, for the execution of a suspended prison sentence.

The participation of the DGRSP in the processes for issuing sentences has been negligible, with just one case registered in 2020 in which the Portuguese court, which was preparing to issue a sentence involving a suspended prison sentence with a probation regime for execution in Romania, requested the support of the DGRSP with the definition of the relevant social reintegration plan. From the information gathered from the courts, the courts seem to have little recourse to the transmission of sentences or decisions that apply alternative sanctions to the prison sentence for the purposes of their supervision in another Member State, as there is a perception that this is a lengthy and complex procedure. The defendants/convicts and their defence may know that this possibility exists and that they can request it.

A suggestion from the Portuguese authorities is to explain the complexity of the process better and raise awareness of the advantages of applying FD 2008/947/JHA in view of the greater local monitoring capacity and benefits for social reintegration, and to inform defendants/convicts and their defence counsels about who can request the transmission process.

Another suggestion from the Portuguese authorities to increase and improve the practical application of FD 2008/947/JHA, is to hold specific training sessions involving judicial authorities from Member States with which there is scope for cooperation concerning the aims of this Framework Decision.

Another measure proposed by the Portuguese authorities, is to promote more exchanges of ideas, including by organising EU-level meetings of probation services from all Member States, and possibly to create a network between them.

The evaluation team supports this suggestion and considers it necessary to enhance contacts between probation services dealing with FD 2008/947/JHA from all Member States, as this would allow practitioners to get to know each other and to be able to establish contacts regarding a specific case, when needed.

### 6.3. Conclusions

- The legislation implementing FD 2008/947/JHA attributes the role of issuing authorities under this Framework Decision to the public prosecutors, whilst the executing authorities are the courts of appeal, with competence based on the criteria provided by the law concerning the residence of the sentenced person.
- The DGRSP is not a central authority under FD 2008/947/JHA. However, its representatives, met by the evaluation team, expressed the view that the system could work more efficiently if the DGRSP were designated as a central authority.
- Though acknowledging the requirement for direct contacts with their counterparts in other Member States, the Portuguese authorities involved rely heavily on the assistance provided by the EJN contact point on the application of FD 2008/947/JHA.
- Up to the time of the evaluation, FD 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions, though known to a certain extent by practitioners, has had a limited application in Portugal, especially as an issuing State.
- As reasons for the limited application of FD 2008/947/JHA, the Portuguese authorities included the perception that it involves a lengthy and complex procedure and the fact that many Portuguese courts prefer to keep the execution of the penalty/measure, even at a distance, under the responsibility of the Portuguese services, as they believe this facilitates the monitoring of the measures.
- The evaluation team stresses that awareness-raising activities on the advantages of applying this Framework Decision should be promoted by the Portuguese authorities, including specific training sessions for all the practitioners potentially involved in its application.

- The evaluation team believes that it is also crucial to establish regular meetings between the judiciary, public prosecutors and the DGRSP's social reintegration teams in order to identify cases where FD 2008/947/JHA can be applied and to coordinate their action in this field accordingly.
- The evaluation team also believes, as suggested by the Portuguese authorities, that contacts between probation services dealing with FD 2008/947/JHA from all Member States should be enhanced at EU level, as this would facilitate consultation and cooperation on specific cases, when needed.



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

Framework Decision 2009/829/JHA of 23 October 2009 was transposed into the Portuguese legal system by Law 36/2015 of 4 May 2015, which established the ‘Surrender of natural person between Member States in case of non-compliance with coercive measures’ and was subsequently amended by law 23/2015 of 9 June 2015. National legislation is considered to be comprehensive and clear and, in fact, it is quite close to the FD text. The implementation of FD 2009/829/JHA did not require a change in the organisation of Portuguese institutions.

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

The competent authorities designated by Portugal pursuant to Article 6(1) of FD 2009/829/JHA on the European Supervision Order (ESO) are as follows:

- Where Portugal is the issuing State, the authority with competence for issuing decisions, in accordance with Article 5(3) of Law 36/2015, is the competent Judge (if the decision is taken in the investigation phase, the examining Judge; if the decision is taken in the trial phase, the Judge in the first Instance Court).
- Where Portugal is the executing State, in accordance with Article 5(1) of Law 36/2015, the authority with competence for recognising a decision on supervision measures issued by another Member State is the central criminal prosecution section (investigating judge) or, in areas not covered by criminal investigation sections or investigating judges, the general jurisdiction section of the local court or, failing that, the criminal section of the local court by reference to the court of first instance of the district of residence or of the last known residence of the defendant or, if the latter cannot be determined, to the local criminal section of the judicial court of the District of Lisbon.

In the event of non-compliance with the coercive measure, in accordance with Article 8 and Article 5(2) of Law 36/2015, if the competent authority of the issuing State issued an arrest warrant or any other enforceable judicial decision having the same effects, the competent authority is the court of appeal of the area of the person's residence or, if there is no such court, of the area where the requested person is staying at the time of issuing of the warrant.

No authorities were designated as competent on the basis of Article 6(2) FD 2009/829/JHA on the European Supervision Order (ESO), since the domestic legal system of Portugal does not confer competence to take decisions under this Framework Decision on non-judicial authorities.

Pursuant to Article 7(3) of FD 2009/829/JHA on the ESO, Portugal has designated the Directorate-General for Reintegration and Prison Services (DGRSP) as its central authority, with the role of assisting the competent judicial authorities, though intervening only at the latter's request. However, as it is not a judicial body, the DGRSP does not take any decisions; decisions fall within the competence of judges. The probation services have competence to execute the measures and can also give advice to the judicial authorities.

The Portuguese authorities referred to two unsuccessful attempts to use the ESO: the first of this cases was that of a pregnant woman who was to be transferred to the UK. However, after the British competent authorities accepted to execute the ESO, they backtracked claiming the woman was not a British citizen but a BOTC (British Overseas Territories citizen) and as such did not qualify. The other unsuccessful case regarded a Spanish woman with two infant children: the Spanish court refused execution on the grounds that there was no electronic monitoring as a supervision measure in Spain's criminal law, without asking the Portuguese court for the possibility to adapt such measure, in accordance with article 13 of FD 2009/829/JHA.

The national judge who issued the certificate (on her own initiative) was met during the visit and emphasised that FD 2009/829/JHA (ESO) aims to eliminate inequalities in the treatment of those persons subject to criminal proceedings who are resident in the trial State and those who are not. In that specific case, the person involved was a pregnant woman to whom FD 2009/829/JHA was applicable, with a view to her suffering less coercive measures for humanitarian reasons. After this successful experience, the defence lawyer in this case invoked the ESO FD in a second case. However, only three cases involving outgoing ESOs have been registered since 2017. So awareness-raising seems to be crucial.

From the executing perspective, the Directorate-General for Justice Policy (*DGPJ*) collects statistical data relating to ‘Monitoring of enforcement measures (Law 36/2015)’. As regards the movement of cases of this kind in the lower court, DGPJ databases indicate that from 2015 to 2018 three cases were entered and concluded.

Though acknowledging that cooperation based on FD 2009/829/JHA requires the establishment of direct contacts between judicial authorities, the Portuguese authorities stressed that the intervention of the EJM contact points is crucial to identifying the local competent executing authority and also to establishing effective communication, by circumventing language barriers and lack of training.

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

Framework Decision 2009/829/JHA is a complete novelty without any precedents in the Council of Europe (COE). For now, numbers are extremely low and seem to relate to the activity of a specific judicial authority that gained some knowledge of this Framework Decision and decided to use it. The figures mentioned above show a lack of application by Portugal of this legal instrument of mutual recognition, as both an issuing and an executing State. Therefore, the evaluation team believes this to be a field of work in which good training activities based on successful experiences and best practices are essential.

Due to the limited number of cases in which Framework Decision 2009/829/JHA has been used in Portugal there is no established practice regarding its application, leading the Portuguese authorities to point out that they found it difficult to identify practical difficulties in this regard, apart from some problems arising from incorrect translation of the form.

According to the Portuguese authorities, the main reasons for the scarce use of this legal instrument could be:

- it is a complete novelty with no precedents in the Council of Europe (COE);
- there are a very limited number of cases in which it would be appropriate or expedient to use FD 2009/829/JHA;
- insufficient knowledge of the FD among practitioners, including some lawyers;
- lack of sufficient training;
- difficulties with identification of the executing authority.

In one case where Portugal was the issuing State, Spain had difficulties accepting the supervision in the form of electronic monitoring and the case was solved with an adaptation, in practice, as Portugal agreed not to use the electronic monitoring.

The Portuguese authorities explained during the evaluation visit that direct contacts are a challenge for linguistic reasons and because sometimes the obstacle is to identify the competent authority abroad or the channel for establishing communication. Though acknowledging that cooperation based on FD 2009/829/JHA requires direct contacts between judicial authorities, the Portuguese authorities stressed in this case, too, that the intervention of the EJM contact points was crucial to identifying the local competent executing authority and to ensuring effective communication, by circumventing language barriers and lack of training.

The evaluation team checked and confirmed that the EJM contact point from the Division of International Judicial Cooperation in Criminal Matters (Prosecutor-General's Office) was essential for solving problems not just about direct contacts, but also throughout the issuing or executing process.

According to the evaluation team, one of the causes for the scarce use of this mutual recognition instrument may be that it is not easy to use. So one measure to promote its use that could be considered at EU level would be to modify FD 2009/829/JHA, which is long and difficult to understand, and therefore to use, so as to simplify the procedure.

During the meeting at the Directorate-General for Reintegration and Prison Services (DGRSP), a reference was made to the Portuguese authorities' participation in the Probation Observatory, Network and Training Project (PONT), initiated by the University of Bucharest, in partnership with the University Loyola Andalucía, the University of Latvia, the Bremen Ministry of Justice and the Confederation of European Probation (CEP). One of the main project deliverables is an online e-manual on the implementation of Framework Decisions 829 and 947<sup>7</sup>. This manual is seen by the evaluation team as a useful tool, but is apparently not well known by the practitioners.

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<sup>7</sup> <https://www.cep-probation.org/wp-content/uploads/2020/11/PONT-The-e-manual-for-the-implementation-of-FDs-947-and-829.pdf>

The Portuguese authorities suggested that an approach based on sharing any successful practical experiences concerning the application of FD 2009/829/JHA with other practitioners could facilitate the use of this framework decision. In addition, specific training for lawyers could be helpful since the application of this Framework Decision can be a good alternative to more intrusive measures, such as provisional arrest.

The Portuguese authorities met by the evaluation team underlined that it would be useful to have a practical guide on how to issue the European Supervision Order, as they often do not know how to use it in practice.

The other suggestions from the Portuguese authorities regarding FD 2008/947/JHA, under point 6.2, also apply to FD 2009/829/JHA.

### 7.3. Conclusions

- When Portugal is the issuing State, the authority with competence for issuing decisions under FD 2009/829/JHA is the court of the procedure. Where Portugal is the executing State, the competent authority under FD 2009/829/JHA is the central criminal prosecution service of the local court, though in some exceptional cases the competence lies with other judicial authorities. No authorities were designated as competent on the basis of Article 6(2) FD 2009/829/JHA since the Portuguese system does not allow non-judicial authorities to take decisions under this Framework Decision.
- Up to the time of the evaluation, Portugal had a very limited number of cases concerning FD 2009/829/JHA (ESO): just one outgoing case and three incoming cases. Hence, awareness-raising regarding this Framework Decision seems to be crucial.
- Even though it may be advantageous for their clients, defence lawyers are also not aware of FD 2009/829/JHA. Nevertheless, this mutual recognition instrument is considered useful by the Portuguese authorities, in order to eliminate inequalities in the treatment of those persons subject to criminal proceedings who are resident in the trial State and those who are not.
- According to the Portuguese authorities, the scarce use of FD 2009/829/JHA is due to several circumstances, including: the very limited number of cases in which it would be appropriate or expedient to use the ESO, lack of experience in executing and issuing the certificate, the complexity of the form, difficulties with identification of the executing authority and lack of training on this Framework Decision.
- The evaluation team observes that the length of the text of FD 2009/829/JHA and the complexity of the related procedures make this Framework Decision difficult to understand, and so to use. So, the experts believe that in order to promote its increased use, consideration could be given at EU level to modifying Framework Decision 2009/829/JHA so as to simplify the procedure.

- Though acknowledging the requirement for direct contacts with their counterparts in other Member States, the Portuguese authorities involved in the application of FD 2009/829/JHA rely heavily on the assistance provided by the EJM contact point.



## 8. TRAINING

### 8.1. Training relating to FDs 2002/584/JHA, 2008/909/JHA, 2008/947/JHA and 2009/829/JHA

The Portuguese institution providing training to judges and public prosecutors is the Centre for Judicial Studies (*‘CEJ’*). The CEJ is an establishment with legal personality and administrative autonomy, under the responsibility of the Minister of Justice. Surveys of participants are carried out to evaluate the training provided, with the focus on the quality of the training sessions. This is done by the CEJ itself.

The CEJ includes in the initial training for judges and prosecutors 15 hours of training on multiple aspects of international cooperation, both traditional or based on mutual trust and recognition.

The number of trainees on initial training courses varies every year, depending on the vacancies established by the Ministry of Justice.

Training on the EAW is given in the initial training course for future judges and public prosecutors (known as ‘justice auditors’). This includes training on the recent case-law of the Court of Justice of the European Union that has an impact on EAW proceedings.

The following table shows the data regarding ongoing training seminars in the field of international judicial cooperation in criminal matters in Portugal from May 2017 to December 2020.

Subject	Date	Speaker	Participants
International detention and transfer of prisoners	11/05/2017	Joana Gomes Ferreira	342
European Supervision Order	11/05/2017	Alexandre Oliveira	342
European Investigation Order (EIO)	11/05/2017	Vânia Costa Ramos	342
CJEU case law on extradition and EAW	11/05/2017	Miguel João Costa	342
EU procedural safeguard directives	04/05/2018	Alexandre Oliveira	303
EU procedural safeguard directives	04/05/2018	Vânia Costa Ramos	303
Mutual recognition principle	04/05/2018	Lopes da Mota	303
Preliminary ruling procedures (CJEU)	04/05/2018	Nuno Piçarra	303
Extradition and EAW	21/11/2019	Joana Gomes Ferreira	66

Freezing orders and confiscation	21/11/2019	Hélio Rodrigues	66
EIO	21/11/2019	Júlio Barbosa e Silva	66
EIO	21/11/2019	Vânia Costa Ramos	66
EAW and speciality principle	10/12/2020	Alexandre Oliveira	199
JITs	10/12/2020	Sofia Rocha	199
EPPO	11/12/2020	Margarida Santos	199
EPPO	11/12/2020	Júlio Barbosa e Silva	199
CJEU recent case law (EAW and others)	17/12/2020	Joana Gomes Ferreira	199
EIO and ‘legal remedies’	17/12/2020	Vânia Costa Ramos	199
Asset recovery	18/12/2020	João Conde Correia	199
Freezing orders and confiscation (Regulation 2018/1805)	18/12/2020	Rita Simões	199
<b>Total</b>			<b>910</b>

During the pandemic situation, the CEJ started to provide online training and there are special training programmes accessible to the practitioners via the CEJ website. The evaluation team recognises this as a good practise.

Before the recent pandemic situation, Portuguese judges and public prosecutors regularly attended training sessions on the EAW organised both by the EJTN and ERA.

In EJTN ongoing training, the EAW is addressed in three annual training seminars on judicial cooperation in criminal matters.

Training on FD 2008/909/JHA is provided in the initial training course for future judges and public prosecutors.

The work of EuroPris is followed by the central authority, which regularly contributes to their database and attends meetings held by EuroPris

Training on FD 2008/947/JHA and on FD 2009/829/JHA is given in the initial training course for future judges and public prosecutors.

There was also an initial training course on FD 2008/947/JHA during a regional meeting of the Portuguese contact points in 2013 in Tavira, which involved the EJM Contact Points from Germany and Spain and dealt, among others, with FD 947. The Portuguese EJM contact points received financial support to hold a regional meeting of contact points, that took place in November 2021 in Aveiro, and involved EJM Contact Points from Spain and France. The discussions were precisely on FWD 584, 909 and 947 and the link between them.

In 2017 the CEJ gave one training seminar on FD 2009/829/JHA (European Supervision Order), with 200 places (divided evenly between judges and public prosecutors).

The Portuguese authorities acknowledge that more practical training will be required later on this Framework Decision, in order to present some practical situations and the solutions that these instruments allow for to the judicial authorities.

With regard to training organised at EU level on FDs 2008/947/JHA and 2009/829/JHA, three officials from the DGRSP as well as an investigating judge and a public prosecutor, attended a training session held in Seville, on 30 and 31 January 2020, which took place under the PONT (Probation Observatory, Training and Network) project, funded by the European Union (DG Justice).

The EJTN does not cover FDs 2008/947/JHA and 2009/829/JHA in its training programme.

A search of the ERA's website (in Resources and Projects, and the archive) reveals that it does not seem to offer specific training on these instruments either. However, it does provide a handbook about them (Project JUST/2013/JPEN/AG/4495 – *Social reintegration of sentenced persons: a comprehensive European approach*).

The Portuguese authorities believe that more training and awareness-raising should be organised at EU level on topics pertaining to FDs 2008/947/JHA and 2009/829/JHA, since, as stated above, they regard these as completely new instruments that require some practical training activities based on successful experiences and best practices. The evaluation team supports this view.

In relation to the Portuguese judicial authorities (judges and public prosecutors) who attend EU training programmes, the following data has been collected by the CEJ (at the moment there is no data concerning the specific topics of the seminars attended):

	2016	2017	2018	2019	2020
ERA	2 seminars  15 PT	5 seminars  84 PT	2 seminars  16 PT	4 seminars  50 PT	2 seminars  (1 online)  36 PT
EJTN	4 seminars  20 PT  ■	2 seminars  4 PT  ■	3 seminars  5 PT  ■	3 seminars  4 PT	_____

The Division of International Judicial Cooperation in Criminal Matters (Prosecutor-General's Office) disseminates training materials and information on the EAW to the competent judicial authorities; it makes available the Commission's '*Handbook on how to issue or execute a European arrest warrant*', and links to the European Judicial Atlas and Compendium. Soon, on the same website, specific case law on the EAW will be made available. Materials provided or created by Eurojust, EJTN or the EJM are also regularly disseminated on the prosecutors' intranet.

Also, the national Handbook on Procedures for issuing the European arrest warrant, the Guide on Mutual Legal Assistance in criminal matters, the new guidelines on human rights and international cooperation and the Handbook on the Transfer of Sentenced Persons in the Community of Portuguese speaking States CPLP (Comunidade dos Países de Língua Portuguesa) were developed and are disseminated. The CEJ also provides an e-book (open access) that contains materials on FD 2009/829/JHA.<sup>8</sup>

No materials have been developed or distributed to the practitioners on FD 2008/947/JHA.

To complement and assist their work, the Prosecutor-General's Office took the initiative, together with Eurojust, of appointing a prosecutor specialised in international criminal cooperation to each of the 23 '*comarcas*' (judicial subdistrict) in Portugal. Depending on where they are, they can have a very important role in assisting their colleagues or as a point of contact with foreign authorities (a good example is the Faro contact point).

There is also a working group bringing together prosecutors from the five courts of appeal (Lisbon, Porto, Coimbra, Évora and Guimarães) that meets once every six months to discuss matters specifically related to the activity of the Portuguese authorities as executing authorities (for extradition, EAWs, or transfer of sentenced persons under Framework Decision 2008/909/JHA).

The tools developed by the EJN and available on its website are quite well known by the Portuguese practitioners, due to the many training sessions carried out in the past. Particular mention was made by the Portuguese authorities of the Library and the Atlas, without which they believe direct cooperation would simply not be possible.

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<sup>8</sup> [http://www.cej.mj.pt/cej/recursos/ebooks/penal/eb\\_Decisoeseuropeias.pdf](http://www.cej.mj.pt/cej/recursos/ebooks/penal/eb_Decisoeseuropeias.pdf)

All contact points are very aware of the work of the EJM Secretariat, and participate, taking turns, in all meetings, plenary and regular, and have applied for and been granted financial support to organise meetings with all contact points in the *comarcas*, at which a demonstration of the EJM tools is always an item on the agenda. As already mentioned, the regional meeting that took place in Aveiro, focused on FDs 2002/584/JHA, 2008/909/JHA and 2008/947/JHA and their practical application with Spain and France. In addition, the Judge Contact Point of Portugal website (<https://redepenal.csm.org.pt/ligacoes/>) provides a link to the EJM.

The training courses are organised in particular for public prosecutors and judges, with none provided for lawyers on a regular basis. Lawyers are allowed to participate in some training courses organised by the CEJ and the on-line training provided during the pandemic was also open to lawyers; however, they did not use this opportunity at all. The Bar Association is responsible for organising training courses for lawyers, but specific training courses in the field of international judicial cooperation, included on mutual recognition legal instruments and related EUCJ case-law, are not provided to them and, apart from the initial training, no other regular training courses for lawyers are mandatory. However, they do receive a newsletter and a magazine, which sometimes also mention national and EUCJ case-law.



## 8.2. Conclusions

- The judicial training for judges and public prosecutors is organised by a central organisation, the Centre for Judicial Studies (CEJ), which is an establishment with legal personality and administrative autonomy, under the responsibility of the Minister of Justice. Training courses on FD 2002/584/JHA are provided in a regular manner to Portuguese judges and prosecutors, who also regularly attend training sessions on the EAW organised at international level by the EJTN and ERA.
- Training courses on Framework Decisions 2008/909/JHA, 2008/947/JHA and 2009/829/JHA are provided to Portuguese judges and prosecutors, though not in a regular and systematic manner. Accordingly, the evaluation team considers that training at national level on these Framework Decisions should be enhanced and become part of the systematic and continuous training for all judicial practitioners involved in their application.
- No specific training on EU mutual recognition legal instruments and related CJEU case-law is provided to lawyers in Portugal. The evaluation team believes it is essential to encourage initiatives in this respect, including, where appropriate, considering the possibility for lawyers to participate in training organised by the Centre for Judicial Studies.
- The evaluation team stresses that more training and awareness-raising activities should also be organised at EU level on relevant topics pertaining to the mutual legal instruments covered by this evaluation, in particular on FDs 2008/947/JHA and 2009/829/JHA.
- The evaluation team considers the online training courses that the CEJ began to provide during the pandemic situation, and the special training programmes accessible to practitioners via the CEJ website, as a good practice.

- The Prosecutor-General's office has developed and disseminated several handbooks and guides, including some covering the practical application of the EAW, judgments in absentia and fundamental rights in relation to detention conditions. The evaluation team underlines that the distribution of such material is also considered a good practice.

## 9. FINAL REMARKS, RECOMMENDATIONS AND BEST PRACTICES

### 9.1. Suggestions by Portugal

The Portuguese authorities have suggested:

- 1) the provision of more extensive information on ‘trials in absentia’ in box (d)4 of the EAW form to be filled in by the issuing authorities.
- 2) the organisation of international training specifically on the enforcement of FD 2008/909/JHA, as a way to reinforce the cooperation that it aims for, and the identification of a national contact point for each State, which could facilitate the consultation procedures under this Framework Decision.
- 3) EU-level training and awareness-raising activities on topics pertaining to FDs 2008/947/JHA and 2009/829/JHA.
- 4) the promotion of more exchanges of ideas, including by organising meetings at EU level of probation services in all Member States, and the possible creation of a network bringing them together.
- 5) the creation of a practical guide on how to issue a European Supervision Order.
- 6) the creation of specific electronic forms on the European Judicial Network (EJN) to facilitate the contacts set out in article 22 of FD 2009/829/JHA, in order to expedite the procedures and enhance mutual trust, especially during the preparation of the decision.

## 9.2. Recommendations

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

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

The evaluation team saw fit to make a number of suggestions for the attention of the Portuguese 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 Portugal*

The Portuguese authorities:

- 1) should take measures to further promote direct contacts of their competent authorities with the competent authorities of other Member States on a regular basis in the context of proceedings related to the EU mutual recognition instruments covered by this evaluation;
- 2) should be more proactive in using Framework Decision 2008/909/JHA and not wait for the initiative and/or consent of the person to initiate the proceedings for requesting the Member State of which a convicted person is a national or a resident to recognise the judgment and execute the sentence, when this can facilitate social rehabilitation.
- 3) are encouraged to ensure that foreign convicts who are already in prison are regularly contacted and informed about the possibilities provided for in Framework Decision 2008/909/JHA. In the future, foreign convicts could be informed directly about the possibility of transfer to their home country via a form received at an earlier stage, when they are admitted to the correctional institution and asked to comment.

- 4) should establish a system for the centralised collection of statistics about the use of Framework Decisions 2002/584/JHA, 2008/909/JHA, 2008/947/JHA and 2009/829/JHA, in order to facilitate the analysis of their application and adapt policies and working methods accordingly;
- 5) should provide continuous and systematic training on Framework Decisions 2008/909/JHA, 2008/947/JHA and 2009/829/JHA to all judicial actors involved in their application.
- 6) are encouraged to promote sufficient training for lawyers regarding judicial cooperation matters, including on all the mutual recognition instruments covered in this evaluation.
- 7) should raise practitioners' awareness of the possibilities afforded by Framework Decisions 2008/947/JHA and 2009/829/JHA and promote their use, in order to ensure a more extensive and commensurate application of these instruments.
- 8) should consider establishing regular meetings between the judiciary, public prosecutors and the DGRSP's social reintegration teams in order to facilitate the detection of cases in which FD 2008/947/JHA can be applied and to ensure coordinated action in this respect.
- 9) are invited to change their national legislation so that EAWs can be the subject of Court proceedings that meet in full the requirements inherent to effective judicial protection;
- 10) are invited to change their national legislation as regards 'judgments in absentia' in order to allow not only appeals but also re-trials, in line with the CJEU case-law;
- 11) should take measures to increase the awareness of their practitioners about the case-law of the CJEU regarding fundamental rights aspects related to detention conditions, so that they are prepared for possible future cases in which these issues become relevant.

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

The other Member States:

- 1) should establish a system for centralised collection of statistics about the use of FDs 2002/584/JHA, 2008/909/JHA, 2008/947/JHA and 2009/829/JHA, in order to facilitate the analysis of their application and adapt policies and working methods accordingly;
- 2) regarding EAWs related to trials ‘in absentia’, the competent authorities of the issuing Member States should provide more extensive information in box (d)4 of the EAW form;
- 3) should consider establishing national networks of judges and public prosecutors to promote international judicial cooperation; the networks should meet regularly.
- 4) should consider establishing electronic case file systems accessible to all stakeholders including lawyers.

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

The EU institutions should consider taking appropriate measures:

- 1) to ensure that training is available at EU level on all the mutual recognition instruments covered by this evaluation, including in particular FDs 2008/947/JHA and 2009/829/JHA.
- 2) to promote more exchanges of ideas, including by organising meetings of probation services of all Member States at EU level and the possible creation of a network among them.

The Commission should consider:

- submitting a legislative proposal to modify Framework Decision 2009/829/JHA, in order to simplify the procedure.

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

The EJTN is encouraged:

- to organise training activities at EU level on FD 2008/947/JHA on probation and alternative sanctions and on FD 2009/829/JHA on the European Supervision Order.

### 9.3. Best practices

This section will include a list of best practices identified in Portugal that other Member States are encouraged to follow:

- 1) The Guidelines from the Prosecutor's General Office concerning the application of the different EU mutual recognition instruments covered by this evaluation.
- 2) The national network of magistrates (judges and public prosecutors) for international judicial cooperation, which meets regularly.
- 3) The good coordination among practitioners.
- 4) The frequent use of EJM contact points by other practitioners.
- 5) The good training system, in particular the good organisation of the Centre for Judicial Studies and the good practice of providing online training courses.
- 6) The use of an electronic case-file system, which includes all the documents and communication related to the case, is accessible to all stakeholders, including lawyers, and speeds up the procedures.





**Tribunal Judicial da Comarca de Lisboa Norte**  
**Juízo Local Criminal de Vila Franca de Xira - Juiz 2**  
 Palácio da Justiça, Praça da Justiça  
 2601-502 Vila Franca de Xira  
 Telef: 263285760 Fax: 263093589 Mail: vfxira.judicial@tribunais.org.pt

NUIPC: -----

*Inquiry n.*

**Secção/Juízo: Juízo Local Criminal de Vila Franca de Xira - Juiz 2**

*Division*

**(Inglês)**

**TERMO DE IDENTIDADE E RESIDÊNCIA**  
**( Art.º 196.º do Código Processo Penal )**  
 (Processo Comum (Tribunal Singular))

**STATEMENT OF IDENTITY AND RESIDENCE**  
*(Section 196 of the Code of Criminal Procedure)*

Data da diligência <i>Date of the statement</i>	Hora: <i>Time</i>	Local: <i>Place</i>
Entidade que preside: <i>Presiding authority</i>	Funcionário que executa: <i>Officer carrying it out</i>	

<b>ARGUIDO/ DEFENDANT</b>	
Nome: ----- <i>Name</i>	
Alcunha: <i>Nickname</i>	
Filiação: <i>Parents</i>	
Naturalidade/Nacionalidade: <i>Place of Birth / Nationality</i>	
Data de nascimento: <i>Date of birth</i>	
Estado civil: <i>Marital status</i>	Profissão: <i>Occupation</i>
Residência: domicílio: <i>Place of residence</i>	
B. I. / Passap. / C. Cond. Nº <i>Identity card / Passport / Driving licence no.</i>	Emitido em <i>Issued on</i>

E por ele arguido foi dito que o seu endereço <b>para efeito de notificação</b> é domicílio: <i>The defendant stated that his address for the purposes of being notified is</i>
Telefone/Fax: <i>Telephone / fax</i>

Foi-lhe dado conhecimento:
a) Da obrigação de comparecer perante a autoridade competente ou de se manter à disposição dela sempre que a lei o obrigar ou para tal for devidamente notificado;----- --
b) Da obrigação de não mudar de residência nem dela se ausentar por mais de cinco dias sem



**Tribunal Judicial da Comarca de Lisboa Norte**  
**Juízo Local Criminal de Vila Franca de Xira - Juiz 2**

Palácio da Justiça, Praça da Justiça  
2601-502 Vila Franca de Xira  
Telef: 263285760 Fax: 263093389 Mail: vfxira.judicial@tribunais.org.pt

comunicar a nova residência ou o lugar onde possa ser encontrado;-----

- 
- c) De que as posteriores notificações ser-lhe-ão feitas por via postal simples para o endereço acima indicado para esse efeito, excepto se comunicar um outro, através de requerimento entregue ou remetido por via postal registada à secretaria dos serviços onde o processo correr termos nesse momento;-----
- 
- d) De que o incumprimento do disposto nas alíneas anteriores legitima a sua representação por defensor em todos os actos processuais nos quais tenha o direito ou o dever de estar presente e bem assim a realização da audiência na sua ausência, nos termos do artigo 333º CPP;-----
- 
- e) De que, em caso de condenação, o termo de identidade e residência só se extinguirá com a extinção da pena

*He was informed that:*

- a) *it is his obligation to appear before the competent authorities or to be at their disposal whenever required by law or having been duly summoned for that purpose;-----*
- b) *it is his obligation not to change address nor to leave his residence for more than five days without communicating his new address or the place where he can be found;-----*
- 
- c) *he will receive the subsequent notifications by simple mail at the above-mentioned address, unless he indicates another through a request handed over or sent by registered mail to the administrative office of the services where the inquiry proceedings are taking place at that moment;-----*
- d) *his non-compliance with the provisions in the previous paragraphs will legitimate his representation by a defence counsel in all acts of the proceedings he is entitled or liable to attend, as well as the Court session being held in his absence, according to Section 333 of the Code of Criminal Procedure.-----*
- 
- e) *That, in case of condemnation, the statement of identity and residence will only be extinguished with the extinction of the sentence.*

Declarou ficar ciente, recebeu cópia e assina:

*He declared to have taken knowledge of the above, has received a copy and is going to sign:*

\_\_\_\_\_  
\_\_\_\_\_

## **ANNEX B**

### **Problems arising from the COVID-19 pandemic in Portugal**

Besides the information provided on site during the visit by the consulted entities, this document reflects some **additional information**.

#### **Information provided by the Directorate General for Probation and Prison Services (DGRSP)**

The public health situation did not interfere in the application of the instruments, other than the special care applied to the general population.

It should be noted that the contingency plans and safety procedures pursued by the DGRSP, always in dialogue and close collaboration with the Health Department, began in March 2020 with the sole purpose of preserving the health of most people that integrate the different universes of the DGRSP.

Given the dispersion of the DGRSP Services throughout the national territory and the large amount of persons (more than 20,000), between inmates and workers, in permanent social and professional interaction, only with this prevention work and, unavoidably, with the collaboration of all, it was possible to avoid, for many months, situations of outbreaks within the prison establishments and educational centres and, when they occasionally appeared, to respond in a timely and appropriate way to the circumstances.

This response was decisive so that young people and inmates positive to Covid 19 could have been immediately isolated and subjected to clinical monitoring 24 hours a day. Using exclusively the human and technical means of health of the DGRSP, it was possible to avoid the registration of new contagions and that sick people had been discharged from the clinic in the average times that public health considers predictable for the recovery of the Covid 19 disease.

The DGRSP guides its performance by respecting the Human Rights of the people placed in its custody, having zero tolerance for behaviour that violates these rights. To this extent and in prisons where there were outbreaks of Covid 19, despite the need to reinforce isolation measures and prevent new contagions, the rights of inmates were always respected. By way of example and in summary, it is reported that:

1. The general medication was always available, in the usual terms and according to the respective prescription. In the event of any additional need arising from the situation experienced, the clinical teams permanently in the Prison Establishments, endeavoured, for their satisfaction;
2. In view of the prophylactic need to temporarily close the canteens, an alternative scheme for requisitioning articles by inmates was immediately organized, which involved delivering the products to each one's cell spaces;
3. All inmates enjoyed the recess time provided for by law, which, in order to guarantee physical distance, took place in small groups of inmates, wearing a mask. Inmates always had access to the telephone booths, which were sanitized after each use;
4. Inmates always had access to contact with their lawyers.

This respect for the Rights of inmates was always present in the contingency plans which foresaw, among other measures, that prison establishments would carry out the reassignment (accommodation in the same prison sector) and the differentiation of the daily routines of the inmate population in order to try to separate , as much as possible, the people that the DGS considers most vulnerable (age over 60 years old, with immunosuppression or chronic disease, namely respiratory, hypertension and diabetes), of the remaining inmates.

The total suspension of visits took place for the period strictly advisable in terms of health. Thus, following public health guidelines, visits to prisoners resumed as soon as possible. The preparation of the conversation area involved the installation of integral acrylic booths.

As a way of making up for the lack of visits, the installation of videoconferencing facilities was reinforced. The videoconferencing system has been available in all Prisons since December 2019 and is installed in a private room and includes a computer, video camera and voice system.

To facilitate contact with family and friends, it was allowed to make three daily phone calls lasting five minutes each, a situation that still remains.

Communication between inmates of the same family, in different prisons, was facilitated by the use of videoconferencing, being defined, by internal regulation, that these video calls are monthly and last 20 minutes. Communication between inmates and a person not deprived of their liberty was initially facilitated by the use of Skype, later replaced by the WebEx platform. These communications, which principles were also regulated, are weekly and last 20 minutes.

## ANNEX C: PROGRAMME FOR THE ON-SITE VISIT

### NINTH ROUND OF MUTUAL EVALUATIONS

Mutual recognition legal instruments in the field of deprivation or restriction of liberty

#### PORTUGAL

##### *Programme*

*28 September to 1 October 2021*

September 28		
<i>Time</i>	<i>Meeting</i>	<i>Place</i>
09H50 - 10H30	<p>Directorate-General for Justice Policy</p> <p>Welcome Meeting</p> <ul style="list-style-type: none"><li>• On behalf of the Minister for Justice, Dr. António Folgado</li><li>• General Director of Directorate-General for Justice Policy, Dr. Jorge Costa</li></ul>	DGPJ - Av. D. João II, n° 1.08.01E, Torre H, Piso 2, Campus da Justiça, Lisboa
10H35 – 11H35	<p>Local Criminal Court</p> <ul style="list-style-type: none"><li>• Judge, Dra. Ana Sofia Rosado Sousa Peixeiro Ferreira Amado</li></ul>	Campus da Justiça - EXPO
12:00 – 12H50	<p>Centre for Judicial Studies</p> <ul style="list-style-type: none"><li>• Deputy Director, Deputy General Prosecutor, Dr. Luís Pereira</li></ul>	Largo do Limoeiro 1149-048 Lisboa
13H00– 14H30	Lunch break	

15H00 -17H30	<p>Prosecutor General's Office as Central Authority for International Judicial Cooperation in Criminal Matters</p> <p>Meeting with:</p> <ul style="list-style-type: none"> <li>Deputy General Prosecutor, Dra. Joana Ferreira (Deputy Director of the office of Comparative Law and Coordinator of the Judicial Cooperation Division of the PGR)</li> </ul>	<p>Rua do Vale de Pereiro, nº 2</p> <p>1269-113 Lisboa</p>
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September 29		
<i>Time</i>	<i>Meeting</i>	<i>Place</i>
08:00	<p>Directorate-General for Justice Policy</p> <ul style="list-style-type: none"> <li>Departure to Coimbra</li> </ul>	Av. Dom João II, 1900-233 Lisboa
10:15	<ul style="list-style-type: none"> <li>Arriving Coimbra</li> </ul>	
10H30 – 12:00	<p>Court of Appeal of Coimbra</p> <ul style="list-style-type: none"> <li>Deputy General Prosecutor, Dr. Luís Farinha Rosa</li> <li>Prosecutor, Dr. Pedro do Carmo</li> <li>Prosecutor, Dr. Carlos Filipe Preces</li> </ul>	R. Sofia, 3000-064 Coimbra

12:15H – 13H45	Lunch break	
14H15 – 15:45	<p>Court of Appeal of Coimbra</p> <ul style="list-style-type: none"> <li>• Judge Appellate Body, Dr. Jorge Manuel de Miranda Natividade Jacob</li> <li>• Judge Appellate Body, Dra. Helena Isabel Ribeiro Carmelo Dias Bolieiro</li> </ul>	R. Sofia, 3000-064 Coimbra
17:20	Departure from Coimbra	
19:30	Arrival in Lisbon	

September 30		
<i>Time</i>	<i>Meeting</i>	<i>Place</i>
09H00	Directorate-General for Justice Policy	DGPJ - Av. D. João II, nº 1.08.01E, Torre H, Piso 2, Campus da Justiça, Lisboa
09H15 – 10H00	Meeting with Judge Dra. Susana Mão de Ferro ( ESO) (DGPJ- videoconference)	DGPJ - Av. D. João II, nº 1.08.01E, Torre H, Piso 2, Campus da Justiça, Lisboa
10H30 – 11H45	<p>DGRSP</p> <ul style="list-style-type: none"> <li>• General Director, Dr. Rómulo Mateus</li> <li>• Dra. Mariana Lopes</li> </ul>	Travessa Cruz do Torel
12H00 – 12H30	Judiciary Police (PJ)	Rua Gomes Freire 174, Lisboa



September 30		
<i>Time</i>	<i>Meeting</i>	<i>Place</i>
	INTERPOL	
12H45 – 14H00	Lunch break	PJ
14H15 – 14H30	PUC-CPI	Rua Gomes Freire 174, Lisboa
15H00 – 16H00	SIRENE	Av. <sup>a</sup> Defensores de Chaves, n.º 6, R/C  1049-063 Lisboa
16H30 – 17H15	Portuguese Bar Association <ul style="list-style-type: none"> <li>Dra. Ângela Cruz</li> </ul>	Largo de São Domingos, 14 – 1º Lisboa
20H00	Dinner organised by the Ministry of Justice	(place to be determined)
October 1		
<i>Time</i>	<i>Meeting</i>	<i>Place</i>
10H00-12H00	<ul style="list-style-type: none"> <li>Final round for debriefing and possible pending questions with representatives of the Portuguese</li> </ul>	DGPJ - Av. D. João II, nº 1.08.01E, Torre H, Piso 2, Campus da Justiça,

September 30		
<i>Time</i>	<i>Meeting</i>	<i>Place</i>
	entities	Lisboa
12H30	<ul style="list-style-type: none"> <li>• End of meeting /Departure</li> </ul>	

## **ANNEX D: PERSONS INTERVIEWED/MET**

*Venue: Directorate-General for Justice Policy*

<b>Person interviewed/met</b>	<b>Organisation represented</b>
Dr. António Folgado	On behalf of the Minister for Justice
Dr. Jorge Costa	General Director of Directorate-General for Justice Policy
Mariana Sotto maior	General Director of Directorate-General for Justice Policy
Silvia Boto	General Director of Directorate-General for Justice Policy

*Venue: Local Criminal Court*

<b>Person interviewed/met</b>	<b>Organisation represented</b>
Judge, Dra. Ana Sofia Rosado Sousa Peixeiro Ferreira Amado	Judge

## Meetings on

*Venue: Centre for Judiciary Studies*

Person interviewed/met	Organisation represented
Deputy Director, Deputy General Prosecutor, Dr. Luís Pereira	Centre for Judiciary Studies
Judge Alexandre Oliveira	Centre for Judiciary Studies

*Venue: Prosecutor General's Office*

Person interviewed/met	Organisation represented
Deputy General Prosecutor, Dra. Joana Ferreira (Deputy Director of the office of Comparative Law and Coordinator of the Judicial Cooperation Division of the PGR)	Office of Comparative Law and Coordinator of the Judicial Cooperation Division of the PGR
Prosecutor Dra Sofia Rocha	Office of Comparative Law and Coordinator of the Judicial Cooperation Division of the PGR

*Venue: Court of Appeal of Coimbra*

Person interviewed/met	Organisation represented
<i>Deputy General Prosecutor, Dr. Luís Farinha Rosa</i>	Judge
<i>Prosecutor, Dr. Pedro do Carmo</i>	Judge
<i>Prosecutor, Dr. Carlos Filipe Preces</i>	Judge
Judge Appellate Body, Dr. Jorge Manuel de Miranda Natividade Jacob	Judge
Judge Appellate Body, Dra. Helena Isabel Ribeiro Carmelo Dias Bolieiro	Judge

## Meetings on

*Venue: DGRSP*

Person interviewed/met	Organisation represented
General Director, Dr. Rómulo Mateus	DGRSP
Dra. Mariana Lopes	DGRSP

*Venue: Portuguese Bar Association*

Person interviewed/met	Organisation represented
Dra. Ângela Cruz	Portuguese Bar Association

*Venue: Criminal police*

Person interviewed/met	Organisation represented
Deputy Director Verismo Milhazes	Criminal Police
Inspector Helena Gravato	Criminal Police

*Venue: SPOC and Sirene*

Inspector Jorge Portas	Sirene Bureau
Inspector Jose Barbosa	SPOC
Inspector Esmeralda Louro	SPOC


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

<b>List of acronyms, abbreviations and terms</b>	<b>language of Portugal or acronym in original language</b>	<b>language of X- Land or acronym in original language</b>	<b>English</b>
FD			Framework Decision
EAW			European Arrest Warrant
PGR			Public Prosecution Service
STJ			The Supreme Court of Justice
TC			Constitutional Court
CRP			Constitution of the Portuguese Republic
DCJRI			Judicial Cooperation and International Relations Department
DCIAP			Central Department of Criminal Investigation and Prosecution
DIAPs			Regional departments of Criminal Investigation and Prosecution
DGRSP			The Directorate-General for Reintegration and Prison Services
CEJ			Centre for Judicial Studies
ERA			Academy of European Law
NCB			National Central Bureau of the Police



<b>List of acronyms, abbreviations and terms</b>	<b>language of Portugal or acronym in original language</b>	<b>language of X- Land or acronym in original language</b>	<b>English</b>
SIS II			Schengen Information System II
EJN			European Judicial Network
EJTN			European Judicial Training Network
CJEU			Court of Justice of the European Union

## ANNEX E: IMPACT OF COVID 19

<b>PORTUGAL</b> 	
<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>The courts are already working without any limitations, so EAW issuance is now back to normal. As of April 6th, 2021 Courts are no longer working only with urgent serious cases, which means that non-urgent cases are expected to proceed normally. During the confinement period, under the confinement rules adopted in Portugal, Courts were mostly working only with urgent serious cases, a circumstance that naturally had an impact on the procedures of issuing EAWs. In addition, during that time, the Prosecutor General issued a general instruction, addressing several issues related to the COVID situation, among which there was one underlining the importance of carefully considering the need to impose measures that would imply deprivation of liberty only in the cases that, due to their seriousness, justify such measures.</p> <p><b>Impact on the execution of EAWs and postponement of the actual surrender</b></p> <p>As far as we are aware, no decision was taken to temporarily suspend the execution of EAWs during the confinement period. Nowadays, considering that Courts restarted their normal activity the execution of EAWs and the physical surrender of persons also follow the regular procedure and timelines. During the confinement period, Courts suspended their activities except for urgent cases, which meant that when someone was arrested, the usual EAW procedure was initiated given its urgent nature and dealt with by the on-duty Magistrates and Court clerks.</p> <p><b>Impact on surrender, extradition, transfer by land</b></p> <p>To our knowledge, the COVID-19 pandemic had no impact on the execution of surrenders, extraditions and transfers by land between Portugal and Spain, its only neighboring MS. As of June 2021, all surrenders, extraditions and transfers by land regained their usual pace, became as frequent as they were before the confinement period and the same rules are being applied.</p> <p><b>Impact on surrender, extradition, transfer by air</b></p> <p>A vaccination certificate or a negative Covid-19 test is required for the</p>

	<p>person to be allowed to enter the country. In addition, air traffic has now been re-established with UK and Brazil. As we noted in the previous compilation, until a couple of months ago, there was a travel ban in place regarding direct flights originating from UK and Brazil. Every other traveler should produce a negative PCR- COVID test.</p> <p>Despite the limitations, all surrender, extradition and transfers followed the same rules, with the necessary adjustments required by the pandemic situation. As such, as executing MS, all procedures are being processed, taking into account each specific case: for example, if the due travel arrangements are not possible, due to flight restrictions, Portugal sends a request to the issuing authority asking for a postponement until such limitations are lifted (this request is usually granted).</p> <p>As issuing MS, Portugal notes that the usual procedures in place have gradually been resumed accompanying the returning to the regular operation by the airline carriers.</p> <p><b>Legal basis for postponing the actual surrender</b></p> <p>In the few limited situations that was necessary to do so bearing in mind this context, in order to postpone the surrender of persons requested by the authorities of other Member States, the Portuguese authorities resorted to article 23(4) of FWD 2002/584/JHA.</p> <p><b>Adequacy of these provisions</b></p> <p>So far, this provision seemed sufficient, especially when the request refers to an EAW for enforcement of a conviction. However, some additional issues may arise when the EAW is for criminal prosecution if time limits to keep the person under custody are reached.</p> <p><b>Releases of requested persons following the postponement of the surrender</b></p> <p>So far, there is no note of any case in which this has occurred.</p> <p><b>Expected resuming of the surrender</b></p> <p>Portuguese authorities have been surrendering persons as requested State when conditions are met. During the pandemic, when the air-travel ban was in place, such requests were executed at the land border. As requesting State, there were some problems due to the fact that Portuguese police officers used, in most cases, the Portuguese national carrier, which suspended several flights until June 2021. Since then, the procedures returned to the usual practice.</p> <p><b>Transit</b></p> <p>No specific measures were implemented by the Portuguese</p>
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	<p>authorities regarding the transit of persons, but the generic preventive safety and sanitary measures were applied. As such, the transit through Portuguese territory maintained the rules previously established but there were a few adjustments regarding the compliance with the measures generally introduced to deal with the pandemic situation. Transit resumed and became normal from June on.</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 is note of some precautionary measures requested by some Member States. For example, Portugal has been requested to provide health certificates to persons to be surrendered when they transit through Austria. On the other hand, persons surrendered to Portugal were placed in quarantine when they were introduced to the prison system.</p>

	<p><b>Specific measures for the person to be transferred</b></p> <p>No specific measures were adopted besides the usual safety and sanitary measures adopted during the pandemic (for example, testing, the use of masks, vaccination).</p> <p><b>Specific measures for the escorting police officer</b></p> <p>No specific measures were adopted besides the usual safety and sanitary measures adopted during the pandemic (for example, tests, priority in accessing the vaccination process, vaccination certificate, among others).</p> <p><b>Need (or not) for further guidance on precautionary measures</b></p> <p>We believe it would be helpful to know in advance which type of precautionary measures each State will be requiring.</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>There were some minor occurrences. For example, in one extradition case to Switzerland, already granted, the surrender of the person has been postponed once due to the limited availability of the officials from the requesting State to travel to retrieve and accompany the person.</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 transfer of sentenced persons</b></p> <p>Some transfers of prisoners, especially physical removal, have been cancelled due to COVID-19 implications, mainly in order to avoid circulation in airports.</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>SIRENE Portugal is working at full capacity, but due to the COVID-19 situation, some SIRENE staff worked remotely from home during the most acute phases of the pandemic.</p> <p><b>Impact on the exchange of information with other SIRENE Bureaux</b></p> <p>There has been no impact on the time taken for exchanging information with other MS, as the SIRENE staff maintained access to all the relevant police databases.</p>

<b>EIO and MLA</b> -prioritization in issuing/execution -electronic transmission -whom to contact	<b>Impact on the issuing of EIOs and MLA requests</b> EIOs are being issued, translated and sent also in non-urgent cases.
<b>Freezing and confiscation orders</b> -prioritization in issuing/execution	N/A
<b>JITs</b> -prioritization and alternative telecommunication solutions	N/A
<b>Recommended channels for transmission of</b> -urgent requests -information exchange	In Portugal, judicial authorities as well as the central authority have <i>on duty services</i> . Direct requests to the competent authorities, in cases of EAW, are considered <i>very urgent</i> ; EIOs, with the mention of urgency clearly stated in the subject will be addressed immediately. We also consider that the intervention of urgent police channels, as well as EUROJUST, in duly justified cases, are an added value.
<b>Any other relevant information</b>	-The regular activity of first instance courts is no longer suspended, so non urgent cases are expected to proceed normally; -The hearing of witnesses shall be held preferably in a court or public building, unless that is not feasible, in which case the hearing will take place through appropriate means of remote communication; - The parties, their representatives or other participants who, according to the guidelines of the health authority, should be considered to be at risk, are not obliged to go to court and, in the event they do not attend, their presence in the proceedings must be carried out through appropriate means of remote communication, namely teleconferencing, videoconferencing or others.