



Handbook on the Transfer of Sentenced Persons between Romania and Norway



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MINISTRY OF JUSTICE



DIRECTORATE OF NORWEGIAN
CORRECTIONAL SERVICE



Marielle Kvalheim Gunnarsen
Kjersti Lehmann

Mariana Radu
Dana Maria Roman
Delia Luiza Gabriela Motîngă

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Preface

A globalised world has increased international mobility and migration. Thus, judicial cooperation is becoming increasingly essential to manage issues linked to the pursuit and conviction of criminal foreign citizens.

Sentenced foreign citizens frequently encounter difficulties such as language barriers, different culture and customs and the absence of contact with their relatives. Moreover, the objective of rehabilitation and reintegration is highly impaired by the circumstance that most sentenced foreign citizens have no connections with the sentencing state.

In order to strengthen the cooperation regarding transfer of sentenced persons, and also as a recognition of the good relations between both countries, Romania and Norway signed the Treaty between Romania and the Kingdom of Norway on the Transfer of Sentenced Persons in September 2010.

The bilateral Treaty is of great importance, and progress is expected to be achieved in transferring the sentenced persons between Romania and Norway.

In facilitating the transfer of sentenced persons, the bilateral Treaty takes account of modern trends in crime and crime policy. It provides for a simplified and speedier procedure which is likely to be less cumbersome than the one laid down in the Council of Europe Convention of the Transfer of Sentenced Persons (1983).

The purpose of this Handbook is to strengthen and improve the cooperation between the judicial authorities in our two countries and to facilitate an enhanced and more efficient application of the Treaty. It is our hope that the Handbook will enable practitioners to act more effectively and more rapidly. That is, to provide them with immediate answers concerning the bilateral Treaty as well as to give practical advice concerning the difficulties and obstacles they may encounter.

Oslo / Bucharest, June 2014



Vidar Brein-Karlsen
State Secretary
Ministry of Justice and Public Security of Norway



Simona-Maya Teodoroiu
Secretary of State
Ministry of Justice of Romania

1. Introduction

This *Handbook* is designed to be used by all actors involved in the transfer of sentenced persons between Romania and Norway, including judges, prosecutors, prison staff, staff of the competent authorities and other individuals interested or active in this field. The Handbook is meant as a tool to familiarise the Romanian and Norwegian specialists with the provisions of the Treaty and to offer them a comprehensive overview of its application. It can be used in a variety of contexts, both as a reference document and a training tool.

The elaboration of this Handbook was inspired by the Council of Europe¹ and United Nations² standards and recommendations on the international transfer of sentenced persons. A standard text providing practical information about the bilateral Treaty was found necessary immediately after its entry into force in order to improve its effective implementation.

¹ http://www.coe.int/t/dghl/standardsetting/pc-oc/Standards_transfer/Recommendations_en.asp

² Handbook on the International Transfer of Sentenced Persons (2012) https://www.unodc.org/documents/justice-and-prison-reform/11-88322_ebook.pdf

2. Overview of the bilateral Treaty

2.1. Content and specificity

The Treaty between Romania and the Kingdom of Norway on the transfer of sentenced persons (hereinafter “the Treaty”) was signed in Oslo on September 20, 2010. After the necessary internal procedures were fulfilled, the Treaty entered into force on February 24, 2012.

The provisions of the bilateral Treaty replace the European Convention on the Transfer of Sentenced Persons from March 21, 1983, and, from Romania’s perspective, are a part of domestic law.

Norway and Romania decided to conclude the Treaty to ensure improved administration of justice by means of transferring sentenced persons with a view of achieving their social rehabilitation.

The bilateral Treaty establishes ground rules according to which the Romanian or Norwegian authorities recognise a decision and enforce a sanction or a measure involving deprivation of liberty. The Treaty is based upon the *Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union*.

The Treaty applies exclusively in cases when the sentenced person is found on the territory of the issuing State. Moreover, the Treaty applies only to the recognition of decisions and enforcement of custodial sentences or measures involving deprivation of liberty applied for a determined or undetermined period of time. The fact that, besides the custodial sentence, a fine or confiscation was also imposed, without being paid or enforced, has no relevance and does not fall under the scope of the Treaty.

The Treaty shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in the European Convention on Human Rights.

2.2. National implementing legislation

2.2.1. Romanian legislation

Law no. 302/2004 on international judicial cooperation in criminal matters incorporates the multilateral and bilateral agreements concluded by Romania into domestic law. This function is illustrated in article 4 which deals with the application of this Law.

The Treaty was ratified by Law 296 from 21 December 2011, published on January 16, 2012.

2.2.2. Norwegian legislation

The Act relating to the Transfer of Sentenced Persons 20 July 1991 No. 67 (hereinafter The Transfer of Sentenced Persons Act) constitutes the legal basis for any multilateral and bilateral agreement Norway enters into regarding the transfer of sentenced persons.

3. Why consider transferring sentenced persons?

3.1. Rehabilitation and reintegration

The purpose of the Treaty, made obvious from the beginning and stated throughout the text, is to facilitate social rehabilitation and integration of sentenced persons; goals that are easier to achieve when the sentence is served in the country where the sentenced person is to be released. Being closer to family and friends, understanding the language and culture are all important factors in the rehabilitation of a sentenced person.

3.2. Humanitarian concerns

The human rights of the sentenced person are to be constantly observed and respected, and the transfer procedure should safeguard the general principles of equality, fairness and reasonableness, for instance as stated in the European Convention on Human Rights.

3.3. Practical considerations

There are a few guidelines to be followed when considering the transfer, the most important being the following:

- The recognition of the foreign judgments to the greatest extent possible, within the limits of the national legislation;
- The interdiction to convert a sanction involving deprivation of liberty into a pecuniary sanction;
- The necessity not to aggravate the sentenced person’s position;
- The courts in the executing State are bound by the description of the facts insofar as they appear from the judgment passed in the issuing State;
- The full period of deprivation of liberty served in the issuing State must be deducted.

3.4. Combined justifications

In many cases, the transfer of a sentenced person is supported by various reasons, besides serving the sentence in the state of nationality or residence.

A transfer might appear necessary for personal reasons (e.g. family), health reasons, or in order to appear before a judicial authority. In this latter case, special attention must be paid to the application of the specialty principle. The opinion of the sentenced person is to be taken into consideration in all cases, even in those when his/her consent is not mandatory.

4. Criminal justice system

4.1. Romania

4.1.1. Sentencing

The categories of penalties provided by the Romanian criminal code are the following:

- Main penalties (life imprisonment, imprisonment and fine);
- Accessory penalties (prohibition of certain rights during the enforcement of the sentence)
- Complementary penalties (prohibition of certain rights after the enforcement of the sentence is terminated)

The general limits of imprisonment are between 15 days to 30 years. The age of criminal responsibility is 14. Criminal liability is limited between the ages of 14 and 16, subject to the condition of the full discernment of the offender. The law provides special educational sanctions for minors, divided into two categories: measures not involving deprivation of liberty and measures involving deprivation of liberty. This latter category includes commitment into an educational centre and commitment into a detention centre.

4.1.2. Romanian Courts of Justice

The judicial power is exercised by the High Court of Cassation and Justice and the other courts appointed by law. The prerogatives of the Public Ministry are exercised by prosecutors, organised as prosecution offices, according to the law. The prosecution offices are attached to courts, conducting and overseeing the investigations carried out by the judiciary police, as provided by law.

The courts are: a) One High Court of Cassation and Justice; b) Courts of appeal -15; c) District Courts (tribunals) - 42; d) Specialised district courts - 4 (Brasov District Court for Minors and Family Cases, Arges Commercial District Court, Cluj Commercial District Court, Mures Commercial District Court); e) Local courts (courts of first instance) - 176; f) Military courts: (i) District Military courts - 4; (ii) Bucharest Territorial Military Court (iii) Bucharest Military Court of Appeal -1.

The High Court of Cassation and Justice is organised in 4 divisions – First civil division, Second civil division, The criminal division, The fiscal and administrative litigations division and the Joint Sections, each having its own jurisdictional prerogatives.

The courts of appeal are legal persons, having under their territorial jurisdiction several district courts and specialised courts.

At the level of each court of appeal, a judge is assigned to be in charge of international judicial cooperation in criminal matters. The same goes for the prosecution offices attached to the courts of appeal.

The territorial jurisdiction of each district court includes all first instance courts of the district or from Bucharest.

The international judicial cooperation in criminal matters is regulated by a distinct primary legislation, including specific procedural provisions in criminal cases. Law no. 302/2004 on international judicial cooperation in criminal matters, re-published in the Official Journal no. 377 from May 31, 2011. Law 302/2004 was amended by three successive acts: Law 224/2006, Law 222/2008 and Law 300/2013. The changes operated by Law 300/2013 also envisaged the provisions of the new criminal code and the new code of criminal procedure.

4.1.3. The independence of the Courts

Romania is a constitutional republic, in which the three powers of the state are separate and independent: legislative, executive and judiciary. The principle of independence of justice, as a public service, is enshrined in the Constitution (article 126 para. 1), stating that justice shall be administered by the High Court of Cassation and Justice and the other law courts set up by law. This principle is also reflected in article 124 para. 3, stating that judges are independent and obey only the law. It is noted that this principle has two aspects: institutional independence and the independence of judges. The independence of justice from any political or executive influence guarantees the impartiality of the act of justice and an effective enforcement of the *res judicata* rule. The Superior Council of Magistracy guarantees the independence of the judiciary.

4.2. Norway

4.2.1. Sentencing

The Norwegian General Civil Penal Code 22 May 1902 No. 10 (hereinafter the Penal Code) provides for the following ordinary penalties:

- Imprisonment
- Preventive detention (indefinite prison sentence)³
- Detention (in practice no longer in use)
- Community sentence
- Fines
- Loss of certain rights (a person's constitutional rights can never be withdrawn as a result of a criminal conviction)

The minimum prison sentence is 14 days. The maximum prison sentence is 30 years (for genocide, war crimes and crimes against humanity). Norway does not have life sentence. However, in theory, preventive detention may be life-long, as it can be extended by up to five years at a time. It is possible to impose both imprisonment and a fine for the same offence. If the fine is not paid, it may be converted to a certain number of days of imprisonment. When a sentenced person is transferred, it is only the sentence imposing deprivation of liberty that is transferred, cf. Article 1(c) of the Treaty.

The age of criminal responsibility is 15 years. For persons who were under the age of 18 at the time of the offence, imprisonment can only be imposed when specially required. The prison sentence for persons under the age of 18 cannot exceed 15 years. In order to reduce the number of juveniles in

³ Section 39 c. When a sentence for a specific term is deemed to be insufficient to protect society, a sentence of preventive detention in an institution under the correctional services may be imposed instead of a sentence of imprisonment when the following conditions in No. 1 or No. 2 are fulfilled:

1. The offender is found guilty of having committed or attempted to commit a serious violent felony, sexual felony, unlawful imprisonment, arson or other serious felony impairing the life, health or liberty of other persons, or exposing these legal rights to risk. In addition there must be deemed to be an imminent risk that the offender will again commit such a felony. In assessing such risk importance shall be attached to the felony committed or attempted especially as compared with the offender's conduct and social and personal functioning capacity. Particular importance shall be attached to whether the offender has previously committed or attempted to commit a felony as specified in the first sentence.
2. The offender is now found guilty of having committed or attempted to commit a less serious felony of the same nature as is specified in No. 1, and has previously committed or attempted to commit a felony as specified there. In addition it must be presumed that there is a close connection between the previous felony and the one now committed, and the risk of relapsing into a new felony as specified in No. 1 must be deemed to be particularly imminent.

prison, a new sanction for juveniles aged 15 to 18 years who have committed serious or repeated crimes has been enacted. The sanction is called ‘the Juvenile Sentence’ and is based on restorative justice-principles. The bill regulating this sanction will enter into force in July 2014.

Persons who were irresponsible, e.g. psychotic or mentally retarded to a high degree, at the time of committing the crime, cannot be sentenced to a regular penalty, but may be sentenced to compulsory psychiatric care.

4.2.2. Norwegian Courts of Justice

The Courts of Justice consist of three instances: the District Courts in the first instance, the Courts of Appeal in the second instance and the Supreme Court in the third instance. The courts hear both civil and criminal cases. The Courts of Justice are supplemented by special courts, including the Labour Court and the Land Consolidation Courts. The courts do not initiate cases themselves, but resolve legal disputes by considering the cases brought before them. Criminal cases are brought before the courts by the prosecution authority. The prosecution authority consists of the Director of Public Prosecutions, the Public Prosecutors and the Prosecuting Authority in the police. The procedures of a criminal case are governed by the Criminal Procedure Act 22 May 1981 No. 25 (hereinafter the Criminal Procedure Act). The Courts of Justice are administratively subordinate to the Norwegian Courts Administration (NCA).

Norway has a two-instance system where all cases start in the District Court. The country is divided into judicial districts, with one District Court per judicial district. There are 66 courts of first instance. Criminal cases in the District Court are decided either by a guilty plea or by the mixed panel of professional and lay judges. In addition, the District Court can make certain decisions during the investigation of criminal cases. The criterion for entering judgment on a guilty plea is that the accused makes an unreserved confession supported by the evidence in the case. In such cases the sentencing framework cannot exceed ten years, and the accused must concur with the procedure. These cases are heard by a single professional judge. The decisions of the District Court regarding imprisonment or other coercive sanctions during the investigation, and any ban on visits to remand prisoners are also taken by a professional judge. In ordinary criminal cases the District Court sits as a mixed panel of one professional and two lay judges. In lengthy and other special cases, the court may be constituted as an “extended court” with two professional and three lay judges. The professional judges and the lay judges participate on an equal basis as regards both the question of guilt and the sentencing. Judgments of the District Court may be appealed to the Court of Appeal. In this way, for reasons of due process, the question of guilt is tested in two instances. Nevertheless, with the exception of the most serious cases, the appeals committee of the Court of Appeal can refuse to let the Court of Appeal hear a case.

There are six Courts of Appeal in Norway, each covering a certain geographical area, called a circuit. The Courts of Appeal adjudicate appeals against decisions from the District Courts in their circuits. In criminal cases the appeal may be against various aspects of the District Court’s decision. If the appeal concerns the question of guilt, the case shall be decided by a jury or a bench consisting of three professional and four lay judges. The lay judges are laymen selected at random from a panel; there will always be two women and two men. The professional and lay judges take all decisions collectively, and all votes are equal.

In cases where the sentencing framework is more than six years, the question of guilt shall be decided by a jury. The jury consists of ten persons, if feasible five women and five men. The Court of Appeal’s decisions – other than decisions on the question of guilt in criminal cases – can be appealed to the Supreme Court.

The Supreme Court is the highest court in Norway. The decisions of the Supreme Court are final and cannot be appealed. The court is chaired by the President of the Supreme Court, and has another 19 judges. Individual cases are normally heard by a panel of five judges, but certain cases are considered by the Supreme Court in plenum. Appeals to the Supreme Court are first considered by the Supreme Court’s Appeals committee, which decides whether a case will proceed to the Supreme Court. The Supreme Court considers both civil and criminal cases, and has authority in all areas of the law. In criminal cases the question of guilt is determined by the Courts of Appeal, whereas the Supreme Court may decide on sentencing and the quality of the procedure. Proceedings of the Supreme Court proper are oral, and are open to the public. There is no immediate presentation of evidence in the form of party or witness testimony as in the District Courts and the Courts of Appeal.

In principle, the decisions of the Supreme Court cannot be rejected or altered by other authorities. However, over the last few decades, the influence of international courts of justice has grown, especially regarding the international conventions on human rights. Amongst others, the Court of Human Rights in Strasbourg now plays an important role in the development of law and jurisdiction in Norway.

4.2.3. The independence of the courts

The National Assembly (Stortinget) passes general laws which the Courts of Justice apply in all cases heard in court. The Courts of Justice are independent in their interpretation of the law. This means that the courts, headed by the Supreme Court, have a great influence on how the letter of each law is applied in each individual case.

The Courts of Justice and all judges must be protected from external influence over rulings and verdicts. The parties in a case may request a judge to step down if the judge in question has any connection with the case or the individual parties which might raise doubts over the impartiality or independence of the process. Judges have a personal responsibility to ensure that they do not give grounds for disqualification in any individual case.

Although their independence is guaranteed by the Constitution, the courts are not insulated from democratic developments in society. The National Assembly passes regulations relating to the organisation of the courts, for example: how many courts shall be provided throughout the nation, where they shall be situated, the number of presiding judges for each court and the procedure for appointing judges. However, the judges are appointed by the NCA, and not by the National Assembly.

4.3. Correctional system

4.3.1. Romanian correctional system

The coordination and the organisation of the incarceration system is the responsibility of the National Administration of Prisons.

The Romanian prison system includes the following units:

- 17 units with maximum security, closed and pre-trial regime;
- 16 prisons with semi-open and open regime;
- 4 prisons for minors and youngsters;
- 6 hospital prisons;
- 2 re-education centers;
- 1 prison for women (inside the other prisons there are also 6 sections for women)

Some prisons have special sections for prisoners on remand.

A sentenced person is assigned to a certain penitentiary according to a set of criteria, such as the domicile or the residence, the detention regime, safety measures imposed, the need for social rehabilitation identified for each prisoner, the sex and age of the offender.

The detention regimes are the following: the maximum security regime, the closed regime, the semi-open regime and the open regime. The detention regime is individualised observing criteria such as: the length of the sentence, the risk of the offender, criminal antecedents, the age, health and conduct of the prisoner, the needs and the abilities of the prisoner (with a view to establishing a specific program during the detention), the prisoner's availability to work or to take part in specific educational activities, therapy, counselling, education, training and so on.

In case a sentenced person performs work during detention, it is credited as follows: 5 days deduction for every 4 days of work (for paid work), 4 days deduction for every 3 days of work (for unpaid work), 3 days deduction for 2 nights of work (in case of work during night time). Education also counts in reducing the sentence, 30 days deduction for every school year. In case the sentenced person takes part in professional training, 20 days are deducted for each graduated course. A sentenced person that publishes a scientific paper or patents an invention benefits from a 30 days deduction.

4.3.2. Norwegian correctional system

The Norwegian Correctional system is organised in three levels: The Directorate of Correctional Service (KDI) at the central level, five regional offices at regional level, and 44 prisons at local level.

The Norwegian Correctional Service carries out remands in custody and penal sanctions in a way that takes into consideration the security of all citizens and attempts to prevent recidivism by enabling the offenders, through their own initiatives, to change their criminal behaviour.

The Directorate of Norwegian Correctional Service is responsible for carrying out remands in custody and penal sanctions in prison and in the community. Based on rules, regulations and guidelines developed by KDI, the prison administrations are responsible for making most decisions related to the serving of a sentence. A sentenced person may appeal such decisions to the regional level, and in certain cases to KDI.

Norwegian prisons are divided into different categories based on the level of security; maximum-security prisons, lower-security prisons and half-way houses. A sentenced person can serve the whole sentence or parts of the sentence in both categories, but it is most common that prisoners with long sentences start serving their sentence in a maximum-security prison and later on applies for a transfer to a lower-security prison. This procedure is based on the idea that a gradual transition towards a life in freedom is beneficial.

Short prison sentences can be served outside the prison with electronic monitoring.

While serving a sentence, a sentenced person can participate in different activities; work, school or rehabilitating programs. The sentenced person receives a daily allowance, but taking part in activities does not affect the length of the sentence.

5. Transfer terminology

5.1. Sentence

In the Treaty, sentence means any custodial sentence or any measure involving deprivation of liberty imposed for a limited or unlimited period of time on account of a criminal offence on the basis of criminal proceedings. This includes regular prison sentences, but also sentences that impose psychiatric care (also when the person is found not to be criminally liable).

Romanian law only provides for limited sentences. Norwegian law provides for both limited and unlimited sentences as described in 4.2.1. Preventive custody is one of the regular sentences. This type of sentence is unlimited in the sense that it may be extended after a review of the risk of re-offending and society's need for protection, and in theory, preventive custody may be life-long. In practice, for the time being, Norway will not request the transfer of a person sentenced to preventive custody, to a state that does not have a similar penalty. Consequently, when Norway is the issuing State, persons sentenced to preventive custody cannot be transferred to Romania.

5.2. Recognition of sentence

In order for the transfer to take place and the sanction to be enforced in the executing State, the sentence must be recognised. A sentence shall be recognised unless a ground for non-recognition or non-enforcement provided for in Article 9 of the Treaty exists.

The Treaty only provides for the continued enforcement of the sentence, with the possibility of adapting the sentence if it is incompatible with the law of the executing State in terms of its duration or nature.

It is important to emphasise that recognition only regards the custodial measure or sanction involving deprivation of liberty, irrespective of any other additional measures, of a different nature (fine, confiscation and so on).

According to Romanian law, recognition of a sentence implies that, following a judicial procedure, the court is satisfied that all the conditions are met in order for the sentence to be enforced in Romania.

According to Norwegian law, recognition of a sentence implies that the conditions are met, and that the sentence can be enforced in Norway.

5.3. Connection to the executing State

The bilateral Treaty refers to *nationals* and *permanent residents*, and to the *State in which a person lives*. According to the Treaty, the State in which the sentenced person lives is the State in which the sentenced person lives and has been legally residing continuously for at least five years and will retain a permanent right of residence there.

5.4. Expulsion

According to Romanian law, expulsion is a complementary sanction imposed by the court, for a period of 1 up to 5 years. Expulsion may be ordered in case a court imposes upon a foreign national a sentence involving either imprisonment or a fine and the court finds the sanction necessary, considering the nature and the seriousness of the offence, the circumstances of the case and the person of the offender.

In Norway, expulsions lie with The Directorate of Immigration (UDI), which is the central agency in the immigration administration in Norway. Appeals are handled by The Norwegian Immigration Appeals Board (UNE). If a person is expelled, the person must leave Norway and loses the right to return to Norway. The prohibition of entry can apply for a limited period of time or permanently, but it will always last for at least two years. In relation to the transfer of sentenced persons, the expulsion will often be based on the fact that the person has committed a criminal act and as a result has been sentenced to imprisonment.

It is important to note that expulsion is not a condition when the sentenced person gives his or her consent, or when he or she does not consent but is a national of and lives in the executing State.

6. Requirements for transfer

The Treaty contains explicit conditions that must be fulfilled before a sentenced person can be transferred to Romania or Norway. The substance of these conditions is hereby explained.

6.1. Final judgment

The first requirement for a sentenced person to be eligible for transfer is that the judgment of conviction and sentence against him or her is final. The term “final” has to be understood as referring to the exhaustion of all ordinary appeal processes, or the time limits for such remedies must have expired without the parties having availed themselves of them. This is not expressed in the Treaty as such and has to be considered as provided by the national law.

6.1.1. Final judgment according to Romanian law

In Romania, according to article 551 of the criminal proceedings code, the judgments of the first instance court remain final:

1. on the date they are handed down, when the judgment is not subject to challenge or appeal;
2. at the date of the expiry of the time limit for filing an appeal or challenge:
 - a) when the appeal or challenge was not filed within the time limit;
 - b) when the appeal or the challenge already filed was withdrawn within the time limit;
3. at the date when the appeal or the challenge is withdrawn, if the withdrawal occurred after the time limit for filing the appeal or the challenge expired;
4. at the date when the judgment denying the appeal or the challenge was handed down.

Moreover, according to article 552 of the criminal proceedings code, the judgment of the appellate court remains final on the date when it was handed down, in cases when the appeal was granted and the trial ended before the appellate court. The judgment on the challenge remains final on the date when it was handed down, in cases when the challenge was granted and the trial ended before the appellate court.

6.1.2. Final judgment according to Norwegian law

Pursuant to Section 50 of the Criminal Procedure Act, a judgment becomes final when it has been accepted by the parties, or when the time-limit for appeal has expired. If an appeal is lodged, the judgment becomes final when the case has been finally decided in the higher court.

6.2. Term remaining to be served

For a sentenced person to be transferred there must be a minimum period of the sentence still to be served at the time of the request (at the time when the competent authority of the executing State receives the request).

There has to be a minimum of six months left of the sentence to be served at the time when the competent authority receives the request. In practice, a request for transfer will only be forwarded in cases where there are more than six months until a possible conditional release, as described in chapter 8.2.

According to Norwegian law, the whole period spent in custody pending trial shall be deducted from the sentence. If the period in custody has been spent in complete isolation, a further deduction is given. This deduction will be decided by the judge in accordance with the Penal Code and is usually stipulated in the judgment.

6.3. Dual criminality

Article 7 of the Treaty contains a list of offences for which dual criminality is not required, if they are punishable in the issuing State by a custodial sentence or a measure involving deprivation of liberty for a maximum period of at least three years, and as they are defined by the law of the issuing State, shall, under the terms of the Treaty and without verification of the double criminality of the act, give rise to recognition of the judgment and enforcement of the sentence imposed. The list includes most forms of criminality that are likely to result in prison sentences for sentenced persons who may be transferred. The Treaty does not define offences in the same way as a criminal Code. It only defines certain *areas* of criminal conduct. For offences not included in the list, the dual criminality is applied.

It is necessary to emphasise that, if the competent authority of the issuing State has ticked one of the boxes on the list, the authority of the executing State will not have to examine if the conduct of the sentenced person is punishable under its national law.

In this respect, transfer cases from Norway are an exception from the general rule laid down in Law no. 302/2004, which imposes a mandatory double criminality check in all cases.

In relation with Norway, in transfer cases, the double criminality will be checked only if the issuing State did not classify the offence as one from the list. In cases where the double criminality is verified, the authority of the executing State will only assess if the criminal conduct is punishable, no matter of its legal classification in the law of the issuing or the executing State.

6.4. Consent of Romania and Norway

When Romania is the executing State, the final decision of the court of appeal that approved the transfer represents the final consent to the transfer. When Romania is the issuing State, the certificate is forwarded only after the competent judge decided that the transfer can be agreed to.

When Norway is the executing State, the final consent will be given by the competent authority after the necessary procedures are fulfilled, as explained in chapter 7.4.4.

When Norway is the issuing State, the procedure is administrative. The competent authority reviews the case and checks if the conditions of the Treaty are met, and if so decides to forward the certificate and a request for transfer. The decision to forward the certificate represents a preliminary consent to the transfer, and a final consent will be given later on in the process. However, not giving the final consent will only be done in extraordinary cases where e.g. one of the conditions set in the Treaty are no longer present or the sentenced person has been or is soon to be released.

6.5. Consent of sentenced persons

According to the Treaty, a judgment and a certificate may be forwarded for the purposes of the recognition of the judgment and the enforcement of the sentence even without the consent of the sentenced person.

Consent is not required when:

- a) The sentenced person is a national of the executing State and lives in that state;
- b) The sentenced person will be deported to the executing State once he or she is released from the enforcement of the sentence on the basis of an expulsion or deportation order included in the judgment or in a judicial or administrative decision or any other measure consequential to the judgment.

If the consent of the sentenced person is not required, the sentenced person's opinion must be taken into account when deciding to forward the judgment together with the certificate.

In Romania, according to Law no. 302/2004, the National Administration of Penitentiaries informs the sentenced person of his right to apply for a transfer. In the course of the transfer proceedings, the judge delegated to supervise the enforcement of custodial sentences, assigned to the correctional facility where the sentenced person is to be found, will hear the person, at the detention facility, in the presence of an attorney of his own choosing or appointed *ex officio* and, should the sentenced person expressly request so, in the presence of a representative of the Norwegian Embassy. Minutes will be drafted and signed by the judge, the sentenced person and the attorney.

In Norway, where the procedures mainly are administrative, sentenced persons that are Romanian nationals will be informed about the possibilities for a transfer and the consequences of a transfer when the serving of the sentence starts. They will be handed a form in which they can state whether or not they give their consent to a transfer and to state their opinion. The prison staff ensures that the sentenced person have been fully informed and that the consent is given voluntarily. If the sentenced person so requires, a representative from the Romanian Embassy may be present.

6.6. Human rights

The human rights requirement is provided in the Treaty. Thus, nothing in the Treaty should be interpreted as prohibiting refusal to execute a decision when there are objective reasons to believe that the sentence was imposed for the purpose of punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced on any one of those grounds.

6.7. Mental health

The bilateral Treaty is applicable also to measures involving persons detained in institutions for mentally disturbed offenders who cannot be held responsible for the commission of their offences. In addition, it applies to offenders who, after being sentenced, become mentally disturbed.

Mentally disturbed prisoners are similar to other prisoners with special needs whose transfer requests may require sympathetic consideration for humanitarian reasons.

When assessing a transfer case where it is established that the sentenced person has mental health problems, it is important to observe the measures of psychiatric or health care imposed in the issuing State, and their correspondence to the measures existing in the law of the executing State. In this respect, the transfer documents should include, whenever necessary, medical documents and recommendations on the further treatment of the prisoner.

In both countries there is a possibility to consult with the competent authorities in order to determine the best treatment and the most appropriate medical facility for the sentenced person.

Persons that are not held criminally liable, but are sentenced to psychiatric care can also be transferred according to the Treaty.

7. Transfer process

The sentenced persons should be informed of their right to apply for a transfer, the substance of what a transfer involves and the procedure for making transfer wishes clear to the authorities.

7.1. Requests and replies

The sentenced person may express an interest in being transferred to both issuing and executing States. Requests to initiate a transfer process and replies should be made in writing and requests should be addressed between competent authorities.

7.2. Time-limit for decision

According to Article 12 of the Treaty, the executing State is under the obligation to decide as soon as possible if it chooses to recognise the decision and enforce the sanction. Except for the cases when a reason for postponement is applicable as provided in Article 11 of the Treaty, the final decision concerning the recognition shall be taken as soon as possible and within a deadline of 90 days from the receipt of the decision and the certificate. The deadline is calculated from the date when the decision and the certificate are received by the competent authority and it represents the length of the entire procedure, including all levels of jurisdiction.

7.3. Costs

The issuing State shall bear all costs of the actual transfer of the sentenced person to the executing State as well as costs arising exclusively in the sovereign territory of the issuing State. All other costs resulting from the application of the Treaty shall be borne by the executing State. Typically, that will be costs related to the execution of the sentence in the executing State after the person has been transferred.

7.4. Decision-making procedures

7.4.1. Romania as the executing State

Law no. 302/2004 also ensures that the process of transferring sentenced persons is subject to judicial control.

The division for international judicial cooperation in criminal matters within the Ministry of Justice forwards the certificate and the decision to the prosecution office attached to the court of appeal in whose territorial jurisdiction the sentenced person resides, for the purpose of submitting the case to the court of appeal, within a deadline of 20 days.

The president of the court of appeal or the judge delegated by the president sets a trial date within 10 days, counting from the date when the file was registered at the court. The length of the procedure is 30 days counting from the same date.

The case is decided by a single judge, in chambers, without the notification of the sentenced person. The participation of the prosecutor is compulsory. In case the person was convicted for several offences, the requirements will be checked for each of the offences. When the requirements are fulfilled only for a part of the offences, the court may order the partial recognition of the judgment. In this latter case, consultations will take place with the issuing State, which will have the opportunity to withdraw the certificate.

The court examines the foreign decision, checks the works of the file and, on the basis of its findings, will render one of the following decisions:

- a) orders, by judgment, the enforcement in Romania of the sentence imposed by the court of the issuing State; or
- b) where the sentence is incompatible with the Romanian law in terms of its nature or its duration, compared to the sanction provided by domestic law for similar offences, it will adapt the sentence imposed by the court of the issuing State;
- c) orders, by judgment, the refusal of the request concerning the enforcement of the foreign decision in Romania.

For the purpose of rendering one of the decisions provided in article 6, the court may consult, directly or through the specialised directorate of the Ministry of Justice, with the competent authority of the issuing State, without extending the 30 days period by such consultations. The court will hand down its decision by a motivated judgment, which has to be drafted within a 10 days deadline and which is notified to the sentenced person, directly or through the authority appointed by the issuing State.

The judgment may be appealed, within a 10 days deadline, by the prosecutor and the sentenced person. For the prosecutor, the time limit runs from the handing down of the judgment. For the sentenced person, the time limit runs from the notification of a copy of the court's order. The file will be forwarded to the appellate court in 3 days, and the appeal will be trialled in 10 days, in chambers, without the notification of the sentenced person. The participation of the prosecutor is compulsory.

The final decision of the court is the end of the decision-making procedure. The competent authority will notify the Norwegian competent authority in this respect.

7.4.2. Romania as the issuing State

In case a foreign prisoner expresses his/her wish to be transferred to another state, the judge delegated to supervise the enforcement of custodial sentences, assigned to the correctional facility where the sentenced person is to be found, will hear the person, at the detention facility, in the presence of an attorney of his/her own choosing or appointed ex officio and, should the sentenced person expressly request so, in the presence of a representative of the Norwegian Embassy. Minutes will be drafted and signed by the judge, the sentenced person and the attorney.

After examining if all the requirements are met, the judge decides whether the sentenced person can be transferred or not.

- a) If the judge denies the transfer, he will establish a deadline after which the request can be re-examined. The judge's decision may be challenged before the competent local court, within a delay of 3 days. The court decides in chambers, in the presence of the prosecutor and with the notification of the sentenced person.
- b) In case the judge decides in favour of a transfer, the decision accompanied by the relevant documents will be forwarded to the Ministry of Justice, who will draft and forward the certificate.

7.4.3. Norway as the executing State

When Norway is the executing State and receives a formal request for a transfer to Norway, The Directorate of Correctional Service as the competent authority examines the case documents and makes sure that all necessary documents are enclosed.

The formal request is forwarded to the Director of Public Prosecutions (DPP) for an examination of whether the criminal act the person is sentenced for is covered by the list in Article 7 of the Treaty, or if not, whether it represents a criminal act according to Norwegian law (dual criminality). The DPP

also gives his opinion on whether there should be continued enforcement of the sentence or if the sentence should be adapted.

According to the Transfer of Sentenced Persons Act, the subsequent procedure is then dependant on whether there should be a continued enforcement or an adaption of the sentence in question.

In case of continued enforcement, the formal request for the transfer with all enclosures is forwarded to the Prosecuting Authority in order to start the enforcement. The procedure is administrative and the formal acceptance is given by the Directorate. If however the punishment by nature is incompatible to Norwegian law, or the punishment exceeds the maximum prescribed penalty scale according to Norwegian law, the Prosecuting Authority is requested to forward the case to the Courts which through a judicial procedure will adapt the sentence. The Directorate of Correctional Service will then notify Romanian authorities of the Court's decision.

7.4.4. Norway as the issuing State

According to the Transfer of Sentenced Persons Act, the procedure when Norway is the issuing State is administrative.

The cases of transfers of sentenced persons are initiated by the prison, which gives the sentenced person all the necessary information regarding the transfer, collects the sentenced person's opinion, prepares the case documents and forwards them to the Directorate of Correctional Service.

When the Directorate of Correctional Service receives the documents, the case is reviewed, and if all the conditions of the Treaty are met, the certificate and the formal request for transfer will be drafted and sent to the competent authority in Romania.

As soon as the case is reviewed by Romanian authorities and a formal acceptance is received by the Directorate of Correctional Service, the Directorate examines the terms on which Romanian authorities give their acceptance and decides whether or not a final consent can be given. Such an acceptance will always be given, except in extraordinary cases where e.g one of the conditions set in the Treaty is no longer present or the sentenced person has been or is soon to be released.

8. Transfer of the sentenced person

Once the transfer is approved, according to article 14 paragraph (2) of the Treaty, the issuing State is responsible for the transfer of the sentenced person. The procedure is carried out by the police. In Romania, the sentenced person will be taken over at the airport by designated persons from the National Administration of Penitentiaries.

9. Post-transfer considerations. Effects

9.1. Laws governing enforcement

9.1.1. Romania

The enforcement of sentences is governed by Law no. 254/2013 and the Code of Criminal Proceedings.

After being transferred from a foreign state, the sentenced person is firstly introduced into a penitentiary for a 21 days quarantine period, during which he/she is evaluated, undergoes medical tests and his/her detention regime is individualised. After that, he/she will be assigned to the detention facility where he/she will serve the sentence.

9.1.2. Norway

In Norway, the Execution of Sentences Act 18 May 2001 No. 21 (hereinafter the Execution of Sentences Act), together with regulations and guidelines, governs the enforcement of sentences.

When a sentenced person is transferred from a foreign State in order to serve the rest of the sentence in Norway, the decision of which prison the sentenced person will serve his or her sentence in, is dependent on a set of criteria; which security level is necessary based on the crime committed and the length of the sentence, knowledge about the sentenced person, other relevant information such as where the sentenced person is from, if he or she has family or children, if there is any health issues which should be taken into consideration or other rehabilitation needs. Capacity in the prisons will also be a factor.

9.2. Laws governing conditional release

9.2.1. Conditional release in Romania

In Romania, conditional release in case of imprisonment may be granted if: a) the prisoner served at least two thirds of the penalty, in the case of imprisonment not exceeding 10 years, or at least three fourths of the penalty, but not more than 20 years, in case of imprisonment exceeding 10 years; b) the prisoner is serving the sentence in a semi-open or open regime; c) the prisoner fully paid the civil compensation imposed by the sentence, except for the case when he produces evidence that he had no possibility to pay; d) the court is satisfied that the prisoner has improved and is ready to be reintegrated into society. In the calculation of the fractions of the penalty provided above, the part of the penalty that can be considered, according to the law, as served based on the work carried out, shall be taken into account. In this case however, conditional release cannot be granted before the actual service of at least half of the penalty of imprisonment under 10 years or of at least two thirds for imprisonment over 10 years.

If the prisoner has reached the age of 60, conditional release may be granted after the actual service of a half of the penalty, in case of imprisonment not exceeding 10 years, or at least two thirds of the penalty, in case of imprisonment exceeding 10 years, if the requirements under letters b)-d) are met. In the calculation of the fractions of the penalty provided above, the part of the penalty that can be considered, according to the law, as served based on the work carried out, shall be taken into account. In this case however, conditional release cannot be granted before the actual service of at least one third of the penalty of imprisonment under 10 years, or of at least a half for imprisonment over 10 years.

It is compulsory to state the factual reasons that led to granting the conditional release and that the prisoner is warned on his future behaviour and on the consequences he is facing, should he commit further offences or fail to comply with the supervision measures or the obligations imposed during the probation period. The time between the date of the conditional release and the date when the sentence will be fully served is the probation period for the prisoner.

According to article 587 of the criminal proceedings code, conditional release is granted following a request or a submission filed according to the provision of the law concerning the enforcement of sentences, by the first instance court in whose territorial jurisdiction the detention facility is placed. When the court finds that the requirements for the conditional release are not met, it will set a time limit after which the submission or the request may be renewed, by the decision denying the request. The time limit cannot exceed one year and it runs from the date when the decision remained final. The court's decision may be challenged before the district court in whose territorial jurisdiction the detention facility is placed, within a 3 days' deadline from the notification. The challenge filed by the prosecutor will suspend the execution of the decision. A copy of the final decision will be notified to the competent probation service, as well as to the proximity police.

9.2.2. Conditional release in Norway

According to section 42 of the Execution of Sentences Act, the Correctional Services may release a sentenced person on probation when the said person has served two-thirds and at least 60 days of the sentence, regardless of the length of the sentence imposed. The Correctional Services shall not decide to release a sentenced person on probation if on an overall assessment the circumstances make such a release inadvisable. The Correctional Services shall attach particular weight to the sentenced person's conduct while serving the sentence, and to whether there is reason to assume that the sentenced person will commit new criminal acts during the probation period. If half the sentence of imprisonment and not less than 60 days in prison has been served, the Correctional Services may release a sentenced person on probation if there are special reasons for doing so.

9.3. Rule of specialty

The rule of specialty ensures that no person that is transferred from one State to another, can be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence that was committed before the transfer, other than for the offence that he or she was transferred.

Exceptions are included in Article 16 paragraph 2 of the Treaty. These exceptions can be included in one of the following categories:

- Exceptions that imply the volition of the sentenced person (letter a – the omission to leave the territory of the executing State in 45 days or the act of returning in that state; letter e – when the sentenced person consents to the transfer; letter f – the express renunciation of the sentenced person);
- Exceptions related to the sentence applicable or the proceedings (letters b, c, d);
- Cases when the issuing State gives its consent.

9.4. Termination of enforcement

According to both Romanian and Norwegian law, the enforcement is terminated in one of the following cases: the sentence was served in full, the sentenced person was conditionally released, in case of amnesty and pardon.

9.5. Information

The cases when information is exchanged between the issuing and the executing State are provided in articles 18 and 19 of the Treaty.

Exchange of information should not be limited to these cases. It can take place at any time during the transfer process, most likely in the form of consultations between or through the competent authorities, in order to facilitate the cooperation.

9.6. Amnesty, pardon and review of judgment

In Norway, pardon is granted by the King in Council, usually in cases where the sentenced person has severe health problems that make it impossible to serve the sentence.

A sentenced person may apply to have a criminal case reviewed by the Norwegian Criminal Cases Review Commission. The Commission shall assess whether the requirements for a review are present. The most important grounds for a criminal case to be reopened are:

- New evidence or new circumstances that may lead to acquittal or a considerably lighter sentence.
- In a case against Norway, an international court or the UN Commission on Human Rights has concluded that the decision or the proceedings of the sentenced person's case, is in contravention of international law and there are grounds to suppose that a new examination of the criminal case will lead to a different conclusion.
- If someone who has had crucial dealings with the case (prosecuting counsel, judge, expert, defence counsel, witness) has committed a criminal offence that may have affected the conviction/sentence to the disadvantage of the sentenced person.

A review of the sentence will not prevent a transfer.

In Romania, amnesty has the effect of removing/dismissing the criminal responsibility for the offence (when it is granted before the conviction), or the enforcement and all the effects of the judgment, except for the fine which was already paid, the safety measures and the rights of the injured parties (when it is granted after the conviction). It can only be awarded by law (by the Parliament), regarding certain offences, categories of offences or penalties (within certain limits expressly indicated by law). It can be general or specific, conditional or unconditional. It applies only for the offences committed prior to a date expressly mentioned by law or prior to the date when the amnesty law comes into force.

Pardon is an act of clemency, which is the attribution either of the President (individual pardon) or of the Parliament, by law (collective pardon). Unlike amnesty, it does not dismiss responsibility, its effect being the fact that the sentence is no longer enforced or it is commuted to a lighter one. Individual pardon is granted only after the conviction remains final. Collective pardon is awarded only for offences committed prior to the entry into force of the law. Individual pardon can only be unconditional, collective pardon may be conditioned by certain criteria. It may also be total (when it covers the entire penalty) or partial (covering only a part of the penalty).

The general term of review of judgment, *lato sensu*, includes the litigation for annulment and the review *per se*. They can only be filed for specific reasons indicated by law, concerning either legality issues or certain factual circumstances that either constitute serious impediments to a fair trial or might have altered the final decision, should they have been known or established beforehand. Review is also available when the European Court of Human Rights established that there is an infringement under the Convention.

10. Competent authorities

10.1. Romanian competent authority

The Directorate for International Law and Judicial Cooperation is a specialised legal department within the Ministry of Justice, comprising: a) the Division for International Judicial Cooperation in Criminal Matters; b) the Division for International Judicial Cooperation in Civil and Commercial matters; c) a Unit for treaties, international relations and liaison magistrates.

The Division for International Judicial Cooperation in Criminal Matters is run by a head of division and it comprises 11 members of staff. The division insures, among other prerogatives, the achievement of the obligations incumbent to the ministry according to Law 302/2004 on international judicial cooperation in criminal matters, along with the subsequent amendments, as well as other legislation including provisions in this matter, on the basis of the international legal instruments ratified by Romania or on the basis of the EU relevant legal instruments or by virtue of international courtesy, with the guarantee of reciprocity, in its capacity of Romanian competent authority in the field of international judicial cooperation in criminal matters.

10.2. Norwegian competent authority

The Directorate of Norwegian Correctional Service was of July 2013 established as a separate entity outside the Norwegian Ministry of Justice and Public Security, and as of 1 January 2014, is the competent authority in charge of the management of transfers of sentenced persons.

The Directorate is responsible for carrying out remands in custody and penal sanctions in a way that takes into consideration the security of all citizens and attempts to prevent recidivism by enabling the offenders, through their own initiatives, to change their criminal behaviour.

The Directorate of Correctional Service is led by the Director General, and consists of five sections and two staffs: Security and Legal Section, Content and Capacity Management Section, Administrative and Financial Section, HR section, IT Section, Public Information Unit and International Cooperation Unit. In addition, The Directorate of Correctional Service is in charge of The Correctional Service of Norway Staff Academy.

Annexes

Annex I. Treaty between the Kingdom of Norway and Romania on the Transfer of Sentenced Persons

Treaty between Romania and the Kingdom of Norway on the Transfer of Sentenced Persons

Romania and the Kingdom of Norway, hereinafter referred to as the "Contracting Parties",

Taking into consideration the laws and regulations in force regarding law enforcement of the Contracting Parties and the desirability of enhancing their cooperative efforts in law enforcement and the administration of justice,

Desiring to facilitate the social rehabilitation of sentenced persons into their own society,

Considering that these objectives require that persons who are sentenced by final judgment as a result of their commission of a criminal offence should be given the opportunity to serve their sentences within their own society and that the best means to achieve this is to transfer them to their own countries,

Considering the need for extended application of the principle of the transfer of sentenced persons,

Taking into account that:

(1) Both Contracting Parties have ratified the Council of Europe Convention on the Transfer of Sentenced Persons of 21 March 1983. Under that Convention, sentenced persons may be transferred to serve the remainder of their sentence only to their State of nationality and only with their consent and that of the States involved. The Additional Protocol to that Convention of 18 December 1997, which allows transfer without the person's consent, subject to certain conditions, has also been ratified by both Contracting Parties.

(2) However, a further development of the cooperation provided for in the Council of Europe instruments concerning the enforcement of criminal judgments should be envisaged, in particular where citizens of the Contracting Parties were the subject of a criminal judgment and were sentenced to a custodial sentence or a measure involving deprivation of liberty in another Contracting Party. Notwithstanding the need to provide the sentenced person with adequate safeguards, his or her involvement in the proceedings should no longer be dominant by requiring in all cases his or her consent to the forwarding of a judgment to the other Contracting Party for the purpose of its recognition and enforcement of the sentence imposed.

(3) This Treaty should be applied in a manner which allows general principles of equality, fairness and reasonableness to be respected.

(4) Nothing in this Treaty should be interpreted as prohibiting refusal to execute a decision when there are objective reasons to believe that the sentence was imposed for the purpose of punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced on any one of those grounds.

(5) This Treaty should not prevent any Contracting Party from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media.

Have agreed as follows:

Article 1 Definitions

For the purposes of this Treaty:

(a) 'sentenced person' is any person, including a minor, against whom a judgment has been pronounced in the territory of either Party and who is being detained in that territory;

(b) 'judgment' shall mean a final decision or order of a court of the issuing State imposing a sentence on a natural person;

(c) 'sentence' shall mean any custodial sentence or any measure involving deprivation of liberty imposed for a limited or unlimited period of time on account of a criminal offence on the basis of criminal proceedings;

(d) 'issuing State' shall mean the State in which a judgment is delivered;

(e) 'executing State' shall mean the State to which a judgment is forwarded for the purpose of its recognition and enforcement;

(f) the state in which the sentenced person 'lives' is the State in which the sentenced person lives and has been legally residing continuously for at least five years and will retain a permanent right of residence there;

(g) 'national' shall mean for Romania, a Romanian citizen and, for the Kingdom of Norway, a Norwegian citizen.

Article 2 Determination of the competent authorities

1. The competent authority is, for Romania, the Ministry of Justice, and for the Kingdom of Norway, the Ministry of Justice and the Police. For the purposes of Article 14 "competent authority" means, for Romania, the Ministry of Administration and the Interior, and, for the Kingdom of Norway, the Ministry of Justice and the Police.

2. The Contracting Parties shall notify each other of any changes of the competent authorities.

Article 3

Purpose and scope

1. The purpose of this Treaty is to establish the rules under which a Contracting Party, with a view to facilitating the social rehabilitation of the sentenced person, is to recognize a judgment and enforce the sentence.
2. This Treaty shall apply where the sentenced person is in the issuing State.
3. This Treaty shall apply only to the recognition of judgments and the enforcement of sentences within the meaning of this Treaty. The fact that, in addition to the sentence, a fine and/or a confiscation order has been imposed, which has not yet been paid, recovered or enforced, shall not prevent a judgment from being forwarded.
4. This Treaty shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in the European Convention on Human Rights.

Article 4

Criteria for forwarding a judgment and a certificate

1. Provided that the sentenced person is in the issuing State and provided that this person has given his or her consent where required under Article 6, a judgment, together with the certificate for which the standard form is given in Annex I, may be forwarded to the other Contracting Party when:
 - (a) the other Contracting Party is the State of nationality of the sentenced person or is the State in which the sentenced person lives; or
 - (b) the other Contracting Party is the State, of which, while not being the State in a), the sentenced person has such close ties to, that a transfer is deemed appropriate, and the competent authority of that Contracting Party consents to the forwarding of the judgment and the certificate.
2. The forwarding of the judgment and the certificate may take place where the competent authority of the issuing State, where appropriate after consultations between the competent authorities of the issuing and the executing States, is satisfied that the enforcement of the sentence by the executing State would serve the purpose of facilitating the social rehabilitation of the sentenced person.
3. Before forwarding the judgment and the certificate, the competent authority of the issuing State may consult, by any appropriate means, the competent authority of the executing State. Consultation shall be obligatory in the cases referred to in paragraph 1 (b). In such cases the competent authority of the executing State shall promptly inform the issuing State of its decision whether or not to consent to the forwarding of the judgment.

4. During such consultation, the competent authority of the executing State may present the competent authority of the issuing State with a reasoned opinion, that 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.

Where there has been no consultation, such an opinion may be presented without delay after the transmission of the judgment and the certificate. The competent authority of the issuing State shall consider such opinion and decide whether to withdraw the certificate or not.

5. The executing State may, on its own initiative, request the issuing State to forward the judgment together with the certificate. The sentenced person may also request the competent authorities of the issuing State or of the executing State to initiate a procedure for forwarding the judgment and the certificate under this Treaty. Requests made under this paragraph shall not create an obligation of the issuing State to forward the judgment together with the certificate.

Article 5

Forwarding of the judgment and the certificate

1. The judgment or a certified copy of it, together with the certificate, shall be forwarded, by the competent authority of the issuing State directly to the competent authority of the executing State, as defined in Article 2, by any means which leaves a written record under conditions allowing the executing State to establish its authenticity. The original of the judgment, or a certified copy of it, and the original of the certificate, shall be sent to the executing State if it so requires. All official communications shall also be made directly between the said competent authorities.
2. The certificate shall be signed, and its content certified as accurate, by the competent authority of the issuing State.

Article 6

Opinion and notification of the sentenced person

1. Without prejudice to paragraph 2, a judgment together with a certificate may be forwarded to the executing State for the purpose of its recognition and enforcement of the sentence only with the consent of the sentenced person in accordance with the law of the issuing State.
2. The consent of the sentenced person shall not be required where:
 - (a) the sentenced person is a national of the executing State and lives in that State;
 - (b) the sentenced person will be deported to the executing State once he or she is released from the enforcement of the sentence on the basis of an expulsion or deportation order included in the judgment or in a judicial or administrative decision or any other measure consequential to the judgment;

3. The sentenced person shall be given an opportunity to state his or her opinion orally or in writing. Where the issuing State considers it necessary in view of the sentenced person's age or his or her physical or mental condition, that opportunity shall be given to his or her legal representative.

The opinion of the sentenced person shall be taken into account when deciding the issue of forwarding the judgment together with the certificate. Where the person has availed him or her self of the opportunity provided in this paragraph, the opinion of the sentenced person shall be forwarded to the executing State. If the sentenced person stated his or her opinion orally, the issuing State shall ensure that the written record of such statement is available to the executing State.

4. The competent authority of the issuing State shall inform the sentenced person, in a language which he or she understands, that it has decided to forward the judgment together with the certificate by using the standard form of the notification set out in Annex II.

Article 7 **Double criminality**

1. The following offences, if they are punishable in the issuing State by a custodial sentence or a measure involving deprivation of liberty for a maximum period of at least three years, and as they are defined by the law of the issuing State, shall, under the terms of this Treaty and without verification of the double criminality of the act, give rise to recognition of the judgment and enforcement of the sentence imposed:

- participation in a criminal organization,
- terrorism,
- trafficking in human beings,
- sexual exploitation of children and child pornography,
- illicit trafficking in narcotic drugs and psychotropic substances,
- illicit trafficking in weapons, munitions and explosives,
- corruption,
- fraud,
- laundering of the proceeds of crime,
- counterfeiting currency, including of the euro,
- computer-related crime,
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
- facilitation of unauthorized entry and residence,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage-taking,
- racism and xenophobia,
- robbery,
- theft,
- illicit trafficking in cultural goods, including antiques and works of art,
- swindling,
- racketeering and extortion,

- counterfeiting and piracy of products,
- forgery of administrative documents and trafficking therein,
- forgery of means of payment,
- illicit trafficking in hormonal substances and other growth promoters
- illicit trafficking in nuclear or radioactive materials,
- trafficking in stolen vehicles,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Court,
- unlawful seizure of aircraft/ships,
- sabotage.

2. For offences other than those covered by paragraph 1, the executing State shall make the recognition of the judgment and enforcement of the sentence subject to the condition that it relates to acts which also constitute an offence under the law of the executing State, or would constitute an offence if committed on its territory, whatever its constituent elements or however it is described.

Article 8 **Recognition of the judgment and enforcement of the sentence**

1. The executing State shall recognize a judgment which has been forwarded in accordance with the procedure under this Treaty, and shall forthwith take all the necessary measures for the enforcement of the sentence, unless it decides to invoke one of the grounds for non-recognition and non-enforcement provided for in Article 9.

2. Where the sentence is incompatible with the law of the executing State in terms of its duration, the executing State may decide to adapt the sentence only where that sentence exceeds the maximum penalty provided for similar offences under its national law. The adapted sentence shall not be less than the maximum penalty provided for similar offences under the law of the executing State.

3. Where the sentence is incompatible with the law of the executing State in terms of its nature, the executing State may adapt it to the punishment or measure provided for under its own law for similar offences. Such a punishment or measure shall correspond as closely as possible to the sentence imposed in the issuing State and therefore the sentence shall not be converted into a pecuniary punishment.

4. The adapted sentence shall not aggravate the sentence passed in the issuing State in terms of its nature or duration.

Article 9 **Grounds for non-recognition and non-enforcement**

1. The executing State may refuse to recognize the judgment and enforce the sentence, if:

- (a) the certificate referred to in Article 4 is incomplete or manifestly does not correspond to the judgment and has not been completed or corrected within a reasonable deadline set by the competent authority of the executing State;
- (b) the criteria set forth in Article 4(1) are not met;
- (c) enforcement of the sentence would be contrary to the principle of *ne bis in idem*;
- (d) in a case referred to in Article 7(2), the judgment relates to acts which would not constitute an offence under the law of the executing State. However, in relation to taxes or duties, customs and exchange, execution of a judgment may not be refused on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing State;
- (e) the enforcement of the sentence is statute-barred according to the law of the executing State;
- (f) there is immunity under the law of the executing State, which makes it impossible to enforce the sentence;
- (g) the sentence has been imposed on a person who, under the law of the executing State, owing to his or her age, could not have been held criminally liable for the acts in respect of which the judgment was issued;
- (h) at the time the judgment was received by the competent authority of the executing State, less than 6 months of the sentence remain to be served;
- (i) the judgment was rendered *in absentia*, unless the certificate states that the person was summoned personally or informed via a representative competent according to the national law of the issuing State of the time and place of the proceedings which resulted in the judgment being rendered *in absentia*, or that the person has indicated to a competent authority that he or she does not contest the case;
- (j) the executing State, before a decision is taken in accordance with Article 12(1), makes a request, in accordance with Article 16(3), and the issuing State does not consent, in accordance with Article 16(2)(g), to the person concerned being prosecuted, sentenced or otherwise deprived of his or her liberty in the executing State for an offence committed prior to the transfer other than that for which the person was transferred;
- (k) the sentence imposed includes a measure of psychiatric or health care or another measure involving deprivation of liberty, which, notwithstanding Article 8(3) cannot be executed by the executing State in accordance with its legal or health care system.

2. In the cases referred to in paragraph 1(a), (b), (c), (i) and (k), before deciding not to recognise the judgment and enforce the sentence, the competent authority of the executing State shall consult the competent authority of the issuing State, by any appropriate means, and shall, where appropriate, ask it to supply any necessary additional information without delay.

Article 10 **Partial recognition and enforcement**

1. If the executing State could consider recognition of the judgment and enforcement of the sentence in part, it may, before deciding to refuse recognition of the judgment and enforcement of the sentence in whole, consult the competent authority of the issuing State with a view to finding an agreement, as provided for in paragraph 2.

2. The competent authorities of the issuing and the executing States may agree, on a case-by-case basis, to the partial recognition and enforcement of a sentence in accordance with the conditions set out by them, provided such recognition and enforcement does not result in the aggravation of the duration of the sentence. In the absence of such agreement, the certificate shall be withdrawn.

Article 11 **Postponement of recognition of the judgment**

1. The recognition of the judgment may be postponed in the executing State where the certificate referred to in Article 4 is incomplete or manifestly does not correspond to the judgment, until such reasonable deadline set by the executing State for the certificate to be completed or corrected.

2. The same applies if the certificate and the judgment are not translated in accordance with article 21.

Article 12 **Decision on the enforcement of the sentence and time limits**

1. The executing State shall decide as quickly as possible whether to recognize the judgment and enforce the sentence and shall inform the issuing State thereof, including of any decision to adapt the sentence in accordance with Article 8 (2) and (3).

2. Unless a ground for postponement exists under Article 11, the final decision on the recognition of the judgment and the enforcement of the sentence shall be taken as soon as possible and within a period of 90 days of receipt of the judgment and the certificate.

3. When in exceptional cases it is not practicable for the competent authority of the executing State to comply with the period provided for in paragraph 2, it shall without delay inform the competent authority of the issuing State by any means, giving the reasons for the delay and the estimated time needed for the final decision to be taken.

Article 13 **Withdrawal of the certificate**

As long as the enforcement of the sentence in the executing State has not begun, the issuing State may withdraw the certificate from that State, giving reasons for doing so. Upon withdrawal of the certificate, the executing State shall no longer enforce the sentence.

Article 14

Transfer of sentenced persons

1. The sentenced person shall be transferred to the executing State at a time agreed between the competent authorities of the issuing and the executing States, and within 30 days after the final decision of the executing State on the recognition of the judgment and enforcement of the sentence has been taken.
2. The issuing State shall be responsible for the transfer of the sentenced person to the territory of the executing State, including obtaining any necessary authorization for transit.
3. If the transfer of the sentenced person within the period laid down in paragraph 1 is prevented by unforeseen circumstances, the competent authorities of the issuing and executing States shall immediately contact each other. Transfer shall take place as soon as these circumstances cease to exist. The competent authority of the issuing State shall immediately inform the competent authority of the executing State and agree on a new transfer date.

Article 15

Law governing enforcement

1. The enforcement of a sentence shall be governed by the law of the executing State. The authorities of the executing State alone shall, subject to paragraphs 2 and 3, be competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for early or conditional release.
2. The competent authority of the executing State shall deduct the full period of deprivation of liberty already served in connection with the sentence in respect of which the judgment was issued from the total duration of the deprivation of liberty to be served.
3. The competent authority of the executing State shall, upon request, inform the competent authority of the issuing State of the applicable provisions on possible early or conditional release. The issuing State may agree to the application of such provisions or it may withdraw the certificate.

Article 16

Rule of specialty

1. A person transferred to the executing State pursuant to this Treaty shall not, subject to paragraph 2, be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed before his or her transfer other than that for which he or she was transferred.
2. Paragraph 1 shall not apply in the following cases:

- (a) when the person having had an opportunity to leave the territory of the executing State has not done so within 45 days of his or her final discharge, or has returned to that territory after leaving it;
- (b) when the offence is not punishable by a custodial sentence or detention order
- (c) when the criminal proceedings do not give rise to the application of a measure restricting personal liberty;
- (d) when the sentenced person could be liable to a penalty or a measure not involving deprivation of liberty, in particular a financial penalty or a measure *in lieu* thereof, even if the penalty or measure *in lieu* may give rise to a restriction of his or her personal liberty;
- (e) when the sentenced person consented to the transfer;
- (f) when the sentenced person, after his or her transfer, has expressly renounced entitlement to the specialty rule with regard to specific offences preceding his or her transfer.
Renunciation shall be given before the competent judicial authorities of the executing State and shall be recorded in accordance with that State's national law. The renunciation shall be drawn up in such a way as to make clear that the person has given it voluntarily and in full awareness of the consequences. To that end, the person shall have the right to legal counsel;
- (g) for cases other than those mentioned under points (a) to (f), where the issuing State gives its consent in accordance with paragraph 4 or 5.

3. A request for consent referred to in para 2 (g) shall be submitted to the competent authority of the issuing State.

4. A request shall be supported by:

The original or an authenticated copy of the conviction and sentence or detention order immediately enforceable or of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting Party;

A statement of the offences for which prosecution, sentencing or deprivation of liberty is requested. The time and place of their commission, their legal description and a reference to the relevant legal provisions shall be set out as accurately as possible; and

A copy of the relevant enactments or, where this is not possible, a statement of the relevant law.

If the information communicated by the requesting Party is found to be insufficient to allow the requested Party to make a decision, the latter Party shall request the necessary supplementary information and may fix a time-limit for the receipt thereof.

Consent shall be given when there is an obligation to extradite under the European Convention on Extradition and its additional protocols.

5. A request submitted after a possible entry into force of the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway, shall be accompanied by the following information:

- a) the identity and nationality of the person

- b) the name, address, telephone and fax numbers and e-mail address of the issuing judicial authority
- c) evidence of an enforceable judgement, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 2 and 3 of the said Agreement
- d) the nature and legal classification of the offence, particularly in respect of Article 3 of the said Agreement
- e) a description of the circumstances in which the offence was committed, including the time place and degree of participation in the offence by the requested person:
- f) the penalty imposed, if there is a final judgment, or the scale of penalties for the offence under the law of the issuing State
- g) if possible other consequences of the offence.

The request shall be translated in accordance with Article 21 of this Agreement.

Consent shall be given when there is an obligation to extradite under that Agreement. The decision shall be taken no later than 30 days after reception of the request. For situations mentioned in Article 8 of that Agreement, the executing State shall give the guarantees mentioned therein.

Article 17 **Amnesty, pardon, review of judgment**

1. An amnesty or pardon may be granted by the issuing State and also by the executing State.
2. Only the issuing State may decide on applications for review of the judgment imposing the sentence to be enforced under this Treaty.
3. In the case in paragraph 2, where his or her personal appearance for review is required by the issuing State, the sentenced person shall be temporarily transferred to the issuing State on condition that he or she is returned within the time limit appointed by the executing State. The transferred person must remain in custody in the territory of the issuing State unless the executing State for the transfer does not request his or her release.

Article 18 **Information from the issuing State**

1. The competent authority of the issuing State shall forthwith inform the competent authority of the executing State of any decision or measure as a result of which the sentence ceases to be enforceable immediately or within a certain period of time.
2. The executing State shall terminate enforcement of the sentence as soon as it is informed by the competent authority of the issuing State of the decision or measure referred to in paragraph 1.

(3) The competent authority of the issuing State shall upon request inform the competent authority of the executing State of the possibility for review of the judgment and of the conditions provided in its national law, particularly with regard to the authority to which a possible request for review is to be addressed and of the time limit for the making of such a request.

Article 19 **Information to be given by the executing State**

The competent authority of the executing State shall without delay inform the competent authority of the issuing State by any means which leaves a written record:

- (a) of the final decision to recognize the judgment and enforce the sentence together with the date of the decision;
- (b) of any decision not to recognize the judgment and enforce the sentence in accordance with Article 9, together with the reasons for the decision;
- (c) of any decision to adapt the sentence in accordance with Article 8 (2) or (3), together with the reasons for the decision;
- (d) of any decision not to enforce the sentence for the reasons referred to in Article 17 (1) together with the reasons for the decision;
- (e) of the beginning and the end of the period of conditional release, where so indicated in the certificate by the issuing State;
- (f) of the sentenced person's escape from custody;
- (g) of the enforcement of the sentence as soon as it has been completed.

Article 20 **Consequences of the transfer of the sentenced person**

1. Subject to paragraph 2, the issuing State shall not proceed with the enforcement of the sentence once its enforcement in the executing State has begun.
2. The right to enforce the sentence shall revert to the issuing State upon its being informed by the executing State of the partial non-enforcement of the sentence pursuant to Article 19 (f).

Article 21 **Languages**

1. When Romania is the executing State, the certificate, the judgment and other necessary documentation shall be translated into Romanian.
2. When the Kingdom of Norway is the executing State, the certificate, the judgment and other necessary documentation shall be translated into Norwegian or English.
3. The communications between the competent authorities of the Contracting Parties shall be made in English.

Article 22
Costs

Costs resulting from the application of this Treaty shall be borne by the executing State, except for the costs of the transfer of the sentenced person to the executing State and those arising exclusively in the sovereign territory of the issuing State.

Article 23
Consultations

The Contracting Parties may consult each other to find solutions to individual cases and in view of the effective implementation of this Treaty. Consultations shall take place directly between the competent authorities of the Contracting Parties.

Article 24
Sharing information

The Competent authorities shall, at least once a year, give each other general information about the nationals of the other Contracting Party, subject to a final sentence.

Article 25
Relationship with other Treaties

This Treaty shall, from the date of entry into force, replace the corresponding provisions of The European Convention on the transfer of sentenced persons of 21 March 1983 and the Additional Protocol thereto of 18. December 1997.

Article 26
Transitional provision

1. Requests received before entry into force of this Treaty shall continue to be governed in accordance with the existing legal instruments on the transfer of sentenced persons. Requests received after that date shall be governed by the rules in this Treaty.

2. This Treaty shall apply also to the execution of sentences imposed before its entry into force.

Article 27
Final provisions

1. This Treaty shall enter into force on the thirtieth day after the latter of the dates on which each of the Parties has notified the other through diplomatic channels that the procedures required by its law have been complied with.

2. This Treaty may be amended by written agreement of the Contracting Parties, in accordance with the procedure laid down for its entry into force.

3. Any of the Contracting Parties may terminate this Treaty, at any time, by means of written notice sent through diplomatic channels. In this event, this Treaty shall cease to take effect 6 months after the date of receipt of the notice.

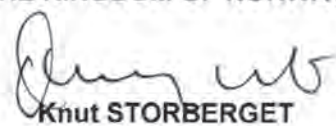
In witness whereof, the undersigned, being duly authorized thereto, have signed this Treaty.

Signed in Oslo in two originals, this, 20 September 2010, in Romanian, Norwegian and English, each text being equally authentic. In the case of divergence of interpretation, the English text will prevail.

FOR
ROMANIA


Alina Mihaela BICA
Secretary of State
Ministry of Justice

FOR
THE KINGDOM OF NORWAY


Knut STORBERGET
Minister of Justice and Police

1

ANNEX I

CERTIFICATE

1

This certificate must be written in, or translated into one of the languages as stated in Article 22 of the Treaty between Romania and the Kingdom of Norway on the transfer of sentenced persons

**referred to in Article 4 of the Treaty between Romania and the Kingdom of Norway
on the transfer of sentenced persons**

(a)

Issuing State: ...

Executing State: ...

(b) The court which delivered the judgment imposing the sentence that became final:

Official name: ...

The judgment was delivered on (give date: dd-mm-yyyy): ...

The judgment became final on (give date: dd-mm-yyyy): ...

Reference number of the judgment (if available): ...

(c) Information related to the authority that may be contacted for any question related to the certificate:

1. Type of authority: Please tick the relevant box:

Central authority ...

Court ...

Other authority ...

2. Contact details of the authority indicated under point (c):

Official name: ...

Address: ...

Tel.: (country code) (area/city code) ...

Text as Tentatively Agreed to by the Romanian and Norwegian Delegations
Subsequent to 22-23 April Negotiations, in Bucharest

Fax: (country code) (area/city code) ...

E-mail address (if available): ...

3. Languages in which it is possible to communicate with the authority:

4. Contact details of person(s) to be contacted to obtain additional information for the purposes of enforcement of the judgment or agreement on the transfer procedures (name, title/grade, telephone no: ... , fax, e-mail address), if different from 2:

(d) Information regarding the person on whom the sentence has been imposed:

Name: ...

Forename(s): ...

Maiden name, where applicable: ...

Aliases, where applicable: ...

Sex: ...

Nationality: ...

Identity number or social security number (if available): ...

Date of birth: ...

Place of birth: ...

Last known addresses/residences: ...

Language(s) which the person understands (if known): ...

The sentenced person is: in the issuing State and is to be transferred to the executing State.

Additional information to be provided, if available and if appropriate:

1. Photo and fingerprints of the person, and/or contact details of the person to be contacted in order to obtain such information:

2. Type and reference number of the sentenced person's identity card or passport:

3. Type and reference number of the sentenced person's residence permit:

4. Other relevant information about the sentenced person's family, social or professional ties to the executing State:

(e) Relation to any earlier request for extradition or Arrest Warrant

A request for extradition or Arrest Warrant has been issued for the purpose of the execution of a custodial sentence or detention order Yes

No

A request for extradition/arrest warrant has been issued for the purpose of prosecution of a person who is a national or resident of the executing State and the executing State has extradited/surrendered the person under the condition that the person is to be returned to the executing State in order to serve there the custodial sentence or detention order passed against him or her in the issuing Member State

Yes

No

(f) Reasons for forwarding the judgment and the certificate [(if you have answered yes in Box (e), there is no need to fill in this box)]:

The judgment and the certificate are forwarded to the executing State because the issuing authority is satisfied that the enforcement of the sentence by the executing State would serve the purpose of facilitating the social rehabilitation of the sentenced person and:

(a) The executing State is the State of nationality of the sentenced person

(b) The executing state is the state in which the sentenced person lives..

(c) The executing State is a State, other than a State referred to in (a) or (b) the competent authority of which consents to the forwarding of the judgment and the certificate to that State.

(g) Judgment imposing the sentence:

1. The judgment covers ... offences in total.

Summary of facts and a description of the circumstances in which the offence(s) was (were) committed, including time and place; and the nature of the involvement of the sentenced person:

Nature and legal classification of the offence(s) and the applicable statutory provisions on the basis of which the judgment was made:

2. To the extent that the offence(s) identified under point (g) 1 constitute(s) one or more of the following offences, as defined in the law of the issuing State, which are punishable in the issuing State by a custodial sentence or detention order of a maximum of at least three years, please confirm by ticking the relevant box(es):

- participation in a criminal organisation;
- terrorism;
- trafficking in human beings;
- sexual exploitation of children and child pornography;
- illicit trafficking in narcotic drugs and psychotropic substances;

- illicit trafficking in weapons, munitions and explosives;
- corruption;
- fraud;
- laundering of the proceeds of crime;
- counterfeiting currency, including of the euro;
- computer-related crime;
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
- facilitation of unauthorised entry and residence;
- murder, grievous bodily injury;
- illicit trade in human organs and tissue;
- kidnapping, illegal restraint and hostage-taking;
- racism and xenophobia;
- robbery;
- theft
- illicit trafficking in cultural goods, including antiques and works of art;
- swindling;
- racketeering and extortion;
- counterfeiting and piracy of products;
- forgery of administrative documents and trafficking therein;
- forgery of means of payment;
- illicit trafficking in hormonal substances and other growth promoters;
- illicit trafficking in nuclear or radioactive materials;
- trafficking in stolen vehicles;
- rape;
- arson;
- crimes within the jurisdiction of the International Criminal Court;
- unlawful seizure of aircraft/ships;
- sabotage.

3. To the extent that the offence(s) identified under point 1 is (are) not covered by point 2, please give a full description of the offence(s) concerned:

(h) Status of the judgment imposing the sentence:

1. Indicate if the judgment was rendered in absentia:

- No, it was not.

- Yes, it was; it is confirmed that:

- the person was informed in person, or via a representative competent according to the national law of the issuing State, of the time and place of the proceedings which led to the judgment in absentia or
- the person has indicated to a competent authority that he/she does not contest the decision.

2. Details of the length of the sentence:

2.1. Total length of the sentence: ...

2.2. The full period of deprivation of liberty already served in connection with the sentence in respect of which the judgment was issued:

... as per (...) (give date on which calculation was made: dd-mm-yyyy): ...

2.3. Number of days to be deducted from total length of the sentence for reasons other than the one referred to under 2.2 (e.g. amnesties, pardons or clemencies, etc. already granted with respect to the sentence): ... as per (give date on which calculation was made: dd-mm-yyyy): ...

2.4. Sentence expiry date in the issuing State:

- Not applicable, because the person is currently not in custody

- The person is currently in custody and the sentence, under the law of the issuing State, would be fully served by (give date: dd-mm-yyyy)²: ...

3. Type of sentence:

- custodial sentence

- measure involving deprivation of liberty (please specify):

(i) Information related to early or conditional release:

² Please insert here the date by which the sentence would be fully served (not taking into account the possibilities of any form of early and/or conditional release) if the person were to stay in the issuing State.

1. Under the law of the issuing State the sentenced person is entitled to early or conditional release, having served:

- half the sentence
- two-thirds of the sentence
- another portion of the sentence (please indicate):

2. The competent authority of the issuing State requests to be informed of:

The applicable provisions of the law of the executing State on early or conditional release of the sentenced person;

The beginning and the end of the period of early or conditional release.

(j) Opinion of the sentenced person:

The sentenced person is in the issuing State and:

a. has requested the forwarding of the judgment and the certificate

consented to the forwarding of the judgment and the certificate

did not consent to the forwarding of the judgment and the certificate (state reasons given by the sentenced person):

b. Opinion of the sentenced person is attached.

Opinion of the sentenced person was forwarded to the executing State on (give date: dd-mm-yyyy): ...

(k) Other circumstances relevant to the case (optional information):**(l) Final information:**The text of the judgment(s) is (are) attached to the certificate³.

Signature of the authority issuing the certificate and/or its representative certifying the content of the certificate as accurate

Name: ...

Post held (title/grade): ...

Date: ...

Official stamp (if available) ...

³ The competent authority of the issuing State must attach all judgments related to the case which are necessary to have all the information on the final sentence to be enforced. A translation of the judgment(s) shall also be attached.

ANNEX II**NOTIFICATION OF THE SENTENCED PERSON**

You are hereby notified of the decision of ... (competent authority of the issuing State) to forward the judgment of ... (competent court of the issuing State) dated ... (date of judgment) ... (reference number; if available) to ... (executing State) for the purpose of its recognition and enforcement of the sentence imposed therein in accordance with the Treaty between Romania and the Kingdom of Norway on the Transfer of Sentenced Persons.

The enforcement of the sentence will be governed by the law of ... (executing State). The authorities of that State will be competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for early or conditional release.

The competent authority of ... (executing State) has to deduct the full period of deprivation of liberty already served in connection with the sentence from the total duration of deprivation of liberty to be served. An adaptation of the sentence by the competent authority of ... (executing State) may take place only if it is incompatible with the law of that State in terms of its duration or nature. The adapted sentence must not aggravate the sentence passed in ... (issuing State) by its nature or duration.

Annex II. List of relevant laws**Norwegian law**

- The Act relating to the Transfer of Sentenced Persons 20 July 1991 No. 67
- The Criminal Procedure Act 22 May 1981 No. 25
- The Execution of Sentences Act 18 May 2001 No. 21
- The Norwegian General Civil Penal Code 22 May 1902 No. 10

All relevant laws can be found online at www.lovdata.no

Romanian law

- Law no. 302/2004 on international judicial cooperation in criminal matters
- Law no. 296/21 December 2011, ratifying the treaty between the Kingdom of Norway and Romania on the Transfer of Sentenced Persons
- The criminal code
- The criminal procedure code
- Law no. 254/2013, concerning the enforcement of sentences and measures involving deprivation of liberty, ordered by the judicial authorities in the course of the criminal trial

Annex III. Case summaries

Transfer cases – from Norway to Romania

1. Romanian national, male, age 29

The request was initiated by the Norwegian Ministry of Justice and Public Security, on the basis of the bilateral Treaty. Mr. X was sentenced to an 8 years' imprisonment sentence, for 5 offences of theft and robbery. The convicting court took into consideration, *inter alia*, the criminal record he had in Romania. The request was drafted in the form of the certificate indicated at article 4 of the Treaty. In the certificate, the offences were chosen from the list at point 2. The sentenced person consented to the transfer, the procedure was initiated at his request. Therefore, the principle of specialty was not applicable. The certificate was accompanied by the statement of the sentenced person and the decisions of the courts (first instance and appeal).

The transfer was trialed by the Court of Appeal of Bucharest. The court acknowledged that the double criminality check is not necessary, that the judgment is final and enforceable, the fraction of the penalty remaining to be served exceeds 6 months, that the sentenced person is a Romanian national (information provided by the issuing State and checked by the Prosecutor's Office). The court recognised the decision and ordered its enforcement in Romania. In order for the provisional arrest to be deducted, supplementary information was requested from the issuing State.

The decision was notified to the sentenced person, who did not file for appeal. In this context, the decision ordering the transfer remained final, and the Romanian Ministry of Justice informed the issuing State in this respect. Subsequently, a letter from the Norwegian competent authority was received, containing the final consent to the transfer.

The surrender procedure was carried out by the Norwegian Interpol Bureau, with the cooperation of its Romanian colleagues. The sentenced person was brought to Romania by an escort of the Norwegian police.

2. Romanian national, male, age 23

Mr. Y, a Romanian national, was sentenced to a 2 years and a month sentence, for aggravated robbery. A certificate was drafted, in which the corresponding box at point 2 was ticked (offence for which the double criminality check was not to be performed).

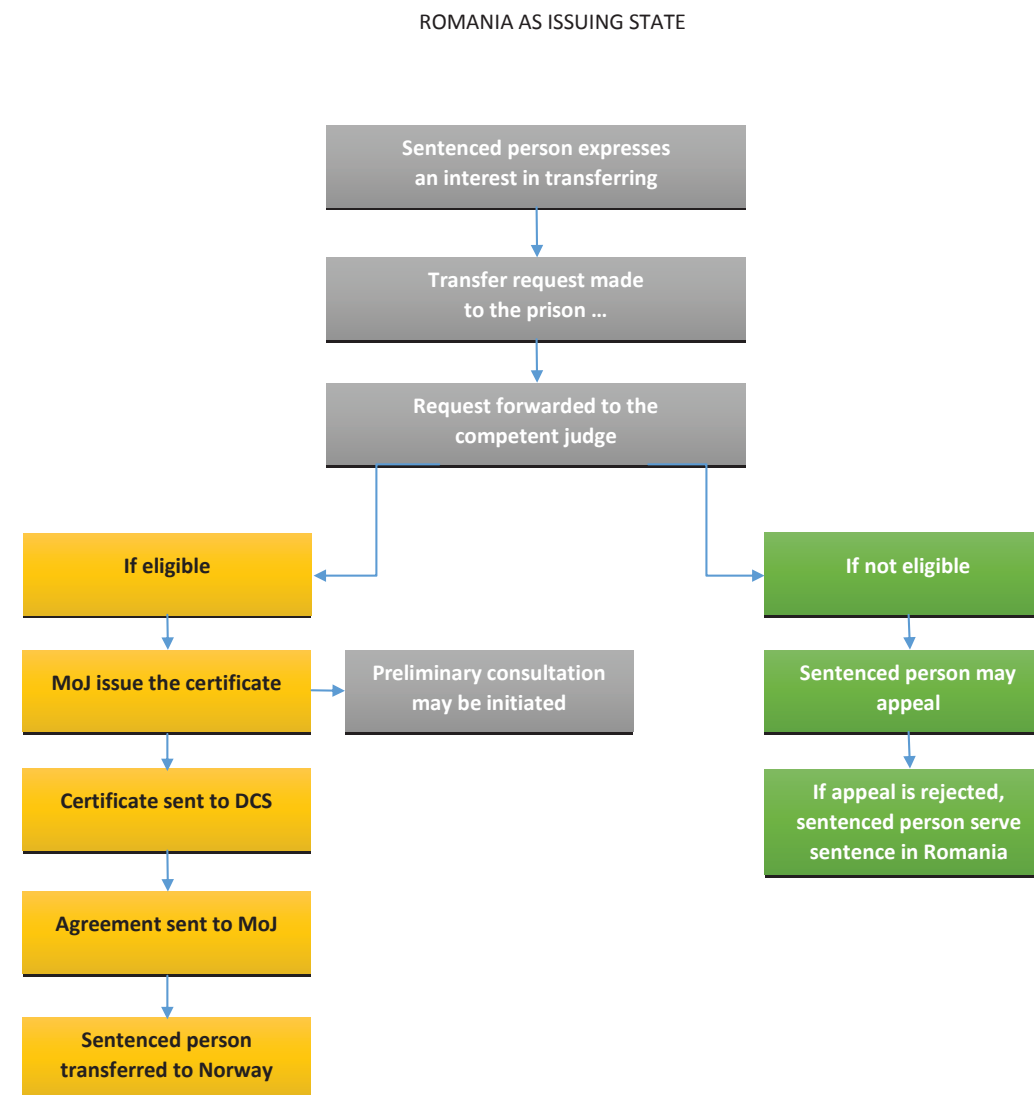
In this case, the sentenced person did not consent to the transfer, but the certificate was nevertheless forwarded, according to article 6.2.a of the bilateral Treaty, since he was a Romanian national and resided in Romania. This requirement was verified by the Prosecution, through the competent division of the Ministry of the Interior. The Romanian authorities also took into consideration the fact that the Norwegian court found that Mr. Y did not have a steady place to live in Norway.

The Romanian competent authority followed the standard procedure in transfer cases, forwarding the file to the Prosecutor's Office of the Court of Appeal of Bucharest, who submitted the documents to the court. The Court examined the works of the case and decided that the requirements for transfer were fulfilled. A distinct reference in the decision was made to the compatibility of the sanction with Romanian law.

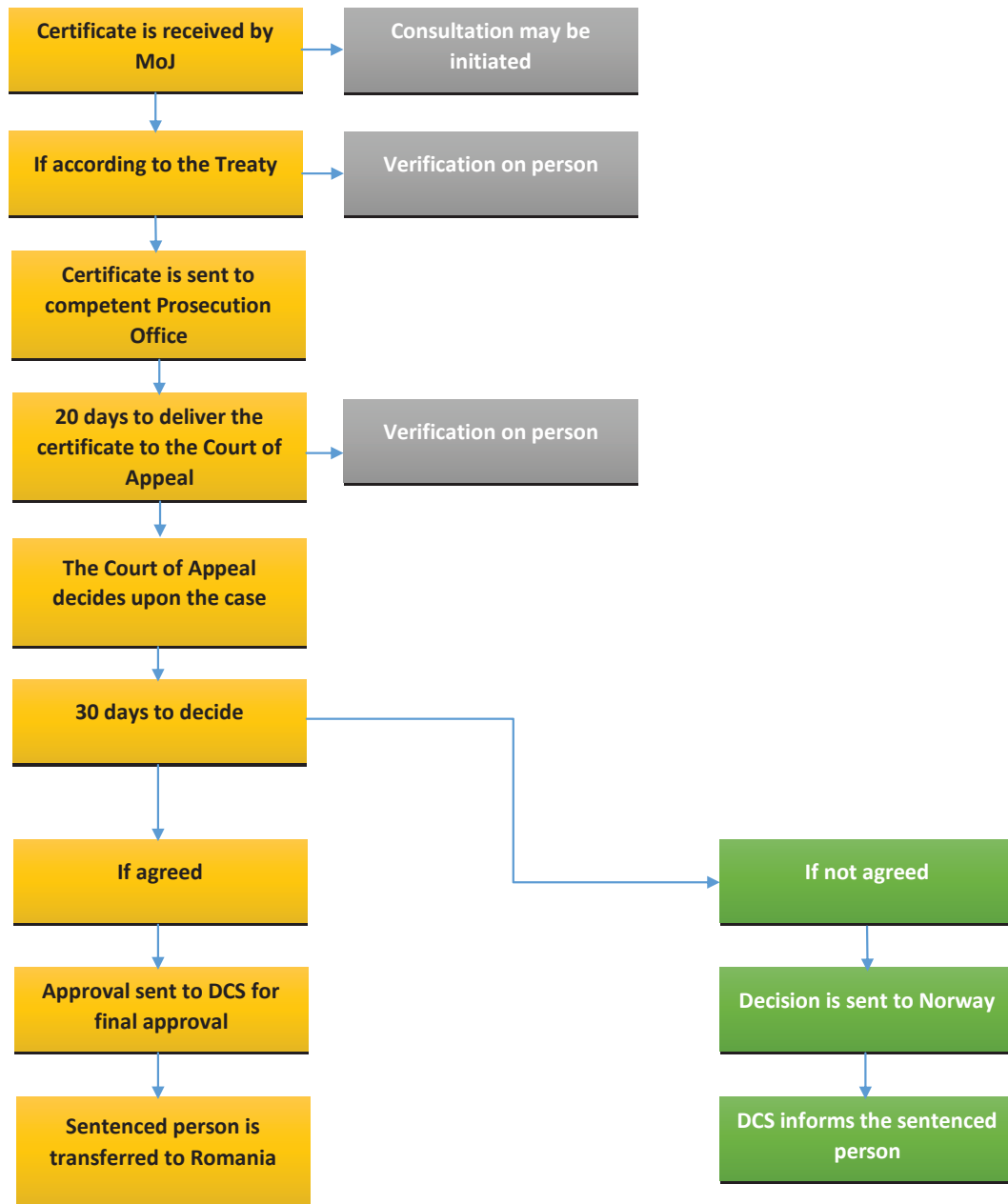
After the approval decision became final, the Norwegian competent authority was informed and gave its final consent. The Norwegian and the Romanian Interpol Bureau were informed in this respect. According to the standard procedure, the National Administration of Penitentiaries was informed, mentioning especially the applicability of the principle of specialty in this case.

The sentenced person was transferred by an escort of the Norwegian police.

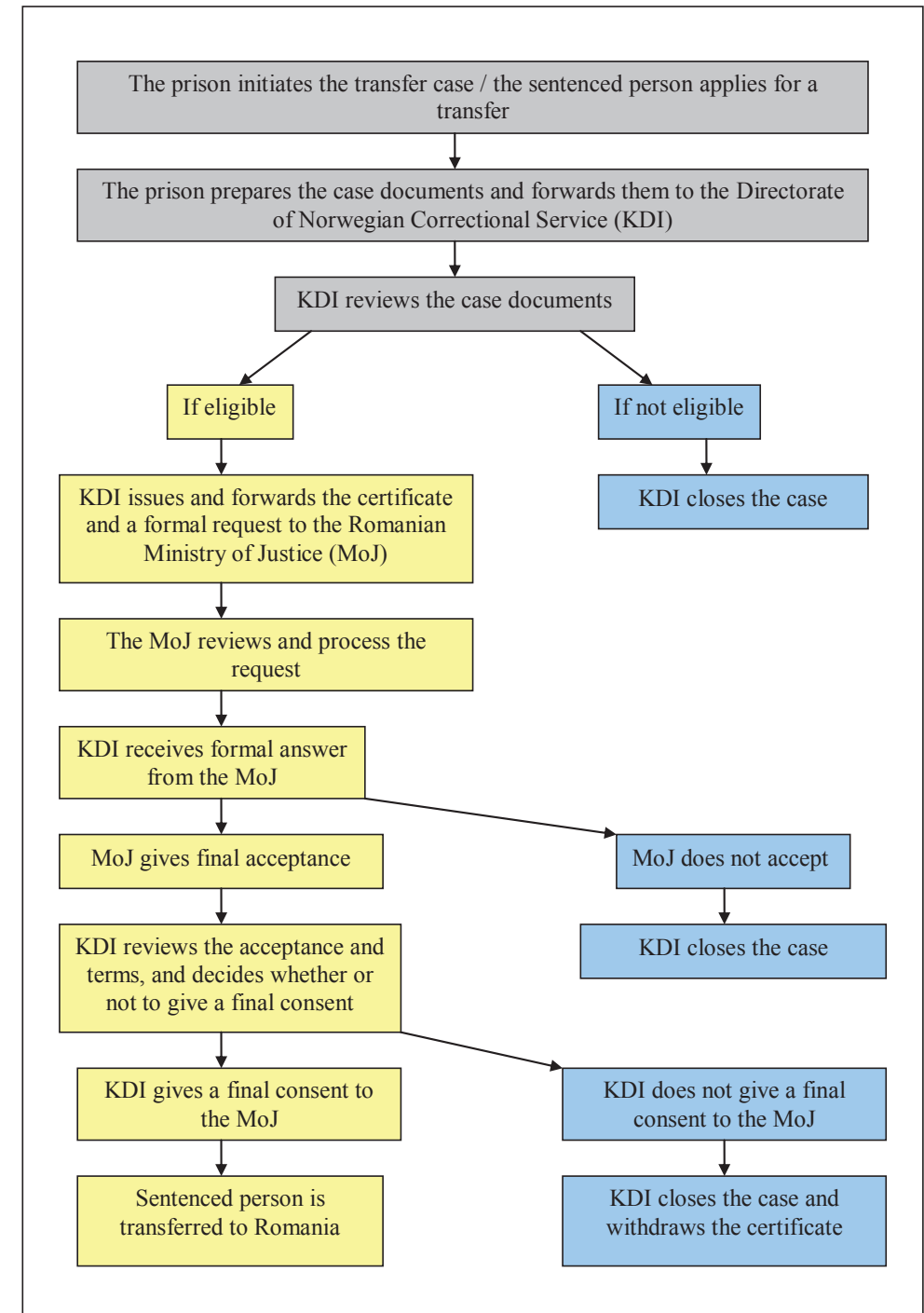
Annex IV. Flowcharts showing the procedure under the bilateral Treaty



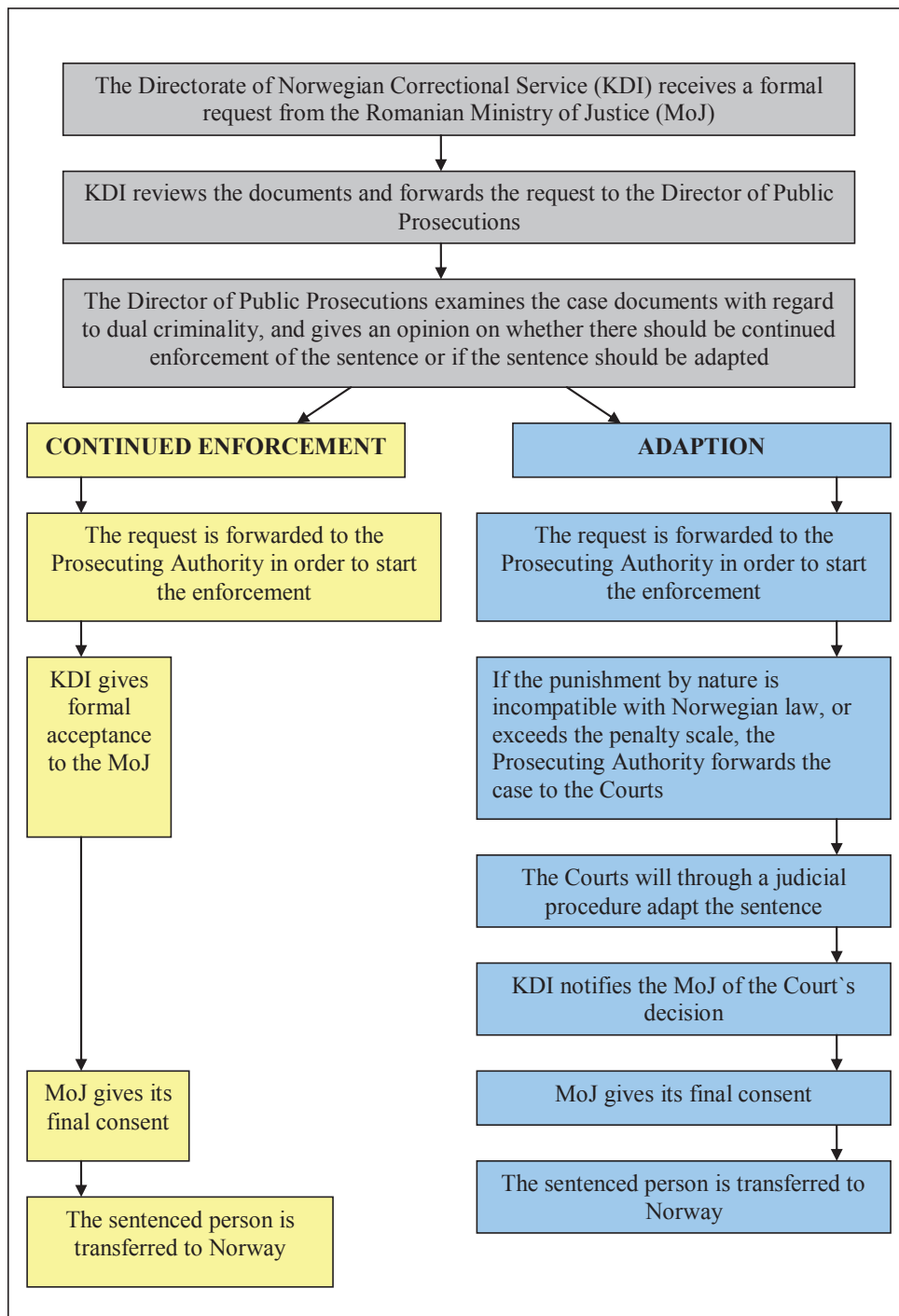
ROMANIA AS EXECUTING STATE



NORWAY AS ISSUING STATE



NORWAY AS EXECUTING STATE



Annex V. Contact details of the competent authorities

Norway

Directorate of Norwegian Correctional Service
 Po. Box 694, 4305 Sandnes
 Office address: Skedsmogata 5.N- 2000 Lillestrøm, Norway
 Tel: (+47) 40438800
 Fax: (+47) 40438801
 Email: postmottak-8005@kriminalomsorg.no

Romania

Directorate for International Law and Judicial Cooperation
 Division for International Judicial Cooperation in Criminal Matters
 Office address: 17, Apolodor Street, 5th Sector, 050741
 Tel: (+40) 372.04.10.85
 Fax: (+40) 372.04.10.79; Fax: (+40) 372.04.10.84
 Email: transfer@just.ro

Through the EEA Grants and Norway Grants, Iceland, Liechtenstein and Norway contribute to reducing social and economic disparities and to strengthening bilateral relations with the beneficiary countries in Europe.

The three countries cooperate closely with the EU through the Agreement on the European Economic Area (EEA).

For the period 2009-14, the EEA Grants and Norway Grants amount to €1.79 billion. Norway contributes around 97% of the total funding. Grants are available for NGOs, research and academic institutions, and the public and private sectors in the 12 newest EU member states, Greece, Portugal and Spain. There is broad cooperation with donor state entities, and activities may be implemented until 2016.

Key areas of support are environmental protection and climate change, research and scholarships, civil society, health and children, gender equality, justice and cultural heritage.