

Mutual Trust under Pressure, the Transferring of Prisoners in the EU,

Transfer of Judgments of Conviction in the European Union and the Respect for Individual's Fundamental Rights

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Abbreviations in the introduction and conclusions

AFSJ	Area of Freedom Security and Justice
AG	Advocate General
CFR	Charter of Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union
Council	Council of the European Union
Directive 2012/13	Directive 2012/13/EU on the right to information in criminal proceedings
Directive 2013/48	Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty
Directive 2010/64	Directive 2010/64 on the right to interpretation and translation in criminal proceedings
EAW	European Arrest Warrant
EC	European Commission
ECcHR	European Commission on Human Rights
ECHR	European Convention on Human Rights
ECLI	European Case Law Identifier
ECtHR	European Court of Human Rights
EIO	European Investigation Order
EP	European Parliament
EU	European Union
FD	Framework Decision
FD EAW	Framework Decision 2002/584/JHA on the European Arrest Warrant and the surrender procedures between Member States
FD 2008/909	Council Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union
FD 2008/947	Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
ToL	Treaty of Lisbon

The findings of the empirical research will appear highlighted in the body text of this research.

Quotes of the persons and institutions interviewed during the empirical research are reported in coloured windows throughout the research.

PART I INTRODUCTION

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This research is funded through an action grant awarded by the European Commission to the University of Utrecht in order to analyze how mutual recognition in criminal matters interplays with the rights of the individuals concerned. On the side of mutual recognition, the research is limited to the Framework Decision on the European Arrest Warrant (FD EAW),³ the Framework Decision on Transfer of Prisoners (FD 2008/909)⁴ and the Framework Decision on judgments and probation decisions (FD 2008/947).⁵ With regards to the rights of the individuals, this research focuses particularly on the Charter of Fundamental Rights of the European Union (CFR),⁶ Directive 2012/13/EU on the right to information in criminal proceedings,⁷ Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings⁸ and Directive 2010/64/EU on the right to interpretation and translation.⁹ The research aims to improve judicial cooperation and to exchange best practices with full respect for the citizens' fundamental rights. One of the most important aspects of this research is that it combines a legal analysis of this legislation with an empirical research.

1. Approach, objectives and structure

Article 6 of the Treaty on the European Union (TEU) places the respect for fundamental rights at the center of the European Union (EU). In particular, this provision mentions the CFR, the European Convention on Human Rights (ECHR) and the general principles of the Union's law consisting of the fundamental rights as guaranteed by the ECHR, and as they result from the constitutional traditions common to the Member States. In this sense the task of the EU mentioned in Article 3(2) TEU to offer its citizens an Area of Freedom, Security and Justice (AFSJ) can only be achieved with due respect for fundamental rights and the legal traditions of the Member States.

To perform this task, the principle of mutual recognition in criminal matters plays an essential role because it facilitates cooperation between judicial authorities involved in criminal proceedings while respecting the differences between legal systems.¹⁰ The principle directly binds judicial authorities in the EU to ensure the free movement of judicial decisions, such as arrest warrants or judgments of conviction, in contrast to traditional mutual legal assistance binding governments merely on the basis a voluntary basis. Mutual recognition means that a judicial decision made in one Member State shall be recognized by, and enforced in, another Member State. In fact, the authorities of the latter State only have the right to refuse the execution of a foreign judicial decision in a very limited number of situations when for example one of the few grounds for non-execution listed in EU law can be relied on. Although the justice systems of the EU Member States may be different, the principle of

³ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States [2002] OJ L190/1.

⁴ 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 [2008] OJ L327/27.

⁵ Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions [2008] OJ L 337/102).

⁶ Charter of Fundamental Rights of the European Union [2012] OJ C326/391.

⁷ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings [2012] OJ L142/1.

⁸ Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty [2013] OJ L294/1.

⁹ Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings [2010] OJ L281/1.

¹⁰ Article 67 TFEU.

mutual recognition implies that the checks carried out by the executing judicial authorities on foreign decisions are limited to specific and exhaustive formal requirements. The rationale justifying the concept of mutual recognition and the limited judicial supervision is to facilitate the free movement of judicial decisions between Member States that have decided to abolish the controls at their internal borders.

In most cases, mutual recognition entails coercive effects for the suspect, accused or convicted person because the mechanism is aimed at granting more powers to the prosecution services in the fight against crime. A judicial decision made in application of the FD EAW and of FD 2008/909 has the effect of transferring (almost) automatically the individual affected by it from one country to another. FD 2008/947, for its part, provides for transferring a judgment, and when applicable, probation measures concerning that individual. While implementing mutual recognition judicial authorities must nonetheless make sure that the individual's fundamental rights are respected.¹¹ However, in the FDs concerned by this research only a few grounds for non-execution of a foreign decision relate to the protection of a particular individual's right. Contrary to the recent European Investigation Order (EIO),¹² there is no general human right's based ground for non-execution. The review of the merits of the judicial decision against the fundamental rights of the individual concerned by it remains in general within the jurisdiction of the State that issued the decision. In general, this legislation only reflects the overhaul obligation for the Member States to respect fundamental rights in Preamble recitals or provisions of a general nature.¹³ This latter obligation rests upon both the issuing and executing Member States in all three FDs.¹⁴ In addition, judicial authorities must formally respect the minimum requirements imposed by the procedural Directives subject to this research.¹⁵

However, in the context of transnational transfer of persons several specific rights may pose problem and create a tension between the obligation for a judicial authority to execute a foreign decision and its obligation to respect fundamental rights. In particular, this research will focus on the protection against torture and degrading treatment (for example, would it be possible for a court to refuse the surrender of a convicted person to a country where that person would be detained in an overcrowded prison?), the right to a fair trial (for example, would it be possible for a court to allow the recognition of a foreign decision only if the proceedings leading to that decision are exempt of flagrant denial of justice?) and the right to private and family life (for example, to what extent should a court take into account interferences to that right in a decision allowing the transfer of a convict?).

The limited powers of judicial authorities enforcing mutual recognition to assess the respect of fundamental rights in relation to a foreign judicial decision is supported by the

¹¹ Article 67 TFEU and Article 2 and 6 TEU.

¹² Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters [2014] OJ L130/1.

¹³ See for example, recital 12 and Article 1(3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States [2002] OJ L190/1.

¹⁴ V.H. Glerum, 'De balans van 10 jaar Europees aanhoudingsbevel: efficiency en rechtsbescherming in balans?' [2014] 10 NtEr 332 – 341.

¹⁵ It should be noted that in addition to these three Directives, several other procedural Directives have been adopted since the start of this project, but as they were not yet implemented in the Member States they are not part of this research, see for example http://ec.europa.eu/justice/criminal/criminal-rights/index_en.htm last accessed October 2017. In particular, Directive 2016/1919 of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings [2016] OJ L297/1, Directive 2016/800 of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings [2016] OJ L132/1 and Directive 2016/343 of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings [2016] OJ L65/1.

general presumption that all EU Member States actually provide an equivalent protection of individual's fundamental rights in criminal justice. This equivalent protection is justified by several factors, i.e. all EU Member States are parties to the ECHR, are bound by their own national constitutional standards of fundamental rights, are subject to the rule of law and are bound by the CFR when acting within the scope of application of EU law. Mutual recognition is here linked to mutual confidence or mutual trust.¹⁶ Although it is not defined in EU legislation, the Court of Justice of the EU (CJEU) considers this as a constitutional principle underlying the whole AFSJ. In its Opinion on the EU's Accession to the ECHR, the CJEU states that the principle of mutual recognition "requires, particularly with regard to the AFSJ, each of [the Member States], save in exceptional circumstances, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognized by EU law."¹⁷ Consequently a Member State may not check whether another Member State has actually, in a specific case, observed the fundamental rights guaranteed by the EU.¹⁸ Mutual recognition is thus based on the presumption that all Member States adequately respect the fundamental rights of the individuals.

This being said differences in the protection of fundamental rights in criminal proceedings between legal systems remain important.¹⁹ Moreover, in practice, the respect for fundamental rights may not always live up to the binding minimum EU standards set on paper. For example, there are major differences between countries with regard to the conditions of detention. In certain EU Member States these conditions do not comply with the EU fundamental rights standards, in particular Article 4 CFR and Article 3 ECHR.²⁰ Moreover, from a less strictly legal and more cultural point of view, one can attest that in different countries – and even within countries, in different ethnic (minority) groups – different cultural ideas are upheld on concepts such as family, hygiene, communication, private, fair, degrading etc. Even when such concepts are explicitly defined by law, both actors in the legal system (judges, lawyers, prosecutors etc.) and individuals subjected to transfer might not feel at ease with the presumed mutual trust when they believe that their interpretation of such concepts differs culturally from that in the executing country.

This is the reason why in the Joined Cases C-404/15 and C-659/15 PPU *Pál Aranyosi* and *Robert Căldăraru*²¹ concerning the FD EAW the CJEU has decided that a serious risk of violation of Article 4 CFR can undermine mutual trust and may have direct consequences on mutual recognition involving a transfer of person. The CJEU rules in such exceptional circumstances that a judicial authority requested to recognize a foreign judicial decision "is bound to determine whether, in the particular circumstances of the case, there are substantial grounds to believe that, following the surrender of that person to the issuing Member State, he will run a real risk of being subject in that Member State to inhuman or degrading treatment, within the meaning of Art 4."²² Thus, where there is a real risk of violation of Article 4 CFR and Article 3 ECHR, an executing judicial authority must carry out a review of the pending case although it is formally bound by the principle of mutual recognition. This consideration

¹⁶ Mutual trust and mutual confidence will be used interchangeably in this contribution.

¹⁷ Opinion 2/13 *Adhésion de l'Union à la CEDH*, Opinion of the Court of Justice (Full Court) of 18 December 2014, EU:C:2014:2454, para. 191.

¹⁸ *Ibid*, para. 192.

¹⁹ See for example the Impact assessments of the procedural directives SEC(2011) 686 final, SEC(2010) 907, SEC(2009) 915.

²⁰ See documents of the European Committee for the Prevention of Torture available at <http://www.cpt.coe.int/en/> (last visited February 2015).

²¹ Joined Cases C-404/15 and C-659/15 PPU *Pál Aranyosi* and *Robert Căldăraru v Generalstaatsanwaltschaft Bremen [GC]*, Judgement of the Court (Grand Chamber) of 5 April 2016, EU:C:2016:198.

²² *Ibid*, para. 94.

will have particular consequences in the context of this research and may lead to the refusal to transfer a person or judgment.

In addition to a risk of violation of Article 4 CFR, the breach of other fundamental rights can be considered as exceptional circumstances undermining the presumption of mutual trust between judicial authorities and, consequently, may affect operations of transfer of prisoners or judgments of conviction. A breach of rights may occur not only after the judgment of conviction is made, but it may also have arisen during the proceedings ending with that judgment or with the decision to recognize and enforce that judgment. Although this research only concentrates on **post-trial situations**, (i.e. where an individual has been convicted), a breach that has occurred during the trial may well have consequences on the trust requested from judicial authorities executing a sentence of conviction. Moreover, a breach of procedural safeguards during the recognition proceedings may also affect mutual recognition (for example, what should be the consequences of a failure to hear the person subject to a foreign decision?).

The objective of the research conducted was thus to show how the current Union policy protecting the fundamental rights of individuals in the context of mutual recognition in criminal matters, and its implementation and enforcement in the Member States, actually address the concerns of these individuals. The main research question answered here is how in the post-trial context, respect of fundamental rights affects mutual recognition and mutual trust in EU criminal law. Five countries have been selected (Italy, Poland, Romania, Sweden and the Netherlands) to carry out the research on how the Union policy concerning the EAW, FD 2008/909 and FD 2008/947 have been implemented with respect to the individuals' fundamental rights. In order to attain the objective of the research a legal analysis of the implementation of the abovementioned instruments has been carried out in the countries selected and compared. In addition, an evaluation of their *enforcement* was conducted in order to reveal whether the concerns of the individuals have been addressed adequately. The research has applied a multidisciplinary (law and social sciences) approach for the identification of the problems affecting mutual trust and the implementation of mutual recognition.

This study essentially concentrates on the role of fundamental rights violations that may have an impact on the obligation to mutually recognize by the executing State. The purpose of the research is not to screen all possible violations of fundamental rights that may occur in the enforcement of the EAW, FD 2008/909, and FD 2008/947. The research focuses on post-trial situations and, therefore, on mutual recognition of judgments of conviction.

Three categories of violation of fundamental rights are examined in this project:

- Past violations: violations that may have occurred in the issuing State during the proceedings that ended with the judgment of conviction and that may have an impact on the decision to recognize this judgment by the judicial authority of the executing State (past violations). In other words, the question posed here is whether a past violation of a fundamental right of the person subject of mutual recognition can limit the obligation of the executing State to mutually recognize. In particular, the right to have a fair trial and prohibition of degrading treatment and torture may be at issue;
- Present violations: violations that may occur in the executing State during the proceedings leading to the recognition of a judgment of conviction (present violations). In particular, the research will address the rights protected in Directives 2010/64, 2012/13 and 2013/48. The question posed here, is whether a violation of the Directives can limit the obligation to mutually recognize;

- Future violations: violations that may occur in the future in the State where the judgment of conviction will be carried out (future violations). In particular, prohibition of degrading treatment and torture, the right to a fair trial and possibly the right to family life will be at issue. The question posed here is whether a possible violation of fundamental right that an individual may encounter in the country where the judgment of conviction will be carried out can limit the obligation to mutually recognize.

With the present introduction (Part I) included, this report comprises six parts. In Part II, this research will explain the extent to which judicial authorities are bound by mutual recognition in the context of the EAW, FD 2008/909 and FD 2008/947. In other words, this Part explains how mutual recognition operates at EU level. It is followed by Part III that concentrates on the mechanisms aimed at ensuring the respect of fundamental rights in mutual recognition proceedings within the EU multi-level legal order. These mechanisms consist in official grounds for non-execution and minimum requirements provided for by the FDs as such and by Directives approximating certain aspects of the right to a fair trial. In addition, the research explores the case law of the CJEU and of the ECtHR concerning the rejection of the principle of mutual trust in the context of the EAW and its consequences on mutual recognition. The analysis conducted in Part II and III describes the legal framework that is used by the national experts in their reports (Part IV). The same framework is used in order to compare the national practice (Part V). Finally, Part VI of the book will provide the reader with the conclusion of the research and some recommendations.

2. Methodology

The research was conducted in three main stages. Firstly, the general scope of the research is delineated. To that effect, the literature and data available on the topic are analyzed in order to avoid overlap and to enhance the content of the analysis of the research.²³ Then the scope of the legislation and case law concerned is identified. In particular, the EU legislation, case law of the CJEU and ECtHR and the relevant literature are analyzed. This material does not only concern the main EU instruments, the rights in the CFR and ECHR subject of the research, but also deals with the principle of mutual recognition and mutual trust. The aim of this first stage is to provide information on the scope of the instruments (personal and material), identify the issues covered (and possible gaps) and enumerate the fundamental rights affected by the transfer of judgment of conviction pursuant to mutual recognition. The following questions have therefore been answered: Which are the fundamental rights concerns in the post-trial context? How are these fundamental rights addressed in the context of mutual recognition? What are possible solutions? Secondly, the scope of the national researches is set out with the aim to analyse the extent to which the Member States included in the research have incorporated the obligations arising from the relevant instruments, and to identify problems and reflect on possible solutions. Thirdly, the parameters of the empirical research are identified.

The main research question of the project is “In the post-trial context, how do fundamental rights concerns affect mutual recognition and mutual trust in EU criminal law?” To obtain the broadest possible answer, the legal analysis is complemented by qualitative, empirical research (interviews) and quantitative data (statistics) in the five Member States participating in the project with regard to the EU instruments subject of this research.

Using both legal, quantitative and qualitative data this research applies *data* triangulation, as well as *method* triangulation, in order to enhance the internal validity of the research.²⁴ Through method triangulation, one can verify the findings acquired through one method, with the findings acquired through another method, thereby improving the quality of the research. *Investigator* triangulation has also been applied, in the sense that researchers from all participating countries are involved in data-collection and have discussed the findings in some shared meetings. This improves the validity of the research, as researcher subjectivity is avoided in this way.²⁵

Qualitative research

The qualitative empirical research is added to the legal analysis as a way to triangulate and verify the data emerging from the legal analysis: do actual legal practices live up to the legal principles laid down in national law? How are legal regulations experienced by the people subjected to it (or the NGO’s advocating their rights)? Practitioners involved in transnational criminal proceedings, in particular members of the judiciary, prosecution services and lawyers as well as other stakeholders in the field – in particular human rights organizations concerned with detention facilities – have been interviewed. The consortium decided to also interview individuals subjected to the legal instruments under study (although this has not been possible

²³ See for example, <http://www.ejn-crimjust.europa.eu/ejn/libcategories.aspx?Id=36>; <http://www.ejn-crimjust.europa.eu/ejn/libcategories.aspx?Id=37>; http://ec.europa.eu/justice/news/consulting_public/0012/JLS-DC-FinalReport_en.pdf; http://ec.europa.eu/justice/news/consulting_public/0012/JLS-DC-FR_IRCP41_en.pdf; <http://db.eurocrim.org/db/>

²⁴ N.K. Denzin, *The Research Act: A Theoretical Introduction to Sociological Methods* (Englewood Cliffs, N.J Prentice-Hall 1988).

²⁵ See (n 23) and N. Semmens, ‘Methodological Approaches to Criminological Research’ in P. Davies, P. Francis & V. Jupp (eds.) *Doing Criminological Research* (2nd edition, London Sage Publications 2011) 56-60.

in all countries in the consortium, due to different national circumstances considering the access to prisoners and the duration of getting formal access). The aim of the interviews with practitioners, human rights advocates and persons subjected to the instruments under study is to reveal obstacles and problems arising from the interplay between mutual recognition and fundamental rights of citizens, as experienced in everyday praxis.

In each Member State participating in the project between 10 and 15 interviews are conducted. Respondents are selected through so-called *purposive sampling*: those legal practitioners and human rights advocates most knowledgeable about the topics under study are approached and interviewed. For the interviews with prisoners a combined *purposive* and *convenience sampling* technique is applied: individuals who have experienced a transfer, and to whom access can be realized in the timespan of the research period are approached. These are non-probability sampling techniques, meaning that generalizability is limited.²⁶ In other words: our findings from the semi-structured interviews with, for example, judges, cannot be generalized to all judges in the respective countries, and the same goes for the other legal practitioners, human right advocates and persons subjected to transfer that are interviewed.

Transcripts are made from the recorded interviews, which are then analyzed and described in the national reports according to a common format. Confidentiality, anonymity and informed consent of the respondents are guaranteed in a way appropriate to the research ethics of the respective countries, meaning that in some countries written consent is acquired, whereas in others verbal consent is sufficient. Respondents are informed in advance about the goal of the project, the use of the results, the distribution of the (anonymized) results *et cetera*, and they can at all times withdraw from the research without further consequences. Participation is at all times completely voluntarily and no pressure is exerted upon respondents to participate. There are no financial rewards or incentives to participation, as this can impact on the validity of the provided information.

The roadmap for interviewing is as follows:

1. Prepare final versions of the questionnaires and consent forms in English;
2. Translate questionnaires and consent forms into the national languages;
3. Identify interviewees (authority issuing and executing European orders);
4. Contact courts/advocates/human rights organisations or prisoners;
5. Optional: *Send questionnaires* [especially judges and advocates usually want it – to prepare for example cases];
6. Perform the interviews;
7. Complete transcriptions;
8. Analyse data.

Three separate types of questionnaires or topic lists have been prepared, in order to match the question as close as possible to the respondents' daily reality, as well as to his/ her knowledge and capacities:

1. For judges and advocates;
2. For representatives of human right organisations (NGOs);
3. For prisoners.

For the judges and advocates the interview guide took the form of a semi-structured questionnaire, in which the questions were more detailed, technical and juridical, focusing on the application of concrete provisions of EU law. For the representatives of human rights organisations and prisoners we used topic-lists instead – which are, nonetheless, constructed

²⁶ P. Francis, 'Planning Criminological Research' in P. Davies, P. Francis & V. Jupp (eds.) *Doing Criminological Research* (2nd edition, London Sage Publications 2011) 24-26.

on the basis of the questionnaires – in order to allow for more flexibility and a more open character of the interview. This provides more room to (a) build a relationship of trust; (b) let the respondent elaborate on the topics in his or her own way and matching his or her level of knowledge; and (c) let the respondent bring forward issues of his or her concern, which might not have been included in the original questionnaire, but which could give important insight into the matter, anyway (this is precisely the goal of using the method of open interviewing for an explorative research goal).

For each of these three groups, thus, the interview guides – whether the more detailed and technical questionnaire or the more open topic-list – have been prepared encompassing all three legal instruments (FD 2002/584, FD 2008/909 and FD 2008/947). Member States organised differently the application of these acts – in some the same judges are competent to treat cases on EAW, transfer of prisoners and transfer of alternative sanctions, in others different courts are competent for each type of case.

The questionnaire for judges/advocates consists of 32 questions divided into six parts:

1. Personal questions (type of place of work and size of the city, function and experience with EU criminal law)
2. General questions on application of EU acts concerning judicial cooperation in criminal matters
3. Questions on FD 2002/584 (EAW) relating to grounds for refusal of an EAW, especially those due to the violation of fundamental rights, and to procedural rights (right to access a lawyer, to translation and interpretation, to information and to be heard);
4. Questions on FD 2008/909 (Transfer of prisoners) relating to: initiating the procedure of forwarding the sentence to another EU Member State, the most important factors in deciding about forwarding the judgment, refusal of the transfer due to the potential violation of fundamental rights and to procedural rights;
5. Questions on FD 2008/947 (Probation decisions) (practice refusal of recognition and supervision and procedural rights)
6. Closing questions on mutual trust and need for a ground of refusal of execution of EAW/transfer order in case of a breach of a specific right in another Member States.

The topic-list for representatives of human right organisations consists of five topics:

1. Questions on personal data (information on the organization and the role of the persons in it, including experience with transfer of convicted person proceedings)
2. Questions on access to information and legal assistance provided to a convicted person who might be transferred
3. Questions on transfer process (a concrete example of a person's transfer process, language/ translation service, legal counsel, right to be heard (EAW)/ right to give an opinion or to give consent (FD 2008/909)
4. Questions on opinions on the rights of transferred persons and on European cooperation in cases of transfer
5. Closing questions

The topic-list for prisoners consists of six topics:

1. Questions on personal data (nationality, time since when in the facility, case and transfer information)
2. Questions on current circumstances (general wellbeing, prison conditions, treatment by staff, family visits)
3. Questions on access to information preceding transfer

4. Questions on transfer process (knowledge on the rights, Language/ translation service, etc.)
5. Questions on after transfer (continued legal assistance, what could be improved, what was lacking, etc.)
6. Closing question.

Quantitative research

The consortium has prepared the list of ideal data to be gathered knowing at the same time that some of the data will not be collected either due to the absence of data or to the absence of cooperation from national authorities. The statistical data is essential in order to confirm or invalidate the findings of the legal analysis and the qualitative research. In particular, an analysis of the statistics concerning the grounds put forward in cases where judicial cooperation was refused will be necessary. The statistical data needed to complement the legal analysis and the qualitative empirical research is listed below.

EAW

- Number of EAW issued and received in the country (for the purposes of conducting a criminal prosecution / for the purposes of executing a custodial sentence)

If possible the rest of the data only pertaining to the EAW for purposes of executing a custodial sentence

- Number of individuals transferred
- Number of refusals to transfer
- Identification (and numbers) of the grounds for refusal to transfer
- Identification (and numbers) of the refusals based on fundamental rights breach: protection against torture and degrading treatment / fair trial / family life / other
- Identification (and numbers) of cases in which a breach of fundamental right was evoked but without success: protection against torture and degrading treatment / fair trial / family life / other.

FD 2008/909 on Transfer of Prisoners

- Number of requests for transfer issued/received by the country
- Number of individuals transferred from/to the country
- Number of refusals to transfer
- Identification (and numbers) of the grounds for refusal to transfer
- Identification of the refusals based on fundamental rights breach: protection against torture and degrading treatment / fair trial / family life / other
- Identification of cases in which a breach of fundamental right was evoked but without success: protection against torture and degrading treatment / fair trial / family life / other

FD 2008/947 on Probation decisions

- Number of requests for transfer of a probation decision issued/received by the country
- Number of probation decisions transferred from/to your country
- Number of refusal of recognition and supervision
- Identification of the grounds for refusal to transfer
- Identification of the refusals based on fundamental rights breach.