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**TRUST AND ACTION PROJECT
(GA 800829)**

**Guidelines for improving judicial cooperation
between Italy, Romania and Spain in the areas covered
by Framework Decision 2008/947/JHA
and Framework Decision 2009/829/JHA**

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**Table of correspondence of judicial decisions provided by Italian, Romanian and Spanish law
to which Framework Decision 2008/947/JHA applies**

INTRODUCTION

This table of correspondence collects the judicial decisions provided in the Italian, Romanian and Spanish legal orders which are relevant to the scope of application of Framework Decision 2008/947/JHA.

This document is the outcome of various contributions, namely: the desk research of the project research units, insights from national central authorities and judicial authorities at the territorial level, interviews to key-practitioners, the case law of the Court of Justice.

The table of correspondence aims to:

- Propose an all-encompassing overview of the relevant national judicial decisions
- Place these judicial decisions under the categories of measures listed in Art. 2 FD 2008/947/JHA
- Identify and underscore possible correspondences and divergences among the various judicial decisions listed herewith, with a view to strengthen mutual trust and facilitate judicial cooperation mechanisms

How to read the table of correspondence:

- The table provides an overview of the various judicial decisions, including the domestic legal basis, a quick description of their substance, and the indication of the competent judicial authorities
- Where in principle the features of two or more national judicial decisions possibly (and maybe partially) correspond, these are placed in the same line

A note to the reader/user: the content of this document reflects the current normative state of affairs and the very limited practice concerning the application of the judicial cooperation mechanism at issue.

On the one hand, the proposed sub-division of the judicial decisions in the theoretical definitions provided by the Framework Decision is not intended to restrict the flexibility of the mechanism. Admittedly, the essence of some of the measures listed herewith is complex (and blurred) and therefore in principle fits more than one category.

On the other hand, the actual correspondence of national measures largely depends on the assessment of the specific features of the decisions issued on an individual basis, also because of the flexibility and wide scope of application of the relevant national provisions.



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IMPLEMENTATION OF FRAMEWORK DECISION 2008/947/JHA

Spain	Italy	Romania
Spanish Act 23/2014, of 20 November, on mutual recognition of judicial decisions in criminal matters in the European Union (Ley 23/2014, de 20 de noviembre, de reconocimiento mutuo de resoluciones penales en la Unión Europea).	Legislative Decree no. 38, 15 February 2016 (Decreto Legislativo 15 febbraio 2016, n. 38, Disposizioni per conformare il diritto interno alla decisione quadro 2008/947/GAI del Consiglio, del 27 novembre 2008, relativa all'applicazione del principio del reciproco riconoscimento alle sentenze e alle decisioni di sospensione condizionale in vista della sorveglianza delle misure di sospensione condizionale e delle sanzioni sostitutive)	Law no.302/2004 on international judicial cooperation in criminal matters (Articles 200-227)



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NATIONAL LEGAL ORDERS

Suspended sentence		
Article 2.2 FD 947: ‘suspended sentence’ shall mean a custodial sentence or measure involving deprivation of liberty, the execution of which is conditionally suspended, wholly or in part, when the sentence is passed by imposing one or more probation measures. Such probation measures may be included in the judgment itself or determined in a separate probation decision taken by a competent authority		
Spain	Italy	Romania
<p>Suspended sentence (suspensión de la ejecución de las penas privativas de libertad, according to art. 93.1 b): suspension of the sentence, either partially or totally, imposing one or more probation measures, that may be included in the sentence itself, or be determined in a separate probation decision)</p>	<p>Suspended sentence (sospensione condizionale della pena, according to art. 2.1 c): a conviction or a judicial decision imposing a restriction of personal liberty, the enforcement of which is conditionally suspended along with the duty not to commit further offences and with possible further prescriptions)</p>	<p>Suspension of execution of a sentence under supervision (suspendarea executării pedepsei sub supraveghere, suspension in serving the sentence on probation, according to article 170.2 b): the sentence of imprisonment or a measure involving deprivation of liberty whose execution is fully or partially suspended, through the application of one or more probation measures)</p>
<p>Legal basis in national law: Art. 80 to 87 of the Penal Code</p> <p>Definition: This measure implies the total suspension of the fulfilment of a prison sentence, with the obligation to follow one or more behavior rules (supervised release measures)</p> <p>Authority responsible for taking such a decision: Sentencing Judge or Court</p> <p>Authority responsible for supervising: Sentencing Judge or Court and Penitentiary Administration</p> <p>Authority responsible in case</p>	<p>Legal basis in national law: Art. 163 to 168 of the Criminal Code</p> <p>Definition: The execution of the sentence is suspended for five years on condition that the sentenced person will not commit other offences. If, at the end of this period, the sentenced person has not committed any offences, the offence is extinguished and the sentence is therefore not executed Possibility to add prescriptions and measures to the suspension.</p> <p>Authority responsible for taking such a decision: Sentencing Judge or Court</p> <p>Authority responsible for supervising: The local authorities and the local services who have received the communication of the judgment</p> <p>Authority responsible in case of infringement: Sentencing Judge or</p>	<p>Legal basis in national law: Art. 91 to 98 of the Criminal Code</p> <p>Definition: Suspended sentence supervision is an alternative to the imprisonment penalty. The execution of the imprisonment penalty may be suspended for a period of time set by the judge within the time limits established by the law. During this period the convict has the obligation to comply with certain supervision measures and obligations.</p> <p>Authority responsible for taking such a decision: Sentencing Judge or Court</p> <p>Authority responsible for supervising: Probation Service</p> <p>Authority responsible in case of infringement: Sentencing Judge or</p>



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<p>of infringement: Sentencing Judge or Court</p>	<p>Court. If the measure has not been issued upon the judgment, the revocation is carried out by the execution judge (Art. 674 of the Criminal Procedure Code)</p>	<p>Court</p>
	<p>Suspension of the execution of the prison sentence for drug addicts (sospensione dell'esecuzione delle pene detentive nel caso di tossicodependenti)</p>	<p>There is no special legislation in this case in Romania. In case of a penalty below 3 years, it can be suspended in the light of the general regime (see above). All suspended sentences which are below 3 years can lead to probation measures.</p>



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	<p>Legal basis in national law: Art. 656 of the Code of Criminal Procedure and 94 of the Decree of the President of the Republic no. 309, dated 9 October 1990</p> <p>Definition: This is a suspension of the execution of a prison sentence which is targeted exclusively towards drug addicts or alcohol addicted sentenced persons or to persons who perpetrated a crime in relation to their condition of drug addiction or alcohol addiction, and who are willing to follow a rehabilitation program. The offender can apply for it at any time, even before the execution of the imprisonment warrant. It can be granted not more than twice, and just once to recidivists.</p> <p>Authority responsible for taking such a decision: The Supervisory Court and the Supervisory Judge, the latter in respect of possible modifications to obligations and prohibitions.</p> <p>Authority responsible for supervising: The public healthcare service. The Probation Service of the area where the offender lives is responsible for reporting periodically to the Supervisory Judge about the therapeutic program and compliance with the obligations and prohibitions.</p> <p>Authority responsible in case of infringement: Criminal supervision court is in charge of revocation and other measures</p>	
	<p>Respite/Postponement of the enforcement of the sentence (rinvio dell'esecuzione)</p>	



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	<p>Legal basis in national law: Art. 684 of the Code of Criminal Procedure in cases as per Article 146 and 147 of the Criminal Code</p> <p>Definition: The execution of imprisonment and of sanctions alternative to short prison sentences is postponed and therefore the prisoner is immediately released, in cases in which the judge (Supervisory Court) believes that the detention would be in serious conflict with the protection of health and with the aware participation of the sentenced person in the execution of the sentence; this being because of the particular condition in which he/she is at the time of the execution.</p> <p>Authority responsible for taking such a decision: Supervisory Court (in panel) or, in urgent cases, the Supervisory Judge (Magistrato di Sorveglianza)</p> <p>Authority responsible for supervising: The authorities and services on the territory who have received the communication of the judgment.</p> <p>Authority responsible in case of infringement: Supervisory Court</p>	
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Conditional sentence		
Article 2.3 FD 947: ‘conditional sentence’ shall mean a judgment in which the imposition of a sentence has been conditionally deferred by imposing one or more probation measures or in which one or more probation measures are imposed instead of a custodial sentence or measure involving deprivation of liberty. Such probation measures may be included in the judgment itself or determined in a separate probation decision taken by a competent authority		
Spain	Italy	Romania
<p>Conditional sentence (condena condicional, according to art. 93.1. d): pursuant to the laws of the issuing State, a conditional sentence by means of which one or more probation measures are imposed, being able, when appropriate, to differ from the conditional form of the custodial sentence imposed</p>	<p>Conditional sentence (condanna condizionale, according to art. 2.1 d): una sentenza in cui l'irrogazione della pena sia condizionalmente differita con l'imposizione di uno o più obblighi e prescrizioni o in cui detti obblighi e prescrizioni siano disposti in luogo della pena detentiva o della misura restrittiva della libertà personale (A judgment the issue of which is postponed on the condition that the person concerned complies with probation measures or prescriptions imposed as an alternative to the custodial penalty)</p>	<p>Conditional sentence (amânarea aplicării pedepsei, according to art. 200 alin. 2 let. c): measure whereby the enforcement of a sentence has been postponed on probation, through the imposition of one or several probation measures, or in which one or more probation measures are imposed instead of a custodial sentence or of a measure involving deprivation of liberty</p>
	<p>Suspension of the proceedings with assignment to probation (sospensione del procedimento con messa alla prova – suspension of the trial conditioned upon the positive outcome of a probation period)</p> <p>Legal basis in national law: Art. 168 bis of the Criminal Code</p> <p>Definition: This probation decision applies to offences punished by pecuniary penalty or by a maximum of 4 years detention (alone or in parallel with a pecuniary penalty). It implies the imposition of prescriptions, in particular the commitment to undergo activities that are capable of neutralising the harm or risk caused by the offender, including – where possible – pecuniary compensation for the damages occurred. Moreover, social services are in charge</p>	



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	<p>of guiding the offender through a rehabilitatin programme, that can involve for instance voluntary activity in favour of society. Probation also entails compliance with prescriptions regarding the relationship with the social services, residence, free movement and the prohibition to visit certain places.</p> <p>This decision can be furthermore conditioned upon performing work for the benefit of society (lavoro di pubblica utilità), that is to say an unpaid working activity chosen in the light of the specific skills, cmpetences and epxertise of the offender, for at least 10 continuous days. This activity can be performed at various public bodies/entities/ institutions at the local, regional and national level, including hospitals, as well as at other bodies workng in the domain of social assistance, heathcare and volunteering.</p> <p>This activity must not affect the study/work/family needs and obligations of the offender.</p> <p>Its daily duration cannot overcome 8 hours.</p> <p>The positive outcome of this probation period (the duration of which is determined by the court) leads to the extinction of the offence.</p>	
		<p>Penalty postponement – a measure of conditional sentence with two possible solutions: if the sanctioned person (not convicted) complies with the measures and obligations imposed on him/her for a two years surveillance period, all legal consequences are neutralized and no criminal record is registered. The two years surveillance period implies the existence of an interim criminal record which is nullified upon the successful completion of the surveillance period without incidents. In the event of a</p>



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		<p>violation of the measures imposed within the mentioned surveillance period, the court can enforce the initial postponed penalty.</p> <p>Legal basis in national law: Art. 83 to 90 of the Criminal Code</p> <p>Definition: the postponement of the application of the penalty refers to the situation in which the Court applies an imprisonment penalty, but postpones its enforcement, subject to the proof of rectification that the defendant will give in a certain period of time (surveillance term). It is a measure that can be effective in the case of offences of a minor gravity.</p> <p>As for the effects of this measure, at the end of the surveillance term, the custodial penalty is no longer enforced. The postponement of the application of penalty has no effects on safety measures or upon the civil obligations established within the judgment.</p> <p>The Court can rule to postpone the application of the penalty if the following conditions are met: the sentence is a fine or no more than 2 years of imprisonment; the defendant does not have any previous prison sentences; the defendant has consented to perform community service; considering the person of the defendant, their conduct before committing the offense, their efforts to remove or minimize the consequences of their offense.</p> <p>The probation period is 2 years and starts as of the date when the judgment remained final.</p> <p>Authority responsible for taking such a decision: Sentencing Judge</p> <p>Authority responsible for supervising: Probation Service</p>
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		Authority responsible in case of infringement: Sentencing Court
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Alternative sanction		
Article 2.4 FD 947: 'alternative sanction' shall mean a sanction, other than a custodial sentence, a measure involving deprivation of liberty or a financial penalty, imposing an obligation or instruction		
Spain	Italy	Romania
<p>Substitutive penalties (penas sustitutivas, according to art. 93.1 c): substitution of the penalty by another imposing deprivation of a right, and obligation or a prohibition that does not constitute a custodial sentence or a measure of deprivation of liberty or a financial penalty)</p>	<p>Alternative sanction (sanzione sostitutiva, according to art. 2.1.e): una sanzione, diversa dalla pena detentiva o da una misura restrittiva della liberta' personale o dalla pena pecuniaria, che impone obblighi e impartisce prescrizioni)</p>	<p>Alternative sanction (Sanctiune alternative, according to art. 200, alin. 2, let. e): any other sanction not involving deprivation of liberty, imposed against a natural person by means of a court decision, as a result of having committed an offence, other than financial penalty, and consisting of an obligation or coercion measure and which is self-standing)</p> <p>The category of alternative sanctions also includes the educational measures imposed on minors. Due to their short duration in Romanian legislation, it is unlikely to make transfers to other states, but it is possible to recognize in RO similar measures imposed in other states.</p>
	<p>Assignment of the offender to the probation service in particular cases (affidamento in prova al Servizio Sociale in casi particolari)</p> <p>Legal basis in national law: Art. 656 of the code of Criminal Procedure and 94 of the Decree of the President of the Republic no. 309, dated 9 October 1990</p> <p>Definition: This is an alternative measure to detention which is targeted exclusively towards drug addicts or alcohol addicted sentenced persons or to persons who perpetrated a crime in relation to their</p>	



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	<p>condition of drug addiction or alcohol addiction, and who are willing to follow a rehabilitation program. The offender can apply for it at any time, even before the execution of the imprisonment warrant. It can be granted not more than twice, and just once to recidivists.</p> <p>Authority responsible for taking such a decision: The Supervisory Court and the Supervisory Judge, the latter in respect of possible modifications to obligations and prohibitions.</p> <p>Authority responsible for supervising: The public healthcare service. The Probation Service of the area where the offender lives is responsible for reporting periodically to the Supervisory Judge about the therapeutic program and compliance with the obligations and prohibitions.</p> <p>Authority responsible in case of infringement: Supervisory Court for the revocation of the measure, the Supervisory Judge for the possible modification of obligations and prohibitions</p>	
	<p>Assignment of the offender to the probation service in particular cases (affidamento in prova al Servizio Sociale in casi particolari)</p> <p>Legal basis in national law: Art. 47 of the Italian Penitentiary Act</p> <p>Definition: This is an alternative measure to detention granted by the Supervisory Court after a final judgment issued by a criminal court. The offender is assigned to the Probation Service for a period equal to the length of the custodial sentence to be served. The decision is made on the basis of a positive outcome from the</p>	



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	<p>scientific observation of the offender, carried out by the prison team for at least a month. It can be granted without any scientific observation when the judge deems that the offender's behavior shows his/her good intentions and that, through the additional compliance with some obligations and prohibitions, it is possible to avoid recidivism.</p> <p>Authority responsible for taking such a decision: The Supervisory Court and the Supervisory Judge, the latter in respect of possible modifications to obligations and prohibitions.</p> <p>Authority responsible for supervising: The local Probation Service of the area where the offender lives.</p> <p>Authority responsible in case of infringement: Supervisory Court for the revocation of the measure, the Supervisory Judge for the possible modification of obligations and prohibitions.</p>	
<p>Suspension of the enforcement of a sentence (suspension de la ejecución de la pena)</p> <p>Legal basis in national law: Art. 84 of the Penal Code</p> <p>Definition: This measure implies the substitution of the execution of a complete prison sentence under 2 years, imposing instead either mediation, a fine or community service.</p> <p>Authority responsible for taking such a decision:</p>		



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<p>Sentencing Judge or Court.</p> <p>Authority responsible for supervising: Sentencing Judge or Court and Penitentiary Administration in case of community service.</p> <p>Authority responsible in case of infringement: Sentencing Judge or Court.</p>		
	<p>Supervised freedom (Libertà controllata): Art. 56 legge 689/1981, substitutive sanction applicable to convictions of a maximum 1 year duration.</p> <p>Legal basis in national law: Art. 56 legge 689/1981</p> <p>Definition/description: substitutive sanction applicable to convictions of a maximum 1 year duration. It entails limits to the freedom to exit the city of residence, the duty of presenting to the law enforcement authorities on a daily basis (or, for drug addicts, the duty to undergo a rehabilitative residential or semi-residential programme), the prohibition to hold any kind of arms and explosives, the suspension of the driving licence, withdrawal of the passport and prohibition to expatriate, as well as any further measures possibly capable of enhancing the chances of social rehabilitation, performed by the social services (UEPE, external criminal law enforcement service) upon a supervision magistrate's decision</p>	



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	<p>Authority responsible for taking such a decision: Supervision magistrate (magistrate di sorveglianza).</p> <p>Authority responsible for supervising: local public security department or law enforcement authorities</p> <p>Authority responsible in case of infringement: Supervision magistrate</p>	
<p>Community service (trabajo en beneficio de la comunidad)</p> <p>Legal basis in national law: Arts 33, 39, 40, 49, 53 of the Penal Code.</p> <p>Definition: The sentenced person has the obligation to carry out different community activities in a non-remunerated way. These activities can consist, in relation with similar offences as the one committed by the offender, harm restoration or victim support. Community service is a penalty in itself, but it is also an alternative to imprisonment for fine defaulters (art. 53). It is included here only as an alternative to imprisonment.</p> <p>Authority responsible for taking such a decision: Sentencing Judge or Court</p>	<p>Community service (lavoro di pubblica utilità)</p> <p>1) Legal basis in national law: arts 54 - 55 decreto legislativo 274/2000.</p> <p>Definition: alternative sanction applicable by the Giudice di pace with the charged person's consent as a main penalty or as a way to replace a pecuniary penalty.</p> <p>2) Legal basis in national law: art. 73 d.P.R. 309/90, co. 5-bis</p> <p>Definition /description: in relation to specific drug-related offences (trafficking, illicit possession, production) committed by drug addicts, community service replaces (no more than 2 times) a conviction or a pecuniary penalty. Should the person concerned commit other kinds of crime, community service can be resorted to only once (provided that the penalty at stake is not higher than</p>	<p>Community service replacing a criminal penalty fine.</p> <p>Legal basis in national law: art. 64 of the Criminal Code</p> <p>Definition: The sanction can be enforced by the delegated judge either if the subject cannot afford to pay the penalty fine or where he/she lodges a formal request to perform community service. Hence, the delegated judge can order staggered payment or replace it with community work, if the person involved agrees. The probation services are responsible for the surveillance of completion of the workload only, not the surveillance of the person.</p> <p>Authority responsible for taking such a decision: Sentencing Judge</p>



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<p>Authority responsible for supervising: Penitentiary Surveillance Judge and Penitentiary Administration.</p> <p>Authority responsible in case of infringement: Sentencing Judge or Court.</p>	<p>1 year conviction) and is in any case banned in the event of particularly serious crimes.</p> <p>3) Legal basis in national law: arts 186(9-bis) and 187(8-bis) of the legislative decree 285/1992, so called codice della strada – road traffic code).</p> <p>Definition/description: to replace a custodial conviction or a pecuniary penalty for the offence of driving under the effect of alcohol or drugs, unless specific aggravating circumstances occur.</p> <p>For any case of community service (nos. 1, 2 and 3 above), the positive evaluation of the activity performed leads to the extinction of the offence</p> <p>Authority responsible for taking such a decision: sentencing judge</p> <p>Authority responsible for supervising: law enforcement authorities and sentencing judge or judge of the execution phase</p> <p>Authority responsible in case of infringement: the sentencing judge or the judge of the execution phase revokes the community service and re-imposes the original penalty. Pursuant to Art. 57 d.lgs. 274/2000 (ie community service no. 1 above) where community service is the main penalty its infringement constitutes a specific and autonomous offence.</p>	<p>Authority responsible for supervising: Probation Service</p> <p>Authority responsible in case of infringement: Sentencing Judge</p>
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Probation decision		
Article 2.5 FD 947: ‘probation decision’ shall mean a judgment or a final decision of a competent authority of the issuing State taken on the basis of such judgment: (a) granting a conditional release; or (b) imposing probation measures		
Spain	Italy	Romania
<p>Probation (according to art. 93.2: the provisions of this Title also govern recognition and execution of the decision on probation when this has been adopted by the competent authority for execution of the custodial sentence or measure of deprivation of liberty in the issuing State)</p>		<p>Probation decision (Decizie de probațiune, according to art. 200, alin. 2, let. f) of the Criminal Code: a court or administrative decision rendered in reliance upon a court decision, whereby a probation measure was imposed or conditional release was ordered)</p> <p>In the probation case management, probation decisions involve the individualization/customization made by the probation counselor of the way specific obligations are completed, based on the information collected from the supervised person;</p> <p>The judge establishes the sentence that the person has to fulfill certain obligations, while the legal case manager decides the place and the period for completion, as well as other specific details. In this case, the judge issues a decision in three copies: one for the probation file, one for the supervised person, one for the institution where the obligation / sentence is to be executed.</p>
<p>Supervised release for juveniles (libertad vigilada)</p> <p>Legal basis in national law: Art. 7.1 h), 15, 51 of the Organic Law 5/2000, 12th January, regulating de criminal responsibility of juveniles</p> <p>Definition: This measure implies a tight control of the person’s movements: his or her attendance to school, vocational training centre or</p>		



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<p>work place, while trying to help him or her overcome the circumstances that lead him or her to commit the offence. This measure implies the obligation to follow socio-educative rules established by the public organization or the person in charge of controlling the execution of the measure. These rules have to be included in the individual intervention program and passed by the Juvenile Court Judge.</p> <p>Authority responsible for taking such a decision: Juvenile Court Judge</p> <p>Authority responsible for supervising: Juvenile Courts, Autonomic Administration and Penitentiary Administration in certain cases</p> <p>Authority responsible in case of infringement: Juvenile Courts</p>		
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Conditional release		
Article 2.6 FD 947: ‘conditional release’ shall mean a final decision of a competent authority or stemming from the national law on the early release of a sentenced person after part of the custodial sentence or measure involving deprivation of liberty has been served by imposing one or more probation measures		
Spain	Italy	Romania
<p>Conditional release (according to art. 93.1 a): conditional release on the basis of that sentence, or by a subsequent probation decision)</p>	<p>Conditional release (according to art. 2.1 f), una decisione che prevede la liberazione anticipata di una persona condannata dopo che questa abbia scontato parte della pena detentiva, anche attraverso l'imposizione di obblighi e prescrizioni)</p>	<p>Conditional release (liberarea condiționată, according to art. 200, alin. 2, let. d) of the Criminal Code: early release of a sentenced person after the partial service of an imprisonment sentence or of a measure involving deprivation of liberty by imposing one or more probation measures)</p>
<p>Legal basis in national law: Arts 90 to 92 of the Penal Code</p> <p>Definition: Judgement, as a consequence of a proposal formulated by the Penitentiary Administration, establishing the early release of a sentenced person, after having served part of the custodial sentence</p>	<p>Legal basis in national law: Arts 176 and 177 of the Penal Code, Art. 682 of the Code of Criminal Procedure, Art. 190 and 236 of the Legislative Decree 271/81 (implementing provisions of the code of criminal procedure)</p> <p>Definition: The sentenced person is released in advance because he or she has demonstrated through his or her behavior in prison that he or she has mended his or her way, and the purpose is therefore to accelerate re-entry into society</p>	<p>Legal basis in national law: Arts 99 to 106 of the Criminal Code</p> <p>Definition: the early release of a convicted person is a measure taken by the court, before the total execution of the sentence, if he/she fulfills certain conditions (for example, if he/she has executed a certain length of sentence, if he is a hard worker, disciplined and gives solid evidence of rectification, taking into account the duration of the sentence that remains to be executed, the age, the state of health, the form of guilt with which he committed the crime and his criminal record). During the conditional release period the convicted person may be forced to undergo surveillance measures. If, within the timeframe from release to the completion of the term of the sentence, the convicted person has not committed any other offense, the sentence shall be considered as executed.</p>
<p>Authority responsible for taking such a decision: Penitentiary Surveillance Judge (Juez de Vigilancia Penitenciaria)</p>	<p>Authority responsible for taking such a decision: Supervisory Court of the place of residence of the sentenced person or, if she or he is in prison, of the place where the sentenced person applied for conditional release</p>	<p>Authority responsible for taking such a decision: The conditional release is decided by the local Court competent for the place of detention</p>



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<p>Authority responsible for supervising: Penitentiary Surveillance Judge</p> <p>Authority responsible in case of infringement: Penitentiary Surveillance Judge</p>	<p>Authority responsible for supervising: Bodies indicated by the judge and local Offices for the Execution of Sentences in the Community (Ufficio dell'Esecuzione Penale Esterna)</p> <p>Authority responsible in case of infringement: Supervisory Court</p>	<p>Authority responsible for supervising: Probation Service</p> <p>Authority responsible in case of infringement: Court</p>
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Table of correspondence of probation measures and alternative sanctions provided by Italian, Romanian and Spanish law to which Framework Decision 2008/947/JHA applies

INTRODUCTION

This table of correspondence collects the probation measures and alternative sanctions provided in the Italian, Romanian and Spanish legal orders which are relevant to the scope of application of Framework Decision 2008/947/JHA.

This document is the outcome of various contributions, namely: the desk research of the project research units, insights from national central authorities and judicial authorities at the territorial level, interviews to key-practitioners, the case law of the Court of Justice.

The table of correspondence aims to:

- Propose an all-encompassing overview of the relevant national probation measures and alternative sanctions
- Analyse which national probation measures and alternative sanctions can be connected to the list provided by Art. 4 FD 2008/947/JHA
- Identify and underscore possible correspondences and divergences among the various probation measures and alternative sanctions listed herewith, with a view to strengthen mutual trust and facilitate judicial cooperation mechanisms

How to read the table of correspondence:

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IMPLEMENTATION OF FRAMEWORK DECISION 2008/947/JHA

Spain	Italy	Romania
Spanish Act 23/2014, of 20 November, on mutual recognition of judicial decisions in criminal matters in the European Union (Ley 23/2014, de 20 de noviembre, de reconocimiento mutuo de resoluciones penales en la Unión Europea).	Legislative Decree no. 38, 15 February 2016 (Decreto Legislativo 15 febbraio 2016, n. 38, Disposizioni per conformare il diritto interno alla decisione quadro 2008/947/GAI del Consiglio, del 27 novembre 2008, relativa all'applicazione del principio del reciproco riconoscimento alle sentenze e alle decisioni di sospensione condizionale in vista della sorveglianza delle misure di sospensione condizionale e delle sanzioni sostitutive)	Law no. 302/2004 on international judicial cooperation in criminal matters (Articles 200-227)



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NATIONAL LEGAL ORDERS

Obligation for the sentenced person to inform a specific authority of any change of residence or working place (Article 4(1), let. a), FD 947)		
Spain	Italy	Romania
<p>Legal basis in national law: Art. 83 (suspended sentence), 90 (conditional release), 106 of the Penal Code (non-custodial security measure of supervised liberty)</p> <p>Definition: The sentenced person has the obligation to inform the Penitentiary Authorities and the Judge or Court of any change of residence or working place, regardless of the nature of the offence.</p>	<p>Legal basis in national law: Art. 47(5) of the penitentiary law no. 354 of 1975</p> <p>Definition: A person who is sent to probation under Art. 47(1) (eg: in the event of the imposition of sentences of a duration which is below 3 years) is obliged to declare his residence, to choose his domicile and to communicate any changes.</p> <p>More broadly speaking, Art. 677(2 bis) of the criminal procedural code provides that any sentenced person – when filing a request for a measure alternative to detention – has an obligation to indicate to the competent territorial supervisory court his/her place of residence or domicile. He/she is also under a duty to update this declaration in the event of a change of the place of residence or domicile.</p> <p>In principle, this is not a prescription connected to the imposition of an alternative measure, rather an organizational measure. Yet, a failure to comply with this obligation may affect both the request for an alternative measure and its enforcement.</p>	<p>Legal basis in national law: Art.85 para.1 (postponement of the application of the penalty), 93 para. 1 (suspension of execution of a sentence under supervision), 101 para. 1 (conditional release)</p> <p>Definition: During a certain period, a convict shall comply with the following supervision measures: give notice of changing domicile; give notice of any travel longer than 5 days; give notice of changing jobs</p>



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Obligation not to enter certain localities, places or defined areas in the issuing or executing State		
(Article 4(1), let. b), FD 947)		
Spain	Italy	Romania
<p>Legal basis in national law: Art. 83 (suspended sentence), 90 (conditional release), 106 of the Penal Code (non-custodial security measure of supervised liberty)</p> <p>Definition: The sentenced person has the obligation not to visit certain places, territories or localities</p>	<p>1) Legal basis in national law: Art. 47(5)(6) of the penitentiary law no. 354 of 1975, as well as Art. 94 of the presidential decree no. 309 of 1990 (special law on drug-related offences), which refer to the former provisions.</p> <p>Definition: when issuing a probation decision, the competent authority must specify the ensuing obligations, including the prohibition to enter/visit certain places (para. 5), the prohibition to reside in a certain place (6) and/or the obligation to reside in a given place</p> <p>2) Legal basis in national law: Art. 215 (non-custodial security measure), 233 (non-custodial security measure), 234 (non-custodial security measure). Please note that in principle these obligations are connected to security measures and not probation decisions or alternative sanctions. Their inclusion into the scope of application of the Framework Decision at issue is still debated.</p> <p>Definition: They are types of non-custodial security measures provided for sentenced persons in the community, considered socially dangerous. The prohibition from staying in one or more municipal districts or provinces (Art. 233) can be applied to persons convicted of certain crimes. The prohibition from frequenting taverns or public shops selling alcoholic drinks (Art. 234) is compulsorily added to the sentence for persons judged to be dangerous to society due to their abuse of alcohol; and for</p>	<p>Legal basis in national law: Art. 85 para.2 (postponement of application of penalty), 101 para. 2 (early release) or art. 93 if this obligation was ordered in the sentence as a complementary punishment</p> <p>Definition: The Court can order a defendant to comply with one or several of the following obligations to: f) not be in certain locations or attend certain sports events, cultural events or public gatherings established by the Court</p>



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	convictions for crimes perpetrated in a drunken state	
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Obligation containing limitations on leaving the territory of the executing State (Article 4(1), let. c), FD 947)		
Spain	Italy	Romania
<p>Legal basis in national law: Art. 83 (suspended sentence), 90 (conditional release), 106 of the Penal Code (non-custodial security measure of supervised liberty)</p> <p>Definition: The sentenced person may have certain obligations containing limitations on leaving certain territories, which can include the Spanish territory</p>	<p>Legal basis in national law: Art. 47(6) of the penitentiary law no. 354 of 1975 + Art. 56 of law 689 of 1991 on alternatives to detention for sentences below 1 year.</p> <p>Definition: The first provision applies to probation measures and involves a possible obligation to reside in a given place and to stay there. It follows that – also in light of the relevant case law – the person concerned cannot leave the territory of the State. The second provision regards those cases where a person is imposed a non-custodial sanction replacing a custodial penalty below 1 year. In these cases, the sentenced person’s passport is withdrawn and any document enabling a travel abroad is temporarily suspended until the end of the enforcement period.</p>	<p>Legal basis in national law: Art. 85 para.2 letter i) (postponement of application of penalty), 93 para.2 letter d) (suspension of the execution under surveillance), 101 para. 2 (early release)</p> <p>Definition: The Court can order a defendant who has been granted postponement of penalty enforcement to comply with one or several of the following obligations to not leave Romanian territory without securing agreement from the Court</p>



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Instructions relating to behavior, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity (Article 4(1), let. d), FD 947)		
Spain	Italy	Romania
<p>Legal basis in national law: Art. 83 (suspended sentence), 90 (conditional release), 106 (non-custodial security measure of supervised liberty). Limitations on carrying out a professional activity are only provided for supervised liberty</p> <p>Definition: The sentenced person may have to participate in training, labor, cultural, traffic education, equal and non-discriminatory treatment, sexual and environmental defense training programs, those of protection of animals and other similar ones. The sentenced person may be prohibited to carry out certain activities that may provide or afford him the chance to commit criminal offenses of a similar kind.</p>	<p>Legal basis in national law: Art. 47 of the Penitentiary Act + Art. 94 of the presidential decree 309 of 1990 (special law on drug-related offences), which recalls Art 47 of the penitentiary act.</p> <p>Definition: Among the obligations and prohibitions assigned to the control of the Probation Service, there can be the obligation to fulfill family duties, or the prohibition to perform activities which could lead him to reoffend</p>	<p>Legal basis in national law: Art. 85 (postponement of application of penalty), 93 (suspension of the execution under surveillance), 101 (early release)</p> <p>Definition: The Court can order a defendant to comply with one or more of the following obligations: to take classes in school or a vocational training; to attend one or more social reintegration programs operated by the Probation Service or in cooperation with community entities; not to drive certain vehicles determined by the Court; not to take or exercise the position, profession, occupation or activity connected to the criminal conduct.</p>



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Obligation to report at specified times to a specific authority		
(Article 4(1), let. e), FD 947)		
Spain	Italy	Romania
<p>Legal basis in national law: Art. 83 (suspended sentence), 90 (conditional release), 106 of the Penal Code (non-custodial security measure of supervised liberty).</p> <p>Definition: The sentenced person may have to make a personal appearance before the Court, the police, or the service of the Administration this appoint to report on and justify his activities</p>	<p>Legal basis in national law: Art. 228 of the criminal code (supervised liberty) + Art. 56 of the law no. 689 of 1981 on non-custodial sanctions replacing custodial measures below 1 year)</p> <p>Definition: Supervised liberty is a non-custodial security measure that may imply the supervision of the offender via an obligation to report to an authority at times established by the judge Instead, Art. 56 law 689/1981 entails an obligation for the sentenced person to report at least on a daily basis (at a scheduled time which must be compatible with his/her work or studies) to the law enforcement agency which is territorially competent for the case</p>	<p>Legal basis in national law: Art. 85 (postponement of application of penalty), 93 (suspension of the execution under surveillance), 101 (early release)</p> <p>Definition: The defendant must comply with the following measures: report to the Probation Service on the dates set by the latter</p>

Obligation to avoid contact with specific persons		
(Article 4(1), let. f), FD 947)		
Spain	Italy	Romania
<p>Legal basis in national law: Art. 83 (suspended sentence), 90 (conditional release), 106 (non-custodial security measure of supervised liberty)</p> <p>Definition: The sentenced person may have the obligation to avoid contact with the victim, his relatives or other persons determined by the Judge or Court</p>	<p>Legal basis in national law: Art. 47 of the Penitentiary Act</p> <p>Definition: The Supervisory Court can, for offenders assigned to the Probation Service, establish prohibitions on having contact or relations with certain persons who could lead them to commit further offences.</p>	<p>Legal basis in national law: Art. 85 (postponement of application of penalty), 93 (suspension of the execution under surveillance), 101 (early release). This obligation applies during the suspension under supervision only if it was ordered as a complementary punishment</p> <p>Definition: The Court can order a defendant to comply with one or several of the following obligations to not communicate with the victim or the victim's family, with the persons together with whom they committed the offense or with other persons as established by the</p>



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		Court, or to not go near such persons
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Obligation to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence (Article4(1), let. g), FD 947)		
Spain	Italy	Romania
<p>Legal basis in national law: Art. 83 (suspended sentence), 90 (conditional release), 105 (non-custodial security measures), 171 (threat), 172 (coercion), 173 (crimes against moral integrity), 379 to 383 (traffic-related crimes)</p> <p>Definition: The sentenced person may have the obligation to avoid contact with specific objects. This is a compulsory penalty for domestic violence offenses in relation with fire arms, for persons that had the previous authorization for using them, and in traffic-related offenses, in relation to automobiles</p>	<p>Legal basis in national law: Art. 47(6) of the penitentiary law no. 354 of 1975 + Art. 56 of law 689 of 1991 on alternatives to detention for sentences below 1 year.</p> <p>Definition: Under Art. 47, the supervisory court can impose any obligations which is deemed necessary to avoid the risk of reoffending, including meeting certain persons or conducting give activities (see also the previous block). In practice – even though the law does not add any further clarifications, this often entails a prohibition to carry arms, to take drugs, and drink alcoholics. The second provision always entails the prohibition to hold and carry arms, ammunitions and explosives.</p>	<p>Legal basis in national law: Art. 85 (postponement of application of penalty), 93 (suspension of the execution under surveillance), 101 (early release). This obligation applies during the suspension under supervision and early release only if it was ordered as a complementary punishment</p> <p>Definition: The Court can order a defendant to comply with one or several of the following obligations to not own, use and carry any category of weapons; not take or exercise the position, profession, occupation or activity they used in the commission of the offense</p>



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Obligation to compensate financially for the prejudice caused by the offence and/or an obligation to provide proof of compliance with such an obligation (Article 4(1), let. h), FD 947)		
Spain	Italy	Romania
<p>Legal basis in national law: Art. 83 and 84 (suspended sentence), 90 (conditional release)</p> <p>Definition: The person whose sentence has been suspended may have the obligation to compensate financially the victim or other persons as a result of a mediation or as a condition for the suspension or conditional release</p>	<p>Legal basis in national law: Art. 47(9) of the penitentiary law no. 354 of 1975 (probation) + Art. 165 criminal code (suspended sentence) + Art. 168 bis criminal code (suspended trial with assignment to probation) + Art. 176 criminal code (conditional release)</p> <p>Definition: Art. 47(9) penitentiary act provides that compensation to the victim(s) can be listed among the sentenced person's obligations in the framework of alternatives to detention.</p> <p>Art. 168 bis allows for the suspension of the trial and subsequent assignment to probation services when an offence for which the maximum custodial penalty threshold available is 4 years is at issue. Compensation (or – better – the deployment of any effort to compensate) is an integral part of the probation measure.</p> <p>Under Art. 165 criminal code, the enforcement of a custodial penalty can be suspended on certain conditions, among which the sentencing judge can also include the compensation to the victim(s). In practice, compensation is often de facto a requisite for these suspended sentences to apply.</p> <p>Art. 176 of the criminal code concerns cases of conditional release. More specifically, in these cases the compensation is a condition for conditional release to be granted. Therefore, the application of the FD at issue to these cases is doubtful.</p>	<p>Legal basis in national law: Art. 85, paragraph 5 and Art. 93 paragraph 5</p> <p>Definition: within the postponement of the application of punishment and the suspension of sentence under surveillance, the court may order the supervised person to pay the civil obligations entirely, while the legal case manager follows the fulfillment of the order and has the duty to notify, three months in advance of the term, if the civil obligations were paid entirely. The court can revoke the postponement and suspension if the order of payment has been violated in bad faith.</p>



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Obligation to carry out community service		
(Article 4(1), let. i), FD 947)		
Spain	Italy	Romania
<p>Legal basis in national law: Art. 84 (suspended sentence)</p> <p>Definition: The person whose sentence has been suspended may have the obligation to carry out community service</p>	<p>Legal basis in national law: see the domestic provision on suspended sentence (165 criminal code), suspension of trial with assignment to probation (168 bis criminal code) and the various cases of decisions imposing community service listed in the chart on probation decisions</p> <p>Definition: If the offender consents to it, the Judge can order non-paid work for the community</p>	<p>Legal basis in national law: Art. 85 (postponement of application of penalty), 93 para. 3 (suspension of the execution under surveillance)</p> <p>Definition: The Court can order a defendant to comply with one or several of the following obligations to perform community service for a certain duration, in the conditions ordered by the Court, except for the case where their health precludes them from performing that service. The daily number of hours to be performed shall be established as under the Law on the Service of Penalties</p>

Obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons		
(Article 4(1), let. j), FD 947)		
Spain	Italy	Romania
<p>No</p>	<p>Legal basis in national law: Art. 47 of the penitentiary law no. 54 of 1975 and Art. 56 of the law no. 689 of 1981.</p> <p>Definition: Under Art. 47, persons assigned to the Probation Service have to cooperate with the social worker who is supervising him. Supervised freedom under Art. 56 can include the involvement in rehabilitation programmes implemented by social services</p>	<p>Legal basis in national law: Art. 85 (postponement of application of penalty), 93 (suspension of the execution under surveillance), 101 (early release)</p> <p>Definition: The defendant must comply with the following measures: receive visits by the probation officer appointed to supervise them</p>



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Obligation to undergo therapeutic treatment or treatment for addiction		
(Article 4(1), let. k), FD 947)		
Spain	Italy	Romania
<p>Legal basis in national law: Art. 83 (suspended sentence), 90 (conditional release), 106 of the Penal Code (non-custodial security measure of supervised liberty)</p> <p>Definition: The Court can order the offender to undergo therapeutic treatment or treatment for addiction</p>	<p>Legal basis in national law: Decree No. 309 of 9 October 1990</p> <p>Definition: Therapeutic treatment cannot be imposed. It must be freely agreed between the addict and the healthcare structure which will take care of him. The alternative is to serve the sentence in prison.</p>	<p>Legal basis in national law: Art. 85 (postponement of application of penalty), 93 (suspension of the execution under surveillance)</p> <p>Definition: The Court can order a defendant to comply with medical checkups, treatment or care</p>



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Table of correspondence of supervision measures alternative to pre-trial custodial measures provided by Italian, Romanian and Spanish law to which Framework Decision 2009/829/JHA applies

INTRODUCTION

This table of correspondence collects the supervision measures alternative to provisional pre-trial detention provided in the Italian, Romanian and Spanish legal orders which are relevant to the scope of application of Framework Decision 2009/829/JHA.

This document is the outcome of various contributions, namely: the desk research of the project research units, insights from national central authorities and judicial authorities at the territorial level, interviews to key-practitioners.

The table of correspondence aims to:

- Propose an all-encompassing overview of the relevant national supervision measures
- Analyse which national supervision measures and alternative sanctions can be connected to the list provided by Art. 8 FD 2009/829/JHA
- Identify and underscore possible correspondences and divergences among the various supervision measures listed herewith, with a view to strengthen mutual trust and foster the application of the European Supervision Order

How to read the table of correspondence:

- The table provides an overview of the various supervision measures, including the domestic legal basis and a quick description of their substance and main features
- Where in principle the features of two or more national measures possibly (and maybe partially) correspond, these are placed in the same line of the table

A note to the reader/user: the content of this document reflects the normative state of affairs as of November 2020 and the extremely limited practice concerning the application of the judicial cooperation mechanism at issue.

The actual correspondence of national measures largely depends on the assessment of the specific features of the measures issued on an individual basis, also because of the flexibility and wide scope of application of the relevant national provisions.



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IMPLEMENTATION OF FRAMEWORK DECISION 2009/829/JHA

Spain	Italy	Romania
<p>Yes.</p> <p>Spanish Act 23/2014, of 20 November, on mutual recognition of judicial decisions in criminal matters in the European Union. Title V (in particular Arts. 109-129)</p>	<p>Yes.</p> <p>Legislative decree no. 36 of 15 February 2016, provisions on the implementation of Framework Decision 2009/829/JHA</p>	<p>Yes.</p> <p>By the Law no. 300 from 15 November 2013 for the amendment and supplemental of the Law no. 302/2004 on the international judicial cooperation in criminal matters, published in the Official Gazette of Romania on 11 December 2013 Romania transposed the Framework Decision no. 2009/829/JHA of 23 October 2009. The legal provisions concerning the transposition of the aforementioned Framework entered into force within 15 days from the publication date in the Official Gazette of the transposing law, respectively on 26 December 2013</p> <p>Title VII Recognition and enforcement in relation to the Member States of the European Union of judgments which ordered sanctions or criminal non-custodial measures Art.184 – 199 of the Law no.302/2004</p>



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NATIONAL LEGAL ORDERS

What measures enter into the scope of mutual recognition under FD 829 (Art. 8 Framework Decision 2009/829/JHA)?

Obligation to inform of any change of residence (Article 8(1)a FD 2009/829/JHA)		
Spain	Italy	Romania
<p>In spite of not being a precautionary measure, any party to a procedure shall communicate a change in their residence to the judicial body (art. 155.5 Civil Procedural Act, “LEC” –of supplementary application in criminal proceedings by virtue of art. 4 LEC)</p> <p>The issuing authority in charge of this measure is the investigative judge – in Spanish: <i>Juez de Instrucción</i>. The supervision authority is the court clerk – in Spanish: <i>Letrado de la Administración de Justicia</i>-</p>	<p>An obligation to inform of any change of residence is not per se an autonomous pre-trial measure.</p> <p>Instead, this is an obligation which the accused person must always comply with in the event he/she imposed other available non-custodial measures.</p> <p>In particular, for instance, this obligation is expressly referred to in Art. 283 of the criminal procedure code (cpp) establishing the prohibition/obligation to stay in certain places (divieto/obbligo di dimora). In these cases, any change of the place where the person originally chosen to serve the provisional measure must be timely communicated to the local law enforcement authority and to the competent judge</p>	<p>Provision under Law no.302/2004 - Art.184 (1) This Chapter shall apply in relation to Member States of the European Union, in the field of recognition of actions that, during the criminal trial, have order, in accordance with national legislation and procedures of the issuing State, one or more of the following supervision measures:</p> <p>a) the obligation of the person to inform the competent authority of the executing State of any change of residence, in particular for the purpose of receiving the summons to attend a hearing or a criminal trial;</p> <p>Provision under Criminal Procedure Code: Art.215 (1)</p> <p>b) While under judicial control, a defendant shall comply with the following obligations: to inform forthwith the judicial bodies having ordered the measure or with which their case is pending on any change of residence;</p> <p>Under the previous Criminal Procedure Code, the defendant did not have the right to change his residence without the consent</p>



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		<p>(<i>incuviințarea</i>) of the judicial authorities. Under the present provisions, the defendant only has the obligation to <i>inform the judicial authorities of this change of residence</i>. He / She has no restraints. The limitation may only appear in conjunction with his obligation of not to leave a certain territorial limit, which implies <i>de facto</i> the impossibility of changing his residence with a residence outside the area already established under the judicial control measure.</p> <p>The notification of the judicial body has to be done <i>immediately</i> but the law does not set a period of time. This notification of change of residence may be done orally or in writing, personally or by representation but it has to be addressed to the judicial authority which ordered the measure and not to the authority designated to supervise the obligations.</p> <p>The legislator uses the notion of <i>residence</i> and by that it means the actual location/address where the defendant actually lives which may be the same or different with the domicile address shown in his ID Card. This obligation seeks for the judicial authority to know exactly where the defendant may be located, summoned or brought with warrant before the authorities.</p> <p>The measure may be ordered by a prosecutor or judge depending on the stage of the case (pre-trial, preliminary chamber or trial) if the conditions provided by the</p>
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		law are met. The defendant may file a <i>complaint</i> against the Ordinance of the prosecutor. During trial stage the defendant or prosecutor may file appeal against the measure.
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Obligation not to enter certain localities, places or defined areas (Article 8(1)b FD 2009/829/JHA)		
<p>No available precautionary measure</p>	<p>1) (see also sub Art. 8(1) f) Art. 282-ter cpp provides for the obligation not to approach the place(s) where the victim lives and/or the places habitually attended by the victim (divieto di avvicinamento).</p> <p>The competent judge can also impose the person concerned to remain at a certain pre-determined distance from these premises and from the victim himself/herself</p> <p>This obligation can be extended to the close family members of the victim and to the places where they live/which they habitually attend.</p> <p>If the accused person has to visit these places due to his/her working activity, the competent judge shall be timely informed and take all necessary limitations and measures.</p> <p>In addition, the judge can also prohibit to the accused person to communicate with the victim and/or with his/her close family members by any means.</p> <p>2) Art. 283(1) cpp allows the competent judge to prescribe a prohibition to live in certain places (divieto di dimora). A prior authorisation from the issuing judge is necessary to derogate from this prohibition, where needed.</p> <p>In any case, while determining the territorial scope of the prohibition, the judge has to take into due consideration the accused person's needs in</p>	<p>Provision under Law no.302/2004 - Art.184 (1) b) the obligation not to enter certain localities, places or defined areas in the issuing State or executing State;</p> <p>Provision under Criminal Procedure Code: Art.215 (2) b) Judicial bodies having ordered the measure may require that the defendant, during the judicial control, comply with one or more of the following obligations: b) not to travel to places set specifically by the judicial bodies or to travel only to places set by these;</p> <p>The interdiction aims another aspect of the limitation of the free movement, complementary to the one provided at Art.215 (2) a) not to exceed a specific territorial boundary, set by the judicial bodies, without their prior approval;</p> <p>Art. 215 (2) b) – the scope of this limitation might be the one of prohibiting the defendant to access certain locations or interaction with certain categories of persons that are found in those locations. The defendant might not be allowed to attend large manifestations, enter clubs or internet café locations etc. The location of the places may be generic or identified in concrete by mentioning the exact locations.</p> <p>The measure may be ordered by a prosecutor or judge</p>



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	<p>terms of work, housing and assistance. In particular, when a drug/alcoholics addict is at issue, and a therapeutic programme is ongoing in a specialised facility, the judge takes all needed monitoring measures, to secure the continuation of the programme itself.</p> <p>3) (see also under Art. 8(1) f) Art. 282 bis cpp provides for the obligation to immediately leave the family house and not to go there only upon prior authorisation issued by the competent judge (allontanamento dalla casa familiare).</p> <p>Where necessary, the competent judge can extend this obligation to any other place which the victim or his/her close family members habitually attend/live in, including the workplace. In case the prohibition to live with the family determines serious economic turbulences, the judge can impose on the accused person the duty to pay regular amount of money to the family members.</p>	<p>depending on the stage of the case (pre-trial, preliminary chamber or trial) if the conditions provided by the law are met. The defendant may file a <i>complaint</i> against the Ordinance of the prosecutor. During trial stage the defendant or prosecutor may file appeal against the measure.</p> <p>The supervision of the measure is of the competence of the Police where the person has his / her domicile or where he/she actually lives.</p> <p>Nonetheless, for the majority of the judicial control measures, the compliance with the measures imposed relate to the good-faith of the defendant bearing in mind the risks that he is assuming by intentionally breaching the obligation. The Police authorities may only occasionally verify if the obligations are respected or not.</p>
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Obligation to remain at a specified place (Article 8(1)c FD 2009/829/JHA)		
<p>Pre-trial detention may be served in the residence of the detainee, when a stay at the detention centre may cause a serious damage to the health of the detainee (art. 508.1 Criminal Procedural Act, "LECrIm")</p> <p>Pre-trial detention may be served in a detoxification centre, when a stay at the detention facility may thwart the ongoing rehabilitation treatment (art. 508.2 LECrim)</p> <p>The issuing and supervision authority in charge of the measures mentioned above is the investigative judge</p> <p>The underage defendant may be placed under their parents' authority or a third person, and even under the custody of an educational centre (art. 28.1.II Underage Offenders Criminal Liability Act, "LRPM")</p> <p>The issuing authority in charge of this measure is the judge for minor offenders. The supervision authorities are both the judge for underage offenders and the public prosecution officers</p> <p>See also measures to be ordered pursuant to art. 544 bis LECrim (as stated below)</p>	<p>Art. 283(2) cpp allows the competent judge to prescribe an obligation to live in certain places (obbligo di dimora). A prior authorisation from the issuing judge is necessary to derogate from this prohibition, where needed.</p> <p>The obligation can refer to a given city or even to parts/areas of it. Where no police stations are available in the surroundings and the monitoring activity would be hampered, the judge can point at a neighbouring city or to other places, preferably nearby the place of habitual residence.</p> <p>In any case, while determining the territorial scope of the obligation, the judge has to take into due consideration the accused person's needs in terms of work, housing and assistance.</p> <p>In particular, when a drug/alcoholics addict is at issue, and a therapeutic programme is ongoing in a specialised facility, the judge takes all needed monitoring measures, to secure the continuation of the programme itself.</p>	<p>Provision under Law no.302/2004 - Art.184 (1) c) the obligation to remain in a certain place, where applicable, during specified time intervals;</p> <p>Provisions under Art.215 (2) a) not to exceed a specific territorial boundary, set by the judicial bodies, without their prior approval;</p> <p>Usually when judicial authorities order this measure, it relates to the interdiction of leaving the country or locality / city where the defendant lives. But the judicial authority may as well individualize this measure in accordance with the particularities of the case and of the defendant.</p> <p>It may order for the limitation of movement for a certain area of the locality (determined by certain streets) or for several localities, or counties (județe). It is important for the defendant to easily be able to identify this territorial limit so that he does not breach it unintentionally.</p> <p>The interdiction is not absolute is one established <i>under a condition</i> – that of prior approval. The defendant cannot breach the territorial limit except if his request is approved first by the judicial authority.</p> <p>The measure may be ordered by a prosecutor or judge depending on the stage of the case (pre-trial, preliminary</p>



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		<p>chamber or trial) if the conditions provided by the law are met. The defendant may file a <i>complaint</i> against the Ordinance of the prosecutor. During trial stage the defendant or prosecutor may file appeal against the measure.</p> <p>The supervision of the measure is of the competence of the Police where the person has his / her domicile or where he/she actually lives together with the Public Service of the Evidence of Persons, The Romanian Border Police and the General Inspectorate for Immigration (if the person is not Romanian national) – in cases where the measure imposed is the obligation not to leave the country.</p>
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Obligation containing limitations on leaving the territory of the executing State (Article 8(1)d FD 2009/829/JHA)		
<p>Possibility of the defendant's passport being withdrawn by the judicial authority (art. 530 LECrim)</p> <p>The issuing and supervision authority for this measure is the investigative judge</p>	<p>Art. 281 cpp provides for the prohibition to leave the territory of the State (divieto di espatrio). The competent judge takes any decision regarding the travel documents which is necessary to ensure that this measure can be actually enforced.</p> <p>From a general point of view, Art. 281(2 bis) cpp clarifies that this obligation is automatically imposed whenever a non custodial pre-trial measure is imposed.</p>	<p>Provision under Law no. 302/2004 Art.184 (1) d) the obligation which puts restrictions on leaving the territory of the executing State;</p> <p>Provision under the Criminal Procedure Code - Art.215 (2) a) and b) <i>examined above</i>. a) not to exceed a specific territorial boundary, set by the judicial bodies, without their prior approval; b) not to travel to places set specifically by the judicial bodies or to travel only to places set by these;</p>

Obligation to report at specified times to a specific authority (Article 8(1)e FD 2009/829/JHA)		
<p>Defendant's periodical appearance court is compulsory – known as <i>comparencia apud acta</i>. Apart from this, judicial authorities may order any other appearance if they deem it necessary (art. 530 LECrim)</p> <p>The issuing and supervision authority for this measure is the investigative judge</p>	<p>Art. 282 cpp provides for the obligation to report to a local station of a law enforcement authority (obbligo di presentazione alla polizia giudiziaria).</p> <p>The criteria for enforcing this measure (including in particular the schedule of the reporting and the pace) must be clearly stated by the competent judge, taking into consideration the habitual place of stay/residence and the work of the person concerned.</p>	<p>Provision under Law no.302/2004 – Art.184 (1) e) the obligation to report at specified time intervals to a specific authority;</p> <p>Provision under Criminal Procedure Code – Art.215 (1) a) to appear before the criminal investigation body, the Preliminary Chamber Judge or the court any time they are called;</p> <p>The obligation to appear in front of the judicial authority might involve the summoning of the person in writing or by phone call. The obligation to appear is independent of: the manner of summoning; the reasons for which the person is called to appear; or the period of time that has passed since the last appearance.</p>



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		<p>The obligation is <i>an individual one</i>, it cannot be done by representation or defense attorney.</p> <p>In cases when the defendant cannot appear in front of the competent authority due to reasons that are independent of his will, he must inform the prosecutor/ judge of these circumstances. The refusal to appear in bad-faith may lead to a change of the measure into a more severe one.</p> <p>The defendant may also be brought before the judicial authority with a warrant.</p>
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Obligation to avoid contact with specific persons in relation with the offence(s) allegedly committed (Article 8(1)f FD 2009/829/JHA)		
<p>Possibility to impose the obligation of living in or attending to certain places, neighbourhoods, municipalities, provinces or autonomous communities for felonies included in art. 57 of the Criminal Code, "CP" (Art. 544 bis LECrim). Such felonies are: homicide, abortion, bodily injuries, offences against personal freedom, torture, human trafficking, offences against sexual integrity, offences against the right to self-image and offences against socio-economical order)</p>	<p>1) (see also supra, Art. 8(1) b) Art. 282-ter cpp provides for the obligation not to approach the place(s) where the victim lives and/or the places habitually attended by the victim (divieto di avvicinamento). The competent judge can also impose the person concerned to remain at a certain pre-determined distance from these premises and from the victim himself/herself This obligation can be extended to the close family members of the victim and to the places where they live/which they habitually attend.</p>	<p>Provision under Law no. 302/2004 – Art.184 (1) f) the obligation to avoid the contact with certain persons in connection with the offence alleged to have been committed;</p>
<p>Possibility to impose the prohibition of coming into close proximity or communication with the presumed victim, for felonies included in art. 57 CP (art. 544 bis LECrim)</p>	<p>If the accused person has to visit these places due to his/her working activity, the competent judge shall be timely informed and take all necessary limitations and measures.</p>	<p>Provision under Criminal Procedure Code – art.215 (2) d) not to return to their family's dwelling, not to get close to the victim or the members of their family, to other participants in the committed offense, witnesses or experts or to other persons specified by the judicial bodies and not to communicate with these in any way, be it directly or indirectly;</p>
<p>The issuing and supervision authority in charge of the measures mentioned above is the investigative judge</p>	<p>In addition, the judge can also prohibit to the accused person to communicate with the victim and/or with his/her close family members by any means.</p>	<p>The obligation aims on one hand the limitation of the defendant's right to use the family's home or to return to that home to prevent him for contacting his family members, to avoid any potential physical or psychical aggressive manifestations that may have influence on the criminal trial/case. – this measure is usually ordered in relation to offences committed against family members.</p>
<p>Possibility to forbid an underage defendant from coming into close proximity or communication with the presumed victim or with the victims' relatives or with any other person as decided by the judge (art. 28.1.II LRPM)</p>	<p>2) (see also supra, Art. 8(1) b) Art. 282 bis cpp provides for the obligation to immediately leave the family house and not to go there only upon prior authorisation issued by the competent judge (allontanamento dalla casa familiare).</p>	<p>With regard to the other participants to the criminal trial such as witnesses, interpreters or other persons designated by the judicial authority (clerks, police officers, persons that might become subjects within the case) the interdiction for the defendant to contact them or</p>
<p>The issuing authority in charge of this measure is the judge for underage offenders. The supervision authorities are both the judge for underage offenders and the public prosecution officers</p>	<p>Where necessary, the competent judge can extend this obligation to any other place which the victim or</p>	



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	<p>his/her close family members habitually attend/live in, including the workplace. In case the prohibition to live with the family determines serious economic turbulences, the judge can impose on the accused person the duty to pay regular amount of money to the family members.</p>	<p>get close to them, directly or indirectly aims to avoid for the defendant to influence the next steps of the trial, both meaning prior agreements or threats or intimidations of these persons.</p> <p>For such interdiction to be respected, it is necessary for the judicial authority to individualize and nominate (name and surname) the persons towards whom this negative obligation is ordered. It is not sufficient to mention by example “witnesses in the case” or “injured persons in the case” generically speaking. For example, during the investigative stage (pre-trial), sometimes the defendant does not have access to the information related to the identity of the witnesses, experts or interpreters given the confidential nature or proceedings in this stage.</p> <p>The supervision of the measure is of the competence of the Police where the person has his / her domicile or where he/she actually lives.</p>
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Obligation not to engage in specified activities in relation with the offence(s) allegedly committed (Article 8(2)a FD 2009/829/JHA)		
<p>Temporary or definitive closure of business establishments or premises, suspension of social activities and judicial intervention, in case the criminal liability of a legal entity is being investigated (art. 34.7. III CP)</p>	<p>NB: according to Italian law, these are to be labelled as prohibitory measures (misura interdittiva), which can apply on a temporary basis when the alleged offence is punished by a maximum of at least 3 years.</p>	<p>Provision under Law no. 302/02004 – Art.184 (1) g) an obligation not to engage in certain activities in connection with the offence alleged to have been committed, which may include the involvement in a particular profession or field of activity;</p>
<p>The issuing and supervision authority for this measure is the investigative judge</p>	<p>The scope of application of the Italian implementing legislation is yet to be clarified. In principle, Art. 4 let. g) refers only to the prohibition to conduct certain professional activities. This broad definition makes it unclear whether the legislative decree applies to a set of measures, such as the prohibition to conclude contracts with the public administration. In any case, all possibly relevant prohibitory measures are listed herewith.</p>	<p>Provision under Criminal Procedure Code, Art.215 (2) e) not to practice a profession, craft or activity during the practice or performance of which they committed the act;</p>
	<p>1) Art. 290 cpp provides for the temporary prohibition to conduct a business or perform a certain professional activity, including in particular leading roles in legal entities. The limits referred to above for the imposition of this measure can be derogated in case of certain crimes connected to the market conduct of a company (see para 2 for the list).</p>	<p>The reasons for this limitation regard the scope of the actual measure, meaning the perpetration of a new offence.</p>
	<p>2) Art. 289 cpp provides for the prohibition to perform activities connected to a role in the public administration and to provide public services. Where a crime against public administration is at issue, this measure can be imposed regardless of the quantitative threshold referred to above.</p>	<p>Therefore, the limitation might be ordered when the defendant <i>took advantage</i> of this activity in order to commit the allegedly offence; By continuing to exercise the same activity or profession the defendant might be tempted to repeat the same behavior (or would have the same means, instruments and opportunities) to commit a new offence. The interdiction is also necessary in the hypothesis when the judicial authority would consider that the defendant committed the offence due to his <i>incapacity or lack of training or other causes</i> that make him <i>incapable</i> of occupying such a position / job.</p>



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	<p>3) Art. 289 bis cpp provides for a temporary prohibition to conclude contracts with the public administration (with the exception of the situations where the person concerned benefits from a public service). Where a crime against public administration is at issue, this measure can be imposed regardless of the quantitative threshold referred to above</p>	
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Obligation not to drive a vehicle (Article 8(2)b FD 2009/829/JHA)		
<p>Possibility of ordering a precautionary withdrawing of the defendant's driving license (art. 529 bis LECrim)</p> <p>The issuing and supervision authority for this measure is the investigative judge</p>	<p>No.</p>	<p>Provision under Law no. 302/02004 – Art.184 (1) h) the obligation not to drive a vehicle;</p> <p>Provision under Criminal Procedure Code – Art.215 (2) i) not to drive specific vehicles established by the judicial bodies;</p> <p>In a similar way to the obligation provided at letter e) (not to practice a profession, craft or activity during the practice or performance of which they committed the act) this negative obligation might be ordered by the judicial authority when the prosecutor or judge would reach the conclusion that the defendant had used that type of vehicle for the perpetration of the offence or when the perpetration of the offence is the consequence of his <i>incapacity, lack of experience of training or other causes</i> make him unable for driving certain types of vehicles.</p>



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Obligation to deposit a certain sum of money or to give another type of guarantee (Article 8(2)c FD 2009/829/JHA)		
<p>Possibility of allowing the defendant to be released on bail (art. 529 LECrim)</p> <p>The issuing and supervision authority for this measure is the investigative judge</p>	<p>This provision was not implemented in the Italian legal order.</p> <p>Yet the possibility to impose the payment of a certain sum on a regular basis is granted under Art. 282 bis (3) on the obligation to leave the family house (allontanamento dalla casa familiare)</p>	<p>Provision under Law no. 302/02004 – Art.184 (1) i) the obligation to deposit a certain sum of money or to offer another type of guarantee, which may either be provided in a number of instalments, either all at once;</p> <p>The Romanian Procedural Criminal Code in Art.216 regulates the possibility for the defendant benefit of judicial control on bail. During the criminal investigation, a prosecutor may order judicial control on bail against a defendant, if the requirements of the law are met and if the defendant deposits a bail the value of which is established by the judicial bodies.</p> <p>The Preliminary Chamber Judge, in preliminary chamber procedure, or the court, during the trial, may order judicial control on bail against a defendant.</p> <p>ART. 217 Content of a bail (1) Bail shall be posted in the defendant's name, by depositing a set amount of money with the judicial bodies or by posting a property bond, in securities or real estate, within the limits of the set money amount, in favor of the same judicial bodies. (2) The value of a bail is of at least RON 1,000 and is determined based on the seriousness of the accusation brought against the defendant, their material situation and their legal obligations. (...)</p>



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		<p>(5) The court shall order, by a court decision, confiscation of bail if a judicial control on bail was replaced by a house arrest or pre-trial arrest measure (...)</p> <p>(6) In other cases, the court shall order restitution of the bail, through a court decision. (...)</p>
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Obligation to undergo therapeutic treatment or treatment for addiction (Article 8(2)d FD 2009/829/JHA)		
<p>Pre-trial detention may be served in a detoxification centre, when a stay at the detention facility may thwart the ongoing rehabilitation treatment (art. 508.2 LECrim)</p> <p>The issuing and supervision authority for this measure is the investigative judge</p>	<p>No.</p>	<p>Provision under art.184 (1) j) the obligation to undergo a medical treatment or detoxification treatment;</p> <p>Provision under Criminal Procedure Code – Art.215 (2) g) to subject themselves to medical examination, care or treatment, in particular for the purpose of detoxification;</p> <p>In this particular case there is danger or risk for the person to commit new offences. The fact that the defendant suffers from a certain disease or is addicted to alcohol or other substances that alter his behavior, means that the simple negative obligation of not to commit new offences would be lacked of effect if the causes that generate or facilitates such behavior are not treated.</p> <p>The supervision of the measure is of the competence of the Police where the person has his / her domicile or where he/she actually lives and of the medical institution where he will undergo the treatment.</p>



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Obligation to avoid contact with specific objects in relation with the offence(s) allegedly committed (Article 8(2)e FD 2009/829/JHA)		
<p>Possibility to suspend the right to possess and carry weapons, as well as the obligation to lodge them, in cases of gender violence (art. 67 Comprehensive Protection Measures against Gender Violence Act, "LOMPIVG")</p>		<p>Provision under art.184 (1) k) the obligation to avoid contact with specific objects in relation to the offence alleged to have been committed.</p>
<p>The issuing and supervision authority for this measure is the investigative judge</p>		<p>Provision under Criminal Procedure Code – Art.215 (2) j) not to hold, use or carry weapons;</p>
		<p>The notion of weapons has to be interpreted by weapons and fire arms as well as cold weapons. The interdiction aims both the weapons that require prior approval (permit) even if the defendant had obtained an administrative authorization and those that require no specific formality.</p>
		<p>Provision under Criminal Procedure Code – Art.215 (2) k) not to issue cheques. This interdiction might be imposed when the defendant is accused of having committed economic offences the scope being that of preventing him to commit new offences.</p>
		<p>The supervision of the measure is of the competence of the Police where the person has his / her domicile or where he/she actually lives and the Bank where the defendant holds accounts.</p>