

CEP



**STATUS OF implementation
Framework decisions**

947 & 829

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Comparative overview

	FD 947/2008 on alternative to detention and probation decision	FD 829/2009 on alternatives to provisional detention
Rationale	Too many FNP, overcrowding and minimum reintegration prospects	Too many foreign nationals in pre-trial arrest – consequences?
Precursors	CoE Convention on the Supervision of Conditionally Sentenced or Conditionally Released Prisoners – 1964 (1975) – only 19 of 47	-
Aim and purpose	Enhance social rehabilitation by: <ul style="list-style-type: none"> - preserving family, social, linguistic ties, - improving monitoring of compliance - prevent recidivism - protect the victim and the public 	Protection of the victim and the general public. Supervision of the people while awaiting trial – ensure the due course of justice. Enhancing the right to liberty and the presumption of innocence. Use of non-custodial measures for pre-trial. Equal treatment for non-residents



Comparative overview

	FD 947/2008 on alternative to detention and probation decision	FD 829/2009 on alternatives to provisional detention
Where?	To the MS where the person is lawfully and ordinarily residing – if they returned or want to return Another MS – upon request and consent of the MS	To the MS where the person lawfully and ordinarily reside – informed and consents Other MS but only with consent of that MS.
Characteristics	The system of competent authorities Eleven types of probation measures – added more if ...	The system of competent authorities Recourse of the central authority Six supervision measures (obligatory – report, not to enter, remain in places etc.) Five other measures (may be prepared – treatment, money etc.)
Procedure	Certificate and the sentence E J N - http://www.ejn-crimjust.europa.eu/ejn/EJN_Home.aspx Adaptation – nature and duration ES – 60 days to decide Double criminality – 32	Certificate + Decision on the supervision measures. Specify: length of time, renewal and the provisional length of time needed EJN ES – 20 days for decision + possible another 20 days – inform Adaptation – the nature in line with the national legislation for equivalent offence Double criminality – 32



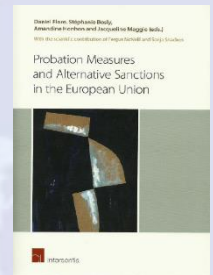
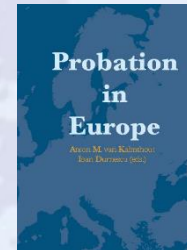
Comparative overview

	FD 947/2008 on alternative to detention and probation decision	FD 829/2009 on alternatives to provisional detention
Grounds for non-recognition	<p>Certificate incomplete Not willing to return Other measures than the 11 Less than 6 months until the end etc.</p>	<p>Certificate incomplete Measures not obligatory Ne bis in idem Immunity In case of breach would not apply the EAW – but consultation etc.</p>
Law governing supervision	<p>ES takes all subsequent decision except alternative sentence if custody is not an option in case of breach.</p> <p>Transfer jurisdiction back</p>	<p>ES In case of continuation – IS may request to extend the monitoring by the ES. ES decides according to its own national law. All subsequent decision taken by the IS – renewal, modification, arrest warrant ES may adapt or refuse</p>
Deadline of implementation	6 th of December 2011	1 December 2012



Several EU projects

- Probation measures and alternative sanctions in the EU
- <http://www.euprobationproject.eu>
- ISTEP www.probation-transfers.eu
- STREAM www.stream-probation.eu
- CEP Expert Group
- Projects, conferences, expert meetings and news articles on FDs can be consulted at the CEP website: <http://cep-probation.org/knowledgebase/eu-framework-decision-on-probation/>





STATE OF IMPLEMENTATION

	FD 947/2008 - Prob	FD 829/2009 - ESO
Transposed	26 MS (except UK and Ireland- in the Criminal Justice Bill)	24 MS
In process of transposition	1 MS - Ireland	2 MS – Cyprus and Ireland
Not transposed	1 MS - UK	2 MS – Belgium and Bulgaria
Practice	<p>Significant increase:</p> <p>NL (since 2012) – 30% in the last three months. NL – 129 outgoing and 36 incoming requests.</p> <p>Hub countries – BE, NL and DE – 81 cases in August 2015.</p>	<p>Scarcely</p> <p>NL (since 2012) – 12 outgoing and 2 incoming.</p>



One case study

Mr. CV is an adult under the supervision of the Probation Service in Roritania. He is was working in Auritania and therefore expressed his wish to be transferred to this country.

He has asked the Probation service in Roritania to be transferred to Auritania. Probation service asked the competent judge to start the procedure.

As the procedure is new, none of the above knew what to do. The judge asked the Probation service about the procedure. The Probation service asked the Probation Directorate about the procedure.

This delay and uncertainty created some frustration in the supervised person:

'not only that they did not know the procedure but they didn't even treat me warmly'



One case study

At a latter stage, when the Probation service received the information from the Probation Directorate – official request 11.02.2014

CV had to make many trips from Roritania to Auritania and back to collect documents and attend supervision appointments. He was not informed about how supervision will look/feel like in Auritania.

On the 29.09.2014 – the transfer was approved by the court in Auritania.



One case study

The transfer was possible because Auritania declared in the light of art. 5(4) of the FD 947:

*'Auritania declares that monitoring of supervision measures or alternative sanctions by the competent Austrian court can be approved **irrespective** of whether the sentenced person has their domicile or permanent residence in Auritania, if **because of specific circumstances ties exist between the sentenced person and Auritania of such intensity** that it can be assumed that monitoring in Auritania **will help facilitate the social rehabilitation and reintegration of the sentenced person.**'*

CV has a job in Auritania !!!



One case study

When CV arrived in Auritania for supervision he was surprised to find a **very supportive** probation counselor:

'when I have arrived in Auritania I didn't even know very well the language. They all started to ask me: shall we bring you a translator? Do you need anything ? What can I say ... even now when the probation time is over, the lady still calls me asking me if I need anything, if I have any problem, if I have a job ... '



One case study

Furthermore, he was very happy to notice that the probation counselor has a **totally different approach** than the one in Roritania:

'...in Roritania I was constantly asked to do this and that. They were like my bosses. If I find a job in Auritania or elsewhere I should be supported to go there because this will help me not to reoffend, right? Otherwise I will have to commit crimes again.'



Some conclusions

The procedure is still rather **unknown** by the judiciary and the probation services

The procedure is still taking **very long** and sometimes too **bureaucratic**

Probationers should be informed about **how** supervision is constructed in the ES: how is the frequency of the meetings decided, if they can expect any practical help or not, how is the relationship with the probation counselor, how is the breach procedure etc.

How CV would have reacted if he would be transferred from Auritania to Roritania
????

Informed consent – the core of legitimacy and the substantive compliance. Now it is implicit and not-informed.



Some conclusions

- **Too many competent authorities** – example in FD 829 !!!
- The FD covers mainly the judicial process and not the **supervision process logic** – no information exchange between probation services, continuity etc.
- **Praetorian probation** is not covered in the FD 947 – the prosecution decisions can not be transferred.
- **Progress with 947 but 829 still poor in its se.**



Some conclusions

- **Clearing houses** – MoJ or Probation Directorates
- Close **cooperation** between probation services – maybe based on hub approach: regional or traditional networks (e.g. Nordic states, Belgium-Germany-Netherlands, Romania-Italy-Spain) – following the migration or touristic trends.
- More **consultation** and information sharing - CEP website – careful attention to the **European Regulation to the data Protection**.
- **More training** for judges and probation services – personal contact – more cooperation between judges&prosecutors and the probation services within the same country.
- **Upgrade** the FD with the praetorian probation and informed consent
- **Expert Groups** – CEP – with national representatives and independent experts
- CEP – **monitoring system** – databases of jurisprudence, up date SPACE II statistics
- Commission **handbooks**
- Eurobarometer – Experiencing Supervision

30. Please indicate the extent to which you agree or disagree with the following statements about your supervision.

For me, supervision is:	Strongly disagree	Disagree	Neither disagree nor agree	Agree	Strongly agree	Don't know
1 a way to make me think twice about offending again.	1	2	3	4	5	6
2 a way to tackle the issues or problems linked to my offending.	1	2	3	4	5	6
3 a way to repair the harms I have done.	1	2	3	4	5	6
4 a way to protect other people from me.	1	2	3	4	5	6
5 Pointless.	1	2	3	4	5	6
6 a result of having a good attorney.	1	2	3	4	5	6
7 a way to keep me out of trouble.	1	2	3	4	5	6
8 a way for me to grow as a person.	1	2	3	4	5	6
9 a way to pay back for the troubles I have caused to others.	1	2	3	4	5	6
10 a restriction of my freedom.	1	2	3	4	5	6
11 a result of having a positive pre-sentence report.	1	2	3	4	5	6
12 useless.	1	2	3	4	5	6
13 a way for paying back society for my offence.	1	2	3	4	5	6
14 a chance to prove myself.	1	2	3	4	5	6
15 a punishment for my offence.	1	2	3	4	5	6
16 a result of committing a minor offence for which I did not deserve a prison sentence.	1	2	3	4	5	6
17 a waste of time.	1	2	3	4	5	6
18 a way to stop me offending altogether.	1	2	3	4	5	6
19 a way for me to understand offending behaviour.	1	2	3	4	5	6
20 a way to keep an eye on me.	1	2	3	4	5	6
21 an assistance to me.	1	2	3	4	5	6



Some conclusions from the last FD Expert meeting – September 2016

- Work with other network organizations that involve judges, prosecutors and professionals to **develop e-learning programmes** and bring together professionals in their FD networks.
- Make **updates of the website and System Map tool**, add contact points for each jurisdiction, and promote these.
- Work with the European Commission and others to develop an **Evaluation** of FD 947/829 practice.
- **Develop a network** with the aim of enabling transfers and discussing FD 947/829 practice.
- Convene a **follow up** meeting to this expert meeting



Thank you !!

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