



# **EU Framework Decisions related to Detention in particular FD 2008/947/JHA (Probation and Alternative Sanctions)**

6<sup>th</sup> Conference for Directors General of Probation  
The Hague, the Netherlands  
25-27 November 2015

Part 1

## EU legislation in the field of detention

Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments imposing custodial sentences or measures involving deprivation of liberty (**Transfer of Prisoners**) had to be implemented by 5 December 2011

Transfer of prison sentences: conditional release falls under Probation and Alternative Sanctions

**Example:** Peter is a national of Member State A and habitually lives there. He is convicted of an offence in Member State B and is sentenced to 2 years in prison. The authorities of Member State B may return him to Member State A to serve the sentence without seeking his consent.

## EU legislation in the field of detention

Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions **(Probation and Alternative Sanctions)** had to be implemented by 5 December 2011

**Example:** Anna is a national of Member State A but is on holiday in Member State B. She is convicted of an offence in Member State B and sentenced to carry out community service in lieu of a custodial sentence. She can return to her home Member State and the authorities of that Member State are obliged to recognise the community sentence and to supervise Anna's execution of it.

## EU legislation in the field of detention

Council Framework Decision 2009/829/JHA of 23 October 2009 on the application of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention (**European Supervision Order**) had to be implemented by 1 December 2012

**Example:** Hans, who is a resident of Member State A is arrested and charged with an offence in Member State B. His trial will not start for 6 months. If he was a resident of Member State A, the judge would be inclined to release him on bail, with a condition of reporting to the police station, but the judge is reluctant to do so because Hans lives in another Member State and will return there pending trial. The judge fears that Hans will not return and may even flee. Under the ESO, the judge can allow Hans to return home can impose a reporting condition, and can ask the authorities in Member State A to ensure that Hans does report to the police station in accordance with the order of the court in Member State B.

## Table on State of Play implementation Framework Decisions

FD 909 – Dec 2011 (Transfer of Prisoners)	FD 947 – Dec 2011 (Probation and Alternative Sanctions)	FD 829 – Dec 2012 (European Supervision Order)
26 Member States	24 Member States	22 Member States
AT, BE, CY, CZ, DK, DE, EE, EL, ES, FI, FR, HR, HU, IT, LV, LT, LU, MT, NL, PL, PT, RO, SE, SI, SK, UK	AT, BE, BG, CY, CZ, DK, DE, EE, EL, ES, FI, FR, HR, HU, LV, LT, LU, MT, NL, PL, PT, RO, SI, SK	AT, CZ, DK, DE, EE, EL, ES, FI, FR, HR, HU, LV, LT, MT, NL, PL, PT, RO, SE, SI, SK, UK

## Background

- ✦ Initiatives of Member States
- ✦ Counter balance to EAW
- ✦ In line with other procedural rights instruments
- ✦ Existing Council of Europe Conventions not very efficient and limited application

## Background

- ✚ Very often, criminal courts order the detention of non-residents because of risk of absconding
- ✚ A suspect who is resident in the country would in a similar situation often benefit from a less coercive measure, such as reporting to the police or a travel prohibition
- ✚ Framework Decisions have to be seen as a package of coherent and complementary legislation that addresses the issue of detention of EU citizens in other Member States
- ✚ Potential to lead to a reduction in pre-trial detention or facilitate social rehabilitation

## General characteristics of the FDs

- ✚ System of certificates
- ✚ System of Competent Authorities (CAs): judges, administrative authorities or public prosecutors
- ✚ Only final decisions of a court, so decisions public prosecutors not included
- ✚ Obligation to accept a transfer, unless grounds for refusal apply
- ✚ No double criminality check for list of 32 offences
- ✚ At the request of the concerned person or one of the Member States involved
- ✚ However, no obligation to transfer for the issuing State (no right to a transfer)

## General characteristics of the FDs

- ✚ Strict time limits: 60 days
- ✚ Mutual recognition: not to re-examine the decision of the issuing State
- ✚ "Continued enforcement": adaptation of the sentence is only possible if the nature or duration of the sentence is incompatible with national law
- ✚ Consent always required (where the sentenced person has returned or wants to return)
- ✚ Social rehabilitation should always be assessed.

## General characteristics of the FDs

### Definition of "social rehabilitation"

- ✚ Person's attachment to the executing State, whether he/she considers it the place of family, linguistic, cultural, social or economic and other links
- ✚ "Social reintegration": to assess social rehabilitation the place of lawful and ordinary residence is often decisive

### Definition of "lawful and ordinary residence"

- ✚ Case by case analysis
- ✚ Centre of main interests

## Types of probation measures and alternative sanctions (Article 4)

- ✦ obligation to inform a specific authority of any change of residence or working place;
- ✦ obligation not to enter certain localities, places or defined area;
- ✦ obligation containing limitations on leaving the territory;
- ✦ instructions relating to behavior, residence, education and training, leisure activities, professional activity;
- ✦ obligation to report at specified times to a specific authority;
- ✦ obligation to avoid contact with specific persons;
- ✦ to avoid contact with specific objects, which have been used or are likely to be used to commit a criminal offence;
- ✦ obligation to compensate financially for the prejudice caused by the offence;
- ✦ obligation to carry out community service;
- ✦ obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons;
- ✦ obligation to undergo therapeutic treatment or treatment for addiction.

## Practical issues

### Competent authorities (CAs)

- ✚ Judicial or administrative
- ✚ Not necessarily one CA, but at least one "clearing house" for incoming requests
- ✚ Developing knowledge and expertise, especially in adaptation of sentence
- ✚ Central contact point, both national and international
- ✚ Helpdesk function advising CAs

# Practical issues

## Pre-sentence reports

- ✦ Containing information on the person or social background
- ✦ Very important for non-resident offenders both for the moment of sentencing by the judge and supervision and follow-up/after care by probation and prison officers

## Languages

- ✦ Certificate always needs to be translated, sometimes also the judgment
- ✦ What about other documents?

## Combined sentences

- ✦ Custodial + conditional or alternative sentence + financial penalty
- ✦ Link with European Protection Order Directive 2011/99/EU (Victims)

## Practical issues

### Regime of subsequent decisions

- ⚠️ General rule is that the executing state is responsible also for subsequent decisions, notably in relation to non-compliance or when a further offence makes the offender liable to be re-sentenced
- ⚠️ But Member State can declare that it will not take the responsibility for subsequent decisions (Art. 14.3)
- ⚠️ Can the executing state impose a custodial sentence?
- ⚠️ Transfer back: but how will the offender defend and what if the issuing state would not revoke although the executing state would do so?

## Possible solutions

- ✦ Increase knowledge of other Member States legal systems so that the sentenced person can make an informed decision on sentence execution modalities
- ✦ Database sentence execution (probation and alternative sanctions) important for judges for imposition of sentence
- ✦ Communication is key: European Judicial Network (EJN)
- ✦ Training of judges, public prosecutors, defence lawyers, prison staff
- ✦ Early warning system : data about offender's residence, not just nationality
- ✦ Member States to identify likely partners to establish lines of communication or organisation of regional meetings

## EU actions

- ✚ Poor state-of-play implementation
- ✚ Active role of COM: 3 implementation Workshops in 2010, 2 Experts' meetings in 2012 and 1 in 2013
- ✚ Implementation report 3 Framework Decisions, 5 February 2014 (*COM(2014) 57 final and SWD(2014) 34*)
- ✚ Possibility to launch infringement actions from 1 December 2014
- ✚ Commission Handbooks

## EU actions

- ✚ COM funding through grants by JPEN financial programme, such as :
  - Operating grants to CEP (Experts Group 947)
  - Action grants

*Belgian project [www.euprobationproject.eu](http://www.euprobationproject.eu)*

*ISTEP [www.probation-transfers.eu](http://www.probation-transfers.eu)*

*DOMICE [www.domice.org](http://www.domice.org)*

*STREAM [www.stream-probation.eu](http://www.stream-probation.eu)*

- ✚ E-justice website (cooperation with EJNI), Atlas criminal matters:  
[e-justice.europa.eu](http://e-justice.europa.eu)
- ✚ Training for judges, prosecutors European Judicial Training Network (EJTN)

# ISTEP Project Website

<http://www.probation-transfers.eu>



### Compare sanction

1) Type of existing sanctions or measures  
--- select type ---

2) Select sanction or measure  
--- select sanction or measure ---

3) select country  
--- select country ---

4) select country to compare  
--- select country ---

[Compare now](#)

### General information for transfer

--- select country ---

### Practical information by country



click to view

- Austria
- Belgium
- Bulgaria
- Croatia
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Georgia
- Greece
- Hungary
- Ireland
- Italy
- Jersey
- Kosovo
- Latvia
- Liechtenstein
- Lithuania
- Luxembourg
- Macedonia
- Malta
- Moldova
- Netherlands
- Norway
- Poland
- Portugal
- Romania
- Slovenia
- Slovakia
- Spain
- Sweden
- Switzerland
- United Kingdom



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