



PROBATIONER ABROAD

What to do?

A guideline for probation officers

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Guideline to Frameworks decision 2008/947/JHA

What is a framework decision (FD)?

A framework decision is a form of legislative act from the EU within the field of judicial cooperation. The date for the implementation of the Framework Decision (FD) 2008/947/JHA was decided for 06.12.2011. In March 2016, 26 member states had implemented it, with the exception of Ireland and the UK.

What does 947 mean for me and my clients?

FD 947 on Probation and Alternative Sanctions allows a person, who is convicted to a probation measure and sentenced to an alternative sanction in an EU member state, to serve this sentence in another EU member state where he/she is lawfully and ordinarily resident.

As mentioned in art. 1, the FD aims at “facilitating the social rehabilitation of sentenced persons, improving the protection of victims and of the general public, and facilitating the application of suitable probation measures and alternative sanctions, in case of offenders who do not live in the state of conviction.”

Who is the target group?

Persons sentenced to probation, with probations decisions and supervisions or other alternative sanctions that are

permanently residing in another EU country. It can also be applicable for persons who are moving to another country and where the move promotes social rehabilitation.

What do I have to know as a probation professional?

You need to inform your client (who is lawfully and ordinarily residing in another EU country) about the Framework Decisions and the possibility to transfer the probation sentence.

If your client is sentenced in your country but has returned or wants to return to the state where he/she is a lawfully and ordinary resident, you should consider initiating the procedure for an application to transfer the measure. Or if your client wishes to forward the measure to another state than the one where he/she is lawfully and ordinary resident, the client can make an application that is sent to the competent authority in your country. The decision on the application is dependent on the other EU member state consent to execute the measure. You should contact the competent authority in your country for further information about how to handle the case.

In some EU countries the case is handled by an expert within the probation service, check how it is organised in your country.

For information about competent authorities: www.ejn-crimjust.europa.eu

What does issuing state and executing state mean?

The issuing state is the EU member state where the original measure was issued. The executing state is the EU member state to which the applicant wishes the measure to be transferred. The Framework Decision lays down rules according to which EU member states recognise each other's measures.

Applicable probation decisions are imposed by the issuing state. After recognition and transfer of the measure it becomes a measure of the executing state that supervises the measure and, when agreed, takes all decisions in relation to the implementation and enforcement of that measure.

What is a probation measure according to Framework Decision 947?

By 'probation measure' the FD understands conditions and obligations imposed by a competent authority on a natural person in the form of a suspended sentence, a conditional sentence or a conditional release. The offender is given a certain (probation) period to fulfil these conditions and obligations.

If he fails to do so, the competent authority may revoke the suspended or conditional sentence or conditional release. Across Europe there are several probation measures that are common and all EU member states are in principle willing to supervise. To these obligations and instructions belong in any case the following obligations (if applicable):

- To inform the relevant authority on any change in residence or working place;
- Not to enter certain defined localities or places;
- Not to leave the territory of the executing state;
- To follow the instructions issued relating to behavior, residence, education, training, leisure activities, or limitations on or modalities of carrying out professional activities;
- To report at specified times to the relevant authority;
- To avoid contact with specific persons and objects;
- To compensate for the harm caused by the offence;
- To carry out community service;
- To cooperate with a probation officer or a relevant representative of a social service;
- To undergo therapeutic treatment or treatment for addiction.

Apart from these conditions and obligations that are explicitly mentioned in art. 4 of the FD's EU member states will supervise standard probation and other measures to the usual standard applicable in their jurisdiction.

Which probation measures and alternative sanctions can be transferred?

The Framework Decision is applicable to:

- a). The recognition of judgements and where applicable, probation decisions;
- b). The transfer of responsibility for the supervision of probation measures and alternative sanctions;
- c.) All other decisions related to those under a and b.

A judgment means a final decision or order of the court of the issuing state, establishing that a natural person has committed a criminal offence and imposing: a custodial sentence or measure involving deprivation of liberty, if a conditional release has been granted on the basis of that judgment or by a subsequent probation decision; a suspended sentence; a conditional sentence; an alternative sanction or conditional release.

Who are the competent authorities appointed by the member states?

See the website www.ejn-crimjust.europa.eu for info about competent authorities.

Which sanctions and measures are not eligible for transfers to another member state?

FD 947 cannot be applied to: probation measures and alternative sanctions that are connected with a decision taken by a non-judicial authority. FD 947 only applies to court decisions. The only exceptions to this are probation measures that are imposed involving a conditional release. This means that FD 947 does not apply to any alternative sanction or probation measure, imposed in the pre-trial stage by the public prosecutor as is possible in many countries, such as Belgium, the Czech Republic, Germany and the Netherlands. It also means that a conditional pardon, notwithstanding the probation measures that can be attached to it, is excluded from the application area of FD 947.

FD 947 does not apply to the execution of custodial sentences and measures, involving deprivation of liberty. These are addressed by FD 2008/909. Community service imposed as a measure, as a condition of a suspended sentence and a condition of another measure are transferable. Financial penalties and financial payments as a condition of probation measures do not fall in the scope of FD 947.

Are some types of offenses excluded from the application of FD 947?

The answer is no. FD 947 can be applied to all offenses. The only condition is that the recognition of the judgment and, where applicable, the probation decision and the supervision of probation measures and/or alternative sanctions by the issuing state is based on a judgment that relates to acts which also constitute an offense under the law of the executing state, whatever its constituent elements or in whatever way it is described. However, this basic principle of double criminality does not apply for all offenses. Find the list here: www.ejn-crimjust.europa.eu

Is a transfer possible if the nature of the probation measure or alternative sanction or the probation period is not compatible with the law of the executing state?

EU member states are applying different probation measures and alternative sanctions and also the duration of these measures and sanctions and the length of the probation period differ from EU Member State to EU Member State. This does not mean that when the nature or duration of the measure or sanction or the length of the probation period is not compatible with the law of the executing state, the transfer of such probation measure or alternative sanction could not take place. On the contrary, the FD offers the competent authority of the executing state the possibility to adapt the sentence in line with its own national law.

Does my client have to consent to the transfer?

FD 947 does not require that the convicted has given his/her consent to the transfer of the judgement or probation measure. On practice however, no transfer will be prepared and carried out when this is against the wish of the person involved. Without the consent of the convicted person a forced transfer and return to another member state would run contrary to the intention of the Framework Decision, which presumes that the person concerned has been released in the issuing state and may return to his/her country of residence in compliance with the imposed alternative sanction and/or probation measure(s).

Which documents have to accompany the transfer request?

The following documents should accompany the forwarding:

- The certificate – in the standard form (set in Annex 1 of the FD), in original;
- The judgment or the probation decision: in original or in certified copies. The certificate is in the possession of the competent authority, in most cases the competent authority is the public prosecutor's office or the court.

The certificate comprises the essential elements of the judgment and, where applicable, of the probation decision. The certificate should assist the

competent authorities in the executing state in taking decisions under the FD, such as decisions on recognition, supervision or adaptation of probation measures and alternative sanctions, or subsequent decisions in case of non-compliance. The certificate must be written in or translated to the official language or one of the official languages of the executing state. Each EU member state may, however, deposit a declaration with the general secretariat of the Council that it will accept a translation in one or more of the official languages of the institutions of the European Union.

Is the transfer bound by time limits?

As stipulated in art. 12 of the FD, the competent authority of the executing state shall decide as soon as possible, but no later than within 60 days from the receipt of the judgment and the probation decision together with the certificate. It also has to inform, by any means that leaves a written record, without any delay the competent authority of the issuing state. In exceptional cases when the competent authority of the executing state cannot comply with this time limit, they shall immediately inform the competent authority of the issuing state and:

1. Give the reasons of the delay and
2. Indicate the estimated extra time needed for the final decision to be

Which country is responsible for the costs connected to the transfer and execution?

The costs resulting from the application of the FD shall be borne by the executing state except for those costs arising exclusively within the territory of the issuing state.

What are the consequences for my client when the transfer is refused by the executing state?

When the judgment or the probation decision is not recognised by the executing state, the sentenced person will have to comply to the legislation in the issuing state.

Which law is applicable after the transfer to the executing State?

The supervision and application of the probation measure and alternative sanction is governed by the law of the executing state. The competent authority of the executing state may supervise an obligation to compensate the victim for the prejudice caused by the offence by requiring the sentenced person to provide proof that he has complied with this obligation.

When ends the responsibility and the jurisdiction of the executing state?

The end of the jurisdiction and the responsibility of the executing state takes place when:

1. The sentenced person cannot be found in the territory of the executing state;
2. The sentenced person absconds or no longer has a lawful and ordinary residence in the executing state. In this case the competent authority of the executing state

transfers back the supervision and all the subsequent decisions to the competent authority of the executing issuing state;

3. When new criminal proceedings are taking place in the issuing state. In this case the competent authority of the executing state may transfer back the supervision and all the subsequent decisions to the competent authority of the issuing state.

In both cases, the competent authority of the issuing state resumes jurisdiction and take into account the duration and the degree of compliance of the person concerned.

Which organisation is responsible for supervising the transferred probation measure or alternative sanction?

The organisations that are under the national law in the executing state responsible for supervising probation measures or alternative sanctions will also be responsible for supervising the offenders transferred from other jurisdictions. In most member states, probation services are responsible for supervising offenders in the community. A few exceptions are in Scotland (where social services are responsible for supervision), in Austria (where the NGOs are empowered by the Ministry of Justice to take over this activity).

Where can I get more information about probation transfers?

Information about the Framework Decision 2008/947/JHA can be found at: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52014DC0057>

Information about the state of play, declarations and notifications, competent authorities and so on can be found on the European Judicial Network (EJN): www.ejn-crimjust.europa.eu.

More information can also be found at the Confederation of European Probation website: www.cep-probation.org/knowledgebase/frameworkdecisions



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