

ISTEP - Implementation Support for the Transfer of European Probation Sentences

European Handbook



Ministry of Security & Justice,
The Netherlands



This project is co-funded by the
European Union



National Offender
Management Service



The aim of this European handbook is to provide readers with information to assist them when implementing the Council Framework Decision 2008/947/JHA. The handbook draws together findings from the ISTEP project (JUST/2010/JPEN/AG/1531) of which the aims were to support the implementation of 2008/947/JHA through identification of the obstacles and challenges to implementation, designing of tools and techniques to overcome these obstacles and providing recommendations for Member States.

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Introduction

The ISTEP project – “Implementation Support for the Transfer of European Probation Sentences” started in June 2011 with the aim of supporting the effective implementation of the Framework Decision 2008/947/JHA – Probation and Alternative Sanctions. This project was led by the National Offender Management Service (NOMS) and was co-funded by the European Commission Directorate General for Justice. Project partners in the ISTEP project are listed below. The project came to a close at the end of May 2013 with a final international conference held in Vilnius, Lithuania.

ISTEP Project Partners

Full co-beneficiary partners:

National Offender Management Service (NOMS), UK – Applicant organisation and Lead Partner
The European Organisation for Probation (CEP), The Netherlands
Generalitat de Catalunya, Departament de Justícia, Catalonia
De Montfort University, UK
University of Tilburg, The Netherlands
University of Bucharest, Romania
London Probation Trust, UK

Associate Partners:

IGA (Crime Prevention Fund), Bulgaria
Ministry of Justice of the Republic of Lithuania
Ministry of Justice, Spain

ISTEP Website

This project website has been developed during the lifetime of the project with the aim of acting as a portal for all EU member states and candidate countries to find out further information about the implementation of this FD across the EU, the types of probation measures and alternative sanctions in a member state where they may transfer an individual to and also to source background information on proposed obstacles, challenges and potential solutions during the transfer process. The website contains all project materials and is hosted and managed by the CEP. It can be found at: www.probation-transfers.eu

This handbook is an output of the ISTEP project. The aim of the handbook is to provide member states with an overview of the obstacles and challenges relating to the transposition of FD 947, identify some potential solutions for countries to consider, and to provide member states with some tools and information that should assist them further with implementation. This handbook and all annex's and associated documents are available on the [ISTEP project website](http://www.probation-transfers.eu) for download. In addition to the tools provided in this handbook, the project has also created factsheets for every member state detailing their types of probation measures and alternative sanctions, country information, specific information regarding their declarations for FD 947 and contact details for their competent authorities. These factsheets are also available on the website.

Workshop

Overview

The aim of the ISTEP expert workshop was to draw on experts' knowledge and experience in developing legislation and gain further insight into the practical implications for the implementation of FD 947. The following topics were addressed:

- Obstacles and challenges of transferring offenders under the FD 947.
- Challenges of implementation from legislative and practical perspectives
- What is needed for effective transfer
- Understanding the links between this FD and other FDs and relevant EU policies i.e. victims, witnesses
- Feedback on the structure of factsheets

It was agreed that the rationale for the FD 947 is to facilitate the social rehabilitation of people convicted within one country through transferring them to their home country in the EU to serve a probation measure or alternative sanction.

The FD is grounded within EU judgements; specifically:

- Developing mutual trust and confidence between EU member states.
- Supporting judicial cooperation and mutual recognition of final decisions in criminal matters.
- Supporting freedom of movement within the EU.

Outcomes

Countries Updates (as of September 2012):

The Netherlands

A new law was drafted based on the two framework decisions 2009/947/JHA AND 2008/909/JHA and the Dutch Law (WETS) came into force on 1st November 2012. Pre-implementation, the working processes (for both 909 and 947) were simulated at a national meeting in Utrecht and a study regarding the impact of the FD's was undertaken. At the time of the implementation of the law, it was expected that about 540 Dutch prisoners could be returned to The Netherlands from other countries under FD 909 and about 80 offenders in Dutch prisons would be transferred out. For 947 the Dutch expected to send approx. 150 people across borders back to their own countries and at that time were not aware how many could be transferred to The Netherlands from other countries.

The public prosecution service is the competent authority in The Netherlands and they are advised by the international desk at the Probation Service (Reclassering). There is no formal role seen by the judiciary in acceptance or refusal. However, when the offender breaches any conditions of their requirements then the decision to change the sentence and impose a custodial sentence must come from the judge.

The Dutch have adjusted their ICT systems used for registration to alert the public prosecution service if a possible case for transfer comes about. The public prosecutor can then ask the probation service for advice in this specific case. There are two different authorities in The Netherlands, one for 909 and one for 947. Both authorities use the same registration system (LURIS) and make arrangements for co-operation when needed.

Czech Republic

The legislation in the Czech Republic will be a package of everything that covers international judicial cooperation and therefore is likely to cover both the Framework Decisions 909 and 947. Experts from the Ministry of Justice expected that implementation may be possible during the middle of 2013. Before then, experts will begin preparing manuals for judges and probation staff to outline the Framework Decisions and the processes attached to them.

Many of the foreign national offenders in the Czech Republic are not from the EU and therefore they predict that they would not necessarily be transferring that many offenders under the FD 947. They do however predict that they may receive offenders from a number of EU countries including the UK and Ireland.

The district courts (74 of them) would all be competent authorities. They would receive some methodology and guidance from the Ministry of Justice, but the different constitutions are very independent and therefore can make their own decisions accordingly.

Denmark

The FD 949 has been implemented in Denmark, but as of the time of the workshop there had been no formal experiences of transfer. The FD 909 has been given more political attention and has progressed further than 947.

The Danish Ministry of justice will be competent authority for executing and issuing transfers. There will be no formal role for the courts for both incoming and outgoing requests.

Denmark is not checking for double criminality if the offence is on the list in the FD, however if it is outside of the list then they will check. They have accepted the full grounds for refusal as stipulated in the FD.

Finland

The Act came into force on 5th December 2011. It was developed by a working group of a number of professionals including from the Ministry of Justice, Prosecution Service, and defence lawyers and police officials. Individual articles of the FD were enacted as applicable into Finnish law and this was embedded into their Implementing Act.

The competent authority is the Criminal Sanctions Agency (responsible for criminal sentences – both prison and probation); they act as the issuing and executing authority. They are also

competent to supervise sanctions in domestic cases. There are some exceptional cases where the decision is escalated to the Ministry of Justice. The CSA make the decisions but the court does the adaptation of the alternative sanction if this is required. Therefore if a sentence must be altered for transfer to take place then the courts make the decision and sanction the adaptation. The court also makes the decision if the conditions are breached.

Finland do not allow for double criminality in cases of list offences for *supervision*. However, in their implementing law there is a possibility not to take responsibility to make decisions on *subsequent measures* (e.g. imposing an unconditional custodial sanction for an offence for which the alternative sanction in the other MS was imposed), if the offence is not punishable according to Finnish law (in situations meant in Article 14).

The competent authority will generally accept requests in Finnish, Swedish and English but there is a possibility of accepting others.

When Finland is the issuing state the request can be made where the transfer would facilitate the social rehabilitation of the person, it's the criminal sanctions agency that would consider whether this is suitable and ensure the required conditions are met. Consent on the part of the individual is required for the transfer.

The legal framework is broad and does have room for flexibility. This is important, and the mutual trust along with flexibility between member states will be paramount for the FD to work.

200 hours is the maximum for a community penalty under Finnish Law.

Slovakia

FD 947 was implemented into Slovakian Law in February 2012. Judges have the principal authority towards decisions, therefore although the Act exists; the decisions still remain with the judges.

There are trust mechanisms and informal relations between the Czech Republic and Slovakia which currently work efficiently without the FD legislation.

Ireland

They are currently updating Probation legislation in Ireland (have been working on the 1907 Probation Act). FD 947 will be accommodated within the new legislation, most likely implemented at the end of 2013.

The competent authority will be in the Ministry of Justice with direct links through to the courts. It will be important to link with Northern Ireland and England and Wales as maybe transfers will come from these jurisdictions. Ireland will also look at the European context – working collaboratively and broadening their horizons. Acknowledging cultural differences and nuances is important.

In November 2011 there were 8500 offenders on community supervision in Ireland – 4.8% were foreign nationals – Poland, Romania, Latvia, England and Lithuania were the main countries of nationality.

'Experiences of transfer' - Worked with the Probation Board Northern Ireland since 2007 to see how offenders travelling north and south could be monitored. Ireland Probation developed an international desk to deal with all offenders crossing borders. Everything is centralised in Ireland so everything goes through this single point of contact.

Examples of scenarios where 947 would be applicable:

Scenario 1: Male aged 28 years convicted of 2 offences of shoplifting and a criminal damage charge (broke the policeman's watch strap when trying to get away.) In England for a week's visit, staying with friends. Stated he ran out of money and wants to return to his home country where he says he has employment in a fast food outlet and a flat to live in. The court wants to make an order for Unpaid Work of 200 hours.

Scenario 2: Female aged 35 years old convicted of one count of assault following an altercation in a public house. On holiday and staying with her sister but has 2 children at home. Not living with the father and doesn't work because of child care commitments. Admitted to having a drink problem in Court and Magistrates Court wants to make a 2 year Community Order with a condition to attend alcohol counselling / group work.

Scenario 3: Male aged 23 years serving a 15 month prison sentence for TWOC, Dangerous Driving, driving without a licence, no insurance. He stole a car whilst in England doing some summer work picking fruit. During a pursuit by Police he drove on the wrong side of the road and undertook some very dangerous overtaking forcing 2 cars off the road before crashing the vehicle and writing it off. He wants to return home to live with his parents and look for work. Licence period of supervision for seven and a half months.

Victims:

Victims should be recognised throughout the criminal justice process:

- Victims' rights should come alongside offenders rights
- Victims should be at the centre of the criminal justice process
- Victims have a right to protection – this is evident within FD 947

EU Directive on the minimum standards for victims of crime:

This follows on from the 2001 EU Framework Decision on victims of crime. This FD was not properly implemented by most member states and the Directive will take over from this FD. New to the Directive is the rights to families of victims. Other rights include:

- The right to understand and be understood (not just translation, but also for the hearing impaired)
- The right to access victim support organisations
- Member states should promote Restorative Justice for victims of crime
- Victims have a right to legal aid – however the directive does not stipulate whether this should be for free or not

- Right for victims resident in another member state – this is the first time there is a right for those people who are not in their country of residency to get victim support
- The right to protection (including from the media – which is difficult due to freedom of speech).

Transfer from one victims support organisation in one country to one in another country depends on the people involved and whether information is transferred, this is not stipulated within EU law and therefore not mandatory.

Most important articles from the directive in relation to the FD 947:

- **Right to information – article 5:** Generally the victim is only informed when the offender is released from prison, not when they have successfully or unsuccessfully completed their alternative sanction. It is important for victims to be made aware specifically if the sentence is changed to due transfer to a different member state.
- **Right to translation – article 7:** This will be a significant burden across member states as victims then have the right to be communicated to in their own language
- **Right to protection – article 17:** On the FD there is the option that protection measures can be transferred to another member state; this could also include protection measures for victims. The victim should be kept informed that the offender is going to another country and also any conditions should be carried out in the new member state e.g. if the protection order is not to email or call the victim, they could still do this from another member state and therefore the order should be carried with them.

European Protection Order

Directive 2011/99/EU

The aim is to ensure the protection provided to an individual in one member state is maintained and continued in another member state. The victim should be able to take it with them wherever they travel. However this is not the transfer of the criminal case, just the transfer of the protection order. This EPO may be hard to manage; it will require an authoritative body that takes requests. However not all protection measures will be the same across all jurisdictions, so it may need to be adapted and what countries will agree to this is yet to be determined.

In Finland the EPO is currently being implemented. Restraining orders are not directly linked to criminal cases – the restraining order is implemented under civil law and therefore ensuring they are associated is difficult, especially when you consider offenders transferring across borders.

EPO and FD 947

Protection orders can be part of conditional sentences for an offender and an element of conditional release. It could become very complicated for example if a victim travels and takes the protection order with him/her to a different country and it is then adapted to the new law of the new member state. However, the offender could then also travel to a different country and therefore their criminal case is transferred under the FD to a different member state. How can you guarantee that the criminal case was transferred with all its requirements?

Article 1 is the only area where victims are covered in the **FD 947**. The EU directive that is now coming into force has the key focus for victims but does not necessarily stipulate regulations and guidelines associated with the FD and the transfer of offenders. Who has to protect the rights of the victims? Is it the responsibility of the issuing state or the executing state? When nothing is stipulated then we have to work it out in practice country by country.

It is worth noting that there are sections relating to victims' rights in new directives about human trafficking and sexual abuse. It is therefore anticipated that many offender based directives will increasingly have victims information integrated into them as they are adapted.

Links between the FD's 909, 947 and 829 and other relevant measures:

At the time of this workshop (September 2012) there were no notifications of any member states who have implemented 2009/829/JHA (European Supervision order). 10 member states had implemented 2008/909/JHA. The European Commission will host a workshop near the end of November to cover 947, 909 and 829.

FD's 909 and 947 relate to the post trial stage where the final sentence has already been imposed. The European supervision order relates to the pre-trial stage – it allows an offender to go back to their home country before the trial. There is a direct link here to the European arrest warrant. If the offender needs to stand trial in a different member state then the European arrest warrant will assist with this.

All 3 FD's have similar objectives – the social rehabilitation aspect is the most important. 947 and the European supervision order (829) are also drafted with the view to preventing recidivism and with paying due regard to the victims and protection of the general public. In principle all 3 FD's are for the benefit of the defendant to enhance their social rehabilitation.

The right of liberty is key in the European Supervision order, as well as the presumption of innocence. The aim of this was to reduce pre-trial detention of non-nationals. They often get fewer visits, have legal restrictions on language use, restricted access to work and education, poor quality of legal advice and find it very difficult to maintain contact with families. This FD has been proposed by the EC, whereas the other two FD's under discussion were proposed by member states.

All of them have different timescales for response: For 909 it is 90 days, for alternative sanctions (947) it is 60 days and for supervision orders it is 20 days.

The executing state is obliged to enforce unless there are grounds for non-recognition. It is possible to transfer to a country where the individual is not a national. There can be an issue with prison conditions; the EC have commissioned a report to find out how the conditions impact on mutual recognition. Detention conditions are under the competence of the member states and therefore certain conditions can not necessarily be enforced.

Links:

The supervision order is very clear that the issuing state has the jurisdiction to make all subsequent decisions. This makes sense as the executing state only takes over power while the offender is on trial.

For 909 there is no requirement of consent, this is mandatory. They are transferred to a member state where they have nationality or where they need to be deported to before release. The other 2 FD's do require consent. In 947 it states that the person must have returned already (implicit consent) or wants to return, and in the 829 the person must choose to return.

Link between the European arrest warrant and 909 – in the transfer of prison sentences it's indicated in recital 12 that 909 will apply in certain cases of the European Arrest Warrant. A member state can refuse to surrender a person when they are a national or they are legally resident in that member state. If the conditions of a European supervision order are breached then an arrest warrant can be issued and the offender can be returned.

Reflections and workshop discussion:

Size of the process and practicalities: Has the size of the process been estimated? Have countries calculated how many offenders would be applicable for transfers? Is every member state aware of the competent authorities in other member states and who to contact? How do IT systems work across borders, especially with regards to data protection and sensitivity?

Double criminality: How do countries negotiate between those that do and those that don't invoke this clause?

Time: the 60 day period has been deemed not long enough, especially at a stage where countries are unaware who to contact in the executing state and what processes to follow. In addition, what is the offender doing during these 60 days? Are there any requirements for them to adhere to? This may differ in every member state and should be noted as part of their declaration.

Role of the judiciary – It seems this differs from country to country. In some cases, if a sentence is to be adapted then the judiciary must be involved. In other circumstances it remains with the competent authorities.

Flexibility – this is paramount as all countries have different legislative processes and different sentencing guidelines and sanctions. Therefore countries must acknowledge this and be amenable to adaptations where relevant.

Mutual Trust – Informal systems already exist between some countries (E.g. Ireland and Northern Ireland, the Nordic States, Slovakia and the Czech Republic) and these processes work due to mutual trust and understanding. The FD should support this mutual trust and encourage it, not undermine it.

Information for transfer – Will the certificates be enough? The workshop group discussed the possibility of more information, like a pre-sentence report about the offender to go to the executing state prior to transfer. This should allow the executing state to better prepare for managing the offender and supporting their social rehabilitation.

Focus Groups

Three focus groups were held by the ISTEP project in January and February 2013. The focus groups were held at this time to enhance the knowledge already gathered by the ISTEP project team on the implementation of the Framework Decision 2008/947/JHA. The focus groups were designed to take an in-depth look into the obstacles and challenges of both the implementation of the FD 947 legislation as well as the practical transfer of offenders. The intention was to bring together experts from across the EU to consider the identification of obstacles and challenges and how these can be overcome and develop some flexible solutions. These groups aimed to stimulate and encourage conversations in each jurisdiction about how the FD 947 will work in practice.

In detail, the focus groups involved:

1. A review of the obstacles and challenges identified by the ISTEP concept paper and expert workshop and consideration of other potential obstacles that have not yet been considered.
2. Identification of any experiences of formal transfer under the FD 947 – discussions regarding how the transfer has occurred, where the challenges arose and how any problems were overcome.
3. Problem solving exercises – A number of hypothetical case studies involving some of the proposed obstacles were presented to the group and they were then tasked with finding some potential solutions and producing some hypothetical solution studies.
4. Discussions regarding the factsheets for every member state. Each attendee was asked to provide feedback and recommendations and provide details of the correct contact person for the ISTEP researchers to send the completed factsheets to for approval.
5. Identifying and promoting good practice in the transfer of probation measures and alternative sanctions

The intention was to have every member state represented across the three focus groups and subsequently address the same topics at each of the three groups. A structure was developed to allow for similar information to be gathered at all three meetings. Unfortunately, a number of member states are not yet at the stage of implementation of this framework decision and some are yet amend their laws or develop new laws to accommodate the legislation. Therefore the impact of this was that a number of countries declined the invite to attend the focus groups as they were not yet in a position to discuss the practicalities of both the implementation of the law and the potential transfers themselves. Despite this, some very interesting information was gathered from a range of different member states that provided invaluable contributions during the focus groups. The reports for each separate focus group are available on the [ISTEP project website](#). In this handbook we have detailed some of the reasons, as identified by the focus groups, for why the FD 947 has not progressed as expected and also some of the hypothetical cases we discussed with the groups and their responses.

Possible reasons why the FD has not progressed as expected:

- The most obvious reason is that the legislation has not yet been fully implemented and therefore the seed has not been planted and no transfers have occurred. At the moment there is no real awareness of the FD 947 and of how important and useful it can be both for criminal justice organisations and the offenders themselves.
- Currently there does not appear to be a significant number of individuals eligible for transfer and therefore countries don't necessarily see it as a high priority to implement.
- There needs to be some mechanisms put in place for fast trials to ensure the transfer occurs within the specified timeframe. The person should then be able to remain within the country and be present at the trial and subsequently this can be passed quickly through to the executing state.
- There is concern that the issuing state loses control over their decision. Article 14 suggests that you will allow the executing country to modify the judgement if they do not comply. Judges may not be happy with not retaining the control over implementation.
- In Finland, the reason they have not undergone any formal transfers is that Sweden and Estonia have not yet implemented this and these are the countries that the FD would be of most use with. This may be the case with other EU Member States.
- The reparation element may be lost by imposing the FD. For example if somebody commits a crime in Barcelona, they have offended against the people of this community and therefore although should receive a punishment that also allows them to repair the harm caused.
- Probation staff may be frustrated that transfer can take a significant amount of time. When transfers occur from Finland to Sweden when an individual is released from prison, it is proposed that the decision is made as soon as he/she is released. However other circumstances change this; sometimes they change their mind, sometimes they commit another offence, and sometimes they decide to go to another country. Therefore once released, they are given a Finnish probation officer and then get on the boat to Sweden and meet with a designated Swedish probation office. It can then take up to 6 months for the transfer to be completed and the offender to be moved directly to Sweden. However, during this time, the individual must keep in contact with the Finnish probation officer until the processes have been completed. The Swedish authorities however would not accept this as part of a conditional sentence/alternative sanction as how can they comply with the conditions in Sweden when they are under Finnish Probation law until the transfer is complete?
 - **Recommendation** – the sooner countries can make a start on the transfer, the better. This reduces the risk of breach during a very vulnerable time for offending when these individuals are in need of support from authorities.
- There are some difficulties with the amount of time someone is awaiting the 'formal transfer agreement'. If someone is sentenced in the issuing state but must return to the executing state within a week for work and family commitments then this needs to be assessed on an individual case by case basis. The judge/competent authority in the executing state would need to acknowledge that transfer can occur and apply some conditions even though the process cannot yet be completed. If they refused the transfer then this risks the ideology behind the FD (reintegration, rehabilitation) not being adhered to simply due to the time frame the process is taking and both authorities being

unsure what the individual should be doing in the meantime. At the moment, these 'interim' measures are missing from the FD 947. There is a suggestion that linking 829 to this may assist, the pre-trial detention could be used to supervise the individual during the transfer process.

The Catalanian Study on the use of FD 947

The Catalanian study measured how many people may be affected by the FD 947 and was conducted in June 2011. At that time there were 7000 people on community sanctions in Catalonia. They asked the probation officers to inform about how many of these were European residents serving their alternative sanction in Catalonia. This resulted in 172 cases, 163 males and 9 females. The majority were between 25 and 40 years old.

The aim was to find out about country of origin, sanction, length of sanction and offence:

- Majority were from Romania (44 people)
- Least amount from Latvia (2 people)
- 23 from Poland, 13 from Italy
- Where they were residing: 121 were in Spain, 4 were in non-European countries and 35 were unknown. Therefore there is only a small percentage that were not in Spain and would be interested in the FD.
- The majority of sanctions were unpaid work, followed by undertaking training programmes for domestic violence (this raises issues of what is happening with the victim and the offender for the 90 days it can take for the transfer to occur for example).
- 37 of those in the sample were not possible to locate.
- 4 were waiting to start the execution of the sanction.
- To explore the possibility of transfer there were only 12 eligible people from those 172 in the sample, therefore the scope is actually very little.
- The residency issue is therefore significant as it affects the numbers applicable for transfer.

In Spain, all courts are required to show statistics every 3 months. One thing they must tick is whether or not the individual is a Spanish national. Therefore it is suggested that there should be another box to note whether they are resident there or not. However judges in Spain note that people will lie about residency and can often find documents to prove something that may not be real.

- A **recommendation** would therefore be that countries should collect judicial statistics that support the implementation of the framework however we would need to ensure these statistics are interpreted with care as they need to be reliable and this cannot always be ensured.
- Another **recommendation** would be to look at how it can be anticipated that this person may be someone who is not a resident and may intend to travel back to their country. This could be done at the hearing or even earlier to try and reduce the 90 day period which currently wouldn't start until after trial.

Hypothetical Cases:

CASE STUDY 1: Community Service/Unpaid work

Kris is 28 years old. He came to England to visit a friend and planned to stay for only about a week. He was arrested for two offences of shoplifting and a criminal damage charge (he broke the policeman's watch strap when trying to get away). He says that he ran out of money and stole in desperation. He now just wants to return to his home country where he says he has employment (in a fast food outlet) and an apartment to live in. Kris has never been in trouble before. The Courts want to make an order for unpaid work / community service of 200 hours.

Questions to consider:

- If Kris came from your country, might he be suitable for transfer under FD 947?
 - What might be the obstacles to using 947 in this case?
 - What solutions could be devised?
 - What information would decision takers require case-by-case? (The factsheets can only set out legal powers, but how will information exchange be managed in specific cases?)
 - How will this information be exchanged in a reliable and timely manner?
-
- If the individual was being returned to Spain then this is something that would be accepted. (Note that it is not only differences in numbers of hours ordered but the way it is presented. For example, Spain work with numbers of days, not hours. But this is then something Spain would need to convert, not the issuing country)
 - Maximum hours/days will differ between countries; therefore each jurisdiction will need to match the sentence as much as possible. However it may be a case that Greece imposes 1500 hours and another jurisdiction says their maximum is only 300 and Greece would then not accept the transfer.
 - In Poland they would have to change the construct of the sentence as they sentence in months.
 - In Finland and Denmark they would take this individual without a suitability report (pre-sentence report). They would start with something else other than the work and then find out if he was suitable for community work and then they would enforce this but if he refused to work and did not comply then would be sent to prison after 2 warnings. If he came from England and Wales then it is likely they would develop a short pre-sentence report anyway and send this to the Finnish/Danish.
 - There is a problem as this person clearly has no money so will probably breach the order unless help is given from the issuing state.
 - Who would be more likely to provide this support? The issuing state as they would want the transfer to happen or the executing state for the benefit of the offender to assist with the rehabilitation of the offender? Either way, there is no obligation for either to pay and for an individual such as this who has little supportive funding it may be unlikely that they could cover their own costs for transfer and this could delay the process further.
 - This may be possible for transfer to Holland and Slovakia. The group discussed the issue of consent as they say the FD is hazy when it says 'implicit consent' and this should be

made clearer in the EC's implementation paper due this year. Also, if the offender is not willing to be transferred then this FD cannot be applied.

- Regarding consent, it would be pragmatic to have some verbal consent which could be evidenced by the pre-sentence report; written consent may take time and add more bureaucracy.
- As UK have not yet implemented, this is the main obstacle however a bi-lateral agreement could be arranged and it would require both countries to be signatories of the Council of Europe and they could be transferred under the Convention.
- Exchanging information may take time due to secure networks not being available to send the data across. However, what happens if the offender is only supposed to be there for a week on holiday, he only has enough money and somewhere to stay for that period. You could send the individual home with a subpoena and therefore they are aware they will be called to court at a certain point. The issuing country needs to make this decision, and they should accept that he may want to travel home and this would support his rehabilitation anyway, however if they do not return for court then there is the potential to issue a European Arrest Warrant.
- For this offence in Italy they do not have an 'alternative sanction' as this individual is a first time offender and it is not a serious offence. Therefore how could they receive such an individual if sentenced to a community sanction in a different member state? There is the possibility then that if the sanction does not exist, the executing state can adapt the measure to find a measure that would match the Italian legislation.
 - The EC would interpret this differently. Italy would not usually impose an alternative sanction unless it is a driving offence. However the EC say that if the executing state imposes a sentence then Italy should take this sentence and adapt it to match their law. They do have community penalties as an option (just not normally for this type of offence) and therefore they should take the transfer and allow the individual to do this sentence for this offence.
 - It is worth noting the potential discrimination here that many jurisdictions may not agree with. For example if this individual committed the crime and was sentenced in Italy they would have received a more lenient offence as a first time offender. However as they were sentenced in England and Wales for example they were given a community penalty with requirements. However, the counter argument is that they committed the crime under a different jurisdiction and therefore they must comply with this. This is why mutual trust and assistance is paramount for the FD to work; countries need to be accepting of differences and similarities in law.

CASE STUDY 2: Suspended Sentence

Roz is 35 years old. At Court, she has admitted an offence of assault which took place during a row in a bar in Slovenia. She came to Slovenia on holiday and was staying with her sister. She wants to return to her own country, where she has two children at home. She is not living with the children's father and doesn't work because of child care commitments. Roz has two previous convictions, one for a similar assault and one for criminal damage. She has said that she has a drink problem and the Court wishes to pass a suspended sentence of imprisonment with supervision and a specific requirement to undergo therapeutic treatment for her drinking.

Questions to consider:

- If Roz came from your country, might she be suitable for transfer under FD 947?
 - What might be the obstacles to using 947 in this case?
 - What solutions could be devised?
 - What information would decision takers require case-by-case? (The factsheets can only set out legal powers, but how will information exchange be managed in specific cases?)
 - How will this information be exchanged in a reliable and timely manner?
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- They have this type of sentence in Croatia, and therefore Roz would be accepted. She would be under supervision of the Probation service where they have specific treatment for alcoholics (specialised psychologists). They then decide whether further medical treatment is still required.
 - Denmark would be able to accommodate Roz. They would impose this sentence with an unconditional condition of drug treatment. If they however assessed her and found that she had no drinking problem then they would withdraw the requirement for drug treatment. This could be done by the Danish administration; the court would not need to be involved.
 - However, in Finland only young people under 21 can have a suspended sentence such as this, but then on the other hand they do receive sentences such as this from Sweden. Therefore it is possible they would also accept this under the FD as there would probably not be many cases. They also do not have mandatory therapeutic treatment for alcohol but then they still may accept this sentence and then direct the individual to a drug treatment programme through an NGO or other organisation. The condition in Finland would be the supervision, but they do not have the treatment as part of it. In this case it almost seems like the Finnish would slightly adapt their practice to the sentence passed from the issuing state.
 - **Note** – In Spain they are thinking about declaring as the executing state that they would not adapt the judgement, just the measure (they will use article 14, number 3). If they do not comply then they will return the case back to the issuing authority (the issuing authority may then issue a European Arrest Warrant and impose a prison sentence). Therefore they will only manage the case if everything goes to plan. If breached (condition is broken) or changes are required then they intend to return the case and the certificate to the issuing state and ask them what they intend to do now that conditions have been broken or the original judgement is no longer possible. Note that there is the possibility of modifying the measure in

the first place to ensure that it matches Spanish legislation, it is just the case that they would not amend if the conditions were breached. This all needs to be clear on the factsheet.

- This individual could be returned to Holland if arrested in Slovenia. Suspended imprisonment and therapeutic treatment is possible in Holland and therefore these requirements could be accommodated.
- Paying for the treatment could be an issue – if the alcohol treatment had a payment attached who would cover this?
- There would be no problem with transfer to Slovakia in theory. In Slovakia alcohol treatment such as this is covered by health insurance, however the individual may not have this if returning to the country and therefore there could cause an issue with payment.
- Also in some countries the treatment provider would need to assess the client for suitability for that condition, this is the case in England and Wales. This could cause issues as the individual would need to be assessed in the executing state prior to the transfer. Or if assessment had occurred in the issuing state would this be enough?
 - A way of going around this in England and Wales is that they would need to negotiate the alcoholic's condition to not be a specific condition or requirement but they could attach it as a part of their supervision and therefore the assessment requirement would not be there. Slovenia would need to agree to this adaptation. However, once again the EC state this may not be allowed under the FD as it would not just be adaptation of the sentence; England and Wales would be removing a condition and setting the sentence how it would be done in the UK. The EC propose that in these conditions then England and Wales would need to consider changing their assessment requirement for transfer cases such as these.

CASE STUDY 3: Conditional Release

Rait is 34 years old. He came from Estonia to work in England and committed a theft in order to get money to buy heroin. He was sentenced to 5 years imprisonment. He was released on licence under supervision after serving 2.5 years. During incarceration he attended different drug and cognitive behavioural programs and was recognised for having good behaviour. He now wants to return to Estonia where he has a girlfriend and a job. The conditions attached to his release on licence are: to comply with appointments with an offender manager and attend a drug rehabilitation program.

Questions to consider:

- If Rait would come to your country, can these conditions be implemented?
 - Who will pay for the drug treatment?
 - What might be the obstacles in the implementation of this licence?
 - When is the licence period likely to end? Is it possible to end before 2.5 years?
 - What sort of information would the probation service like to have regarding Rait? How is that information made available?
-
- Croatia would accept this; Rait would be under supervision and also have the special obligation of drug treatment and this would be paid for by Croatia as it is part of the health system (everybody in Croatia has health insurance). It would not be possible for his supervision to last less than 2.5 years as it must go to the end of the sentence.
 - The Danish authorities would receive Rait. He would receive treatment in the community where he lived prior to going to the UK. Normally the supervision is 1 or 2 years, depending on seriousness of offence, so although they would most likely accept this sentence of 2.5 years, if they felt it was too much after a certain period of time then they may reduce this.
 - The issue in Finland would be determining the time/length of supervision. They would accept Rait, but they do not have drug rehabilitation as a condition to the sentence however it is part of their work so they could include it in the sentence or supervision plan.
 - This is release on licence and this is not something that is supported in Spain. In Spain within their conditional release, the only reason to go back directly to prison is if another crime is committed, otherwise if you breach conditions it is up to the judge to make the decision.
 - In Croatia, they would receive the judgement and the individual. After the meeting with the individual they would call the Probation office in the issuing state to collect the required documents and information. The competent authority will often say yes without knowing all of the information.
 - In The Netherlands they thought that the general rule would be that the executing country would pay for the treatment. Normally this falls under health insurance. See Article 22.
 - In England and Wales, again there would need to be an assessment, the condition would need to be part of a licence condition as a condition of release from prison. The court do not impose this requirement, it would be the parole board and/or the prison releasing them

that would recommend imposing this condition. If this was not the same in a different country then it may be difficult for the person to be transferred on release unless it could be adapted.

- In Slovakia there would be no issues with this. Drug rehabilitation is usually done in custody but can be done in the community. Slovakia has conditional release procedures.
- Length of supervision under licence conditions need to be considered as some countries may only undertake supervision for 5-8 years whereas other countries may have imposed it for longer.
- In Italy, they could take this sentence, but with a licence period with conditions such as this, they would review every 6 months and consider whether the period could be shortened. In Italy they do not have a maximum licence period therefore this 2.5yr licence period does not exceed this. The EC state that they cannot amend this to review and reduce the sentence like they would normally do because they are taking the law from another country and technically are able to accommodate it. On the basis of the text in Article 14, (first paragraph) then maybe they are allowed to amend the sentence in this way – this is something that the EC may need to address as it can be interpreted in many ways.

CASE STUDY 4: Conditional Release/Sex offender

Bas is 30 years old. He came to work in England and was sentenced for indecent assault. He was sentenced to an indeterminate sentence for public protection. He was released on licence under supervision after serving 8 years. During incarceration he attended different cognitive behavioural programs to address his criminogenic need. According to the British law, he has to register as a sex offender and is subject to Multi Agency Public Protection Arrangements (MAPPA). He now wants to return to his country where he has a girlfriend and a job. The conditions attached to his release on licence are: to register in the registry for sex offenders, to comply with appointments with an offender manager, to attend a sex offender program and not to come closer than 200m to any school.

Questions to consider:

- If Bas would come to your country, can these conditions be implemented?
 - Who will pay for the sex offending program?
 - What might be the obstacles in the implementation of this licence?
 - What are the solutions to these problems?
 - When is the licence period likely to end?
-
- The first obstacle would be the sex-offender register as many countries do not have this kind of register. In Holland it is required that if a person with such a history is moving to a certain municipality then the major is entitled to know about this, but the person must give consent. Also would a Dutch court be able to force a Dutch authority to put a person's name on a register when they generally don't practice this?
 - In Slovakia the sex offender register would also not be possible. The court would need to adapt the measures or it could not be accepted.
 - Consider ECRIS as a means for monitoring offenders across borders
 - Could this indeterminate sanction be enforced? Most countries would say no as it is against their law. Therefore releasing someone on licence for life would not be acceptable – this does however fall under grounds of refusal as licence for life would come above all accepted maximum time limits for licence in other EU countries. The same issue would arise for 909, as countries wouldn't accept indeterminate sentences so they would propose that their maximum term which for example is 20 years in NL I used.
 - Spain would inform the issuing state that they could not fulfil the condition of sex offender registration and then the issuing state would need to decide what to do; maybe they would accept and ask if Spain could accept based on just the other conditions. Normally, for example in the case of hours of unpaid work, Spain would just adapt the sentence to the maximum hours they offer, but with cases like this they do not have an alternative, they have no sex offender register or something similar and therefore it would be changing the sentence entirely. Is there the possibility for the issuing state withdrawing the condition of the sentence and then asking Spain to undertake it without the register for example? If so, this is fine. But this may not be possible as if Spain was the issuing country then they could not withdraw it for the executing country to be able to accept it, under Spanish law they cannot do this.

Obstacles, Challenges and Solutions

Ideological

It is evident that the concepts of *social rehabilitation* and *reintegration* are not necessarily understood in the same way across different European Member States. According to the FD:

- 'the aim of mutual recognition and supervision of suspended sentence, conditional sentence, alternative sanctions and decisions on conditional release is to enhance the prospects of the sentenced person's being reintegrated into society, by enabling that person to preserve family, linguistic, cultural and other ties'
- The Framework Decision restates its aim: 'this Framework Decision 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'.

Questions raised:

What criteria falls under social rehabilitation? Family ties? Residence? Home ownership? Caring responsibilities? Employment? This may cause issues if the individual wishes to be transferred back to a country where his/her family are, where they own a home and have a job, however this is also the area where the criminal networks are. Would transferring them then be for their social rehabilitation or to the detriment of it?

How is the principle of the FD measured? How is it ensured that the transfer will aid their social rehabilitation? There is no mention in the FD about criteria and evidence of supporting social rehabilitation and one country may view someone to have rehabilitated through attending programmes, having stable accommodation, having a job but another country may not view the individual to have rehabilitated until they have not re-offended for a set period of time.

What about changes in offending behaviour and measuring success of the transfer in aiding the social rehabilitation? There is no reference of this in the FD nor is there reference to employment or housing. It is therefore assumed that the onus is on the individual countries as to whether they measure any changes in behaviour to determine the effectiveness of transfers.

Legislative

Consent

- Consent to the sanction, about the moving from one country to another or consent to the measure that is imposed? This is not clear in the FD.
- When should consent be discussed? For some countries informed consent is required but others say that if the individual has already transferred themselves back to the executing state then this can be taken as their implicit consent to comply with the transfer. The FD says the person "intends to return" or "has returned", but if they have already returned then it is not so easy to get their written consent.

- There is also no reference to consent for the information and details on the individual being sent to the executing state.
- The EC note that it is difficult to determine how the transfer could be beneficial for the individual's social rehabilitation if they did not consent to the transfer. **Solution** – the EC note that implicit consent is required and therefore if the individual implies consent by travelling back to the executing state prior to execution of the sentence then this can, where applicable, be acceptable.

Lawfully and ordinarily resident

- How do we establish what 'lawfully and ordinarily resident' means? This appears ambiguous in the Framework Decision legislation and can be interpreted differently. Does an individual need to legally reside in the country? Is there lenience for circumstances where an individual has been living and working in a country for a long period but does not 'legally reside'?
 - **Recommendation** – each country states on a factsheet what their definition of lawfully and ordinarily resident would be to provide clarity to other MS.

Competent authority

- Some states use a single authority as the central point at which to manage the transfers however other states will use all of their district courts or probation offices as separate competent authorities. Without a central contact point either the issuing state will have a task to determine who the correct contact point is or the executing state will need to specify on factsheets the contact point for each district or area and make this clear for those states who wish to transfer to that country.
 - At this current time the ISTEP project is yet to be able to confirm the competent authority of every EU MS. This is due to a number of reasons (not implemented 947 yet, not determined who/which organisation will be responsible or in some cases a number of organisations are responsible and this causes confusion as to who the main contact should be – as identified above).
 - The literature reviewed as part of the ISTEP project concept paper is quite clear that the fewer competent authorities the better. The **solution** to this issue as proposed by the EC is that they would prefer there to be one contact point that can then cascade to the courts as appropriate.

Double criminality

- Double criminality is an issue; i.e. abortion is a criminal offence in some countries and not others. In addition, some sanctions in some countries can be interpreted as measures in others. It is not yet known how many countries will make the declaration to not apply Article 10, paragraph 1.
 - **Recommendation** – countries stipulate in their factsheets which of the offences listed in Article 10 they do not define as an offence in their state. This will assist issuing states to acknowledge what offences are not transferable and also may highlight some similarities in offences that are just worded differently across different jurisdictions.

Subsequent decision

- Article 14 states that the competent authority of the executing state will have jurisdiction to take all subsequent decisions relating to a suspended sentence, conditional release, conditional sentence and alternative sanction in cases of non-compliance or where a new criminal offence is committed.
- According to the available literature, the subsequent decision is the responsibility of the issuing state. There is no legal basis for imprisonment for breach, so the decision is suggested to be transferred to the issuing state. But there are issues with this for example who pays? Will the offender transfer back to face the decision? How can the offender defend him/herself if that are not represented?
- Trust is raised as an issue here. A number of countries highlight that if they enforced the judgement based on their law, they would not trust the executing state in amending the sentence or making subsequent decision as this would be their enforcement right.
 - **Recommendation** – countries declare their position on subsequent decisions and whether they would intend to make use of the possibilities in Article 14, paragraph 3.

Age of offending

- The age of criminal responsibility is different in different jurisdictions.
- Some young people would be very much affected by the FD as social rehabilitation is paramount and they are likely to have family and support networks in their home countries. **Recommendation** - It is important for the factsheets to be able to show not only general age of criminal responsibility but also specific age for different sanctions if relevant.

Other

- Length of sentence: The difference between maximum accepted hours of community supervision in countries may be too great. For example if a country imposed 500 hours and then intended to transfer the individual to a jurisdiction that's maximum was 200 hours. In this case, the executing state could only apply their maximum and the issuing state would need to decide whether this is appropriate and acceptable. Unless all sentences across the EU were harmonised there will always be a minority of cases where the difference is so significant and would not match. The issuing state then has the discretion to decide to refuse to under-go the transfer.
- In Amsterdam for example, the prosecution service will be allowed to change the sentences imposed by the court even though they are prosecutors and not Judges. How will that be perceived by other states? This once again raised the issue of mutual trust between jurisdictions. Will judges in the issuing states trust that the measures will be adapted appropriately and via the appropriate channels?
- One of the biggest challenges is the list of probation measures. Different MS have different interpretations of measures and sentences and therefore sentences may look different but may in fact be very similar. It will be a challenge to transfer a measure from one country to another without any adaptations at all.
 - **Recommendation** – countries continue to update the factsheets developed by ISTEP to provide descriptions of their sanctions and measures for other MS to study and see where similarities and differences are evident.

Practical

- Potential staff movement between positions and roles in an organisation – contact details may become out of date.
- Time in replying to requests for transfer
- Current lack of knowledge and awareness amongst staff regarding 947. In many countries the probation staff that deal with offenders on a day to day basis are not at all aware of the possibilities of using 947 to transfer an individual and thus the principle of 947 is undermined.
 - Will practitioners know what questions to ask? They may be informed about the FD and that their client may be applicable but if they do not know enough about it, what the possibilities are, how the process can work, the legislation and so on, how do they know what questions to ask to ensure all bases are covered and transfer can be effective?
- Trust between MS on the correct implementation of the original sentence passed by the Judge. The issuing states needs to be able to trust that the executing state will only amend the sentence where required in line with their law and not alter the sentence and undermine the original judgement imposed by the issuing state.
 - Informal transfers and flexibility – at the moment there can be movement and adaptation of sentences and these tend to be flexible bi-lateral agreements e.g. between The Netherlands and Germany and Belgium. There is concern that the FD may be too fixed and structured, however it may just enhance what is already being done and be a basis to start from. Maybe the FD is the institutionalisation of practice already working, the trust will still be there but the FD may then just help broaden the trust and develop more networks and co-operation across and between all member states.
- Language, what is termed as suspended sentence in some member states is literally translated in (Latvia and Estonia) as conditional sentence (which is an entirely different type of sentence).
- Not all member states have (or will) transpose the FD. This causes delays for those countries whom have high rates of foreign nationals from a specific country and are unable to transfer them due to the executing state having not implemented the FD into law.
- Member States desire to transfer as many offenders as possible to reduce the cost of probation. This was raised as a risk by some MS, however at the same time they may also receive an influx of offenders from other MS to counteract this. The main risk here is not the numbers of transfers; it is ensuring that the transfers are undertaken for the correct reason – to aid the social rehabilitation of the individual.
- Implementing special sanctions such as medical treatments - often there is cost and waiting times for treatments. Is the same treatment available in the executing state?
- The social enquiry report or the pre-sentence report (PSR) - the FD does not say anything about this point except that the report should be sent with the certificate. But at no time does it say by who, when, in what stage of the procedure, what content it must have and so on.

- Different MS may do different PSR's with different content and different recommendations.
- Language is an issue. Language is only mentioned with regard to the certificate but what about the PSR and other supporting documents
- What if a programme is sent with this, will this need to be translated? By whom?
- When does treatment start?
- Special information regarding supervising mentally ill offenders should be provided
- How is it defined that the transfer has been accepted and implemented? Is it just the exchange of certificate? Or do they say it is not 100% accepted until the person has arrived in the executing state and met with a probation officer? It should be outlined at the start (e.g. in the factsheets) what each country specifies with this.
- Costs – travelling costs and payments for treatment. If sentenced to a drug treatment programme in NL and then transferred to Slovakia you may only be able to undergo the treatment if you pay for it. In NL at the moment this information should be incorporated to their database as part of advice and guidance about what is possible in other jurisdictions.
 - The EC states that costs for travelling are not to be the responsibility of the issuing or executing state. The FD requires consent of the person to want to transfer and therefore they transfer of their own means.
 - Regarding payment for treatment: **Solution** – countries should stipulate this on their factsheets so that judges and prosecutors are aware of this when sentencing and can act accordingly or allow the sentence to be amended accordingly.

Solutions

- **Website** – a central website which holds all information on each member state including the contact details for their competent authorities, information on community sanctions and specifics such as declarations on community sanctions. ([ISTEP website](#) can assist)
- **Contact between competent authorities** – Encouraging consistent contact between the competent authorities of each country to build the foundations for co-operation between all member states and encouraging mutual trust and understanding.
- **Formal agreement on costs** – A formal agreement on who bears the cost should be considered. It is widely viewed that many individuals due for transfer will not be in a position to pay for the transfer and therefore should this prevent them transferring?
- **Certificates** – Certificates need to be clear and concise and include all the relevant information for the executing state to be able to determine whether the individual can be transferred and to be able to allocate the most effective services to him/her. The ISTEP project team have presented the certificate in a clear format in a word document (See Annex 2) and also a template for consistent information on offenders social history and risk (Annex 3) to ensure the executing state can manage them accordingly and know what information to expect from the issuing state.
- **Clear factsheets** - Information on the types of Probation measures and alternative sanctions in every member state as well as information on their declarations and their competent authorities must be available and correct to facilitate effective transfers. To view the factsheets produced by the ISTEP project please refer to the [website](#).

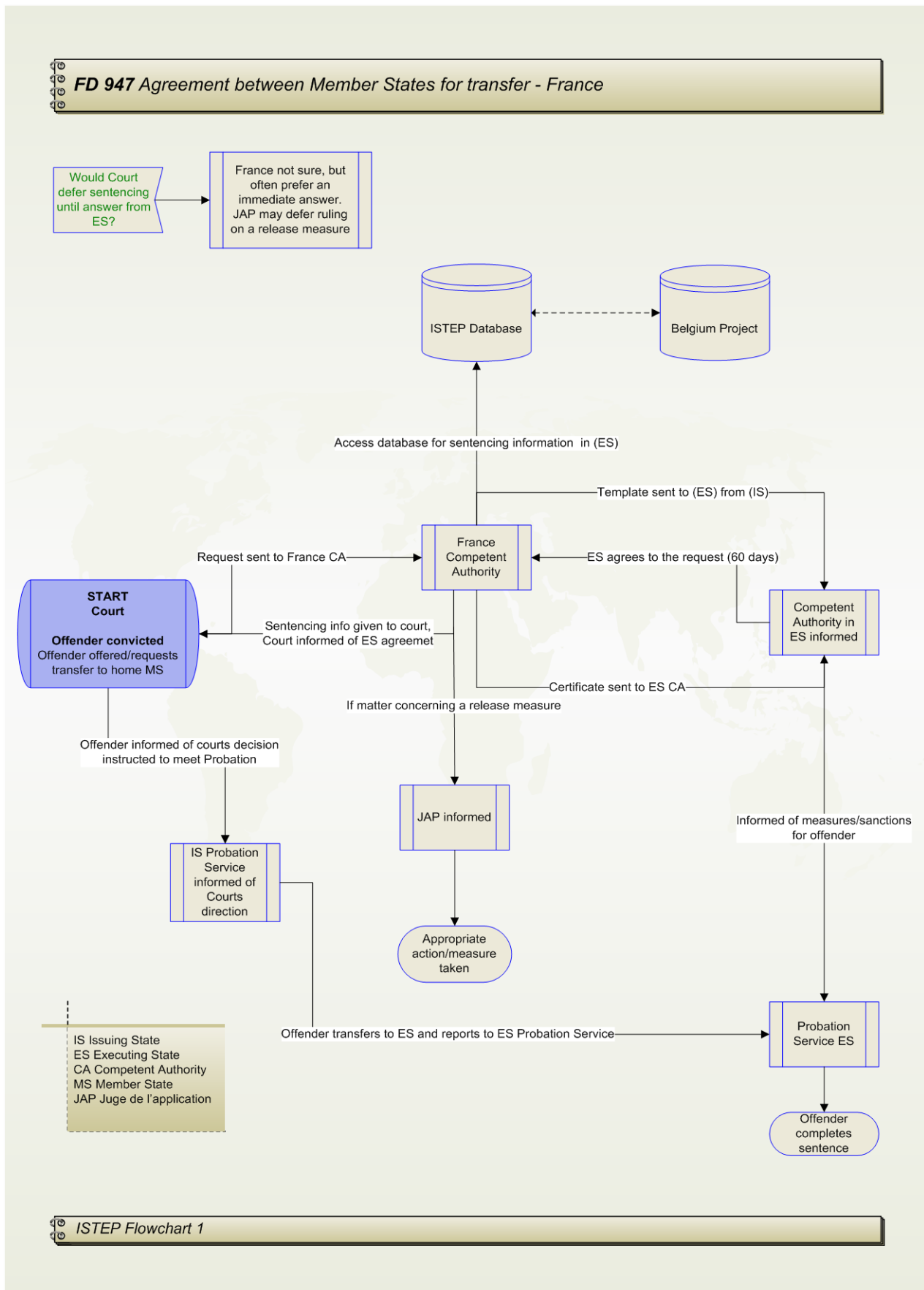
- **Cooperation and Mutual Trust** – Many informal transfers have been underway for some time due to informal agreements and a mutual trust between certain member states. The FD is not designed to undermine this mutual trust but to encourage countries to work together and where required, compromise over changes of sanctions and types of sentences to ensure that the social rehabilitation of the individual is at the forefront of all transfer decisions.
- **Further clarity on the FD** – An opportunity for all member states to air their concerns and inform the EC of areas of the FD that they either do not understand, causes confusions or is posing too great a challenge to implement into their law. The EC have previously run twice yearly expert workshops to cover these types of issues, the next workshop will be held in Brussels in October 2013.
- **Staff training** - In the practical implementation of the FD. Although legal advisors and experts may be involved in the transposition of the legislation, it is the Probation workers that need to understand the processes to undertake to transfer an offender under the FD. To date there is not current guidance for Probation workers on this FD, nor has there been any significant awareness raising to them about the possibilities of using the FD for certain offenders.

Flowcharts:

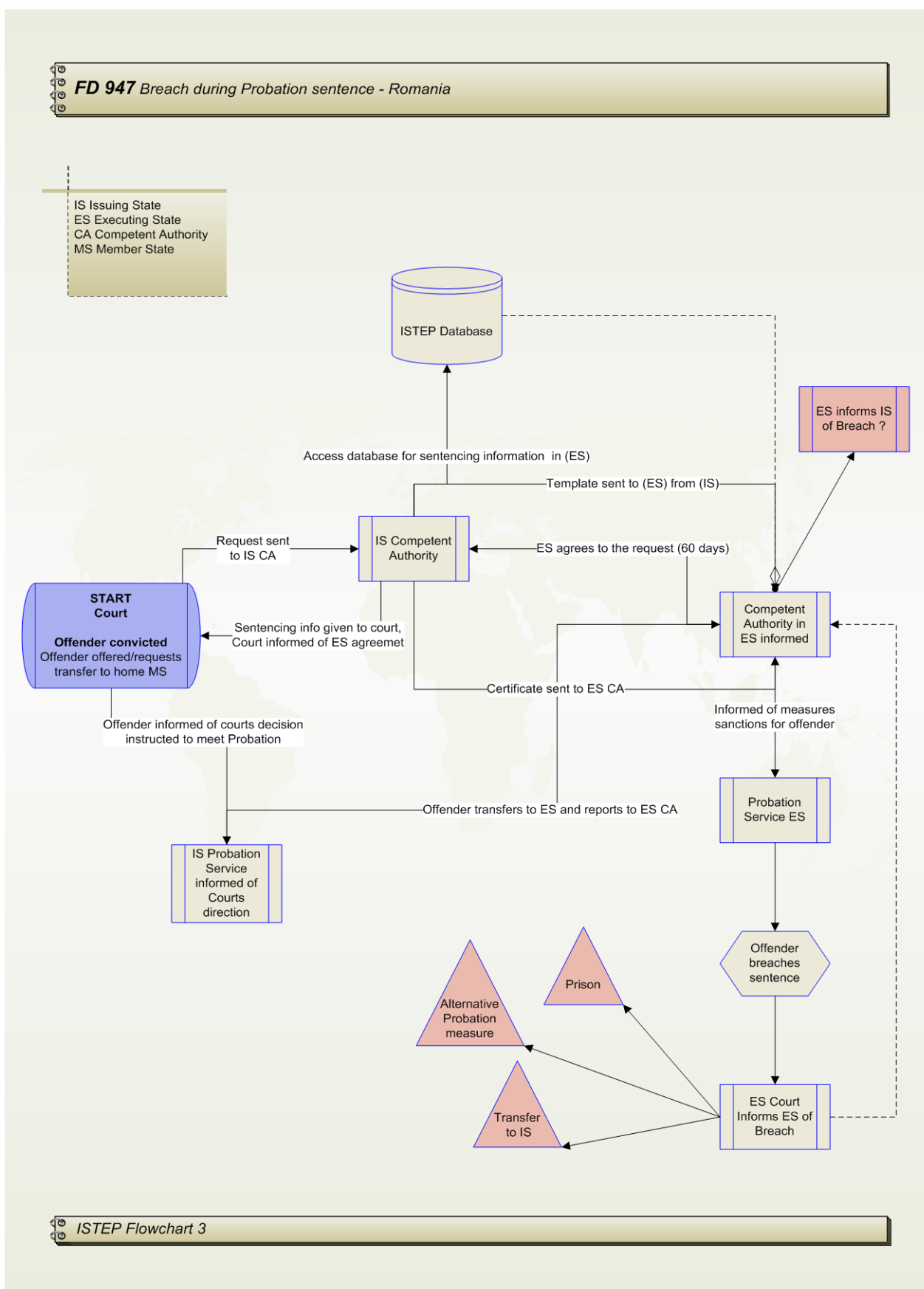
The ISTEP flow charts were originally developed by the project team to help countries visualise a sample of the processes that the FD may require them to undertake. The flow charts predominantly focus on the general transfer process for a member state as the issuing or executing state and also the processes the country would undertake under breach circumstances. The flow charts are designed to practically assist member states; they should assist countries in identifying any areas where challenges may occur, for example any specific requirements of member states that were not foreseen. It is recommended that every country takes the time to produce flow charts for their general transfer processes and also the process if a breach of an order was to occur. These should assist countries in better preparing for transfer and keep them fully informed as to the proposed processes and requirements of the member state they are dealing with.

Please note that these flow charts were created by the ISTEP project team and were sent to the relevant member states for confirmation. These charts may now be out of date and therefore caution should be taken if using them at face level for transfer purposes.

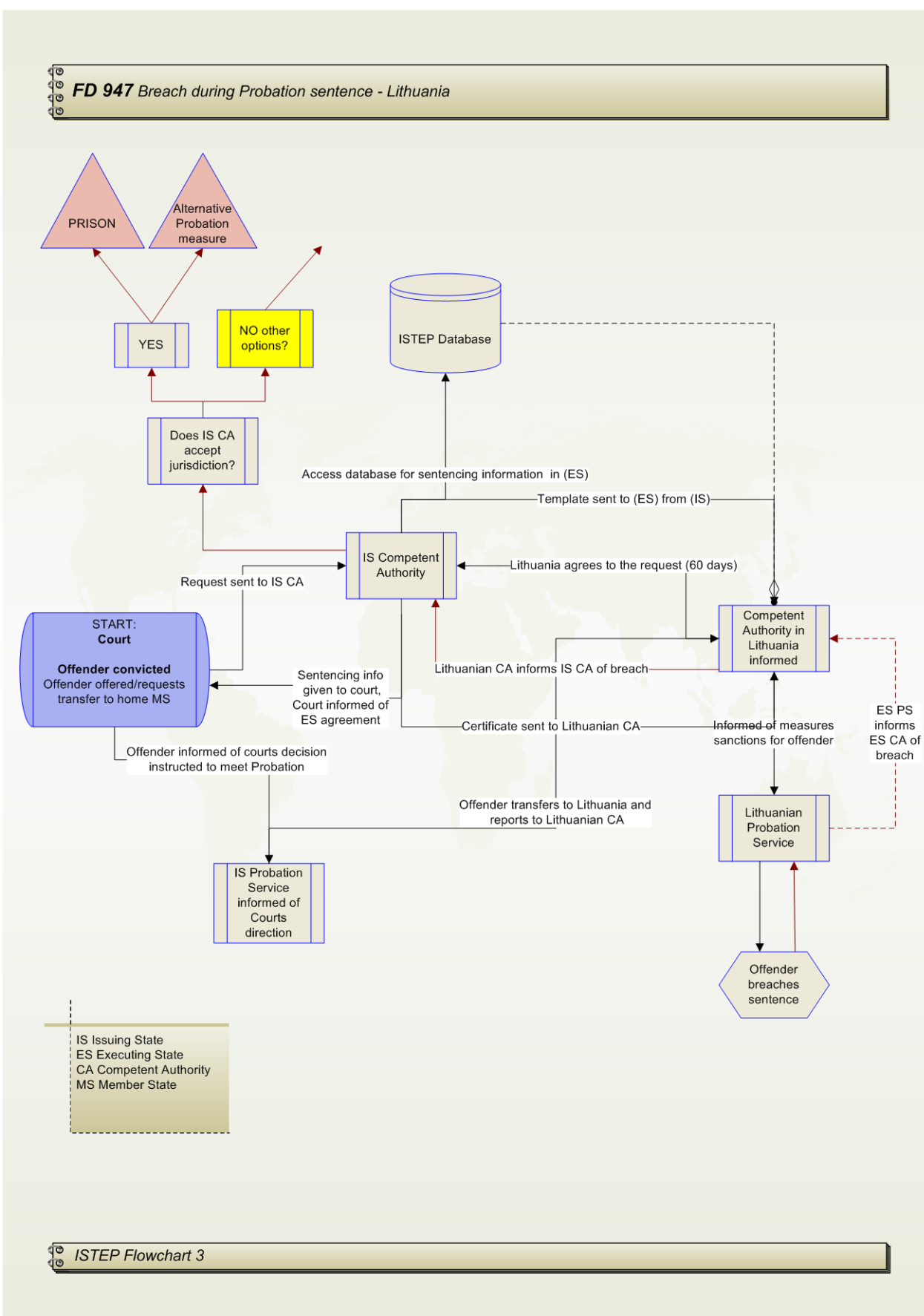
Flow Chart 1: General transfer agreement – France



Flow chart 2: Breach process – Romania



Flow chart 3: Breach process as executing state – Lithuania



Recommendations:

For factsheets:

1. Another column needs to be added to factsheet one to allow for explanations as some countries may not have the specific types of sentences as outlined on the factsheets but do in fact have the sentence with a different requirement or for a different function.
2. The factsheets should not be too ambitious. This can only be a list of legal possibilities and may not be able to cover everything. The real negotiation is going to take place case by case where the issuing state contacts the executing state and begins negotiating
3. A possible question to add to the factsheets or raise somewhere is: "*What criteria or conditions are there in your jurisdiction for the adaptation of penalties from the issuing state?*" (Kind of penalty and length of penalty needs to be established, what does the legislation do if the length of the penalty is longer or shorter than you would impose?)
4. Consider article 14 of the framework legislation. There are some circumstances where the issuing state would make a declaration to maintain responsibility for responding to non-compliance, and therefore the factsheets need to be able to set these circumstances out and inform of any declarations.

For victims:

1. Victims' rights need to be built into legislation and processes from the start. It is difficult to adapt offender focused systems to include victims with the view of making them integral to the criminal justice process. Victims are told they have a lot of rights, however if criminal justice processes do not meet their rights then the victims lose trust in the processes.
2. The EU directive that is now coming into force has the key focus for victims but does not necessarily stipulate regulations and guidelines associated with the FD and the transfer of offenders. Who has to protect the rights of the victims? Is it the responsibility of the issuing state or the executing state? When nothing is stipulated then we have to work it out in practice country by country.

General:

1. Consideration of sentences and judgements that are relevant in one jurisdiction and not another. For example how would the treatment of a sex-offender work? In the UK it is required that the offender remains on a sex offender register for life, but there is no register in other countries. Would it be feasible to withdraw the sentence and issue a new one that aligns with the executing states legislation? Would countries be accepting to this?

2. It is identified that a study to determine the numbers of potential transfers may very useful to determine where their foreign nationals are from, where they would like to return to and so on. However, a new study is a commitment which takes a lot of resource. All countries have statistics, therefore it is suggested that the awareness of the requirement for certain statistics is built into what is currently collected and then the relevant people have access to these to ascertain to a certain degree how far the FD can be applied.
3. Encourage countries to look at their judicial, probation and prison statistics and start to think about nationality and country of residence to gather the correct information and provide an indication of the potential for the demand of the FD. However this should be approached with caution as the FD requires consent and therefore although there may be 100 applicable individuals, only 10 may wish to be transferred. The target groups actually tend to be the tourist groups (or temporary seasonal workers e.g. agricultural, circus workers and so on) as there are often many foreign nationals in different countries but then they are residing there and may not wish to be transferred.
4. A useful tool would be a handbook to assist countries with the implementation of 947 (similar to the EAW one), for example assisting countries in how to complete the certificates. Consider how information could be placed on the e-justice portal.
5. Countries must be flexible as all countries have different legislative processes and different sentencing guidelines and sanctions. Therefore countries must acknowledge this and be amenable to adaptations where relevant.
6. Mutual Trust is of great importance. Informal systems already exist between some countries (E.g. Ireland and Northern Ireland, the Nordic States, Slovakia and the Czech Republic) and these processes work due to mutual trust and understanding. The FD should support this mutual trust and encourage it, not undermine it.
7. The workshop group discussed the possibility of more information, like a pre-sentence report about the offender to go to the executing state prior to transfer. This should allow the executing state to better prepare for managing the offender and supporting their social rehabilitation.
8. The sooner countries can make a start on the transfer, the better. This reduces the risk of breach during a very vulnerable time for offending when these individuals are in need of support from authorities.
9. Countries should collect judicial statistics that support the implementation of the framework however we would need to ensure these statistics are interpreted with care as they need to be reliable and this cannot always be ensured.
10. Look at how it can be anticipated that a person may be someone who is not a resident and may intend to travel back to their country. This could be done at the hearing or even earlier to try and reduce the 90 day period which currently wouldn't start until after trial.

11. Consider ECRIS as a means for monitoring offenders across borders.
12. Each country states on a factsheet what their definition of lawfully and ordinarily resident would be to provide clarity to other MS.
13. Countries stipulate in their factsheets which of the offences listed in Article 10 they do not define as an offence in their state. This will assist issuing states to acknowledge what offences are not transferable and also may highlight some similarities in offences that are just worded differently across different jurisdictions.
14. Factsheets should be able to show not only general age of criminal responsibility but also specific age for different sanctions if relevant.
15. Countries continue to update the factsheets developed by ISTEP to provide descriptions of their sanctions and measures for other MS to study and see where similarities and differences are evident.
16. Regarding payment for treatment: a possible solution is countries should stipulate this on their factsheets so that judges and prosecutors are aware of this when sentencing and can act accordingly or allow the sentence to be amended accordingly.

Annex 1: ISTEP Focus Group Structure

Day 1: Afternoon session (12.30 – 5pm)

1. Welcome and Introductions
 - a. Brief of the ISTEP project and its aims and objectives (include brief reminder of the FD) – ISTEP PowerPoint presentation is available if required.
 - b. Introduction to the focus group, overview of the aims and objectives and what information we intend to draw from the participants.
 - c. Opportunity for participants to inform us what they would like to get out of the next 2 days
2. **Discussion 1:** *How are plans for implementation progressing in your country?*
 - a. Has the necessary legislation been passed?
 - b. Has the competent authority been identified?
 - c. Are judges, prosecutors, probation agencies making preparations?
 - d. Have both transfers in and transfers out been considered?
 - e. Has any attempt been made to anticipate the numbers of people who may be involved?

NB – Focus Groups leaders can decide whether to undertake this discussion as a whole group or to split them into smaller groups and circulate between them. If in smaller groups, participants should be prepared to feedback and summarise at the end of the discussions.
3. Brief account from focus group leaders on the concept paper (PowerPoint available if required)
 - a. Include the obstacles and challenges that emerged both from the concept paper and from the workshops (2 PowerPoint's available if required)
 - b. Ask for input from participants regarding the challenges and obstacles – have they identified any others? Have they experience of them in practice? Have they thought about potential solutions?
4. **Discussion 2:** Has the Framework Decision been used so far in your country? (Transfers in and/or out?)
 - a. If so, ask participants to inform us about this in some detail, including the difficulties experienced and how they were overcome.
 - b. If not, why do you think this is?
 - c. If it is the case that the FD has not been used (which is highly likely) then focus group leaders may wish to then delve into the reasons why transfer hasn't occurred in more depth and put these into categories e.g. due to legislation not being transposed yet, due to not as of yet being able to identify the countries where their nationals are residing, due to judges/prosecutors not being aware of the FD and so on.
 - d. To generate further discussion if required, leaders can ask about **informal transfers** that may have occurred (participants will be asked in advanced to find information out about these before they attend) or bi-lateral arrangements with specific countries. They can then inform the groups about the processes, the arrangements, the challenges and obstacles they faced and any solutions they came up with.
 - e. Leaders can then anticipate the next day by outlining some of the potential solutions to making this happen and let participants know that this will be the focus of day 2.

5. Summary and conclusions of day 1

Day 2: Morning Session (9.30am – 12.30)

(Depending on timings it is at the leader's discretion as to when a coffee break is required)

1. Introduction of factsheets
 - a. Factsheets will have been sent out prior to the focus groups to all participants with one example of a completed factsheets. Participants will be asked start thinking about completing the factsheets, review them and be prepared to feedback to the focus groups on areas they think would be difficult to complete or any missing elements that would be of use.
 - b. Overview of the factsheets, what they aim to do and how they can assist jurisdictions with the FD and transfers (Presentation from workshop and Brussels combined).
2. **Discussion 1:** How useful will these factsheets be in aiding transfer?
 - a. Is the right type of information presented?
 - b. Are there any omissions? Or do people have any other observations?
 - c. Will this information, once collated and uploaded, in practice be accessible and relevant to those who need it?
3. **Exercise 1:** Put people into groups of approximately 3 people and ask them to start filling out the factsheets or progress further if they have already started. It could be up to the groups as to whether they complete just the 1 and discuss the obstacles and challenges or each individual starts filling their own out.
 - a. This is a learning exercise for individuals to find out how easy it will be to complete the factsheets and where challenges and difficulties arise. They will have been asked prior to attending to bring their legislation with them or have started completing the factsheets.
 - b. Approx 45 mins should be spent on this exercise, and then followed by:
 - c. **Exercise 2:** Pairing people with a country they feel they are likely to transfer with and discuss the factsheets including comparisons and differences and how compatible the sentences and transfer processes are. Time should be spent after this discussion to allow participants to feedback on this exercise to the whole group.
 - d. This session can be concluded by explaining that ISTEP will be attempting to complete the sheets for each country, but will then send them to the country so that it can be checked for accuracy and incomplete sections can be filled in. Therefore some countries have spent time already filling these factsheets out then they should speak with the focus group leaders about the next steps. Explain that once the factsheet has been completed as best we can and checked, it will be uploaded and will thereafter be the basis on which other countries will approach them as 'executing state'. It is important to note it will become their responsibility to ensure it is up to date.
4. To whom should the factsheets be sent?
 - a. Tables (see last pages) to be handed out for people to provide the names and contact details of the correct people who are able to complete the factsheets and return them to us. (Participants will be asked to ensure they know the correct people prior to the focus group)
5. Brief overview of the website, what it will offer and how the data should be of use for all jurisdictions.

Day 2: Afternoon Session (1.30pm – 5.00pm)

(Depending on timings it is at the leader's discretion as to when a coffee break is required)

1. **Exercise 1:** Scenarios and case studies (these will have been sent to participants prior to the focus group) – Explain why we have developed the case studies and what we intend to get out of this exercise and how it will be useful to each jurisdiction. 4 case studies to be used. Split the group into 4 separate groups and provide each group with a separate case study and ask them to consider the following questions (thinking about transfers in and transfers out):
 - a. What would be the difficulties in using 947 in cases like these?
 - b. What solutions can be devised?
 - c. What information would decision takers require case-by-case? (The factsheets can only set out legal powers, but how will information exchange be managed in specific cases?)
 - d. How will this information be exchanged in a reliable and timely manner?After about 45 minutes/1 hour each group should then feedback to the wider group regarding the above questions and group discussion can be generated.

NB – If time, refer to other conditions that may affect transfer in case study 3. For example, what if Rait was a registered sex offender in one jurisdiction but there was no possibility for this in the country he was returning to?
2. Conclusions and summary of day 2.

Day 3: Morning Session (9.30am – 12.00)

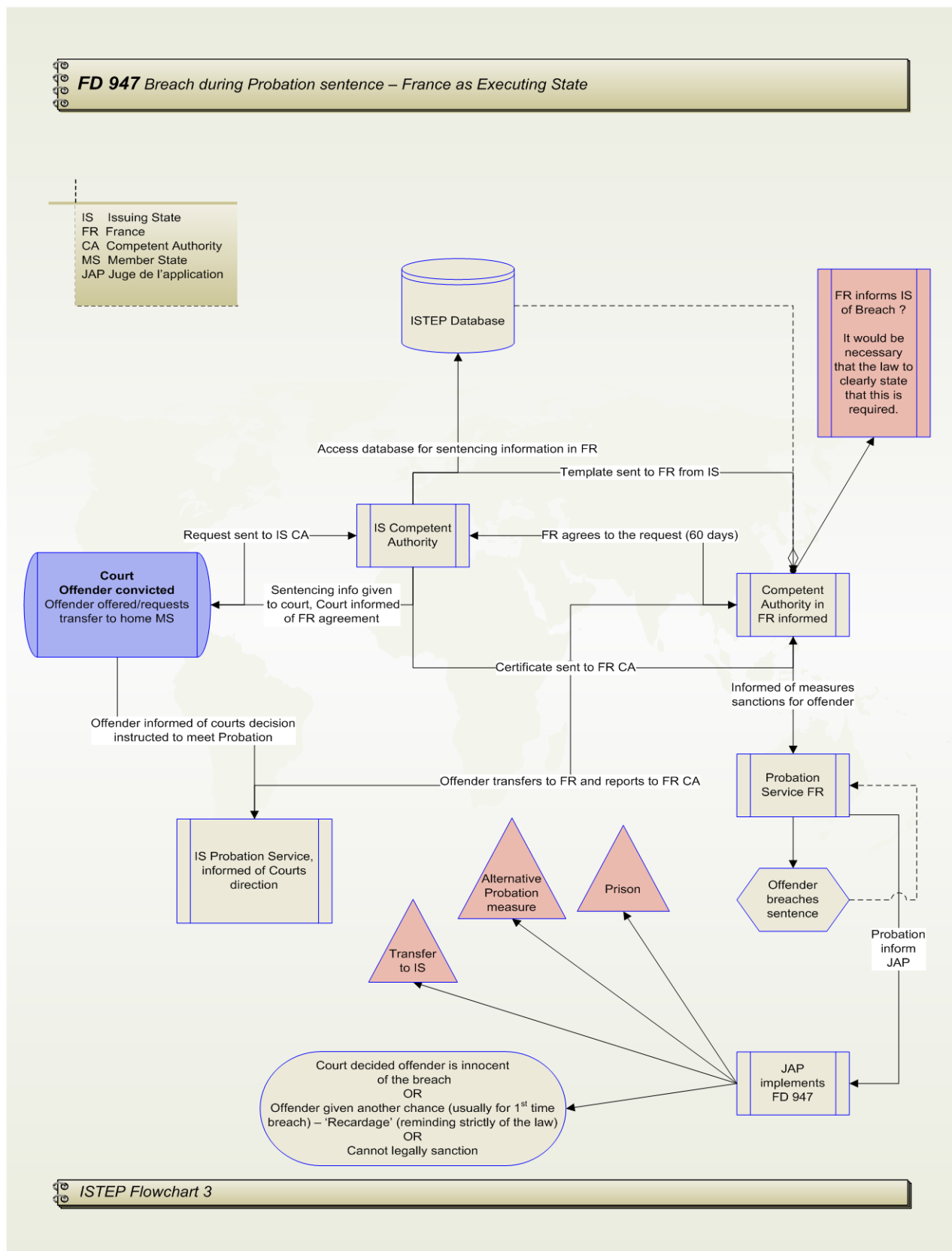
(Depending on timings it is at the leader's discretion as to when a coffee break is required)

1. **Discussion 1:** Present the studies conducted in Catalonia and The Netherlands
 - a. Discuss how these can be of use for jurisdictions – would they all consider doing one?
 - b. How would the study enable jurisdictions prepare for implementation?
 - c. What challenges, obstacles and solutions do they highlight?
2. Next steps: What needs to be done next to further aid understanding of the FD and to further support countries with their implementation?
 - a. How can knowledge and awareness of 947 be raised in your country?
 - b. How should legislators, judges, prosecutors, probation staff, defence lawyers prepare for it?
 - c. How many people may be suitable? (Remember both transfers in and out.)
 - d. What countries will each jurisdiction mainly be dealing with? (Leader to go around the room to ask each jurisdiction to identify which countries, this information can be recorded on the tables below)
3. Summary and conclusions from the focus groups
 - a. Inform that a report will be produced and circulated to all participants.
 - b. Highlight the need for continued co-operation – reiterate the support the project can provide member states in their implementation
 - c. Ask that the factsheets are reviewed and returned to researchers when emailed to participants to ensure we have a factsheet for every member state.

END OF FOCUS GROUPS – MIDDAY ON THE 3RD DAY

Annex 2: Remaining flowcharts

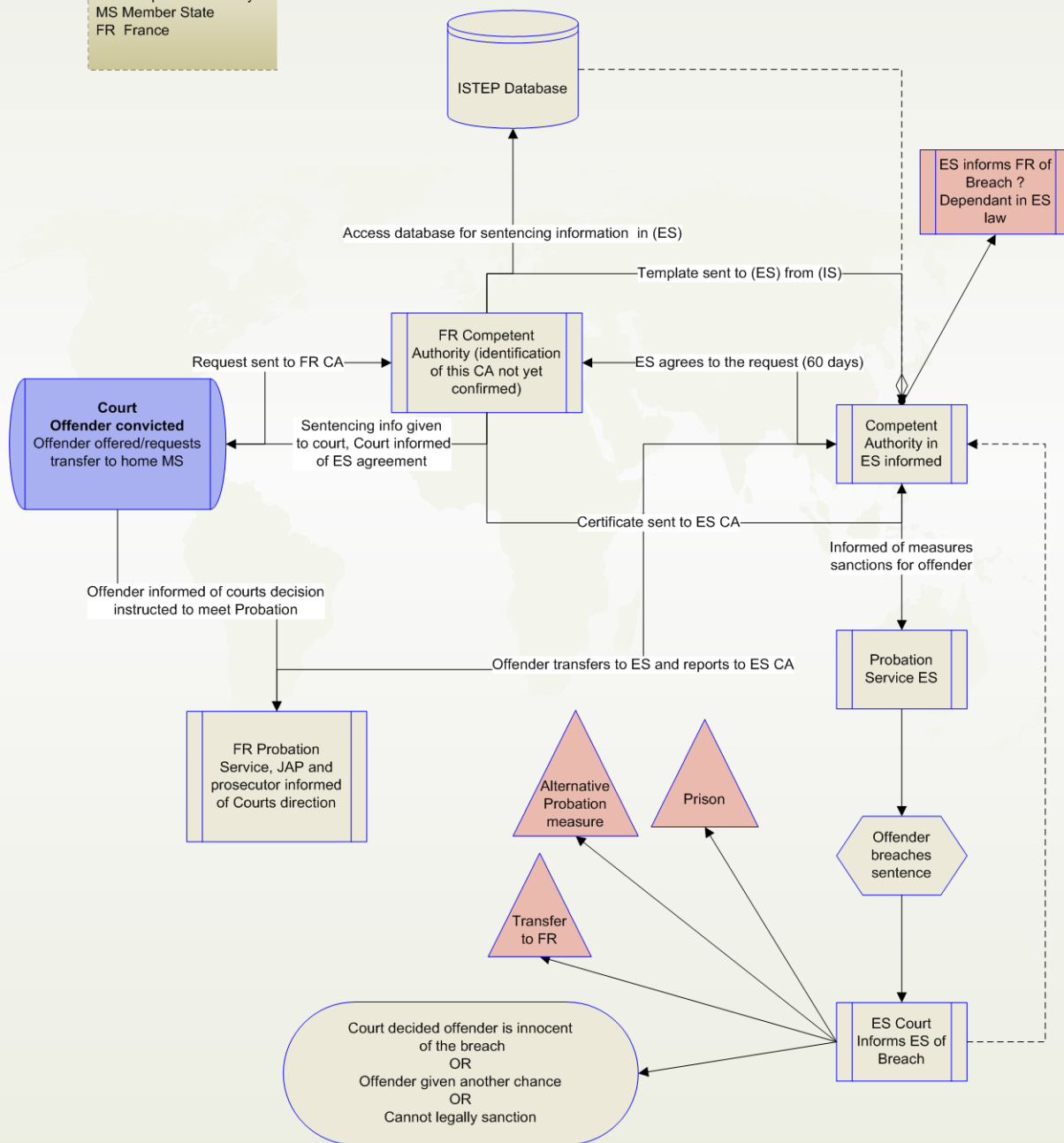
Breach as executing state – France



Breach as Issuing State – France

FD 947 Breach during Probation sentence – France as Issuing State

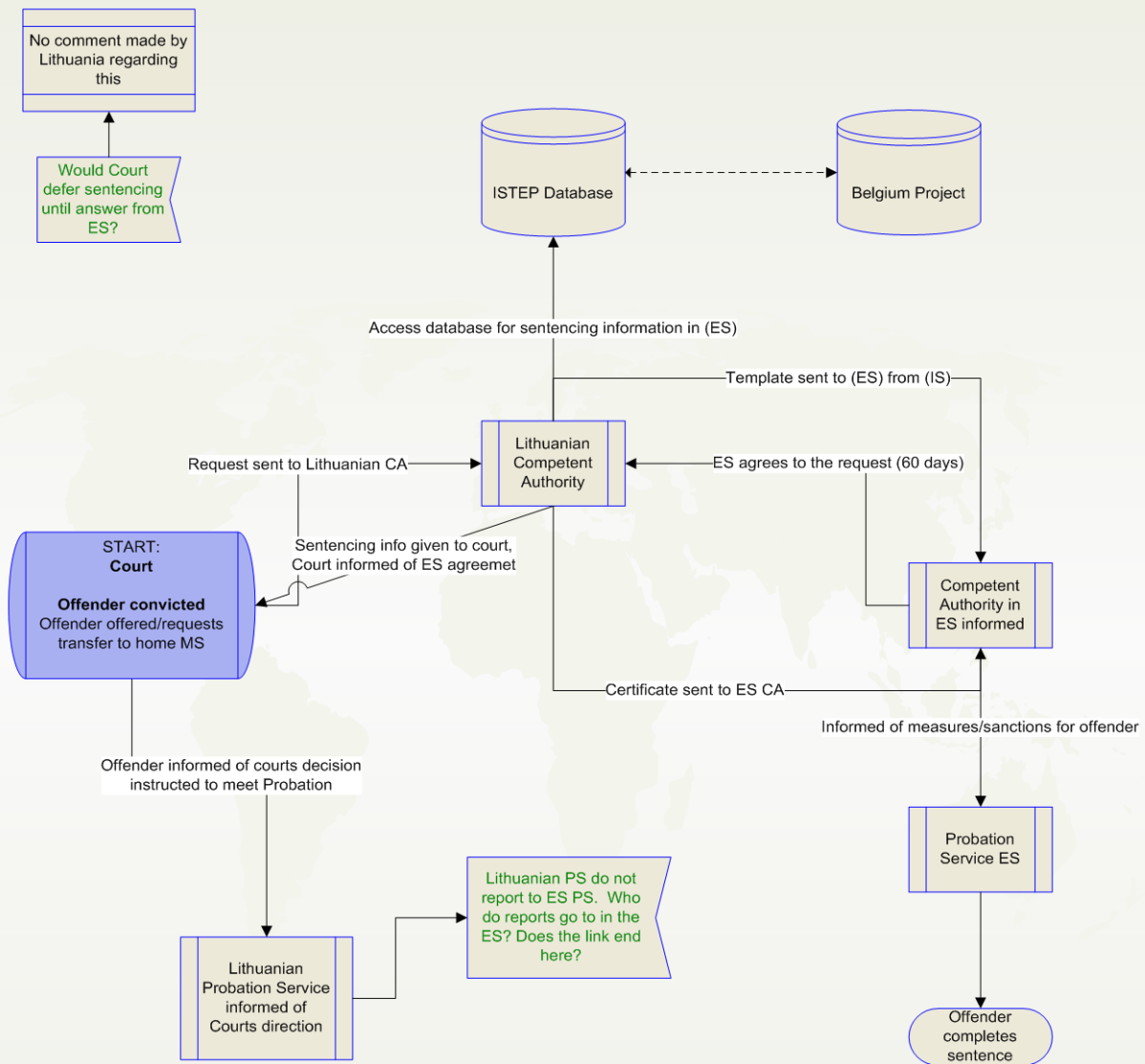
IS Issuing State
ES Executing State
CA Competent Authority
MS Member State
FR France



ISTEP Flowchart 3

General transfer agreement - Lithuania

FD 947 Agreement between Member States for transfer - Lithuania

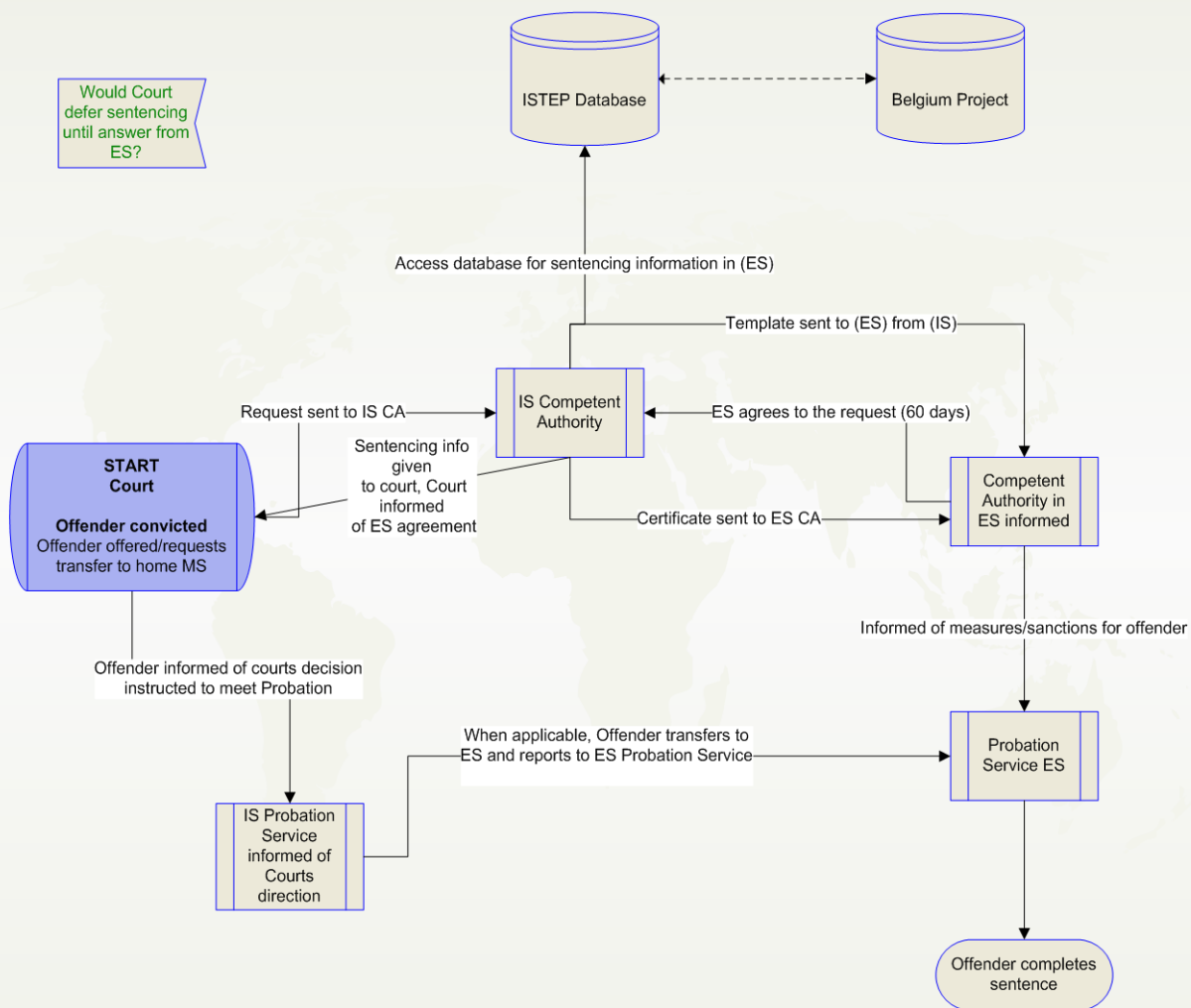


IS Issuing State
ES Executing State
CA Competent Authority
MS Member State

ISTEP Flowchart 1

General transfer agreement – Romania

FD 947 Agreement between Member States for transfer - Romania



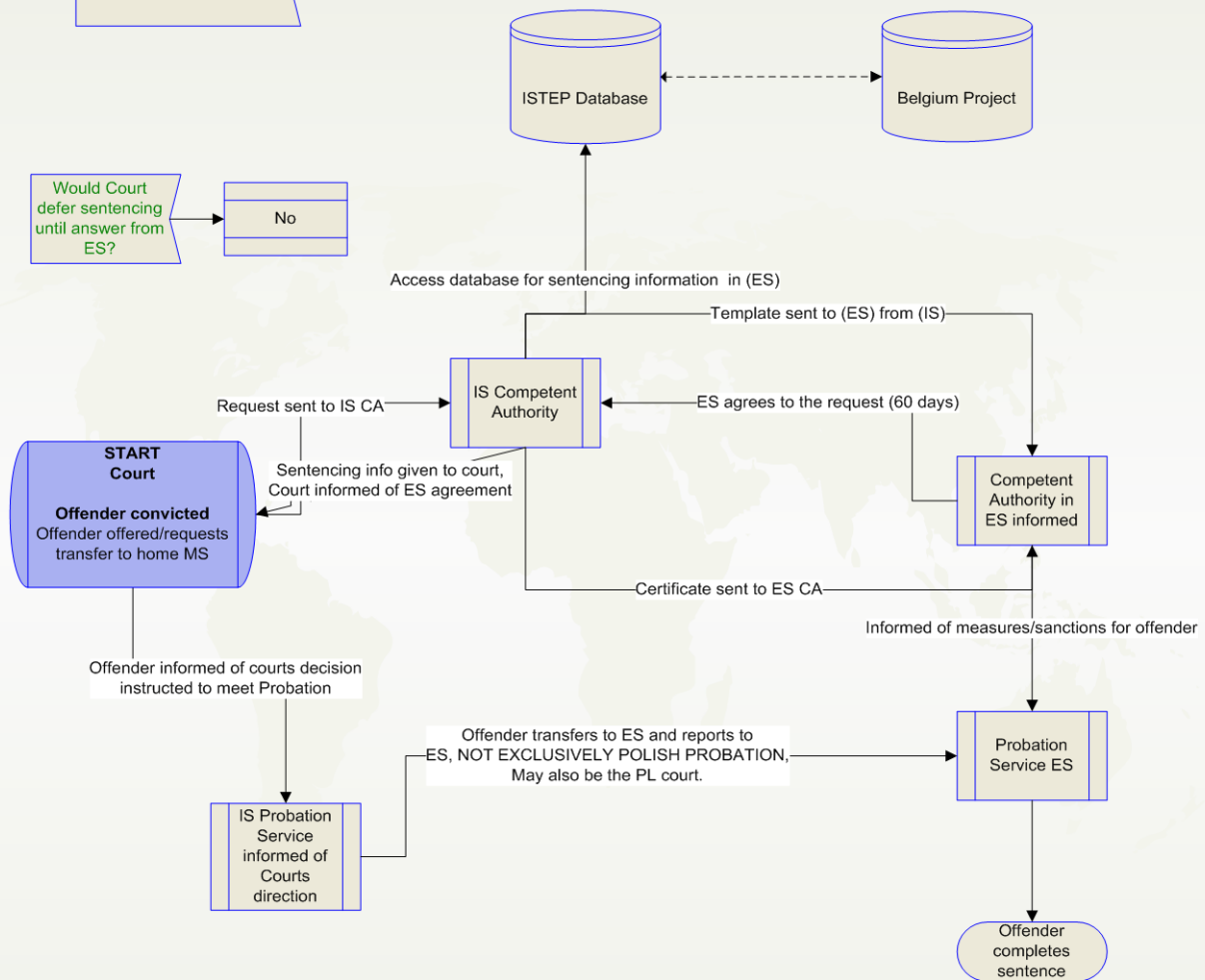
IS Issuing State
ES Executing State
CA Competent Authority
MS Member State

ISTEP Flowchart 1

General transfer agreement - Poland

FD 947 Agreement between Member States for transfer - Poland

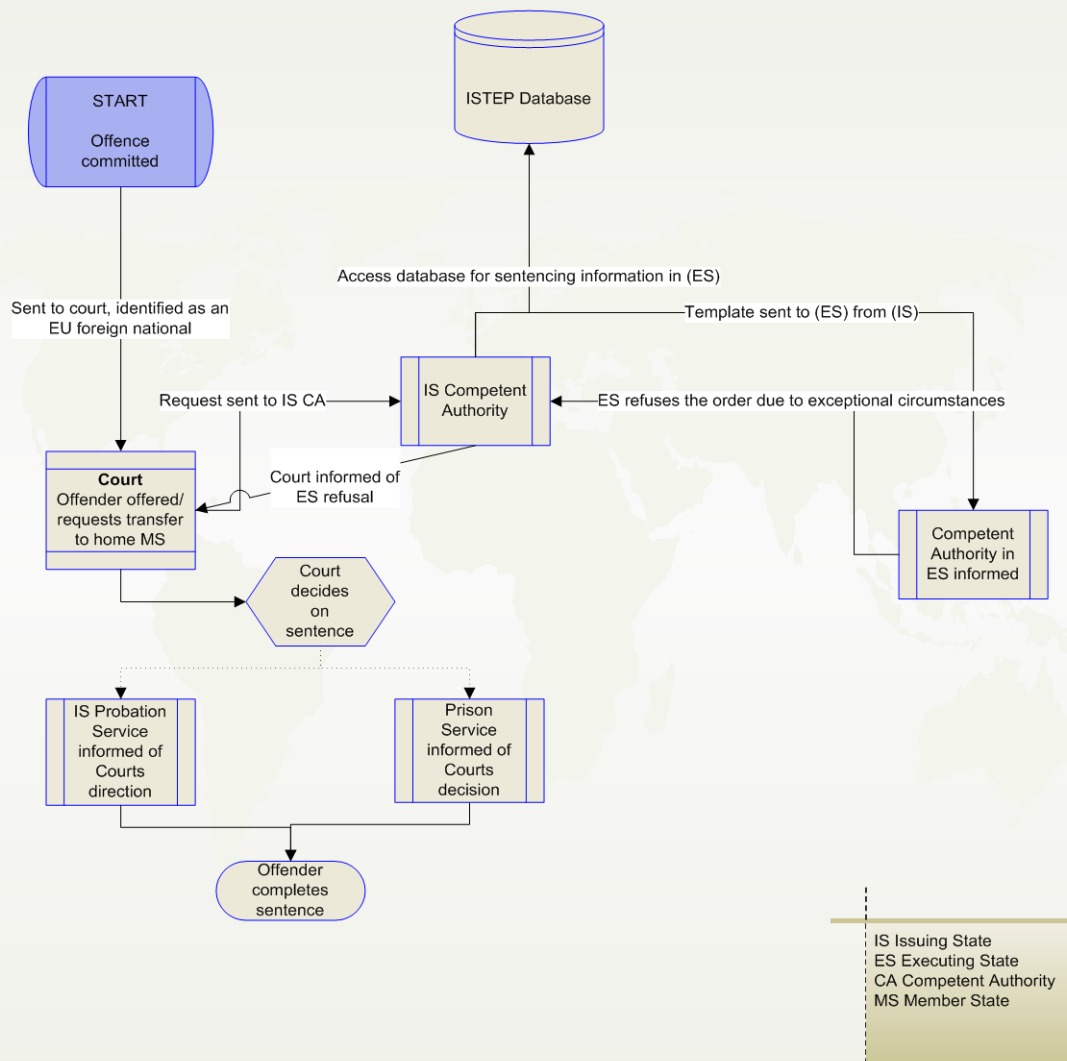
NB. Poland has not appointed any Central Authority. All contact/links held by Competent Court



IS Issuing State
ES Executing State
CA Competent Authority
MS Member State

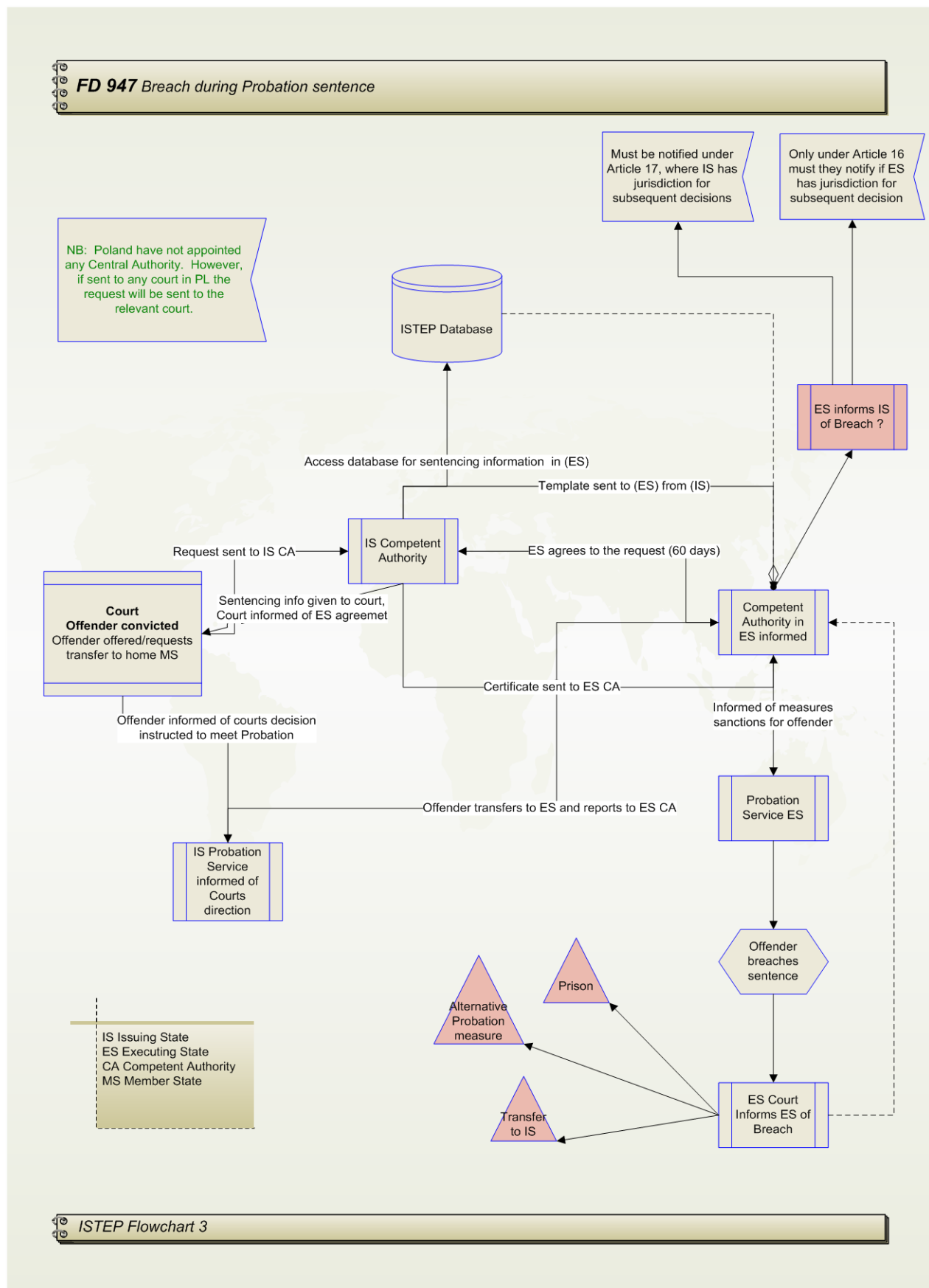
Refusal of order by executing state – Poland

FD 947 Refusal by Executing State to implement order by Issuing State - Poland



ISTEP Flowchart 2

Breach Process – Poland



Annex 3: Transfer Certificate

Referred to in Article 6 Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgements and probation decisions with a view to the supervision of probation measures and alternative sanctions

(a) Issuing State	
Executing State	

(b) Court, which issued the judgement imposing a suspended sentence, custodial sentence or alternative sanction	
Official name	
Please indicate whether any additional information on judgement to be obtained from:	
The court specified above	
The central authority. Please provide the official name of this central authority:	
Another competent authority. Please provide the official name of this authority:	
Contact details of the court/central authority/other competent authority	
Address	
Telephone	
Fax	
Details of the person(s) to be contacted	
Surname	
Forename(s)	
Position (title/grade)	
Post Code /Zip code	
Telephone	
Fax	
Email address	
Language	

(c) Authority, which issued the probation decision (where applicable)	
Official name	
Please indicate whether any additional information concerning the probation decision to be obtained from:	
The authority specified above	
The central authority. Please provide the official name of this central authority if this information has not yet been provided under point (b)	
Another competent authority. Please provide the official name of this authority	
Contact details of the authority, the central authority or the competent authority if this information has not yet been provided under point (b):	
Address:	
Telephone	
Fax	
Details of the person(s) to be contacted:	
Surname	
Forename(s)	
Position (title/grade)	
Post Code /Zip code	
Telephone	
Fax	
Email address	
Languages that may be used for communication	

(d) Competent authority for supervision of the probation measures or alternative sanctions	
Authority which has competence in the issuing State for supervising the probation measure or alternative sanctions:	
The court/authority as referred to in point (b)	
The authority referred to in point (c)	
another authority (please provide its official name)	
Please indicate which authority is to be contacted if any additional information is to be obtained for the purpose of supervising the probation measures or alternative sanctions:	
The authority specified above	
The central authority. Please provide the official name of this central authority if this information has not yet been provided under point (b) and (c):	
Contact details of the authority or of the central authority if this information has not yet been provided under point (b) or (c):	
Address	
Telephone	
Fax	
Details of person(s) to be contacted	
Surname	
Forename(s)	
Position (title/grade)	
Post Code /Zip code	
Telephone	
Fax	
Email (if any)	
Languages that may be used for communication	

(e) Information regarding the natural person in respect of whom the judgement, and where applicable, the probation decision has been issued	
Surname	
Forename(s)	
Maiden Name, where applicable	
Aliases, where applicable	
Sex	
Nationality	
Identity number and social security number (if any)	
Date of Birth	
Place of Birth	
Last known addresses/residences (if any):	
In the issuing State	
In the executing State	
Elsewhere	
Language(s) understood (if known)	
Type and number of identity document(s) of the sentenced person	
Type and number of the residence permit of the sentenced person in the executing State	

(f) Information regarding the Member State to which the judgement, and , where applicable, the probation decision, together with the certificate are being forwarded		
The judgement and, where applicable, the probation decision, together with the certificate are being forwarded to the executing State indicated in point (a) for the following reasons:		
The sentenced person has his/her lawful and ordinary residence in the executing State and has returned or wants to return to that State		
The sentenced person has moved/ intends to move to the executing State for the following reason(s):		
	The sentenced person has been granted an employment contract in the executing State	
	The sentenced person is a family member of a lawful and ordinary resident person of the executing State	
	The sentenced person intends to follow a study or training in the executive State	
	Other reason (please specify)	

(g) Indications regarding the judgement and, where applicable, the probation decision	
Judgement:	
Date issued	
Date judgement became final	
If different, date of the execution of the judgement	
File reference (if available)	
Probation Decision (if applicable):	
Date issued	
Date probation decision became final	
Date of the execution of the probation decision (if different to the final date)	
File reference (if available)	
1. Number of offences covered in the judgement:	
Summary of the facts and description of the circumstances in which the offence(s) was (were) committed, including the time and place, and the nature of the involvement of the sentenced person:	
Nature and legal classification of the offence(s) and applicable statutory provisions on the basis of which the judgement was issued:	

<p>2. If offences referred to in Point 1 constitute(s) 1 or of the following offences, as defined by the law of the issuing State which are punishable in the issuing State by a custodial sentence or measure involving deprivation of liberty of a maximum of at least three years, please confirm by ticking the relevant box(es):</p>		
	Participation in a criminal organisation	
	Terrorism	
	Trafficking in human beings	
	Sexual exploitation of children and child pornography	
	Illicit trafficking in narcotic drugs and psychotropic substances	
	Illicit trafficking in weapons, munitions and explosives	
	Corruption	
	Fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interest	
	Laundering of the proceeds of crime	
	Counterfeiting of currency, including of the euro	
	Computer-related crime	
	Environmental crime, including illicit trafficking in the endangered animal species and in endangered plant species and varieties	
	Facilitation of unauthorised entry and residence	
	Murder, grievous bodily injury	
	Illicit trade in human organs and tissue	
Kidnapping, illegal restraint and hostage-taking		

	Racism and xenophobia	
	Organised and armed robbery	
	Illicit trafficking in cultural goods, including antiques and works of art	
	Swindling	
	Racketeering and extortion	
	Counterfeiting and piracy of products	
	Forgery of administrative documents and trafficking therein	
	Forgery of means of payment	
	Illicit trafficking in hormonal substances and other growth promoters	
	Illicit trafficking in nuclear or radioactive materials	
	Trafficking in stolen vehicles	
	Rape	
	Arson	
	Crimes within the jurisdiction of the International Criminal Court	
	Unlawful seizure of aircraft/ships	
Sabotage		
<p>3. To the extent that the offence(s) identified in point 1 is (are) not covered by point 2 or if the judgement and, where applicable, the probation decision, as well as the certificate are forwarded to a Member state, which has declared that it will verify the double criminality (article 10(4) of the Framework Decision), please give a full description of the offence(s) concerned:</p>		

(h) Indicate if the person appeared in person at the trial resulting in the decision		
1. Yes, the person appeared in person at the trial resulting in the decision		
2. No, they person did not appear in person at the trial resulting in the decision		
3. If no, please confirm the existence of one of the following:		
	3.1a. The person was summoned in person on [please insert date here] and thereby informed of the scheduled date and place of the trial which resulted in he decision and was informed that a decision may be handed down if he or she does not appear for the trial	
	3.1b. The person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the decision, in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial	
	3.2. Being aware of the scheduled trial the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial	
	3.3. The person was served with the decision on [please insert date here] and was expressly informed about the rights to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead the original decision being reversed, and	
	the person expressly stated that he or she does not contest this decision	
OR		
the person did not request a retrial or		

	appeal within the applicable time frame	
<p>If you have ticked 3.1b, 3.2 or 3.3 above, please provide information about how the relevant condition has been met:</p>		
<div></div>		

(i) Indications regarding the nature of the sentence imposed by the judgement or, where applicable, the probation decision	
1. This certificate is related to a:	
Suspended sentence (= custodial sentence or measure involving deprivation of liberty, the execution of which is conditionally suspended, wholly or in part, where the sentence is passed)	
Custodial sentence:	
<p>the imposition of a sentence has been conditionally deferred by imposing one or more probation measures</p> <p>one or more probation measures have been imposed instead of a custodial sentence or measure involving deprivation of liberty</p>	
Alternative sanction:	
<p>the judgement contains a custodial sentence or measure involving deprivation of liberty to be enforced in case of non-compliance with the obligation(s) or instruction(s) concerned</p> <p>the judgement does not contain a custodial sentence or measure involving deprivation of liberty to be enforced in case of non-compliance with the obligation(s) or instruction(s) concerned</p>	
Conditional release (= early release of a sentenced person after part of the custodial sentence or measure involving deprivation of liberty has been served)	
2. Additional information	
2.1. The sentenced person was in a pre-trial detention during the following period:	
2.2. The person was serving a custodial sentence or measure involving deprivation of liberty during the following period (to be filled in only in case of conditional release):	

2.3. In case of a suspended sentence:	
Duration of the custodial period imposed that was conditionally suspended:	
Duration of the period of suspension:	
2.4 If known, length of deprivation of liberty to be served upon	
Revocation of suspension of the execution of the judgement;	
Revocation of the decision on conditional release; or	
Breach of the alternative sanction (if the judgement contains a custodial sentence or measuring involving deprivation of liberty to be enforced in case of such a breach):	

(j) Indications regarding the duration and nature of the probation measure(s) or alternative sanction(s)		
1. Total duration of the supervision of the probation measure(s)/alternative sanction(s):		
2. Where applicable, duration of each individual obligation imposed as part of the probation measure(s) or alternative sanction(s):		
3. Duration of the total probation period (if different to duration indicated under point 1):		
4. Nature of the probation measure(s)/alternative sanction(s) (<i>multiple boxes may be ticked</i>):		
	An obligation for the sentenced person to inform a specific authority of any change of residence or working place	
	An obligation not to enter certain localities, places or defined areas in the issuing or executing State	
	An obligation containing limitations on leaving the territory of the executing State	
	Instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity	
	An obligation to report at specific times to a specific authority	
	An obligation to avoid contact with specific persons	
	An obligation to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view of committing a criminal offence	
	An obligation to compensate financially for the prejudice caused by the offence and/or an obligation to provide proof of compliance with such an obligation	
	An obligation to carry out community service	

	An obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons	
	Other measures that the executing state is prepared to supervise in accordance with a notification under article 4(2) of the Framework Decision	
5. Detailed description of the probation measure(s)/alternative sanction(s) indicated under 4:		
6. Please tick if relevant probation reports available		
If the box is ticked, please indicate which language(s) these reports are drawn up:		

(k) Other circumstances relevant to the case, including relevant information on previous convictions or specific reasons for the imposition of the probation measure(s) or alternative sanction(s):	
<i>Optional information</i>	
The text of the judgement, and where applicable, the probation decision is attached to the certificate	
Signature of the authority issuing the certificate and/or of its representative to confirm the accuracy of the content of the certificate	
Name	
Position (title/grade)	
Date	
File reference (if any)	
Official stamp (where appropriate)	

Referred to in Article 17 of Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgements and probation decisions with a view to the supervision of probation measures and alternative sanctions

REPORT OF A BREACH OF A PROBATION MEASURE OR ALTERNATIVE SANCTION, OR OF
ANY OTHER FINDINGS

(a) Details of the identity of the person subject to supervision:	
Surname	
Forename(s)	
Maiden name, where applicable	
Aliases, where applicable	
Sex	
Nationality	
Identity number or social security number (if any)	
Date of birth	
Place of birth	
Address	
Language(s) understood (if known)	

(b) Details of the judgement, and where applicable, the probation decision concerning the suspended sentence, conditional sentence, alternative sanction or conditional release:	
Date judgement issued	
File reference (if any)	
Court which issued the judgement:	
Official name	
Address	
Where applicable, date probation decision issued on:	
File reference (if any)	
Where applicable, authority which issued the probation decision:	
Official name	
Address	
Date certificate issued	
Authority which issued the certificate	
File reference (if any)	

(c) Details of the authority responsible for supervising the probation measure(s) or alternative sanction(s)	
Official name of the authority	
Name of the person to be contacted	
Position (title/grade)	
Address	
Telephone	
Fax	
Email	

<p>Useful Information that will assist</p> <p>Include country code and area code to telephone and fax.</p>

(d) Probation measure(s) or alternative sanction(s):	
The person referred to in (a) is in breach of the following obligation(s) or instruction(s):	
An obligation for the sentenced person to inform a specific authority of any change of residence or working place	
An obligation not to enter certain localities, places or defined areas in the issuing or executing State	
An obligation containing limitations on leaving the territory of the executing State	
Instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity	
An obligation to report at specified times to a specific authority	
An obligation to avoid contact with specified persons	
An obligation to avoid contact with specified objects, which have been used or are likely to be used by sentenced person with a view to committing a criminal offence	
An obligation to compensate financially for the prejudice caused by the offence and/or an obligation to provide proof of compliance with such an obligation	
An obligation to carry out community service	
An obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons	
An obligation to undergo therapeutic treatment or treatment for addiction	
Other measures:	

(e) Description of the breach(es) (place, date and specified circumstances):

(f) Other findings (if any). Description of the findings:

(g) Details of the person to be contacted if additional information is to be obtained concerning the breach:

Surname	
Forename(s)	
Address	
Telephone	
Fax	
Email	
Signature of the authority issuing the form and/or its representative, to confirm that the contents of the form are correct	
Name	
Position (title/grade)	
Date	
Official stamp (where applicable)	

Useful Info that will assist

Please include country and area/city code for telephone and faxes.

Annex 4: Template for understanding persons social history and risk

Communication from:	<i>Insert Member State name here</i>
Communication being received by:	<i>Insert Member State name here</i>

Social History

(a) Information regarding the natural person in respect of whom the judgement, and where applicable, the probation decision has been issued:	
Surname	
Forename(s)	
Maiden Name, where applicable	
Aliases, where applicable	
Sex	
Nationality	
Identity number and social security number (if any)	
Date of Birth	
Place of Birth	
Last known addresses/residences (if any):	
In the issuing State	
In the executing State	
Elsewhere	
Language(s) understood (if known)	
Type and number of identity document(s) of the sentenced person	
Type and number of the residence permit of the sentenced person in the	

executing State	
Intended new address in executing state	
Probation or other service offender will be reporting to:	
Organisation name	
Contact name	
Address	
Telephone (country and area code)	
Fax (country and area code)	
Email	
Duration offender will be reporting to them	

(b) Information regarding offenders marital status and family/dependents:	
Offender marital status	
Number of dependents	
Dependent 1	
Name	
Age	
Relationship to offender	
Address of residence	
Dependent 2	
Name	
Age	
Relationship to offender	
Address of residence	
Dependent 3	
Name	

Age	
Relationship to offender	
Address of residence	
Dependent 4	
Name	
Age	
Relationship to offender	
Address of residence	
Dependent 5	
Name	
Age	
Relationship to offender	
Address of residence	

(c) Information of intended study, training or employment in executing state:	
Does the offender intend to undertake employment in executing state?	
Job title	
Salary	
Employer	
Address	
Telephone (country and area code)	
Fax (country and area code)	
Duration of employment	
Does the offender intend to undertake any training in the executing state?	
Type of training	
If the training is paid, please indicate the amount	
Address	
Telephone (country and area code)	
Fax (country and area code)	
Duration of training	
Does the offender intend to undertake any education in the executing state?	
Subject name	
Institution	
Address	

Telephone (country and area code)	
Fax (country and area code)	
Duration of study	

Risk Factors

(d) Information regarding the judgement and, where applicable, the probation decision in the issuing state:	
Judgement:	
Date issued	
Date judgement became final	
If different, date of the execution of the judgement	
File reference (if available)	
Probation Decision (if applicable):	
Date issued	
Date probation decision became final	
Date of the execution of the probation decision (if different to the final date)	
File reference (if available)	
1. Number of offences covered in the judgement:	
Summary of the facts and description of the circumstances in which the offence(s) was (were) committed, including the time and place, and the nature of the involvement of the sentenced person:	

Nature and legal classification of the offence(s) and applicable statutory provisions on the basis of which the judgement was issued:		
2. If the offence(s) referred to in point 1 constitute(s) one of the following offences, as defined by the law of the issuing State which are punishable in the issuing State by a custodial sentence or measure involving deprivation of liberty of a maximum of at least three years, please confirm by ticking the relevant box(es):		
	Participation in a criminal organisation	
	Terrorism	
	Trafficking in human beings	
	Sexual exploitation of children and child pornography	
	Illicit trafficking in narcotic drugs and psychotropic substances	
	Illicit trafficking in weapons, munitions and explosives	
	Corruption	
	Fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interest	
	Laundering of the proceeds of crime	
	Counterfeiting of currency, including of the euro	

	Computer-related crime	
	Environmental crime, including illicit trafficking in the endangered animal species and in endangered plant species and varieties	
	Facilitation of unauthorised entry and residence	
	Murder, grievous bodily injury	
	Illicit trade in human organs and tissue	
	Kidnapping, illegal restraint and hostage-taking	
	Racism and xenophobia	
	Organised and armed robbery	
	Illicit trafficking in cultural goods, including antiques and works of art	
	Swindling	
	Racketeering and extortion	
	Counterfeiting and piracy of products	
	Forgery of administrative documents and trafficking therein	
	Forgery of means of payment	
	Illicit trafficking in hormonal substances and other growth promoters	
	Illicit trafficking in nuclear or radioactive materials	
	Trafficking in stolen vehicles	
	Rape	
	Arson	
	Crimes within the jurisdiction of the International Criminal Court	
	Unlawful seizure of aircraft/ships	
	Sabotage	
<p>3. To the extent that the offence(s) identified in point 1 is (are) not covered by point 2 or if the judgement and, where applicable, the probation decision, as well as the certificate are forwarded to a Member state, which has declared that it will verify the double criminality (article 10(4) of the Framework Decision), please give a full description of the offence(s) concerned:</p>		

(e) Other circumstances relevant to the individual named in section (a), including relevant information on previous convictions or specific reasons for the imposition of the probation measure(s) or alternative sanction(s):
Information on previous convictions (please include as much information as possible including date, type of offence, location, date of conviction, punishment/sanction issued – wording?)

(f) Violent and Sexual Offences

Are you aware of any violent or sexual offences committed by the offender? If yes, please give as much information as possible (please include type of offence, location, date of conviction, punishment/sanction issued)

Is the offender registered on any sexual offender registers?

Yes

No

If yes, please give further information (please include the related offence, the name of the register and country of register)

(g) Mental health of the offender:				
Does the offender suffer from any mental health disorder?	Yes		No	
If yes, please give details of the mental health disorder(s) (please include date of diagnosis, symptoms of the disorder, medication taken, involvement with professional services and any other necessary information)				

(h) Substance misuse history of the offender:				
Does the offender suffer from any substance misuse issue?	Yes		No	
If yes, please give details of the substance misuse issue(s) (please include start date, details of the substance(s) misused, involvement with professional services, medication taken and any other necessary information)				

(i) Any other relevant information:

