

MINUTES

CEP Expert Meeting

Enhancing the Implementation of Framework Decisions 2008/JHA/947 & 2009/JHA/829

Date: 15th – 16th September 2016

Brussels, Belgium

Present:

- Annie Devos, Houses of Justice, Belgium
- Anton van Kalmthout, University of Tilburg, Netherlands
- Brian Heath, Probation and After Care Service, Jersey
- Camilla Fylkehed, Prison and Probation Service, Sweden
- Claude Kettel, Service Central d'Assistance Sociale, Luxembourg
- Constantin Daniel Motoi, Judge - Sector 4 Court, Romania
- Daniel Wolter, DBH, Germany
- Daniela Yordanova, General Directorate Execution of Sentences, Bulgaria
- Francisco Navalho, Directorate General of Rehabilitation and Prison Service, Portugal
- Gerry McNally, The Probation Service, Ireland
- Gisella Conrad, Probation Service, Netherlands
- Jaume Martin Barberan, Generalitat de Catalunya, Catalonia
- Jean-Jacques Wondo Omanyundu, Houses of Justice, Belgium
- Jesca Beder, European Commission, Belgium EU
- Leontien Kuijer, Probation Service, Netherlands
- Lisa Gezelius, Prison and Probation Service, Sweden
- Maarja Mägi, Ministry of Justice, Estonia
- Maria Anagnostaki, University of Athens, Greece
- Marina Beun, Prosecutor - International Legal Assistance Centre, Netherlands
- Miriam Sevasta, Department of Probation and Parole, Malta
- Miriam Zillner, Neustart, Austria
- Radka Vošahlíková, Probation and Mediation Service, Czech Republic
- Ralph Bunche, Fair Trials, Belgium
- Rita Andrenacci, Ministry of Justice, Italy
- Roisin Muldoon, Probation Board for Northern Ireland, Northern Ireland
- Samuel Bursky, Ministry of Justice, Slovakia
- Sandra Scicluna, University of Malta, Malta
- Simona Franguloiu, National Institute of Magistracy, Romania
- Simonas Nikartas, Ministry of Justice, Lithuania
- Teimuraz Magradze, National Probation Agency, Georgia
- Vesna Pavlič Pivk, Ministry of Justice, Slovenia
- Viktors Makučevics, Ministry of Justice, Latvia
- Vitalie Renita, Central Probation Office, Moldova
- Willem van der Brugge, Secretary General of CEP, Netherlands
- Mirjam van der Kooij, Operations and policy support officer of CEP, Netherlands
- Anna Esquerrà, Policy and liaison officer of CEP, Catalonia (notes)

Apologies:

Tuuli Eerolainen, legal advisor at Office of Prosecutor General, Finland Katja Dogović, lawyer at Criminal Sanctions Agency, Finland, Tony Grapes, Case management and supervision expert, United Kingdom.

Welcome

Annie Devos welcomed all the participants to the Expert Meeting and said that it was a pleasure to host the meeting at "Houses of Justice". She mentioned that the "Houses of Justice" hosted the meeting for the first time last year and gave continuity by hosting it again this year. She also said that it is not easy to make FDs work therefore it is important that one of the objectives of the meeting was to help jurisdictions implement these Framework Decisions and to make them work.

Purpose/aims of the meeting

Gerry McNally went through the agenda of the Expert Meeting and its purpose. As a follow-up to the expert meeting in August 2015, the Confederation of European Probation (CEP) invited Experts on Framework Decisions, Members of the European Commission, European policy makers, representatives of EU Member States and other interested parties to discuss the state of play regarding FD 2008/JHA/947 and FD 2009/JHA/829 in order to support and promote the implementation of the Framework Decisions throughout Europe and make recommendations/actions on how to enhance their implementation: "*what works, what doesn't work and what needs to be done*".

It was stated that after the expert meeting CEP would produce this report ~~plus~~, organise a network of contacts throughout Europe and would provide a list of recommendations and actions to develop in the upcoming years (2017-2018). During the meeting CEP would give feedback on the questionnaires results that were sent to expert representatives of EU previously.

Programme for the meeting

The programme of the expert meeting consisted of two days. On day 1 experts ~~will~~ discussed the implementation of the FD and, ~~by~~ using the world café methodology, exchanged ideas on what works, what doesn't work, suggestions for improvement, the exchange of information and evaluation of FDs.

On day 2 participants heard a presentation about the Handbook for FD 947 that the European Commission – DG Justice, together with Prof. Anthon van Kalmthout, are preparing. They also heard a presentation about the results of a research on the practice of pre-trial detention. In addition there was a discussion on how to create a network of professionals to exchange ideas and practices on the FDs.

The overall agenda aimed to collect ideas to draft a future action plan/next steps to ensure the FDs implementation as well as to promote the recording of data and evaluation.

Day 1 - 15th September 2016

Short introduction of delegates

All delegates introduced themselves in order to know who was at the meeting and to start promoting a network between participants around Europe. At the meeting 35 participants from 33 different delegations were present, with different roles within the justice system in each jurisdiction, e.g. judges, managers of probation services, practitioners and policy makers as well as European Commission professionals.

It was highlighted that the deadline for implementation of FD 829, FD 947 and FD 909 had now passed. Meetings had been organised to promote action on implementation in practice. The European Commission with CEP and Europris has prioritised the practical application of the three FDs.

Update from the last meeting and brief report on the results of the questionnaires on Framework Decision 829 and 947

Gerry McNally mentioned that the first meeting on the implementation of FD 947 was held in Dublin in 2009 and another followed in Belgium in 2011¹. Over the time since CEP recognised the need to develop a body of knowledge and a body of expertise regarding FD 829 and 947.

Gerry McNally updated participants on the results of last year's expert meeting (2015)²:

- At that meeting it was agreed that EuroPris would take the lead on the FD 909 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.
- CEP would take the lead in advancing on the implantation of Framework Decision 947 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions and FD 829 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention.
- At that meeting it was also stated that in order to implement FDs mutual understanding and trust was needed across EU jurisdictions.
- The challenges regarding how to make people aware of FDs and to use them in a within the criminal justice and probation systems and as well as providing information for offenders was also discussed.

¹ Projects, conferences, expert meetings and news articles on FDs can be consulted at the CEP website: <http://cep-probation.org/knowledgebase/eu-framework-decision-on-probation/>

² The minutes of the 2015 FDs Expert Meeting can be consulted on the CEP website through the following link: <http://cep-probation.org/knowledgebase/cep-expert-meetings/>

- When transferring sanctions plus all the information related to it data protection would have to be considered according to the EU regulations. The importance of the European Data Protection Regulation and Directive adopted this year for application and transposition into national law in 2018 were highlighted.

Gerry McNally went over the development of CEP actions agreed at the last years' expert meeting. The actions agreed at that meeting had a two year time-frame to be implemented (2016-2017).

Status of CEP actions agreed at last years' meeting:

- Regarding the action "making a webpage with an overview of tools and actions that support the FDs":
 - CEP worked on the ISTEP project in order to implement and support the transfer of European probation sentences. A webpage for this project was developed and offering basic information on practical issues country by country: detailed description of suspended sentences, alternative sanctions and conditional sentences that exist within each EU legal jurisdiction.
<http://www.probation-transfers.eu/>
 - CEP is developing a System map tool that gives information on transfer of sanctions. The System map tool originated in the DOMICE project which aimed to improve mutual knowledge and exchange best practices in integrated Case Management in all European Prison and Probation administrations.
http://www.domice.org/default.asp?page_id=1
 - A special area for Framework Decisions was created on the CEP website. The aim of this specific area is to support the FDs, to facilitate access to information and to promote their implementation. Since the area was put online in November 2005 it has had 248 visits.
- Regarding the action "create a network for FDs 947/829 practitioners and/or competent authorities"
 - One of the aims of 2016 expert meeting is to create a European contacts network thus this was one of the actions continuing from 2015.
- About "make updates of the tools, and promote these"
 - During last year's meeting it was agreed that practical tools were needed to make FDs user friendly for professionals. Prof. Anthon van Kalmthout is developing a draft Handbook for FD 947 based on questions and answers to helps professionals within the sector. On the second day of this expert meeting an introduction to this work in progress was given by Prof. Anthon van Kalmthout. Participants gave feedback and suggestions on the main questions that should be addressed.
- A plan to evaluate FDs 8297947 practices was identified as important

- At 2016 expert meeting this issue was discussed as well as the data recording on FDs applications and decisions.

Gerry McNally went through the results of the questionnaire sent to each delegation before the expert meeting. He gave a general overview of the analysis of questionnaires' question by question.

Regarding question 1 on "the implementation of FD 947 and 829" all countries answered that they have implemented FD except countries that are not Member States (Moldova and Georgia).

Regarding question 2 most of the countries mentioned that they have specific administrative, judicial or other structures or arrangements in place to manage transfers under FD 947 and 829.

Regarding question 3 most of the countries stated that there was a multiple point of contact for information except Austria, Finland, Luxemburg and Northern Ireland who stated that they have a single point of contact for information, enquires and application. The result was the same regarding FD 829 except for Finland who did not answer.

To the question 4 "Have you commenced and/or completed transfers under FD 947" most countries said no except Latvia, Luxemburg and Romania. (No data available regarding Austria). For FD 829 most countries said no except Romania. (No data available for Austria).

To the question 5 on "Are there particular jurisdictions with which you have or anticipate more frequent and in depth contact?" regarding FD 947 the following countries said yes: Austria, Catalonia, Finland, Northern Ireland and Romania said. Others there was no data available and/or didn't specify it. Regarding FD 829 Austria, Catalonia and Romania said yes, the rest of the countries did not specify.

With reference to question 6 on "identifying best practices and obstacles" for FD 947 most countries weren't able to identify best practices yet and for FD 829 there was even less information available.

To question 7 on "proposals to help on the best implementation" for FD 947 and 829 there were various answers and suggestions: Provide judges with more information, organise workshops, seminars and conferences to exchange ideas, practice guidance and methodological advice, compare what measures are existing and not existing in the different EU countries and raise awareness and develop campaigns/information for judges and practitioners.

To the question 8 on "particular topics or themes for the meeting" the following answers were received: to talk about experiences in different countries on transferring sanctions, length of the procedure, information to victims, examples of successful request regarding FD 947 and 829, how conditional sentenced are monitored, what are the benefits of implementing the FD 947 and 829, etc.

With reference to question 9 on "other comments or suggestions" Northern Ireland stated that depending on the outcome of the referendum in United Kingdom on 23 June 2016, PBNI would support UK in using Framework Decision 947 and 829.

World café session

A world café session was organised with the aim of exchanging experiences and discussing ideas. There were five groups and each group discussed general topics with specific questions. After discussions the results, suggestions and main ideas were put together and shared with all the participants.

Under the topic “**what works**” two questions were asked:

- What works well in transferring supervision?
- Examples of good practices that can be shared.

Participants agreed that helpful strategies regarding working with FDs included: having a single point of contact when transferring a sentence, building expertise among professionals in each jurisdiction, and knowing what is going on and be aware of good practices of other jurisdictions.

The language issue was also mentioned as participants felt important that people involved in the FD are fluent in a common language (English or Russian). This was identified as a difficult issue as not all professionals (judges, lawyers, prosecutors, probation officers, etc.) have a basic knowledge of these languages.

No good practices were identified by the practitioners as they agreed that they were at the beginning of the FDs implementation.

Under the topic “**what does not work**” two questions were asked:

- What does not work in transferring supervision?
- Suggestions for improvement.

Participants identified several issues that don't work in transferring supervision: the co-operation within each country is not always easy; difficulties were identified in cooperation and communication between the execution administration, prosecutors and judges. Not everybody knows where to find the basic information to proceed with a transfer. Lack of trust was also identified and the low quality and delay in translation of documents. Participants agreed that in order to start a transfer too much bureaucracy was involved which makes the process too long. This bureaucracy doesn't facilitate the practical work needed to enable a transfer to be made promptly.

A suggestion for improvement was to have a database where transfers around Europe can be recorded and relevant good practice and information shared.

Under the topic “**Promoting FD 829 and 947**” two questions were asked:

- How best can we promote the use of FD 829 and 947? To whom (target group) and how?
- What specific actions should be done?

In order to promote FDs, participants agreed that transfer processes should start earlier. Professionals involved should promote awareness at the very beginning, when they have first contact with offender (after analysing the case).

It was mentioned and agreed that a training course should be developed to help professionals be more aware of FDs so they can start using them in a more practical manner (e.g. an eLearning training course).

To facilitate the exchange of information an "FD justice website" should be promoted. It should be kept up to date and be accessible for all Members States.

It was also mentioned that creating a central team expert or point-of-contact in each jurisdiction on FDs would be a good idea. That would enable each jurisdiction to have a singular contact point that would assist the issuing state as well as for the executing state.

Under the topic "**Transfer of information**" two questions were asked:

- What information should be transferred regarding the offender to make the decision on the application? In what format and in what language?
- What information is needed for the social rehabilitation of the offender? In what format and in what language?

Regarding the information that needs be sent for a decision to be taken regarding an application, participants agreed that the certificate is more than enough for formal requirements. In order to promote the offenders' rehabilitation other information is required and necessary for the executing partner (e.g. offender risk and needs assessment, etc.)

Regarding the transfer of information between jurisdictions it was agreed that-professional guidelines were needed (e.g. when talking about mental health issues) and that offenders information should be protected according to EU regulations). The language issue was also mentioned at this point as it represents an extra cost for the issuing state as well as for the executing state.

Under the topic "**Evaluation of transfers**" two questions were asked:

- How are offenders, transferred to another jurisdiction, recorded? Is there feedback to the issuing state?
- How can the whole FD transfer process be evaluated? What should be the measures? Suggestions.

All participants were in favour of evaluating transfers but there were a lot of different opinions on how to evaluate them. Specific suggestions mentioned included creating a centralised data collection point in each jurisdiction accessible for all Member States. To start evaluating transfers it is important to record the number of transfers and the countries involved. It was suggested that CEP seek to include a question regarding the number of transfers on SPACE I and II questionnaires. Data would help Member States identify the transfers and also practices that have and haven't succeeded.

Day 2 - 16th September 2016

Presentation on the Framework Decision 947 Handbook structure

The European Commission with the support of Prof. Anthon van Kalmthout are preparing a Handbook on the FD 947. The aim of the Handbook is to make FD 947 more accessible for those who are working with it on a practical level.

Prof. Anthon van Kalmthout mentioned that not all the information that is needed regarding FDs, is in the FD documents. Sometimes different sources should be checked to find the right information. He said that the Handbook will seek to address all questions that could be raised regarding FD 947 and would try to combine all information from different sources into one single document. The current draft Handbook has 39 questions and answers but more are needed.

The participants in groups were asked to have a one hour discussion on the Handbook questions sharing 13 questions to each group, reflect on what real issues/questions were not addressed and to make suggestions regarding extra questions that should be included in the Handbook.

Suggested additional questions from participants at the expert meeting:

- 1) What is the aim of FD 947? Recovery, rehabilitation, support the offender?
- 2) How soon can an application be made? What can be done in advance?
- 3) How can an Issuing State complain when the Executing State does not respond? Where? How? To whom?
- 4) Is there a central EC organisation where we can complain? Is there a complaint procedure? Who can complain and to whom? To what authority?
- 5) What happens in case of an appeal? How does this affect the application?
- 6) Can a person be transferred to a state where their family are not legally resident?
- 7) Can a person be transferred to a State where their family is not living?
- 8) Can a person be returned to the Issuing State having finishing their sentence?
- 9) Can a person revoke his/her consent?
- 10) Is there consent at different stages?
- 11) Is it necessary to have a written order of Court before commencing the transfer?
- 12) Can the information sent to the Executing State be used for other purposes?
- 13) What kind of costs does the Issuing State have to fund?
- 14) Which authority has to pay the costs in each State (issuing/executing)?
- 15) Who will cover the offenders' costs if he/she doesn't have any money to travel?
- 16) What documentation is necessary and legally required for the Executing State?
- 17) Which State, issuing or executing, is responsible if a visa of any kind is required?
- 18) Is there a need to inform the victim that the offender is moved from one State to another?
- 19) What happens if the Executing State's answer is late? (i.e.: that the period of the order in the Issuing State has already passed)
- 20) Do victims have information rights?
- 21) What are the translation requirements?
- 22) Can measures be adapted if national sanctions are different or not existent?

- 23) Can the Issuing State ask for a report from the Executing State after the case has been transferred and the supervision period completed?
- 24) Can the Issuing State take back a transferred sentence? And if so, when?
- 25) Does FD interfere with, obstruct or replace previous bilateral arrangements between States that have been established in the past?
- 26) How and where do we find the competent authorities in each jurisdiction to make an application, authorise a transfer or seek information?

As well as these questions which were suggested for the Handbook, some other proposals were made:

- It would be useful to have a flowchart process map (translated into all European languages) where all transfer processes are identified and outlined step-by-step.
- If the Handbook is for users, offenders and practitioners it should be easy to read, perhaps a "user friendly" version as well as an information leaflet and other promotional/information materials could be produced. A website format could be an option to be considered, as it can be updated on a regular basis.

The finalised Handbook will be a European Commission document which will be circulated to all Departments and translated into the Member State official languages. The Handbook is hoped to be ready during 2017.

Presentation: A Measure of last Resort? The practice of pre-trial detention decision making in the EU

Ralph Bunche, Fair Trials, Belgium

Fair Trials³ is a human rights organisation that works to improve respect for the fundamental human right to a fair trial. Fair Trials helps people to understand and defend their rights, fights the underlying causes of unfair trials as well as building an international network of fair trial defenders.

Ralph Bunche presented some of the findings of research they did together with 10 partners, NGOs and academics from UK, Ireland, Lithuania, Greece, Spain and Italy and others in their home jurisdictions. It included the Netherlands who are among some of the countries with a high pre-trial detention (PTD) rates.

A Measure of last Resort? The practice of pre-trial detention decision making in the EU is the report of that Europe-wide study which aimed to capture both good practices and problematic practices to identify what is working and what isn't, and to try to explain the wide variation in rates of PTD that they saw across the European Union.

³ Fair Trials web: <https://www.fairtrials.org/>

Small group sessions: creating the network

At this session participants were asked to discuss in small groups, on several questions, in order to recollect their ideas on how best CEP and participants could develop a network. Questions discussed and suggestions made were:

- *What do we need to create a network? What is important to create a network? What is best to create a network?*

Professionals responsible for transfers under FDs, as well as a body that to coordinate meetings and exchanges are needed to create a network. It was also stated that it was necessary for professionals to be interested to share knowledge and to share knowledge and practices that work around Europe.

- *Should we create a large network or local network? Should it be based on transfers or geography?*

It would be useful for professionals involved in FDs to create a large network that included all European Countries as well as divide it into smaller groups of countries involved in mutual transfers.

- *Who should be in the network?*

All stakeholders should be involved in the network (prosecutors, probation officers, judges, etc.). A central contact from each MS should be involved as well as the probation agency that is responsible of executing the transferred sanction.

- *Website, written documents or others?*

Regular and practical meetings would be useful, as well as email exchanges to create an up to date internet platform (website) in order to exchange ideas.

- *How would it work?*

It would be based on regular practical meetings and other exchanges via internet (email, website or other internet platform).

Other suggestions for creating a network were:

Travel should be provided for some meetings around Europe.

It was mentioned that this meeting had already been a network and was a starting point for future contacts, thus it was agreed that contact details (emails) of participants would be shared amongst those who participated.

At the end of the meeting, based on the meeting discussion a number of actions led by CEP were agreed. These actions will be developed under the period 2017-2018.

Suggested actions for CEP for 2017 and 2018

- Work with other network organisations that involve judges, prosecutors and professionals to bring together professionals in their FD networks and develop e-learning programmes.
- Updates of the current FD related websites and System Map tool, add contact points for each jurisdiction and promote these.
- Work with the European Commission and others to develop a model for the evaluation of FD 947 and FD829 in practice.
- Develop a network with the aim of enabling transfers and discussing FD 947 and FD829 practice.
- Convene a follow up meeting to this expert meeting