



Ministerie van Justitie

**Impact Analysis of the Mutual Recognition and
Transfer of EU Criminal Judgements
(WEOS in Dutch)**

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Colophon

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Foreword

Two agreements have been concluded in the European Union concerning the transfer of custodial sentences and probation measures. The transfer of custodial sentences is important from the point of view of rehabilitation in society, as such rehabilitation is difficult in a foreign country. Consequently, the transfer of sentences will lead to a reduction in reoffending levels.

This report contains the results of the impact analysis carried out in preparation for the implementation of the two European framework decisions. I decided to carry out an impact analysis early on in the implementation process so that all the parties involved would have a clear idea of what still needs to be done to have properly functioning legislation in place by the end of 2011. This clear picture will then enable a realistic schedule to be drawn up for the further implementation.

Much important information has been gathered in the course of this impact analysis, thanks to a focus on the nature and size of the target groups, the working processes and responsibilities that will be needed in the criminal justice chain and the impact for the chain organisations involved. In addition, an interactive approach - whereby all the relevant organisations were represented in the expert sessions - generated a shared vision of the course to be followed. The Legislation Department was also involved in this process and the content of the legislative bill will therefore reflect this shared vision.

I would like to thank the participants in the expert sessions and the working conference, and all those who contributed in other ways, for their readiness to join us in thinking about issues at a stage when there was not even the assurance of a legislative bill.

This document is an interim product. It outlines how the framework decisions can be put into practice in working processes. It also discusses the key choices to be made when setting up an effective working structure. Its aim is to provide guidance for the subsequent implementation. That is where the challenge will be over the next few years: in setting up a properly functioning structure for collaboration so that organisations in the criminal justice chain can implement the transfer of custodial sentences and probation measures within the EU in an effective manner. This impact analysis is a good start to achieving that.

Leo Tigges
WEOS Project Manager

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1 Introduction

This chapter gives the reason for this project and its objectives. In addition, the approach taken for this impact analysis is discussed briefly. This is followed by a list of all the organisations involved and a short description of the role they will have in the framework decisions. The chapter ends with a guide to reading the report.

1.1 Background to the WEOS project and project objectives

The EU has reached agreement on two European framework decisions. One concerns the transfer of custodial sentences between member states within the European Union (Framework Decision 909) and the other concerns the transfer of alternative sanctions and the supervision of probation measures (Framework Decision 947) within the European Union. Both framework decisions are based on the principle that there should always be mutual recognition of criminal judgements and the possibility of transferring criminal judgements enforced by EU countries. The framework decisions replace the WOTS treaties [WOTS stands for *Wet overdracht tenuitvoerlegging strafvonnissen*, or Enforcement of Criminal Judgements (Transfer) Act] within Europe and will come into effect in 2011. A project-based approach has been chosen for the implementation of the framework decisions within the Netherlands because of the huge impact that the framework decisions will have on the various organisations in the criminal justice chain. The project has been given the name WEOS, which stands for *Wederzijdse Erkenning en Overdracht EU-Strafvonnissen* [Mutual Recognition and Transfer of EU Criminal Judgements].

The project started with an impact analysis in order to get a picture of the consequences of the new legislation. This report is the result of that analysis. More specifically, this impact analysis provides insight into the following aspects:

- the working processes that the criminal justice chain partners will need to develop
- the number of sentences (both incoming and outgoing) that will fall within the scope of the new legislation
- the impact that the two framework decisions will have on the criminal justice chain organisations involved

1.2 Approach

First, the formal requirements for the process were studied as specified in the text of the framework decisions. That information, together with individual interviews with organisations involved in the current WOTS, was used to create an initial overview of the process steps and associated activities necessary to deal with sentences covered by the framework decisions.

The first version of the process model was then presented to individuals representing the organisations involved. Table 1 lists the organisations involved in the process. These group sessions were used to evaluate the project team's ideas, and the participating organisations were also given the opportunity to provide input. Three such sessions were held in all, with the process models and the allocation of responsibilities becoming clearer with each session. In the intervening periods, interviews were also held with the individual organisations; these interviews were used to examine the consequences of the framework decisions for these organisations in greater depth. This served as the basis for the overview in this report of the key changes per organisation. The organisations involved were given the opportunity to add to these descriptions of the impact.

There was a final verification session at the end, held during an interactive working conference. This working conference was used on the one hand to check the latest version of the process models and make improvements where possible. On the other hand, the working conference gave the opportunity to consider the content and timing of the subsequent implementation process. The directors of the Dutch Prison Service (Peter van de Sande) and the Dutch Probation Service (Sjef van Gennip) and a procurator general of the Public Prosecution Service (Han Moral) attended the working conference, as did the director of the Ministry of Justice's Sanctions and Prevention Policy Department (Michel Groothuizen), who also commissioned this impact analysis. Please refer to Appendix 3 (available on request, in Dutch only) for a summary of the results of the working conference.

Historical data from the following systems was used to investigate the size of the target group: PRISON (Ministry of Foreign Affairs), OM DATA (Public Prosecution Service), LURIS (Public Prosecution Service) and TULP (Custodial Institutions Agency). Meetings were also held to ensure that the data was being interpreted and used in the right way. Furthermore, the characteristics of the target group for Framework Decision 947 were explored qualitatively in a session with a number of judges, a public prosecutor and members of the Probation Service. Please refer to Appendix 2 (available on request, in Dutch only) for a detailed account of the research methodology.

Organisation	FD	Involvement	Individuals involved
Legislation Department	947 909	Is drawing up the legislative proposal for the Dutch Act	<ul style="list-style-type: none"> • Jacob Struyker Boudier
International Legal Assistance Division for Criminal Cases (AIRS in Dutch)	----	AIRS will no longer have any tasks so will not be involved in the future. Is involved in the transfer of those tasks.	<ul style="list-style-type: none"> • Olga Yildiz • Robbert de Groot • Thieu Coffeng
The three probation organisations (known collectively as 3RO)	947	A foreign desk to be set up by 3RO will collect information and coordinate information flows for Framework Decision 947.	<ul style="list-style-type: none"> • John Kwaks • Raymond Swennenhuis • Rolf Streng • Willem van der Brugge • Wim Veldhof
Central Fine Collection Agency	947 909	Will route alternative sanctions and identify sentences for transfer under Framework Decision 909.	<ul style="list-style-type: none"> • Marieke Meinderts • Rob van der Swaan
Public Prosecution Service	947 909	Will be the competent authority for Framework Decision 947. Will coordinate the process of the actual transfer of prisoners and will carry out the judicial evaluation of incoming certificates under Framework Decision 909.	<ul style="list-style-type: none"> • Carla Aarsen • Derek Lugtenberg • Ewout Klont • Hanneke Festen • Irene Gonzales • Lisette Vos • Wim Schmetz
Custodial Institutions Agency	909	Will be the competent authority for Framework Decision 909. The Transport and Support Department will transport prisoners between the border and the penal institution.	<ul style="list-style-type: none"> • Andre Moonen • Jelte Penninga (Transport and Support Department) • Ria Westerhof • Ton Daans • Yvonne Schmit • Paul Linckens (TULP) • Nol van Gemmert (TULP)
Judiciary	909	Will give advice on the classification of an offence.	<ul style="list-style-type: none"> • Hans Lensing • Marc de Werd • Marlies Bouman • Sander Ruys
JustID (judicial information service)	909 947	Manages JDS (criminal records system) and LURIS (national uniform registration system for international requests for mutual assistance).	<ul style="list-style-type: none"> • Annet Markfoort
Immigration and Naturalisation Service	909	Will be consulted when custodial sentences are transferred because of the possibility that an individual has been declared an undesirable alien.	<ul style="list-style-type: none"> • Maykel Bouma
Ministry of Foreign Affairs	909	Consular affairs. They have information about Dutch citizens in foreign prisons and give them consular assistance.	<ul style="list-style-type: none"> • Pauline Woolthuis • Wiebe de Boer • Leo Koene (PRISON)
Royal Netherlands Military Constabulary	909	Escorts prisoners during flights, at Schiphol and during the transfer at the border.	<ul style="list-style-type: none"> • Coen Nieuwenhuyzen • Theo Wielens
Other parts of the core department	909	Makes estimates for detention capacity.	<ul style="list-style-type: none"> • Rob de Smidt

Table 1: organisations and individuals involved in initial impact analysis

There was close contact throughout the process with the Legislation Department at the Ministry of Justice, which is working on a legislative proposal for the framework decisions. The working hypotheses

developed by the Legislation Department also invariably formed the point of departure when considering the implementation of the framework decisions. The legislative proposal had still not been finalised when this report was written, but the main choices it makes were already known. They were the basis for the process models developed in this impact analysis.

The processes and allocation of responsibilities presented here are not yet definite. Various modifications may still be necessary depending on the legislative procedure. However, there is agreement on the main features of the line taken here, and the results presented here have broad support among the criminal justice chain organisations. The following step is to set up a criminal justice chain project plan and arrange the working processes for each organisation in the chain.

1.3 Guide to reading the report

This report should be read as an interim product in the process of implementing the European framework decisions. This means that the precise form of the processes described here could still change. The setup for the processes will be finalised in subsequent steps. Regarding the estimates of the nature and size of the target groups, it should be noted that the estimates of the target group for Framework Decision 947 in particular are likely to be subject to fine-tuning as better data becomes available.

The findings and conclusions in main report are always presented in general terms. The appendices (which are in Dutch only and are available on request) provide more detail on these subjects. The following chapter discusses the WOTS, the framework decisions and the differences between these agreements. In Chapter 3 the criminal justice chain processes necessary to comply with the requirements of the framework decisions are outlined, and a description is given of the organisations responsible for each part of the process. This focuses on the main process steps; the activities per process step are detailed in Appendix 1. Chapter 4 considers the characteristics and size of the target groups of both framework decisions in more detail. In-depth information supplementing this chapter is provided in Appendix 2 in the form of more background data about the target groups and an explanation of the approach used to calculate the size of the target groups. The impact on each of the organisations involved is outlined in broad terms in Chapter 5. This will serve as the basis for the further development of implementation plans for the chain organisations. Finally, Chapter 6 looks into the future. The main issue here is what needs to be done during the rest of the implementation process.

2 Content of the framework decisions in relation to the WOTS

The framework decision for the transfer of custodial sentences (and to a lesser extent, the framework decision for alternative sanctions) replaces existing treaties governing transfers. This chapter first describes current practice and then presents the key elements of the framework decisions. Finally, the main changes when the framework decisions come into effect are outlined.

2.1 Current practice: the WOTS procedure

The Enforcement of Criminal Judgements (Transfer) Act (WOTS in Dutch) arranges for bilateral treaties between the Netherlands and other countries. It is possible under WOTS for sentences to be taken over in their entirety (continued enforcement) or for them to be changed to accord with Dutch criteria (exequatur procedure). Bilateral agreements specify which of these two alternatives is to be applied. The individual who has been sentenced has to take the initiative for a WOTS request, but all parties (including the two countries) have to agree to the transfer.

A WOTS request is received by the International Legal Assistance Division for Criminal Cases (AIRS in Dutch) at the Ministry of Foreign Affairs. This division makes an initial assessment of the case and if AIRS judges the transfer to be feasible, it sends the case file to either the court in Arnhem or an International Legal Assistance Centre (IRC in Dutch) in the region where the individual involved is resident. The court in Arnhem will deal with the case if it is a continued enforcement case, while the IRC will deal with it if it concerns an exequatur procedure.

The IRC or the court in Arnhem will make a recommendation regarding the case to the AIRS. If the recommendation is in favour (and the issuing state agrees), the transfer can take place. The prisoner is picked up by the Royal Netherlands Military Constabulary and brought back to the Netherlands. If it is a continued enforcement case, the rest of the sentence is spent in a Dutch penal institution. In an exequatur procedure, there is first a court hearing in the district where the individual involved lives. The new sentence is served in a Dutch penal institution.

The entire procedure up to and including the transfer can take a long time (thirteen months on average for an incoming request). About 500 requests come in each year, and 50 requests are issued abroad. Within Europe, the continued enforcement procedure is increasingly used rather than the exequatur procedure. Interviews with the AIRS suggest that this is because of the similarity of sentences within Europe.

Transfer of alternative and suspended sanctions

A practice of transferring sanctions has not really developed for alternative and suspended sanctions. Community punishment orders are transferred in some border areas but there are only a few such cases every year. The transfers are arranged by some local judicial authorities on an *ad hoc* basis with the assistance of the Dutch Probation Service's Foreign Desk.

2.2 The framework decisions

The framework decisions will replace the WOTS treaties within the European Union. The main objective of the framework decisions is to further rehabilitation. After all, that can be achieved more effectively in the country of origin than in a foreign country. In addition, the ability to transfer alternative sanctions may discourage 'detention discrimination' of foreigners (the situation whereby foreigners are more likely to be given a custodial sentence than an alternative sanction). Another, more implicit, objective for some countries is a reduction in the high costs associated with imprisoning foreigners. On the one hand there are the costs associated with an occupied cell, on the other hand foreigners are an additional burden on the prison service because of the extra facilities they require, such as language facilities.

The framework decisions ensure that custodial sentences served by EU states are mutually recognised as if they were served by the state in question. In addition, states are obliged to take over the enforcement of

custodial sentences if the individual concerned is both a national of the executing state and resident in that state. The only condition for alternative sanctions and the supervision of probation measures is that the individual concerned should be resident in the executing state. The framework decisions contain a list of the sanctions eligible for transfer. They are shown below.

The following types of sentence are eligible for transfer:

- non-suspended custodial sentences and custodial measures, including detention under a hospital order
- suspended custodial sentences with special conditions
- supervision of special conditions applying to release on parole
- community punishment orders
- conditional suspension of sentencing

The following conditions can be transferred:

- requirement to report a change of residence or work location
- obligation not to enter certain localities
- restrictions on travelling
- instructions concerning behaviour, the place of residence, education and training, or leisure activities, or containing limitations or conditions regarding professional activity
- obligation to report to the authorities
- obligation not to contact certain persons
- obligation to avoid contact with certain objects
- financial compensation
- carrying out community service
- cooperating with the Probation Service
- undergoing therapy or treatment for addiction

A limited number of grounds for refusal have been specified for the two framework decisions. If they do not apply, the member state has an obligation to take over the sanction in its original form. The sanction can only be modified if it is incompatible with the executing state's national legislation. For custodial sentences, this means that the length of the sentence can be reduced to the maximum sentence applying in the executing state for the offence committed, for instance. For alternative sanctions and probation measures, this means the number of hours community service can be reduced to the maximum allowed in the executing state, for instance.

There are time limits set in the framework decisions for the procedure of accepting a foreign sentence and transferring the prisoner, if necessary. The time limits for custodial sentences are 90 days for accepting the sentence, followed by 30 days for carrying out the transfer of the prisoner. There is a limit of 60 days for accepting the sentence in the case of alternative sanctions and the supervision of probation measures. No physical transfer is necessary as the individual involved is not in detention.

A competent authority has to be designated for each of the two framework decisions. This authority deals with the sentences and maintains contacts with other competent authorities in the EU.

Table 2 gives a schematic overview of the key differences between the WOTS and the framework decision on custodial sentences.

WOTS	Framework decision on custodial sentences
The transfer of a convicted person is based on a request, which is generally made by the convicted person or the convicting member state.	There is no request. The convicting member state sends a certificate and the sentence to the executing member state.
The consent of the executing state is required. There is no obligation to give that consent.	The executing member state is obliged to recognise the sentence if it meets the conditions of the framework decision. The grounds for refusal are limited.
Permission from the convicted person is required.	In many cases, permission from the convicted person is not required.
Double criminality (a punishable offence in both the convicting state and the executing state) is a requirement.	There are limits to the requirement of double criminality but the state can opt to keep this requirement.
There are two procedures for executing the sentence: 1. the exequatur procedure, 2. the continued enforcement procedure.	The sentence is always executed according to the continued enforcement procedure.
The execution of the sentence, including parole, is carried out entirely in accordance with the law of the executing state.	The execution of the sentence is carried out in accordance with the law of the executing state but the parole date is modified where necessary to ensure that the net detention period is never longer than it would have been in the issuing state.
No time limits for dealing with a transfer request or for the transfer itself.	Time limits for recognition (90 days) and transfer (30 days).

Table 2: differences between WOTS and framework decisions¹

2.3 Transition from WOTS to framework decisions

The framework decisions will not be implemented by all the countries in the same period. As a result, there will be a period during which the Netherlands will be dealing with transfer cases under WOTS as well as transfer cases under the framework decisions. The WOTS will remain in operation for Poland at any rate, as Poland has been given an extension of five years for the deadline for implementing the framework decisions. The assumption in the impact analysis is that 90% of the transfers of sentences will be covered by the framework decisions two years after the implementation deadline and 100% five years after the deadline.

¹ Dutch House of Representatives, session year 2005-2006, 23 490, no. 420

3 The new processes for the framework decisions

3.1 Introduction

The agreements made in the framework decisions have consequences for the strategic, tactical and operational processes at the Ministry of Justice and the administrative agencies involved. This chapter describes these processes and associated responsibilities in general terms. A more detailed description of the process diagrams can be found in Appendix 1 (available on request, in Dutch only). The key performance indicators for the new processes are also given.

Three techniques were used to identify the new processes:

1. First of all a process hierarchy was drawn up, containing strategic, tactical and operational processes.
2. The operational processes were specified in more detail in process diagrams, which show the main steps in the process across the criminal justice chain.
3. A so-called RASCI matrix was compiled for each of the operational processes, showing the assignment of roles for each process step and organisation involved. This matrix distinguishes the following roles:

R Responsible	Who <i>is</i> responsible for carrying out the activity?
A Accountable	To whom does the responsible party <i>have to</i> render account?
S Supportive	Who <i>could</i> give support?
C Consulted	Who <i>must</i> be consulted?
I Informed	Who <i>must</i> be informed?

3.2 General considerations and guiding principles

There are five evaluation criteria used to arrive at a choice regarding the assignment of activities to organisations:

1. Synergy with other international transfer processes: to what extent is there a match with, or enhancement of, the following processes:
 - the non-EU WOTS cases (the WOTS procedure will remain applicable outside Europe)
 - surrender of individuals under the European Arrest Warrant (EAW); for example, there are similarities in the grounds for refusal
 - framework decision 2008/909/JHA ‘transfer of custodial sentences’ or framework decision 2008/947/JHA ‘transfer of alternative sanctions’ respectively
2. A limited number of links in the process chain. The idea is that the short turnaround times defined in the framework decisions can only be achieved if the number of links and points where information is transferred are kept to a minimum. Keeping the number of links to a minimum also offers the best chance of achieving economies of scale and efficiency benefits. The risk of fragmentation needs to be avoided. A distinction needs to be made between the links in the decision-making process and in the transfer process.
3. Use of existing expertise and networks. Checking the grounds for a refusal, for instance, requires considerable expertise. This is also the case for knowledge of foreign parole rules and so on. What is more, it costs a considerable amount of energy to build up a national and international network of contacts at the policy and operational levels. That is why the preferred option is to use existing contacts.
4. Compatibility with policy responsibilities. The requirement for the minister to exercise political influence or for the department to exercise influence through policy (or the desirability of either of these) is less now than previously under the EU WOTS, but a certain degree of control is still necessary.
5. Compatibility with the regular enforcement process. Taking over foreign sentences or transferring sentences abroad requires compatibility with the enforcement process. For example, the enforcement status needs to be known.

The detailed description of the operational processes for dealing with sentences is a key part of this impact analysis. This detailed description was based on the requirements for the processes as set by the framework decisions. These models were then fine-tuned and improved with the help of the expertise of individuals representing the administrative agencies. They provided assistance in a number of expert meetings and a working conference.

There were a number of guiding principles for the detailed description of the operational processes in the chain:

- The RASCI method was used in this impact analysis to specify whether an organisation has a role in a process step or chain process, but *the part of the organisation or department that should carry out the activity was not specified*. The guiding principle is that the criminal justice chain partners are autonomous and decisions as to which department are decisions that should be taken by the organisation in question. The criminal justice chain process stops at the chain partner's 'doorstep', as it were.
- The general principle was formulated of *working with a single referral point in each organisation wherever possible*, in view of the number of WEOS cases and the expertise required to deal with them.
- The operational chain processes have been defined for the majority of potential cases. Various exceptional situations can be envisaged where it would be necessary to deviate from this process design, such as:
 - sentences that could fall under both framework decisions (partly suspended custodial sentences with special conditions)
 - special measures such as detention under a hospital order
 - sentences for individuals who do not meet the standard criteria for transfer but who are eligible (such as aliens with a residency status).

Further fine-tuning will be required at a later stage in order to allow for such exceptions. Important categories of exceptions were identified when the operational processes were worked out in detail.

3.3 Process hierarchy: associated processes

Figure 1 shows the links between the processes at the strategic, tactical and operational levels. These processes are worked out in detail in the remainder of this chapter.

The strategic and tactical processes discussed in the first workshop of the impact analysis will be specified briefly, as will the performance indicators that must be measured in order to be able to carry out these processes. The duties and responsibilities associated with the execution of the strategic and tactical processes have not yet been specified.

The detailed description of the operational processes for dealing with sentences is a key part of this impact analysis. This detailed description was based on the requirements set by the framework decisions for the processes. These models were then fine-tuned and improved with the help of the expertise of individuals representing the administrative agencies. They provided their help in a number of expert meetings and a working conference.

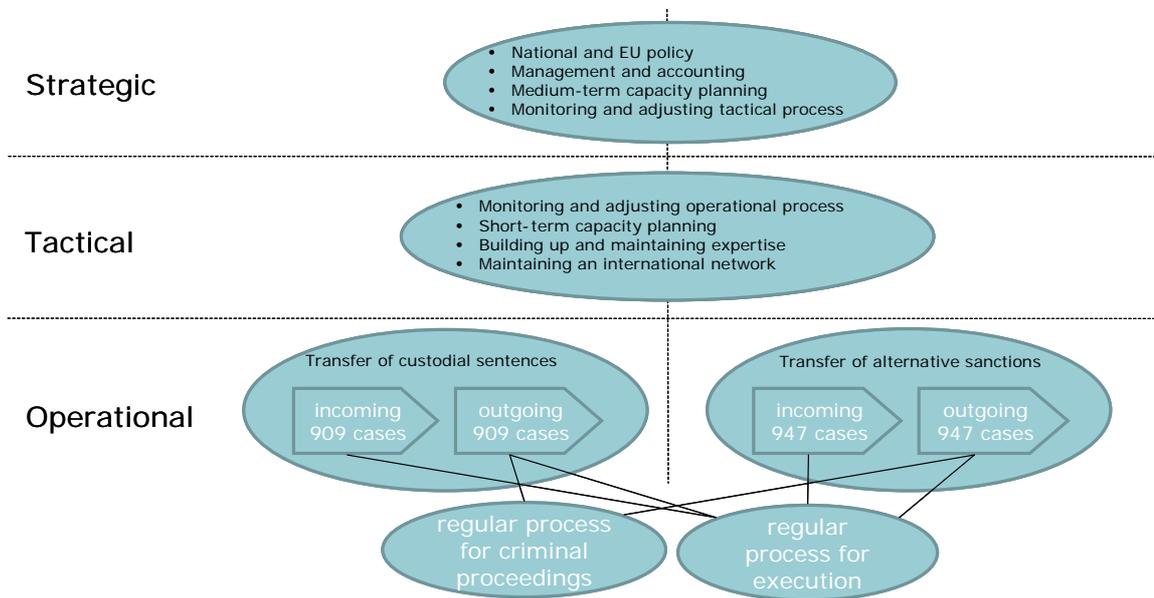


Figure 1: links between processes at the strategic, tactical and operational levels

3.4 Strategic processes

The head offices of the organisations and the core department are responsible for implementing the strategic processes. A brief explanation is given below of the individual processes.

1. **Developing national and EU policy**
National and EU policy will still need to be developed and amended once the framework decisions have been implemented, for example regarding specific groups or how to deal with foreign parole rules. This also includes holding member states to account who do not comply with the framework decisions.
2. **Management and accountability**
The WEOS processes should be incorporated in the regular planning and control cycles that the department has set up with the administrative agencies, and which they in turn have set up between their head office and their regional offices.
3. **Medium-term capacity planning**
The transfer of sanctions will have consequences for the capacity requirements of the Custodial Institutions Agency and the three probation organisations (known collectively as 3RO). Accordingly, as part of the process of management and accounting, medium-term capacity planning (over several years) will require more attention. The starting point here is the net extra capacity required for WEOS cases compared with the EU WOTS cases (that are expected to decrease in number).
4. **Monitoring and making adjustments to the tactical processes**
Checking whether the primary process is being managed properly and whether networks and expertise are being built up as intended, and making adjustments if necessary.

3.5 Tactical processes

The tactical processes involve the management and improvement of the operational chain processes. The tasks making up the tactical processes are assigned to the various organisations involved with the framework decisions. Four processes have been identified:

1. Monitoring and making adjustments to the operational processes
Monitoring the processes across the whole criminal justice chain and the individual processes per chain partner, looking at aspects such as turnaround times, capacity, performance quality and whether corrective action is taken (process, staff, IT, etc.). These are general matters and not specific to individual cases. The obvious approach for monitoring across the criminal justice chain as a whole is to link up with an existing body or to set up a new body to be managed by the central authority. The operational processes are managed using the performance indicators specified in section 3.6.
2. Short-term capacity planning
Making planning agreements about such aspects as transport (by land and by air) and detention capacity based on trends and the inflow of new cases. Given the time taken by the WEOS processes, it is possible to make predictions about the demand for capacity for a period of about three months.
3. Building up and maintaining expertise
Building up expertise at the competent authorities about such matters as checking the grounds for a refusal, foreign parole rules, types of sanction and the enforcement system in other member states.
4. Maintaining an international network
Building up and maintaining contacts with competent authorities in other member states, thus creating a network for liaising both formally and informally about individual cases or for reaching agreement on collaboration (for example, detailed agreement on the information to be supplied).

3.6 Performance indicators for measuring results

Indicators relating to *throughput*, *output* and *outcomes* were defined for the purpose of monitoring the WEOS processes. The indicators are subdivided into general indicators and specific indicators for the incoming and outgoing processes for the Framework Decisions 909 and 947 (hereinafter simply '909' and '947').

The indicators were worked out on the basis of Figure 2, which provides a frame of reference for measuring results. As is clear from this diagram, the details of the following will need to be filled in during the subsequent implementation procedure:

- Development of monitoring norms and a set of measurement methods (target values for all indicators)
- Assignment of the task of management on the basis of these indicators to the responsible organisations and the department as part of the tactical and strategic processes

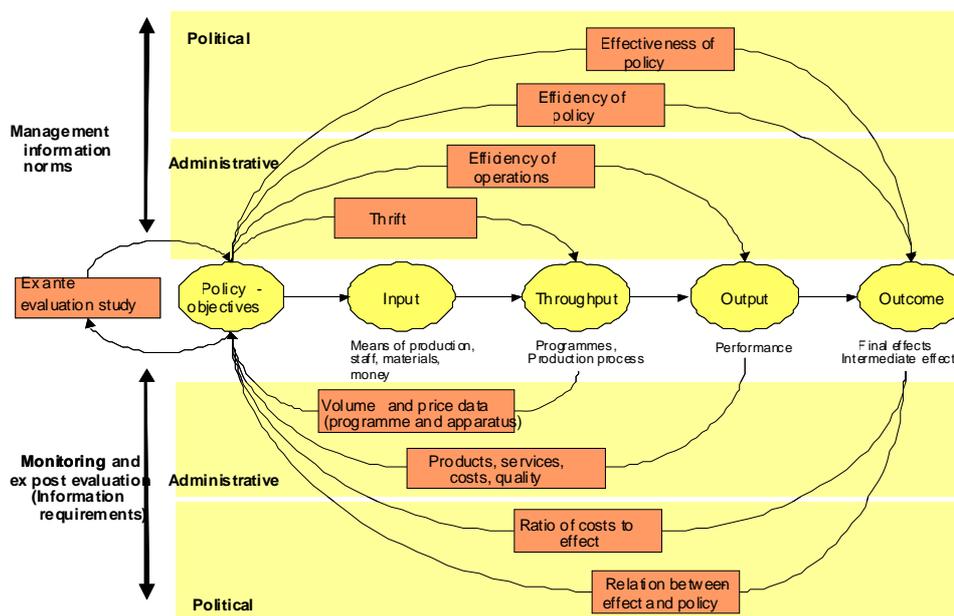


Figure 2: frame of reference for measuring results

Please note: these indicators have been drawn up as a suggestion for the setup of the management processes. These performance indicators have not been evaluated by all the chain partners; rather, they are based on expert knowledge acquired during previous projects involving the implementation of new legislation.

3.6.1 General performance indicators

- % transfers via WOTS or WEOS per member state
- Net capacity requirement for 909 and 947 less net capacity requirement for EU WOTS

3.6.2 Performance indicators for incoming 909 and 947 cases

The following indicators have been identified for *throughput*:

- % of decisions within 90 days and 60 days respectively
- % of transfers of 909 cases within 30 days
- % of recommendations from the Public Prosecution Service on time
- % of recommendations from the judiciary on time
- % of recommendations from 3RO on time
- Number of staff days/costs for each incoming certificate dealt with

The following for *output*:

- Total number of certificates received (per issuing state)
- % of certificates refused (broken down by issuing state/ground for refusal)
- % for each of the different types of sanction
- For 909 cases: average total, and remaining, length of sentence → capacity requirement
- % of special cases (for example, combination sentences or individuals who have been released)
- % modified to accord with Dutch criminal law, both in terms of type of sanction and the maximum sentence

The following for the *outcome* of the criminal justice chain processes:

- Scope: % of incoming certificates in relation to the potential population in the issuing state
- Extent of rehabilitation
- % reoffending within X years

3.6.3 Performance indicators for outgoing 909 and 947 cases

The following indicators have been identified for *throughput*:

- % detected during prosecution
- % of responses to certificate by executing state within the time limit (per executing state)
- % of transfers of 909 cases within 30 days
- Average throughput time for drawing up a certificate
- % of notices of objection dealt with within the time limit
- Number of staff days/costs for each outgoing certificate dealt with

The following for *output*:

- Total number of certificates sent (per executing state)
- % of certificates refused (broken down by executing state/ground for refusal)
- % for each of the different types of sanction
- % use of legal protection (notices of objection, court in interlocutory proceedings)
- For 947 cases: % per initial situation (the convicted person is in the issuing state, in the executing state, in detention, enforcement has already started or has not yet started)
- % of special cases (for example, combination sentences, individuals who have been released, or aliens with a residency status)
- For 909 cases: capacity requirement given average total, and remaining, length of sentence when certificate is issued and when physical transfer takes place

The following for the *outcome* of the criminal justice chain processes:

- Absolute reach: % of outgoing certificates in relation to the potential population in THE NETHERLANDS (including the reasons for not transferring the individual in question)
- Relative reach: extent to which sanctions imposed on EU residents are in line with sanctions imposed on residents in the Netherlands (extent to which detention discrimination is reduced)

3.7 Introduction to the operational processes in the criminal justice chain

Following on from the above explanation of the strategic and tactical processes and performance indicators, the sections below detail how the operational processes for the mutual recognition and transfer of EU criminal judgements will be given shape within the Netherlands. The processes for the transfer of custodial sentences (Framework Decision 909) will be described in detail, followed by the processes for the transfer of alternative sanctions and the supervision of probation measures (Framework Decision 947). In both cases the incoming flow of cases will be discussed first, then the outgoing flow. The descriptions will follow a fixed plan:

- An explanation of the key guiding principles and choices made regarding the setup. Any important issues or points for discussion that are still outstanding will also be noted.
- The process in question will be worked out in a process diagram, showing the order in which activities are carried out and how they are related in terms of content.
- An explanation will be given of the role of the organisations involved using a RASCI matrix that assigns the tasks and responsibilities.
- The main steps are subdivided further into specific activities in Appendix 1 (available on request, in Dutch only).

3.8 Processes for the transfer of custodial sentences and custodial measures (909)

3.8.1 Main elements of the choices made with regard to the setup

The Custodial Institutions Agency will act as the central and competent authority for incoming and outgoing custodial sentences. Decisions will be taken by the Custodial Institutions Agency on behalf of the Minister of Justice. The Public Prosecution Service and the judiciary will be called upon to help deal with the content. The organisation of the physical transfer will draw on the processes that are currently organised through the Public Prosecution Service (the International Legal Assistance Centres).

This arrangement does most justice to the ministerial responsibility and the close association the Custodial Institutions Agency has with the enforcement of detention. The claim that WEOS will make on the prison service means the Custodial Institutions Agency is directly involved. This arrangement also makes maximum use of the expertise the Public Prosecution Service and the judiciary have built up in the field of EAW and WOTS, in particular EU WOTS. In contrast to WOTS, WEOS for custodial sentences is seen as more of an operational process, as the legal framework is more strictly defined. That is why it was considered undesirable to assign WEOS to the International Legal Assistance Division for Criminal Cases analogous to WOTS.

3.8.2 *Main outstanding questions and points for attention for 909 in general*

- The exact division of tasks between the Custodial Institutions Agency, the Public Prosecution Service and the judiciary still needs to be decided on.
- This process needs further fine-tuning to allow for exceptional situations:
 - The convicted person is not in detention. This places the physical transfer in another context. Being able to find the person is also a point for concern.
 - Exceptional custodial measures such as detention under a hospital order.
- Further work is needed on how to deal with the different parole rules, for example by drawing up a decision tree.
- How should cases be dealt with where there is overlap with the EAW, or the ‘right to return’ that the Netherlands now gives for transfers to member states under the EAW?
- A national and international information service for convicted persons needs to be set up.

3.8.3 *Incoming custodial sentences*

3.8.3.1 Assumptions and choices for the setup

Range of applicability

- Transfer of sentences imposed on individuals who are resident in the Netherlands, have Dutch nationality and have been given a non-suspended custodial sentence or custodial measure.

Responsibilities

- The Minister of Justice (the Custodial Institutions Agency) makes decisions and acts as the point of referral and competent authority.
- The Public Prosecution Service is responsible for preparing the decision and coordinating the actual transfer of the convicted person.
- The judiciary advises the Minister of Justice (the Custodial Institutions Agency) on the particulars of the offence.

Assumptions

- There is no legal protection against the decision by the Netherlands as executing state on whether to accept the sentence except for the court in interlocutory proceedings. The assumption is that legal protection is in place in the executing state (analogous to the setup in the Netherlands).
- The applicable parole rules: the assumption is that the net remaining length of sentence cannot be increased by applying the parole rules of the executing state.

Outstanding questions and points for attention

- See section 3.8.2.

3.8.3.2 Process diagram for incoming 909 cases

Figure 3 shows the process worked out in a process diagram that shows the order in which activities are carried out and how they are related in terms of content. Please refer to Appendix 1 (available on request, in Dutch only) for a further subdivision of each primary step.

The blocks in the process diagram are primary steps in the process. They are executed sequentially, working from top to bottom and from left to right. Each primary step delivers a product that is the input for the next process step. This is illustrated by the arrows between the blocks.

The blocks are delimited to the left and to the right by vertical lines. The process steps within those lines take place in the Netherlands. The blocks to the left of the left-hand line are actors or process steps that are not part of the WEOS process but which do provide information for the WEOS process. The blocks to the right of the right-hand line receive information from the WEOS process.

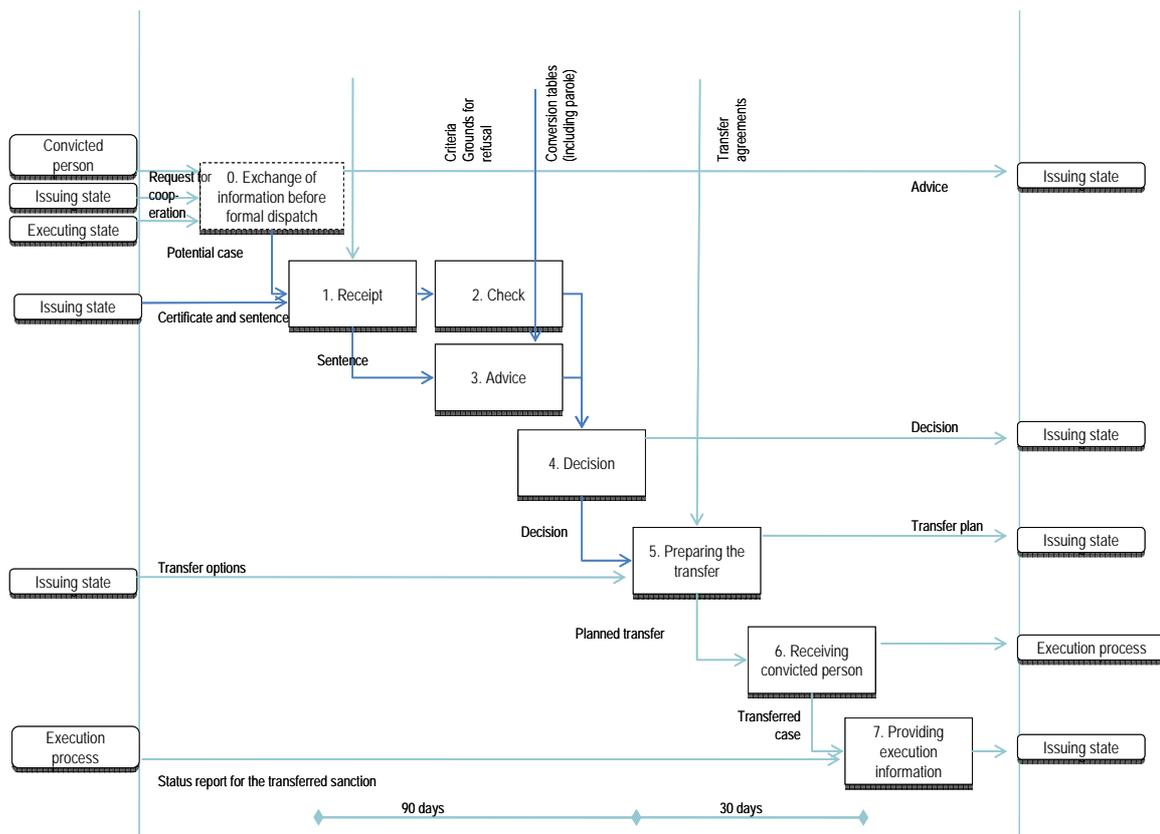


Figure 3: process diagram for incoming 909 cases

3.8.3.3 Allocation of tasks and responsibilities for incoming 909 cases

Figure 4 describes the role of the organisations involved using a RASCI matrix, which assigns the tasks and responsibilities. Please refer to section 3.1 for an explanation of the terms used in this matrix. Please refer to Appendix 1 (available on request, in Dutch only) for a further subdivision of each primary step.

	0. Exchange of information before formal dispatch	1. Receipt	2. Check	3. Advice	4. Decision	5. Preparing the transfer	6. Receiving convicted person	7. Providing execution information
Min. of Justice (Custodial Institutions Agency)	R	A/R	A	A	A/R	A	R	R/C
Judiciary				R	I			
Public Prosecution Service			R		I	R		C
3RO	(C)		(C)					
Min. of Foreign Affairs		I, C			I		I	
Royal Netherlands Military Constabulary/Transport + Support Department						R	S	
Immigration and Naturalisation Service			C					
JustID (judicial information service)							I	C
Central Fine Collection Agency						I		
Issuing state					I	C		I

RASCI: R=Responsible; A=Accountable; S=Supportive; C=Consulted; I=Informed

Figure 4: RASCI matrix for incoming 909 cases

3.8.4 *Outgoing custodial sentences and custodial measures*

3.8.4.1 Assumptions and choices for the setup

Range of applicability

- Transfer of sentences imposed on individuals who are resident in an EU member state, have that nationality and have been given a non-suspended custodial sentence or custodial measure.

Responsibilities

- The Minister of Justice (the Custodial Institutions Agency) detects transferable sentences and acts as the point of referral and competent authority.
- The judiciary deals with objections to a proposed transfer.

Assumptions

- There is legal protection against the decision by the Netherlands as issuing state on the transfer of the sentence in the form of a notice of objection procedure.
- In principle, the Netherlands will not be transferring any combination sentences (custodial sentence and suspended custodial sentence with special conditions) in the initial period.
- The process has been worked out on the assumption that the convicted individual in any particular case is resident in the same EU member state of which he/she is a national.
- The process has been worked out on the basis of convicted individuals who are in detention in the issuing state.

Outstanding questions and points for attention

- See section 3.8.2.

3.8.4.2

3.8.4.3 Process diagram for outgoing 909 cases

Figure 5 shows the process worked out in a process diagram that shows the order in which activities are carried out and how they are related in terms of content. Please refer to Appendix 1 (available on request, in Dutch only) for a further subdivision of each primary step. Please refer to section 3.8.3.2 for an explanation of how to interpret the process diagram.

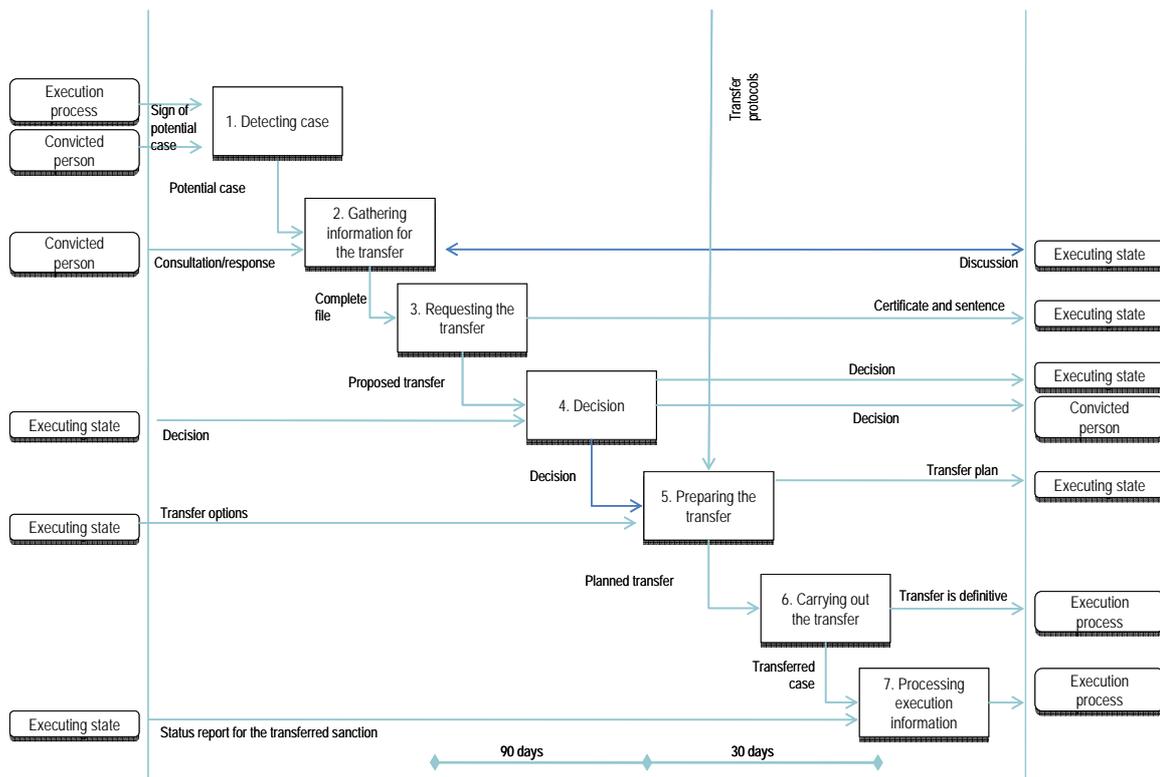


Figure 5: process diagram for outgoing 909 cases

3.8.4.4

Allocation of tasks and responsibilities for outgoing 909 cases

Figure 6 describes the role of the organisations involved using a RASCI matrix, which assigns the tasks and responsibilities. Please refer to section 3.1 for an explanation of the terms used in this matrix. Please refer to Appendix 1 (available on request, in Dutch only) for a further subdivision of each primary step.

	1. Detecting case	2. Gathering information for transfer	3. Requesting transfer	4. Decision	5. Preparing transfer	6. Transferring convicted person	7. Providing execution information
Min. of Justice (Custodial Institutions Agency)	A/R	A/R	A/R	A/R	A	A	A/R
Judiciary				(R)			I
Public Prosecution Service		C			R	R	
3RO		C		C			
Royal Netherlands Military Constabulary/Transp ort + Support Department					C	R	
JustID (judicial information service)						I	I
Central Fine Collection Agency	C	C			I		I
Issuing state		C			C	R	C
Convicted person	I	C		I			

RASCI: R=Responsible; A=Accountable; S=Supportive; C=Consulted; I=Informed

Figure 6: RASCI matrix for outgoing 909 cases

3.9 Processes for the transfer of alternative sanctions and the supervision of special conditions

3.9.1 Main elements of the choices made with regard to the setup

The Public Prosecution Service will be the competent authority for alternative sanctions and supervision of probation measures. This is considered to be along the same lines as the Public Prosecution Service's current tasks and responsibilities regarding alternative sanctions, supervision of probation measures and supervision of conditions for operational periods. The Public Prosecution Service intends assigning the task of competent authority to one of the International Legal Assistance Centres. The execution of alternative sanctions and the supervision of probation measures are assigned by the Public Prosecution Service to the Probation Service. The latter will set up a central desk in view of the specific expertise that will need to be built up. In some cases, the Central Fine Collection Agency will also function as an execution organisation for the Public Prosecution Service, for example in routing community punishment orders for WEOS.

3.9.2 Main outstanding questions and points for attention for 947

- The operation of this framework decision is highly dependent on the extent to which the authorities dispensing justice in the member states are going to impose sentences covered by this framework decision on EU residents. This will be discussed further in section 3.9.4.
- The operation of this framework decision is connected with the operation of the draft EU framework decision 'European supervision order in pre-trial transfer procedures between Member States'²
- This means there is great uncertainty about the annual number of sentences that will be transferred. However, that number is likely to be very small, certainly in the initial period. A point for concern therefore is the cost-effectiveness of the investments required to set up the processes.
- Another point for concern is the traceability of the convicted person. There are various possible initial situations, which need to be allowed for in the design of the operational processes:

² A final decision on this framework decision is due very soon. Reference number: CNS/2006/0158. See <http://www.europarl.europa.eu/oeil/FindByProcnum.do?lang=en&procnum=CNS/2006/0158> for more information.

- The convicted person is already in the executing state.
- The convicted person is in detention in the issuing state (a possibility with the transfer of the supervision of conditions for parole).
- The convicted person is in the issuing state but wishes to return to the executing state (for example, if the convicted person needs to remain available for an ongoing criminal investigation).
- An aspect for attention is the point at which the community service or supervision of conditions starts: ensuring continuity when carrying on with enforcement that has already started is problematic, but delays in starting supervision reduces its effectiveness.
- The process of transferring jurisdiction from the executing state back to the issuing state where necessary (Article 14.3) still needs to be set up.
- A national and international information service for convicted persons needs to be set up.
- A point for attention when working out the processes in more detail is how the Netherlands as the executing state wants to deal with the transfer of the conditional suspension of execution.

3.9.3 *Incoming alternative sanctions and supervision of probation measures*

3.9.3.1 Assumptions and choices for the setup

Range of applicability

- Transfer of sentences imposed on individuals whose lawful and permanent place of residence is in the Netherlands and who have received one of the following sentences:
 - community service or another type of alternative sanction (obligation, instruction)
 - suspended custodial sentence with conditions for the operational period
 - transfer of the operational period decision (supervision of operational period conditions for parole)
 - conditional suspension of sentencing

Tasks and responsibilities

- The Public Prosecution Service is the competent authority. The Public Prosecution Service is the point of contact for the issuing state. It checks grounds for refusal, makes decisions and coordinates the exchange of information between the parties involved in the Netherlands.
- The Public Prosecution Service takes advice from 3RO.

Assumptions

- The current model does not allow for a judicial assessment or advice when checking the grounds for a refusal.
- No special arrangements have been made for legal protection against decisions by the Netherlands as executing state to accept the transfer of a sentence; there is the option of the court in interlocutory proceedings.
- It was assumed when working out the process details that the Netherlands takes over the entire sentence, including responsibility for follow-up decisions (no declaration in accordance with article 14.3).

Outstanding questions and points for attention

- See paragraph 3.9.2.

3.9.3.2 Process diagram for incoming 947 cases

Figure 7 shows the process worked out in a process diagram that shows the order in which activities are carried out and how they are related in terms of content. Please refer to Appendix 1 (available on request, in Dutch only) for a further subdivision of each primary step. Please refer to section 3.8.3.2 for an explanation of how to interpret the process diagram.

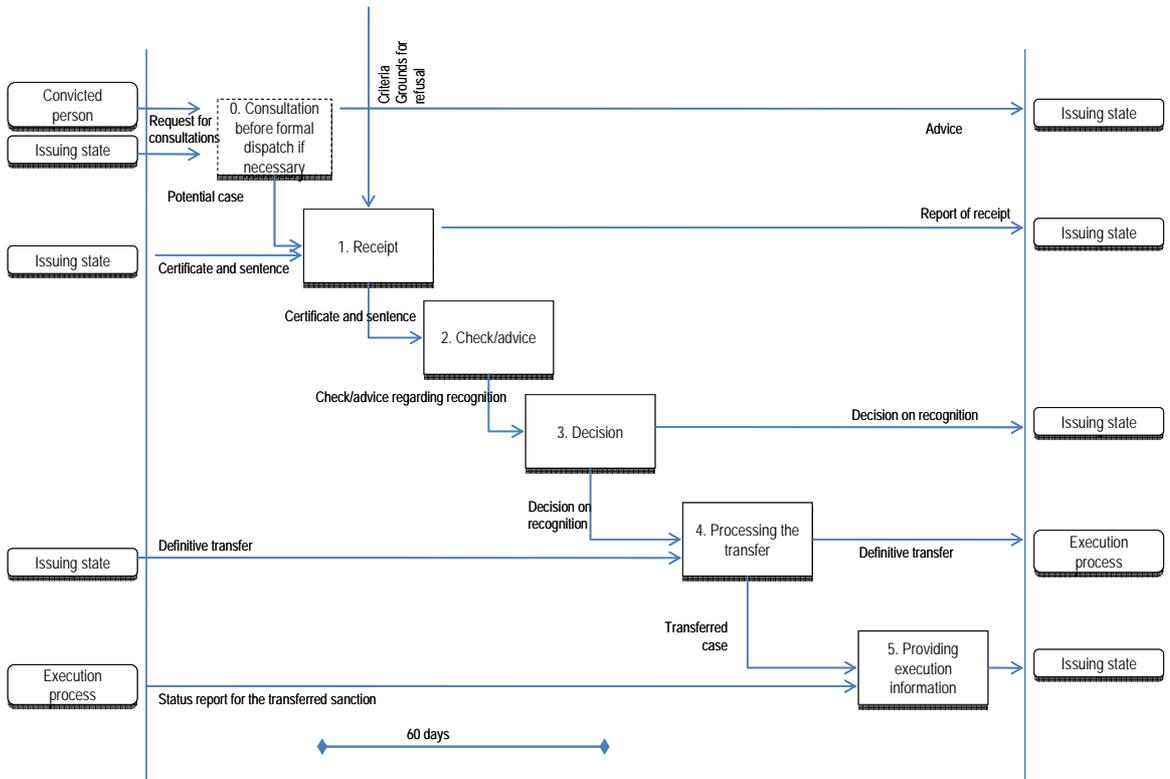


Figure 7: process diagram for incoming 947 cases

3.9.3.3 Allocation of tasks and responsibilities

Figure 8 describes the role of the organisations involved using a RASCI matrix, which assigns the tasks and responsibilities. Please refer to section 3.1 for an explanation of the terms used in this matrix. Please refer to Appendix 1 (available on request, in Dutch only) for a further subdivision of each primary step.

	0. Consultation before formal dispatch if necessary	1. Receipt	2. Check/ advice	3. Decision	4. Processing transfer	5. Providing execution information
Min. of Justice				A		
Public Prosecution Service	A/R	A/R	A/R	R	C	R
3RO	(C)		(C)	I	A/R	C/I
Min. of Foreign Affairs		(I)		(I)		
Police			(C)			
JustID (judicial information service)				I		
Central Fine Collection Agency				I		
Issuing state	(I/C)	I	(I/C)	I	(C)	I
Convicted person	(C)			I?	I	

RASCI: R=Responsible; A=Accountable; S=Supportive; C=Consulted; I=Informed

Figure 8: RASCI matrix for incoming 947 cases

3.9.4 *Outgoing alternative sanctions and supervision of probation measures*

The process for outgoing alternative sanctions and supervision of probation measures is subdivided into two parts:

1. Criminal proceedings prior to the sentencing of an EU citizen in the Netherlands
2. Outgoing process after sentencing/operational period decision

In the spirit of Framework Decision 947, the judiciary should consider the option of:

- an alternative sanction (community service)
- a suspended custodial sentence with special conditions
- special conditions for parole

For EU residents as well as Dutch citizens, with a view to a transfer to improve rehabilitation. This is not done enough at the moment. A change is required in the criminal proceedings for EU citizens to encourage the use of such sanctions for EU citizens.

In the current situation, it is rare for EU citizens to receive alternative sanctions or probation measures due to a combination of the following reasons:

- Alternative sanctions and probation measures are often aimed at furthering rehabilitation, but the rehabilitation of foreigners in the Netherlands is not an objective.
- There is no judicial framework in the current situation for the transfer of alternative sanctions or probation measures.
- Foreigners are more likely to be remanded in custody and as a result are more likely to be given a non-suspended custodial sentence.
- The Public Prosecution Service seldom asks for probation reports for foreigners, and alternative sanctions or conditions for operational periods are not usually applied unless there is a report from the Probation Service.

A number of the reasons listed above can partly be removed if the activities described are implemented. However, the operation of this framework decision also depends partly on the implementation and operation of the draft framework decision 'European supervision order in pre-trial transfer procedures between Member States', which promotes alternatives to remanding in custody for EU citizens.

3.9.4.1 Criminal proceedings prior to the sentencing of an EU citizen in the Netherlands

3.9.4.1.1 **Assumptions and choices for the setup**

Range of applicability

- Criminal proceedings against individuals whose lawful and permanent place of residence is in one of the EU member states and who are eligible for one of the following sanctions:
 - community punishment order or another type of alternative sanction (obligation, instruction)
 - suspended custodial sentence with conditions for the operational period
 - operational period decision with supervision of special conditions (parole)

Tasks and responsibilities

- The Public Prosecution Service (the public prosecutor handling the case) identifies cases involving an EU resident who may be eligible for a community punishment order or a suspended sentence with special conditions. The Public Prosecution Service gathers the necessary information from 3RO, the suspect's country of residence and the suspect in question in order to decide on the sentence to be demanded.
- Or in the case of an operational period decision: the Public Prosecution Service (the central parole facility) identifies cases involving an EU resident who may be eligible for special conditions for parole and gathers the necessary information from 3RO, the Custodial Institutions Agency, the suspect's country of residence and the suspect in question to enable a decision to be made regarding parole.

Outstanding questions and points for attention

- What degree of certainty regarding the transfer is necessary in order to be able to impose an alternative sanction or operational period conditions on an EU resident, and is this feasible?
- One idea is to set up an EU databank or EU knowledge network to enable an evaluation of the enforcement options for use in criminal proceedings. In principle, the intention is to consult this EU information rather than assessing the enforcement options for individual cases by requesting a report from the probation service in the member state in question.
- Alignment with developments in the *Justitiële Voorwaarden* [judicial conditions] programme.
- The formulation of ‘European Probation Rules’ should help in the development of knowledge and confidence.
- Possible problems for the activities described are the time taken by the criminal proceedings and the traceability of the suspect.
- The procedure prior to parole decisions on EU citizens still needs to be detailed.

3.9.4.1.2 Process diagram for outgoing sanctions and criminal proceedings for 947 cases

Figure 9 shows the process worked out in a process diagram that shows the order in which activities are carried out and how they are related in terms of content. Please refer to Appendix 1 (available on request, in Dutch only) for a further subdivision of each primary step. Please refer to section 3.8.3.2 for an explanation of how to interpret the process diagram.

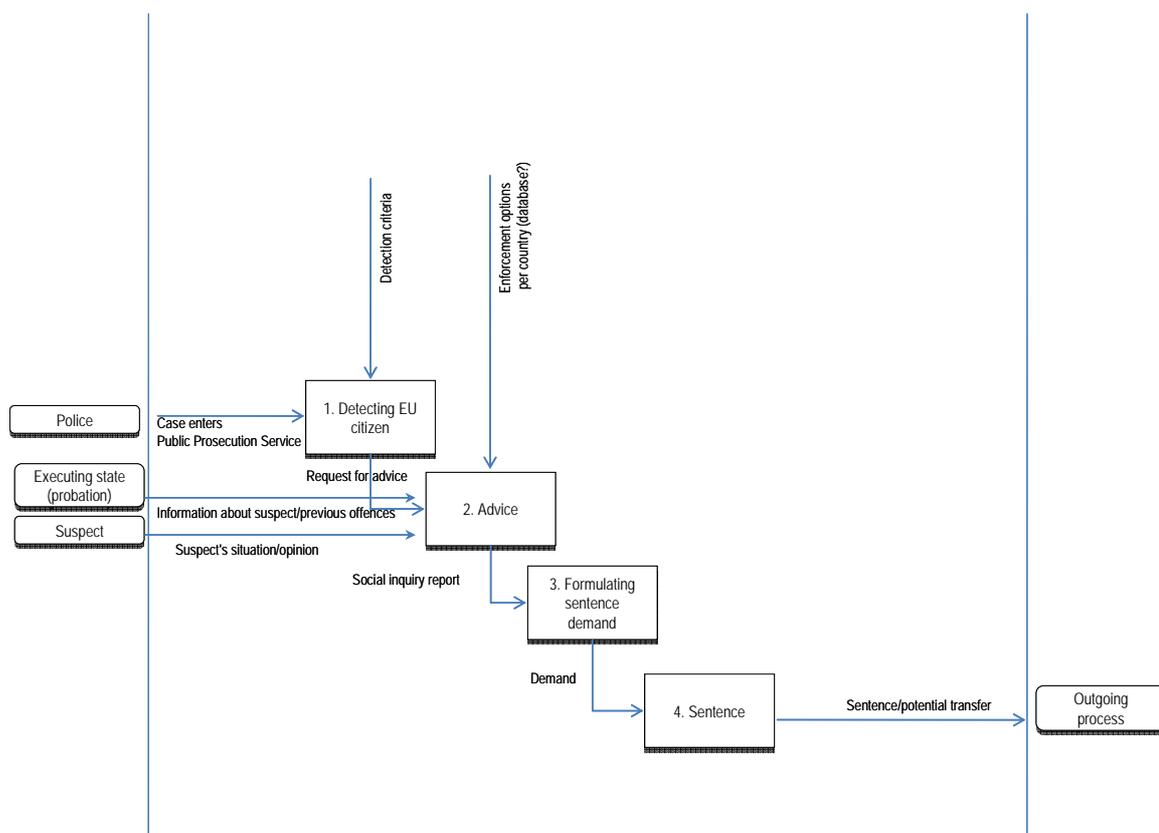


Figure 9: process diagram for outgoing sanctions and criminal proceedings for 947 cases

3.9.4.1.3 Allocation of tasks and responsibilities for criminal proceedings for 947 cases

Figure 10 describes the role of the organisations involved using a RASCI matrix, which assigns the tasks and responsibilities. Please refer to section 3.1 for an explanation of the terms used in this matrix. Please refer to Appendix 1 (available on request, in Dutch only) for a further subdivision of each primary step.

	1. Detecting EU citizen	2. Advice	3. Formulating sentence demand	4. Sentence
Judiciary		I		A/R
Public Prosecution Service	A/R	A/R	A/R	
3RO		C		
Executing state/Probation Service		(C)		
Convicted person		(C)	I	I
JustID (judicial information service)		(C)		

RASCI: R=Responsible; A=Accountable; S=Supportive; C=Consulted; I=Informed

Figure 10: RASCI matrix for criminal proceedings for 947 cases

3.9.4.2 Outgoing 947 process after sentencing/operational period decision

3.9.4.2.1 Assumptions and choices for the setup

Range of applicability

- Transfer of sentences imposed on individuals whose lawful and permanent place of residence is in one of the EU member states and who have received one of the following sentences:
 - community punishment order or another type of alternative sanction (obligation, instruction)
 - suspended custodial sentence with conditions for the operational period
 - transfer of the operational period decision (supervision of conditions for the operational period for parole)

Tasks and responsibilities

- The Public Prosecution Service is the competent authority. The Public Prosecution Service identifies cases, is the point of contact for the issuing state, takes decisions concerning transfer and coordinates the exchange of information between the parties involved in the Netherlands.

Assumptions

- No special arrangements have been made for legal protection against decisions by the Netherlands to transfer a sentence (in contrast to the situation for outgoing custodial sentences); there is the option of the court in interlocutory proceedings.
- When working the process out in detail, it was assumed that the Netherlands would transfer the entire sentence, including the responsibility for follow-up decisions.

Outstanding questions and points for attention

- See paragraph 3.9.2.
- Member states are allowed to declare that they do not wish to take over follow-up decisions involving deprivation of liberty (article 14.3). *What should the Netherlands do in that situation? Would the Netherlands want to transfer cases then?*

3.9.4.2.2 Process diagram for outgoing sanctions for 947 cases

Figure 11 below shows the process worked out in a process diagram that shows the order in which activities are carried out and how they are related in terms of content. Please refer to Appendix 1

(available on request, in Dutch only) for a further subdivision of each primary step. Please refer to section 3.8.3.2 for an explanation of how to interpret the process diagram.

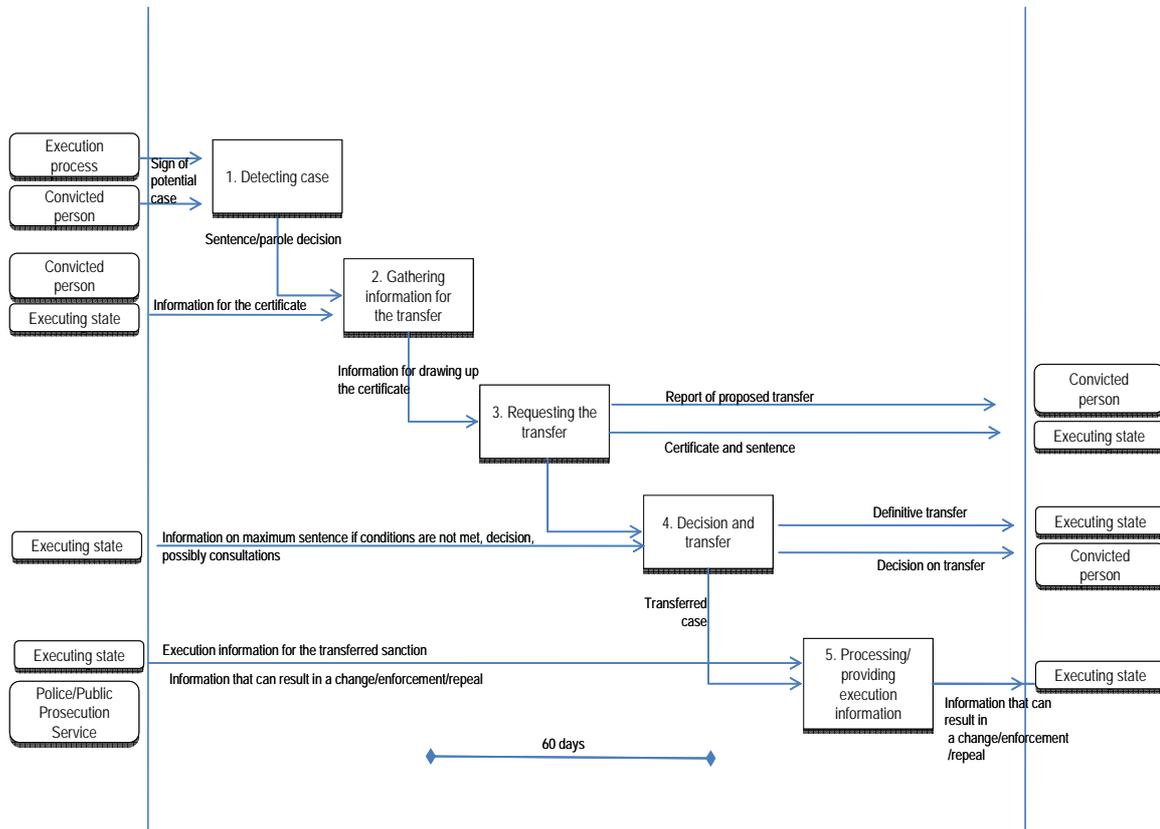


Figure 11: process diagram for outgoing sanctions for 947 cases

3.9.4.3 Allocation of tasks and responsibilities for outgoing 947 cases

Figure 12 describes the role of the organisations involved using a RASCI matrix, which assigns the tasks and responsibilities. Please refer to section 3.1 for an explanation of the terms used in this matrix. Please refer to Appendix 1 (available on request, in Dutch only) for a further subdivision of each primary step.

	1. Detecting case	2. Gathering information for the transfer	3. Requesting the transfer	4. Decision and transfer	5. Processing/providing execution information
Min. of Justice				A	
Public Prosecution Service	A/R	A/R/C	A/R	R	A/R/C
3RO		(C)		I	
Police		C			C
JustID (judicial information service)	C			I	
Central Fine Collection Agency	S/I			I	
Executing state	(I/C)	(C)	(I/C)	(C)/I	I/C
Convicted person	(C)	C	I	I	

RASCI: R=Responsible; A=Accountable; S=Supportive; C=Consulted; I=Informed

Figure 12: RASCI matrix for outgoing 947 cases

4 Size of the target groups

It is important when setting up the working processes for the administrative agencies to know how much work they will have to deal with. To this end, the researchers made estimates of the size of the groups covered by the two framework decisions and the number of cases that the different criminal justice chain partners will have to handle. The expected numbers of cases over time are also presented here. Finally, a calculation was made of the extra detention capacity required due to the transfer of custodial sentences.

The following estimates are based on data from PRISON (Ministry of Foreign Affairs), LURIS (Public Prosecution Service), OMDATA (Public Prosecution Service) and TULP (Custodial Institutions Agency). Please refer to Appendix 2 (available on request, in Dutch only) for a detailed explanation of the calculations of the numbers, including the assumptions, as well as detailed breakdowns of the numbers (for example by country, by offence, etc.).

4.1 WEOS custodial sentences: summary of the numbers

- The inflow into the working process ‘incoming custodial sentences’ is approximately 540 cases per annum.
 - For comparison: approximately 500 incoming WOTS requests are dealt with every year.
 - Approximately 60% of the inflow will come from Germany or Spain.
 - 85% of the inflow concerns drug-related offences. The sentence imposed is higher than the maximum sentence in the Netherlands in 14% of the cases and will therefore need to be modified.
 - Based on the current sentencing policy for Dutch people in EU countries, there are between 0 and 10 ‘special sanctions’ per annum (internment, juvenile punishment, committal to an institution).
 - The number of transfers of sentences where the individual is not detained in the EU member state is not yet known and needs to be investigated further.
- The inflow into the working process ‘outgoing custodial sentences’ is approximately 83 cases per annum.
 - For comparison: approximately 50 outgoing WOTS requests are dealt with every year.
 - Nearly 60% of the outgoing cases will go to Spain, Germany or Belgium.
 - Approximately 70% of the outgoing cases are convictions for drug offences; 10% are for theft.
- There are approximately 750 extra cells required as a result of the WEOS cases (structurally from 2020 onwards).
- An initial estimate was made in 2007 for the forecasting models of criminal justice chains using the data then available; this gave 650 cells (from t+5 onwards).

4.2 WEOS custodial sentences - the numbers in the processes

The diagram below shows the numbers in the key phases of the incoming and outgoing processes for the transfer of custodial sentences. A comparison is made with the current situation for EU WOTS wherever possible.

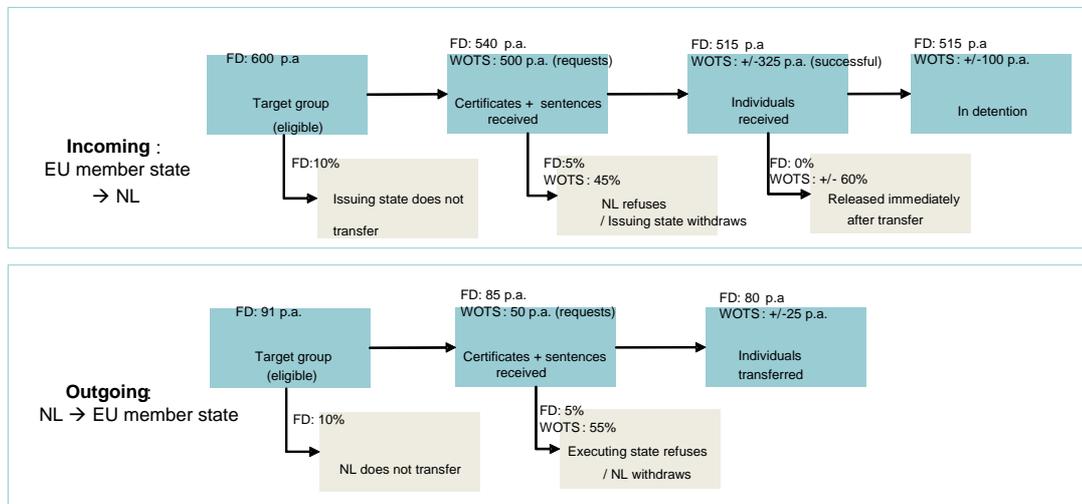


Figure 13: WEOS custodial sentences - the numbers in the processes (FD=Framework Decision)

Using these numbers as a basis, it is possible to derive the following numbers for the individual organisations:

Organisation	Number of cases per annum due to Framework Decision 909
Public Prosecution Service	Judicial evaluation: 540 Number of transfers coordinated by International Legal Assistance Centres (incoming): 515 Number of transfers coordinated by International Legal Assistance Centres (outgoing): 80
Custodial Institutions Agency	Number of cases to be assessed: 540 Number of transportations by the Transport and Support Department and detentions in penal institutions (incoming): 515 Number of transportations (outgoing): 80
Judiciary	Number of recommendations to the Custodial Institutions Agency: 540
Immigration and Naturalisation Service	Number of recommendations concerning undesirable alien declarations: 45
Royal Netherlands Military Constabulary	Number of flight escorts where the Royal Netherlands Military Constabulary escorts incoming prisoners: 55% are not coming from Belgium or Germany = 285 Number of flight escorts where the Royal Netherlands Military Constabulary escorts outgoing prisoners: 69% are not going to Belgium or Germany = 55

Table 3: number of cases per annum for each organisation due to Framework Decision 909

Inflow into the working process 'incoming custodial sentences': implementation path and margin of uncertainty

It is unlikely that all the EU member states will have implemented Framework Decision 909 by 6 December 2011. The EU WOTS will probably remain in operation until all the EU member states have finished implementing the framework decision. The provisional assumption has been made that inflows will be at 90% of the expected level after two years and at 100% after five years. The resulting growth in the inflow into the new working process 'incoming custodial sentences' can be seen in Figure 14.

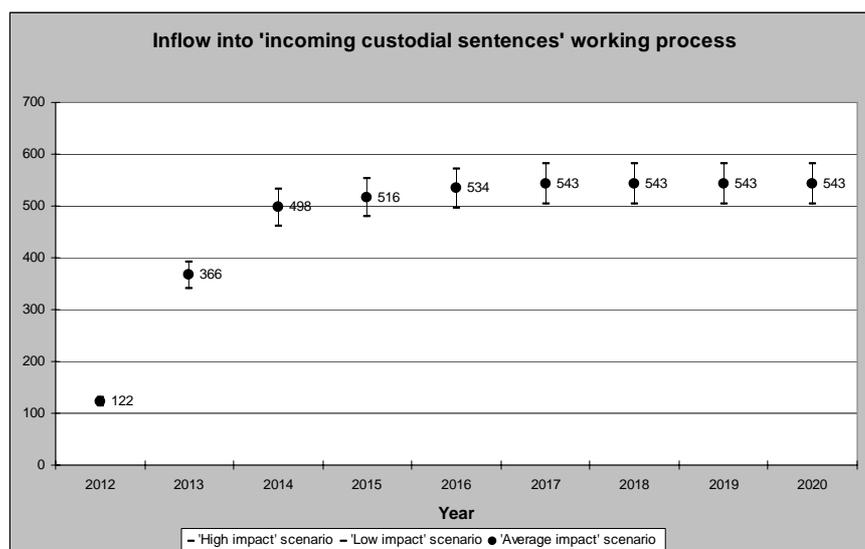


Figure 14: inflow into the working process 'incoming custodial sentences'

The figure also shows the margins of uncertainty. They depend on a number of sources of uncertainty:

- The time the issuing state takes to transfer the sentence after the sentence date. The framework decision does not specify any time limits for this. The assumption for the baseline scenario is that it will take three months before the sentence is received by the Netherlands.
 - If this period is longer (six months was chosen as a scenario), there will be fewer sentences where there are still at least six months of the sanction to go at the point when the sentence is received by the executing state (a ground for refusal, article 11, paragraph j).
 - If this period is shorter (zero months was chosen as a scenario), there will be more sentences where there are still at least six months of the sanction to go at the point when the sentence is received by the executing state (a ground for refusal, article 11, paragraph j).
- The reliability of the recorded length of non-suspended custodial sentences.
- The estimated duration of pre-trial detention.

These uncertainties result in a range for the proportion of Dutch prisoners in EU member states who are eligible for transfer given the remaining time in detention at the point when the transfer would be taking place. Three scenarios were set up:

- 'Low impact' scenario: 65% are eligible, given the remaining time in detention.
- 'Average impact' scenario: 70% are eligible, given the remaining time in detention.
- 'High impact' scenario: 75% are eligible, given the remaining time in detention.

4.3 Inflow into the working process 'outgoing custodial sentences': implementation path and margin of uncertainty

The same assumption regarding the 'implementation path' of the EU member states and the consequences for the transition from outgoing EU WOTS cases to transfers under Framework Decision 909 was made for outgoing custodial sentences (90% after two years, 100% after five years). The resulting growth in the inflow into the new working process 'outgoing custodial sentences' can be seen in Figure 15.

The figure also shows the margins of uncertainty. They represent scenarios for the time the Netherlands takes to transfer the sentence after the sentence date. The same values are used here as for the incoming custodial sentences: zero, three and six months.

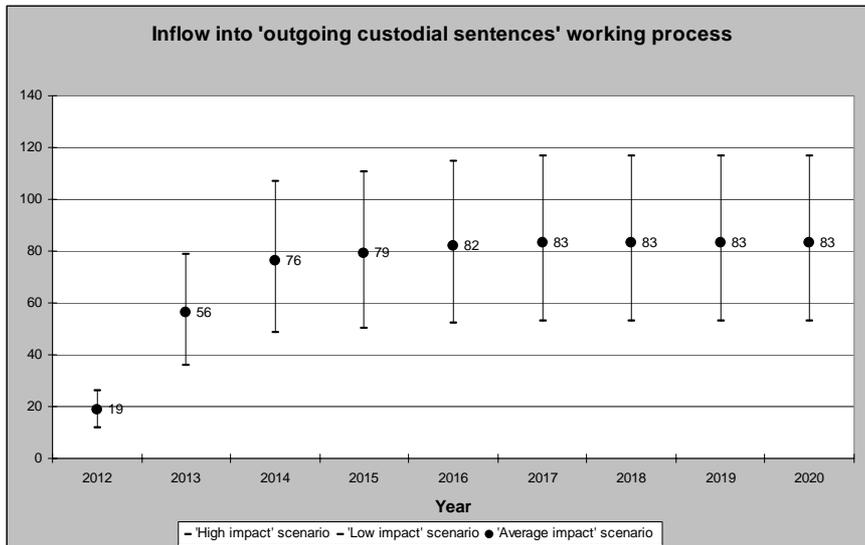


Figure 15: inflow into the working process 'outgoing custodial sentences'

4.4 Required detention capacity: up to 750 cells

A simulation model was created to calculate the detention capacity requirement. This model calculates four values:

- the capacity required for incoming custodial sentences under Framework Decision 909
- a correction for the cell capacity required for the current incoming custodial sentences under the EU WOTS (as this requirement has already been incorporated in the forecast produced by the criminal justice chain forecasting models)
- the cell capacity released by outgoing custodial sentences under Framework Decision 909
- a correction for the detention capacity released by the current outgoing custodial sentences under the EU WOTS (as this has already been incorporated in the forecast produced by the criminal justice chain forecasting models)

Please refer to Appendix 2 (available on request, in Dutch only) for a detailed account of the detention capacity calculations.

Figure 16 shows the detention capacity requirement. The figure also draws a comparison with the original forecasts produced by the criminal justice chain forecasting models in 2007. Again, a margin of uncertainty is shown around various variables. Please refer here too to Appendix 2.

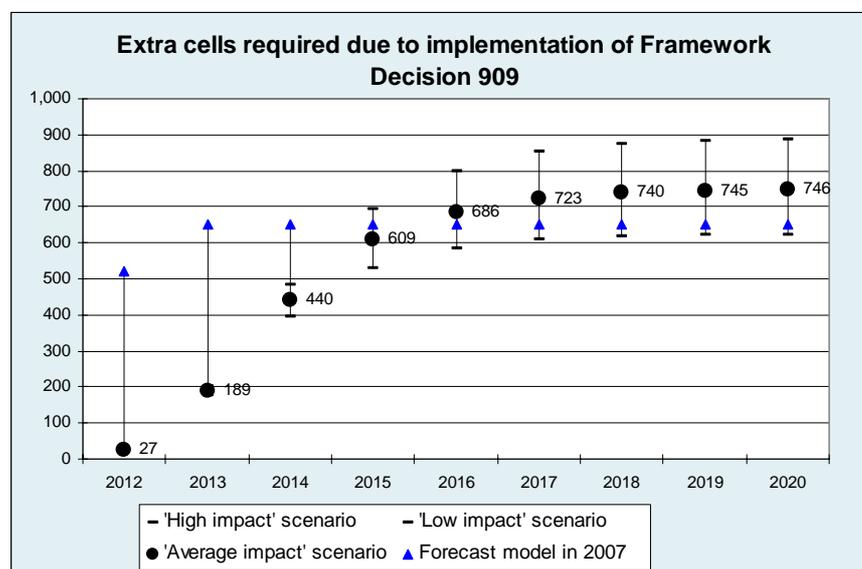


Figure 16: extra cells required due to the implementation of Framework Decision 909

4.5 WEOS alternative sanctions and conditions for the operational period summary

It is extremely difficult to determine the numbers for WEOS community punishment orders and supervision of probation measures as:

- there is no proper reference process because alternative sanctions or conditions for the operational period are seldom imposed on foreigners resident outside the issuing state and there is not really an existing practice of transferring these kinds of sanctions
- the development in the imposition of alternative sanctions and conditions for the operational period on foreigners resident outside the issuing state but within the EU depends strongly on such factors as:
 - how the judiciary in the member states deals with the options offered by this framework decision
 - how successful the enforcement is of the transferred sentences in the executing state
 - how the implementation of the Framework Decision 'European supervision order in pre-trial transfer procedures' works

Some suggestions are made in Appendix 2 for follow-up research that can provide better insight into the numbers.

An estimate was made for the **outgoing alternative sanctions and conditions for the operational period**; this gave 70 cases a year, consisting of community punishment orders, suspended custodial sentences with special conditions and parole decisions with special conditions:

- 50 community punishment orders a year (primarily going to France, Poland and Germany).
- Community punishment orders that are currently imposed on EU citizens do not give a good indication as these individuals have links with the Netherlands (for example, their place of residence, work or family). If the same sentencing policy is assumed for Dutch suspects and suspects resident in one of the EU member states, substitution is expected to take place, in particular from non-suspended custodial sentences of one to four months where the individual in question is not remanded in custody for the entire period (on average there are 190 sanctions for non-Dutch citizens resident in the EU every year). It is assumed that about 25% can potentially shift to being community punishment orders.
- 10 to 20 suspended custodial sentences with special conditions every year. This is a rough estimate based on the expectation that this will not really take off as it is difficult to arrange customised special conditions for individuals resident in the EU. What is more, such cases require a suspect who has confessed and is capable of being motivated and there must be behavioural or addiction problems related to the offence.

- 5 parole decisions with special conditions every year.

It is likely that the supervision of operational period conditions for parole will only be transferred if the non-suspended custodial sentence cannot itself be transferred because the pre-trial detention period was extremely long.

There are 80 cases a year on average where the parole period is longer than six months (custodial sentences of more than 21 months). In 8 of the 80 cases on average, the pre-trial detention period is so long that less than nine months remain of the custodial sentence, which means there is unlikely to be a transfer of the custodial sentence. It is expected that special conditions will be imposed on 60% of these 8 cases, giving an estimate of 5 cases a year.

It is not possible to make an estimate for the **incoming alternative sanctions and conditions for the operational period** at this point in time. The numbers will probably be a factor x greater than the numbers for outgoing alternative sanctions and conditions for the operational period as more Dutch people are convicted in the other EU member states than vice versa. The current situation is that there are about 10 incoming transfers a year.

5 Impact on individual organisations

Workshops and in-depth interviews with employees of the organisations concerned were used to identify the impact in broad terms on the individual organisations.

That impact is described for each organisation in turn on the following pages. The descriptions consider the questions:

- What new tasks or extensions to existing tasks does the organisation get?
- What tasks will cease to be carried out, either in whole or in part?
- Where is there common ground with regular processes within the organisation?
- What matters require special consideration in the rest of the implementation phase?
- How many cases will the organisation have to handle every year?

5.1 Core department excluding the International Legal Assistance Division for Criminal Cases (AIRS in Dutch)

Core department excluding AIRS	
New tasks or extension of tasks	The core department will get new sub-tasks that involve: <ul style="list-style-type: none"> • coordinating the formation and alignment of national and EU policy • adding WEOS aspects to the management and accounting cycles • monitoring and making adjustments to the tactical process, which is the responsibility of the Custodial Institutions Agency and the Public Prosecution Service together with the three probation organisations (collectively known as 3RO)
Tasks that cease to be executed or reduction in tasks	Strategic and policy tasks relating to EU WOTS will eventually cease to be carried out.
Common grounds with regular processes	Planning and control cycle. Medium-term capacity planning for the Custodial Institutions Agency and 3RO.
Points for consideration	Not applicable

5.2 International Legal Assistance Division for Criminal Cases (AIRS)

AIRS	
New tasks or extension of tasks	Neither of the two framework decisions will mean any new tasks for AIRS.
Tasks that cease to be executed or reduction in tasks	The tasks relating to the EU WOTS procedures will cease to be carried out once Framework Decision 909 has been fully implemented by all the EU member states.
Common grounds with regular processes	Not applicable
Points for consideration	<ul style="list-style-type: none"> • A decision on the timing of the transfer of tasks still needs to be taken. Options: <ul style="list-style-type: none"> ○ Per member state when that member state transfers to the framework decisions ○ At a specific point in time. The new administrative agencies will then also get the (decreasingly onerous) EU WOTS task. • Make sure there are safeguards for the transfer of knowledge and experience to the new administrative agency in the implementation process.

5.3 Custodial Institutions Agency

Custodial Institutions Agency	
New tasks or extension of tasks	<p>The Custodial Institutions Agency will take on the tasks of the Central Authority. This means the Agency will have to set up a desk for receiving and sending certificates from issuing states and coordinating these cases within the Netherlands. In connection with this, operational contacts will have to be developed with authorities in other EU member states to enable formal and informal liaising. The Agency's new tasks also include receiving and passing on execution information.</p> <p>In general terms, the Custodial Institutions Agency is responsible for the coordination of cases and issuing reminders to chain partners or escalating problems if necessary. As the coordinating body, the Agency is responsible for setting up the tactical monitoring process and for reporting to the Department.</p> <p>The Custodial Institutions Agency will carry out administrative and judicial evaluations of incoming cases, looking at possible grounds for refusal, and take a decision (on behalf of the Minister) based on the advice of the Public Prosecution Service, the judiciary and, in some cases, the Immigration and Naturalisation Service. Legal and other expertise will need to be developed for this purpose.</p> <p>Where outgoing cases are concerned, the Custodial Institutions Agency is responsible for detecting potential cases, consulting with the Public Prosecution Service, compiling and sending certificates to EU member states and deciding on behalf of the Minister whether transfers should definitely be carried out.</p> <p>The Custodial Institutions Agency is responsible in both situations for initiating the process of the physical transfer. The Agency/Transport and Support Department provide transport overland within the EU and (if transport is by air) the transport to the penal institution.</p> <p>Lastly, the Custodial Institutions Agency needs to incorporate the effects of these tasks in its short-term capacity planning (cells, transport).</p>
Tasks that cease to be executed or reduction in tasks	The transportation and placement of EU WOTS prisoners will (eventually) cease.
Common grounds with regular processes	<p>As soon a prisoner has been transferred from another country, he/she enters the placement process. When the prisoner is registered in the Netherlands, the correct parole date is also recorded in the population register.</p> <p>The detection of individuals who are eligible for transfer abroad is carried out within the regular placement process.</p> <p>The enforcement order in the Netherlands is closed as soon as an individual is transferred abroad. The Custodial Institutions Agency does report to the Public Prosecution Service when the prison sentence abroad has been completed, just as it does with sentences in the Netherlands.</p> <p>The short-term capacity planning will have to be adjusted based on inflow and outflow forecasts.</p>
Points for consideration	<p>Policy may need to be developed to prevent prisoners who are to be transferred abroad from absconding.</p> <p>A central reception centre for prisoners transferred to the Netherlands (e.g. in the vicinity of Schiphol) could make the placement procedure less stressful.</p> <p>The current (automated) system for calculating a parole date does not support non-standard parole dates such as the dates that will be provided by other countries.</p>
Numbers per annum	<p>Requests received: 540 Requests sent: 85 Transportations by the Transport and Support Department: 595 (incoming and outgoing) In detention due to Framework Decision: 515 Not in detention due to Framework Decision: 80</p>

5.4 Public Prosecution Service

Public Prosecution Service	
New tasks or extension of tasks	<p>New tasks for Framework Decision 947 (the Public Prosecution Service will be the competent authority):</p> <ul style="list-style-type: none"> • Receiving, evaluating and deciding on files from EU member states and coordination/point of referral within the Netherlands • Includes any amendments to the sentence and its length to bring it in line with Dutch law • Detecting outgoing transfers, drawing up certificates, requests • Receiving, processing and sending execution information • Building up and maintaining a databank of knowledge about the feasibility of executing community punishment orders and operational period conditions • Building up and maintaining an international network of competent authorities • Point of contact for questions from other countries <p>New tasks for Framework Decision 909 (the Public Prosecution Service will be involved in assessing the files):</p> <ul style="list-style-type: none"> • Judicial evaluation of files from abroad: under WOTS the Public Prosecution Service only carries out an evaluation for exequatur cases. Under Framework Decision 909 the Public Prosecution Service will carry out an evaluation for all EU requests; furthermore, the evaluation grounds are different. Consequently there will be an extension of its tasks and the nature of its tasks will change. • If the executing state remains in charge of the actual transfer of prisoners, the Public Prosecution Service (currently the International Legal Assistance Centres) will have to coordinate more prisoner transfers than is the case under the current WOTS. This means an extension of its tasks.
Tasks that cease to be executed or reduction in tasks	<ul style="list-style-type: none"> • The International Legal Assistance Centres will no longer have the task of evaluating WOTS exequatur cases. • If the issuing state is to start organising the actual transfer process, the Public Prosecution Service will have to coordinate far fewer transfers as it will only be coordinating the outgoing cases. These will be far fewer in number than the current incoming cases under WOTS, which will mean a reduction in tasks. • The Public Prosecutor's Office at the Court of Appeal in Arnhem will no longer have an advisory function regarding the continuation of WOTS cases involving EU countries. There will be no change to the advisory procedure for WOTS for countries outside the EU.
Common grounds with regular processes	<p>Criminal proceedings (Framework Decision 947):</p> <ul style="list-style-type: none"> • The Public Prosecution Service needs to detect potential cases during the criminal proceedings, using the place of residence as documented in the record. • The decision trees for requesting probation advice will have to be changed to enable the public prosecutor to demand an alternative or suspended sentence for EU residents as well. <p>Execution process:</p> <ul style="list-style-type: none"> • If an alternative sanction or suspended sentence is imposed on a resident of an EU country, the Public Prosecution Service (the public prosecutor in question) will need to specify this as a potential transfer case, for example by using the execution indicator. This is to prevent the Central Fine Collection Agency from initiating the sanction. • The Public Prosecution Service always receives execution information from the 3RO probation services, but the execution information for transferred Framework Decision 947 cases needs to be fed back to the issuing state. Consequently it will need to be recorded if it is a transferred sentence. In that case, the Public Prosecution Service department acting as competence authority will need to be informed. <p>Release on parole:</p> <ul style="list-style-type: none"> • The central parole facility will need to consider parole with special conditions for EU residents too.

Points for consideration	<ul style="list-style-type: none"> • Good working relationships need to be developed and maintained with the competent authorities in the other countries and with 3RO's foreign desk in order to enable the tasks under Framework Decision 947 to be carried out properly and efficiently. • Good working relationships need to be developed and maintained with the Custodial Institutions Agency and the Immigration and Naturalisation Service (because of residence permit checks) in order to enable the tasks under Framework Decision 909 to be carried out properly and efficiently. • The best solution would be to centralise the Public Prosecution Service's tasks under both framework decisions in view of the need to build up expertise and keep turnaround times short. • LURIS needs to be amended to allow WEOS cases to be recorded. • The Public Prosecution Service needs to inform public prosecutors of the options on offer under Framework Decision 947 to ensure that full use is made of those options. • The role of the police needs to be studied in the subsequent phase of the implementation. The police may have more work as they may sometimes be called upon to check the place of residence.
Numbers per annum	<p>Framework Decision 947 Outgoing cases: 70 per annum Incoming cases: unknown</p> <p>Framework Decision 909 Judicial evaluation: 540 Involvement of International Legal Assistance Centres in transfers (incoming): 515 Involvement of International Legal Assistance Centres in transfers (outgoing): 80</p>

5.5

Judiciary

Judiciary	
New tasks or extension of tasks	<p>The judiciary is only involved in cases falling under Framework Decision 909.</p> <ul style="list-style-type: none"> • New tasks are advising on the particulars of an offence, amending the sentence to fit the maximum sentence where necessary and determining a parole date where necessary. • There is an objection procedure for outgoing sentences. This means an extension of the judiciary's tasks. • There is the possibility of lawsuits in the court in interlocutory proceedings against the proposed decision by the Minister of Justice. That can mean an extension of tasks.
Tasks that cease to be executed or reduction in tasks	<ul style="list-style-type: none"> • It will no longer be necessary to bring transferred prisoners before the examining judge in exequatur EU WOTS cases; this means a reduction in tasks. • The judiciary will no longer have its advisory task under Article 43 of WOTS for EU WOTS cases.
Common grounds with regular processes	<p>Criminal proceedings:</p> <ul style="list-style-type: none"> • The aim of Framework Decision 947 is for judges to give EU citizens alternative sanctions and suspended custodial sentences with special conditions more often. If that is to happen, they need to know about the options for execution in EU countries, and to have confidence in those options. The necessary information about execution needs to be made available to judges. • It would be a useful addition if sentences of EU citizens could include the information that the sentence in question is transferable (standard text and code).
Points for consideration	<ul style="list-style-type: none"> • There needs to be knowledge available about parole regulations in other countries. • It is desirable for the judiciary's tasks to be assigned to one court of law for reasons of efficiency, continuity and quality. • The objection procedure will be subject to short time limits; this means objections need to be dealt with swiftly. • Judges need to be informed of the options on offer under Framework Decision 947 to ensure that full use is made of those options.
Numbers per annum	Number of recommendations to the Custodial Institutions Agency: 540

5.6 Ministry of Foreign Affairs

Ministry of Foreign Affairs	
New tasks or extension of tasks	The Ministry of Foreign Affairs will not have any new tasks. There may be more requests by the competent authority in the Netherlands for confirmation of a prisoner's identity, which could lead to an extension of its tasks. There may also be more requests for a travel document to be drawn up.
Tasks that cease to be executed or reduction in tasks	The Ministry of Foreign Affairs will not lose any tasks. There may be a reduction in the amount of consular assistance required because fewer Dutch people will be detained in European countries and the transfer procedure will take place more quickly.
Common grounds with regular processes	All the tasks of the Ministry of Foreign Affairs fall within the scope of the regular consular assistance processes.
Points for consideration	<p>Any new information requirements resulting from the WEOS can be dealt with in the new information system KOMPAS by adding fields and leaving them unassigned. Agreements can be made regarding the information the competent authority is able to request from the Ministry of Foreign Affairs (such as place of residence, etc.).</p> <p>The Ministry provides consular assistance to Dutch prisoners abroad and informs prisoners that they and their contact person can obtain information about the WOTS through the WOTS line. The expertise the Ministry has acquired in assisting prisoners means it could be involved in designing the information function together with the International Legal Assistance Division for Criminal Cases.</p>

5.7 The three probation organisations (known collectively as 3RO)

3RO	
New tasks or extension of tasks	<p>In individual cases:</p> <ul style="list-style-type: none"> • Advisory role in determining permanent or temporary address through client tracking system (where necessary, incoming 909 and 947 cases) • Additional social inquiry reports for use in criminal proceedings in the Netherlands involving EU citizens who could potentially be given an alternative sanction (outgoing 947 cases) • Advising the competent authority (Public Prosecution Service) on the feasibility of executing operational period conditions (where necessary, incoming 947 cases) • Advising the issuing state on the feasibility of executing operational period conditions as provided for in the issuing state's criminal proceedings (where necessary, incoming 947 cases) • Incorporating the transferred community punishment order/operational period conditions prior to the transfer in the regular execution process of the probation desks/regions (incoming 947 cases) <p>General tasks:</p> <ul style="list-style-type: none"> • Contributing to the creation and maintenance of a databank of knowledge about the feasibility of executing community punishment orders and operational period conditions (the Public Prosecution Service will probably be responsible) • Developing and maintaining routes for exchanging information between 3RO and European counterparts for the purpose of its intended advisory tasks
Tasks that cease to be executed or reduction in tasks	Current practice of transferring community punishment orders and operational period conditions within the EU will cease (current practice of transfers to and from the Dutch Antilles (25 to 40 cases a year) and outside the EU will continue)
Common grounds with regular processes	<p>Execution process:</p> <ul style="list-style-type: none"> • 3RO should not be given the order to execute an outgoing 947 sentence, as would currently automatically happen once the judgement became final • Execution information provided by 3RO to the competent authority (Public Prosecution Service) for the issuing state: consideration needs to be given to the timeliness and quality of the information
Points for consideration	<ul style="list-style-type: none"> • The probation service is in charge of setting up a foreign desk for dealing with 'transfer cases' at a central location: <ul style="list-style-type: none"> ○ A central point of contact for competent authorities and criminal justice chain partners ○ Preparing, coordinating and dealing with the transfer cases • Client tracking system is being transferred to IRIS: any changes due to the framework decisions should be included in this process • Criminal proceedings: the social inquiry report on EU citizens is not a standard social inquiry report; it is difficult to organise from a logistical point of view (information is required from the executing state) and the desired throughput times are short. Arrangements need to be made with the Public Prosecution Service. • Tracing the convicted person (incoming cases): arrangements need to be made with the Public Prosecution Service regarding the action to be taken if the convicted person cannot be traced, and regarding the allocation of tasks. • Could start with pilot projects: Germany/Belgium, community punishment orders.

5.8 Royal Netherlands Military Constabulary

Royal Netherlands Military Constabulary	
New tasks or extension of tasks	<p>The Constabulary will not have any new tasks.</p> <p>The Royal Netherlands Military Constabulary has two tasks: escorting prisoners between the Transport and Support Department and the foreign authority (all transfers) and escorting prisoners travelling by air. The task of providing escorts between the Transport and Support Department and foreign authorities will become more onerous due to the increase in the number of transfers. Whether the task of providing flight escorts becomes more onerous or less onerous depends on whether the issuing state becomes responsible for these escorts or the executing state remains responsible (as it is for the WOTS cases). Whatever the case, there will always be an escort required at the airport.</p> <p>The task of providing flight escorts will become more onerous if the executing state remains responsible for the escort for flights from the issuing state (as it is for the WOTS cases).</p>
Tasks that cease to be executed or reduction in tasks	<p>The Constabulary will not lose any tasks.</p> <p>The task of providing flight escorts will become less onerous if the issuing state becomes responsible for the flight escorts to the executing state, due to a reduction in numbers.</p>
Common grounds with regular processes	Prisoners can initially be detained at Schiphol as transferred prisoners no longer need to be brought before the public prosecutor. This increases the range of times when the transportation can take place.
Points for consideration	The priorities imposed by the governing council mean that the WOTS is currently given a lower priority than removing and deporting aliens; as a consequence, the time limit of 30 days set in Framework Decision 909 can often not be achieved. The priorities will have to be changed.
Numbers per annum	<p>Number of escorts between foreign authority and Transport and Support Department: 595 (340 at Schiphol and 255 at border posts)</p> <p><i>If incoming cases have flight escorts provided by the Netherlands while outgoing cases are the responsibility of the executing state:</i> Number of flight escorts: 285</p> <p><i>If outgoing cases have flight escorts provided by the Netherlands while incoming cases are the responsibility of the issuing state:</i> Number of flight escorts: 55</p>

5.9

JustID (judicial information service)

JustID	
New tasks or extension of tasks	Neither of the two framework decisions will mean any new tasks for JustID. The Service does not receive any 'WOTS/continued enforcement' decisions at the moment - in contravention of Article 9 of the Criminal Data Decree (BJG in Dutch). All WEOS decisions will need to be added to the Criminal Records (JD in Dutch). As a result, there will in practice be an extension of its tasks.
Tasks that cease to be executed or reduction in tasks	None
Common grounds with regular processes	JustID needs to be informed in good time of decisions and changes in status related to WEOS for the 'referral' and 'recording' processes: <ul style="list-style-type: none"> • Incoming 909/947 cases: enforcement order, start of execution, end of execution • Outgoing 909/947 cases: closing ongoing execution in the Netherlands, registering the completion of execution in the executing state <p>Sentences are sent to the country where the convicted person has nationality for the purpose of the European Criminal Records System (ECRIS). A reference needs to be added to the Criminal Records linking the sentence abroad to the execution taken over in the Netherlands in order to prevent duplicate registrations of a sentence.</p>
Points for consideration	Agreements need to be made regarding case and file numbers if WEOS information is to be processed correctly. The existing approach used in the Criminal Records System and the Criminal Enforcement Reference Index of Persons has limitations that need to be properly allowed for. While reporting the completion of execution (by the Public Prosecution Service) is a regular part of the process (in accordance with Article 7 of the Criminal Data Decree), JustID does not actually receive a completion report in many cases. It should therefore not be automatically assumed that this will work properly for WEOS cases.

5.10 Central Fine Collection Agency

Central Fine Collection Agency	
New tasks or extension of tasks	<p>The two framework decisions will mean that the Central Fine Collection Agency will need to make changes in a number of regular processes to enable it to process WEOS-related cases. It is likely that this will make its tasks more onerous as the cases are exceptions to the rule (both in terms of volume and in terms of deviations from the standard process). This applies to the following processes:</p> <ul style="list-style-type: none"> • Coordinating custodial sentences; currently this is only done for prisoners not in preventive custody • Coordinating community punishment orders • Coordinating release on parole <p>Given the current information flows, the Central Fine Collection Agency is the only organisation in a position to detect the individuals who are not in detention and are eligible for detention abroad. This is an extra task for the National Coordinating Centre for Arrest Warrants. It should be noted that the number of individuals involved is small.</p>
Tasks that cease to be executed or reduction in tasks	None
Common grounds with regular processes	<p>Custodial sentences: The Central Fine Collection Agency receives reports of the execution status and reports this to the Public Prosecution Service. This route should be kept for sentences that are transferred abroad. The Agency/National Coordinating Centre for Arrest Warrants also coordinates the subsequent execution. The Agency should be consulted if a transfer abroad is proposed and should be informed if a prisoner is transferred.</p> <p>Community punishment orders: The Agency routes and monitors community punishment orders on behalf of the Public Prosecution Service. There will be little change for incoming WEOS cases via the Public Prosecution Service. The possibility of non-standard periods and time limits does need to be taken into account. If the Agency has already been informed of outgoing cases prior to the transfer, it needs to close these cases. The preferred option is for these cases to have been 'caught' by the Public Prosecution Service before that stage is reached.</p> <p>Release on parole: There will be no consultation of the local Public Prosecution Service when transferring parole cases. The parole date is non-standard but this will not lead to any deviations in the procedure. The transfer of parole to an executing state is a new variant in the parole process.</p>
Points for consideration	<p>The task of coordinating custodial sentences may in the future be extended to prisoners in preventive custody. There is also talk of the Central Fine Collection Agency being given a role in the routing of special conditions (Framework Decision 947). Allowance may need to be made for non-standard case numbers for incoming cases.</p>

5.11 Immigration and Naturalisation Service

Immigration and Naturalisation Service	
New tasks or extension of tasks	<p>Neither of the two framework decisions will mean any new tasks for the Immigration and Naturalisation Service. An extension of tasks is expected: the Service will be called on more often to check whether the sentence in the issuing state has consequences for the residence permit in the Netherlands (if required, incoming 909 and 947 cases).</p>
Tasks that cease to be executed or reduction in tasks	None
Common grounds with regular processes	The Immigration and Naturalisation Service receives orders/requests from another organisation (AIRS in the old situation, the Public Prosecution Service or Custodial Institutions Agency in the new situation).
Points for consideration	None
Numbers per annum	Number of recommendations concerning undesirable alien declarations: 60

6 Looking to the future

6.1 Future steps - project

The working conference also looked at the steps that need to be taken in the future. Appendix 3 (available on request, in Dutch only) contains a report of the working conference and includes the timetable for the implementation process that was drawn up during the working conference. The ideas developed here form a good starting point for the further implementation of the legislation.

A central project organisation will be set up immediately after the completion of this impact analysis. One of its tasks is to draw up a criminal justice chain project plan specifying the objectives, approach and timetable for the central project. This will serve as a basis enabling the project managers in the criminal justice chain organisations to start drawing up project plans for their own organisations. The central project plan was in the process of being developed while this report was being written. The criminal justice chain organisations will have the opportunity to contribute to this plan.

Further action will need to wait until the legislative proposal has been finalised. This will fix the main setup choices; then the WEOS project will be able to carry on with establishing what consequences the legislation has for the chain partners. The legislative proposal at the start of 2010 will provide further details and fine-tuning for the criminal justice chain processes presented here. It will also address the outstanding points and issues listed in this report. Once that additional level of detail has been added, a quick scan can be made of the information needs throughout the chain.

The next step is to carry out more detailed impact analyses for the individual criminal justice chain organisations. This should make clear what changes can be expected in terms of processes, staffing and the provision of information, and how big those changes will be.

Once working processes have been designed based on this second impact analysis, a start can be made on a pilot project in collaboration with a country where a relatively large number of Dutch people are sentenced. The new WEOS project will be rolled out further after this pilot project has been evaluated.

6.2 Points requiring further discussion within Europe

Coordination within Europe will be needed while the above developments are taking place. Also, the policy for dealing with WEOS cases will need to be developed. These are departmental matters and they are crucial for the success of WEOS. The key European issues that have been identified to date are listed below. This list will need to be updated in future if new issues arise or are discovered.

Framework Decision 909

909-1.	<p>The issuing state bears the costs for the transfer of prisoners. This leads to two options:</p> <ul style="list-style-type: none"> • the issuing state is responsible for the physical transfer to the executing state • the executing state is responsible for the physical transfer to the executing state and charges the costs to the issuing state <p>The Netherlands prefers the first option and proposes making one general agreement applicable to all of Europe.</p>
909-2.	<p>There will be no transfers of hospital detention orders in the first few years. The underlying idea is to start with simple cases and work up to handling increasingly complex cases where possible.</p>
909-3.	<p>The Netherlands is provisionally applying the principle of no transfers of combined cases (partially suspended custodial sentences with special conditions). In other words, transfers are possible under either Framework Decision 909 or Framework Decision 947, but not both.</p>
909-4.	<p>An explanation is needed of the parole rules applying to the individual case in question in order to be able to translate the parole arrangement in the issuing state to the Dutch</p>

	situation This explanation should be included in the certificate.
909-5.	A risk profile of the prisoner is required before the physical transfer takes place to enable transportation and placement to be arranged.
909-6.	In view of past experience with the implementation of legislation, further agreements need to be made with each individual country regarding the period of transition from EU WOTS to the framework decisions.
909-7.	The Netherlands wishes to make use of the current Interpol contacts (EAW) when carrying out the physical transfers.
909-8.	Experience with the EAW shows that people are not always familiar with default sentences, even if that is specified in the certificate. Proposal: Option 1, a new framework decision on default sentences/notices of service of a sentence in anticipation of future practice. Option 2, attach a notice of service proving that the sentence was served in person.
909-9.	A point for attention: the situation needs to be avoided whereby there is duplication in the criminal records because sentences are exchanged on the one hand in the context of Framework Decision ECRIS and on the other hand in the context of Framework Decisions 909 and 947.
909-10.	The certificate specifies whether there is a travel document. The Netherlands wishes to know whether this document is valid and physically available so that measures can be taken in time if that is not the case.
909-11.	There is no legal protection for the proceedings in the Netherlands as executing state except for the court in interlocutory proceedings. This assumes that each member state provides legal protection for proposed decisions regarding transfer to an executing state. What forms of legal protection are distinguished prior to the decision to transfer an individual to another country?

Framework Decision 947

947-1.	Judges and public prosecutors will want information on the execution options in other member states before they consider giving a foreigner an alternative sanction. What modalities are there? How is supervision organised? This information needs to be exchanged internationally. This can be done using a shared database or international knowledge network. CEP, the European Organisation for Probation, could play a part here.
947-2.	Research and discussion about differences in the sentencing policy for nationals and foreign nationals is required in all EU member states to get a picture of the potential size of the target group for this framework decision, and as a result of the effectiveness of the investments that are made or need to be made.
947-3.	There is no legal protection for the proceedings in the Netherlands as executing state except for the court in interlocutory proceedings. This assumes that each member state provides legal protection for proposed decisions regarding transfer to an executing state. What forms of legal protection are distinguished prior to the decision to transfer an individual to another country?
947-4	In view of past experience with the implementation of legislation, further agreements need to be made with each individual country regarding the period of transition from EU WOTS to the framework decisions.
947-5	Coordination is required about when supervision starts in practice. Ensuring continuity when carrying on with enforcement that has already started is problematic but delays in starting supervision reduces its effectiveness.
947-6	It is preferable for EU member states to send any probation reports or other information on such factors as behaviour, previous convictions and criminogenic factors as well when they send the sentence and certificate. Perhaps agreements could be made on this subject with the key EU member states. A point for attention: different regulations governing personal data.
947-7	It is important for agreements to be made on the quality of information about the place of residence of convicted persons that the issuing state provides to the executing state, given the problems that can be expected in tracking down convicted persons.
947-8	Experience with the EAW shows that people are not always familiar with default sentences, even if that is specified in the certificate. Proposal: Option 1, a new framework decision on default sentences/notices of service of a sentence in anticipation of future practice. Option 2, attach a notice of service proving that the sentence was served in person.

947-9	For the time being there will be no transfers of combined cases (partially suspended custodial sentences with special conditions). In other words, transfers are possible under either Framework Decision 909 or Framework Decision 947, but not both.
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7 Appendices

The appendices to this report are available on request. They are only available in Dutch.