



MINUTES

CEP Expert Meeting
Enhancing the Implementation of
Framework Decisions 2008/JHA/947 & 2009/JHA/829
Date: 26th - 27th August 2015
Brussels, Belgium

Present:

- Annie Devos – General Director Maisons de Justice Belgium
- Audrey Servay – Probation Officer and Victim Specialist at the Maisons de Justice Belgium
- Cosmin Stroie - Public Prosecutor to the Court Bucharest
- Daniel Motoi – Judge, Romania
- Marina Beun – Public Prosecutor Dutch Ministry of Justice
- Melinda Lewis – Region Coordinator International Desk Dutch Probation Service
- Marco Brok – Policy Officer International Office Dutch Probation Service
- Anton van Kalmthout – Criminologist University of Tilburg
- Ioan Durnescu – Criminologist University of Bucharest
- Alex Tinsley - Legal & Policy Officer Fair Trials
- Tony Grapes – independent Case Management Expert
- Jesca Beneder – Legal Officer European Commission DG Justice
- Jonas Grimheden – Head of Sector European Union Agency for Fundamental Rights
- Gerry McNally – Board Member CEP (moderation)
- Koen Goei- Liaison Officer CEP (notes)

Apologies:

- Christine Morgenstern - Criminologist University of Greifswald

Purpose of the expert meeting

The CEP expert meeting on Framework Decisions 2008/JHA/947 and 2009/JHA/829 (FDs) aimed to provide CEP with the necessary information to draw up a plan of action to help the European Commission to implement the FDs, as well as to make recommendations to the Commission how the implementation of the FDs can be enhanced.



Therefore, CEP has invited expert practitioners, judges, prosecutors, researchers and policy makers from different EU member States to discuss the state of play regarding the implementation of the FDs, the experiences that they have in transfer processes, to identify obstacles in the implementation process and to think about possible solutions to tackle these obstacles.

The programme of the expert meeting consisted of two days. On day 1 experts discussed the implementation of the FDs and the obstacles encountered in the implementation and in transfer processes. The discussions were centred around four themes that were introduced briefly by one of the delegates. After the introduction, all participants at the meeting contributed to the discussion.

Introduction

Jesca Benerer informed that the European Commission had commissioned three different researchers to write handbooks on the practical implementation of the Framework Decisions 909, 947 and 829. The Handbook on FD 947 has been commissioned to Prof. Anton van Kalmthout, who has involved Prof. Ioan Durnescu as a co-author. The publication of all three handbooks is expected for 2016.

Moderator Gerry McNally proposed to first discuss the relation between FD 2008/JHA 909 on the one hand and 947 & 829 on the other, in order to explore if support actions for the implementation of the FDs would be more efficient if they are done separately for each FD, or that it is better to take them as a package.

Similarities and differences between the FDs were discussed. All are based on the principle of mutual trust, of course. The Commission also pointed out that the FDs as a whole aim to foresee in the transfer of criminal procedures. Therefore they are not options that one can choose to implement or not; all have to be included. Therefore, the FDs have been designed to operate in one body, e.g. 909 and 947 share several similar principles in the implementation, e.g. double criminality. The execution of the FDs in practice shows that cocktail verdicts, i.e. verdicts that combine several EU regulations regarding transfer in criminal procedures, are not uncommon.

However, at present a different number of countries have signed up to the three FDs. As such one can conclude that there is a difference in complementarity and in the commitment to make these work. The execution of the different FDs is quite different. Also, in some countries, like the Netherlands, there are different competent authorities for 909 and 947/829.

With regard to the cocktail verdict, Gerry McNally wonders whether a transfer under 829 implies that the sentence will be transferred as well. He asks the experts to elaborate on their experiences on transfer under 829 in a broader perspective.

Judge Daniel Motoi indicates that probation officers and the judiciary are often not aware of the possibility of transfer under 829. In addition, one cannot expect



judges to have an extensive knowledge of the justice systems of other EU Member States. Descriptions of national law of EU Member States is not always available in English. Inquiries with competent authorities sometimes reveal that even competent authorities are unaware of FD 829. Under these circumstances, it is difficult to find a basis for trust.

Jesca Benerer confirms that more support activities are needed for 829 now than for 909 and 947. The European Commission is eager to support qualitative strong proposals for support actions in the domain of 829.

The discussion that follows the delegates discuss about how trust can be built. Providing information in an accessible way seems crucial, as well as bringing together competent authorities and staff working in the implementation of the FDs physically. It is stressed that there are different target groups: judges, prosecutors, probation officers, defence lawyers etc. Each groups is best targeted in a different way. Judges seem to be a special target group, as this group is hard to reach. As a further support action all delegates consider the dissemination of best practices in transfers under 947/829 to be very useful.

Several possible actions to enhance (continuous) communication and trust are discussed:

- Designing info-websites and e-learning programmes for 947. In the Netherlands, the Public Prosecutor Office has developed an e-programme a few years ago. It will updated soon. This could serve as a basis for a Euro-wide promotion tool. (please note: EuroPris working on a comparable tool for 909). In addition, the Public Prosecutor Office has built a website on 947 especially targeted towards prosecutors. Also this could possibly be an example for other countries
- Build a network for professionals working on 947 in different EU Member States. A similar network should be set up for 829. Different networks for different FDs for different target groups is to be preferred. (please note: the FD909 network meetings that EuroPris has organised in 2014 and 2015 may serve as an example)
- Work on different messages for the support of the FDs for different target groups. Depending on the target group, the stress in the message could be on the benefits of a transfer for the interest for the sentenced person / the effectiveness of the implementation of the verdict / the cost-efficiency that can be obtained.

Prof. Anton van Kalmthout raise the question of how the profile of 829 could be raised. He advocates combining the promotion of 947 and 829, as cases of 829 could easily turn out in 947 transfers. Moreover, in some countries the prosecutor can impose measures that have the character of a fine, which is useful for transfer. He would recommend that when a revision of the FDs is planned, an integration of these measures is to be considered **[Recommendation]**. In this regard he also mentions diversion, that is not covered in the FDs. In a revision of the FDs diversion should not be forgotten to be included.

(Jesca Benerer clarifies that the Netherlands brought in the option of pre-trial diversion in the preparatory discussions for FD 947. However, too little countries have this option, so it was left out of the final text of the FD)

Further discussions made clear that no transfer under 829 has taken place yet.



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Marco Brok indicated that in 947 cases the term is exceeded rather often. In addition, after a transfer the receiving country does not back to the issuing country on the execution of the transferred sanction and the reintegration of the transferred offender. The result of the transfer therefore remains unclear to the issuing state.

Prof. Ioan Durnescu expressed the great interest of researchers into this matter. A research into 909 transfers showed issues like a lack of cooperation between prison administrations and the transfer procedure being too long in many cases.

Daniel Motoi added that prisoners sent back to Romania are often disappointed to learn that their reduction of time in prison obtained via labour (in some countries this option can be applied) is not recognized when they are transferred to Romania. In Romania this option does not exist, and therefore is not applied to the time of the sentence.

Jonas Grimheden informs that Nordic arrangements could serve as good example for EU transfer. Probation officers in one country know well how to find their colleagues abroad. They generally find a method to work well with each other and often they know each other. However, this may change when judges become a part of the communication in cases of transfer.

Gerry McNally draws the discussion to a conclusion. Is the most efficient way to support the implementation of the FDs by targeting the FDS separately or as a package?

It is decided that it is best to develop separate support actions for 909 and 947/829. Also, there need to be expert groups on different professional levels. There is value in liaising with EuroPris on an annual basis in order to discuss bringing together the networks created by EuroPris (909) and by CEP (947/829) for a joint exchange meeting. After all you can learn to trust; you cannot impose trust.

Theme: Purpose and practice of the Framework Decisions – according to their description, their purpose is the facilitating social rehabilitation of offenders and reducing (pre-trial) detention. To what extent do the FDs meet these goals?

After a brief explanation of Gerry McNally of the question of this theme, Anton van Kalmthout comments that when the implementation of the FDs is discussed, experts always talk about probation workers, judges, prosecutors, law makers and other professionals in criminal justice. Never is spoken about prisoners and offenders. But it needs to be addressed what information should be given to the offenders in order to enable them to make an informed consent for transfer under 947/829? After all there is the obligation to provide all relevant information.

Marco Brok adds that transfer cases are always tailored to the offender, which should enhance the rehabilitation after the transfer. However, as the receiving state is not reporting back to the issuing state, the issuing state does not know whether the rehabilitation after the transfer has been successful.





Until now, Marco has never had any negative reactions after transfers, so he can only suppose that all has worked well.

In conclusion Gerry McNally resumes that the key of the promotion of the FDs is the positive principle behind it. Even though taking rehabilitation of the offender into account may complicate discussions on the application of the FDs, it is needed for the interests offender with regard to his reintegration into society.

Alex Tinsley adds that we should be cautious not to draw too much connection between the FDs as their purpose is different. He uses the example of the European Arrest Warrant. Among lawyers there is much confusion about what the terms in the FD actually encompass. Clarification should come from exchange of ideas of professionals. Therefore he recommends that probation organisations should liaise with the bar associations etc. Dialogue is needed at a national level sometimes, as the FDs are not just a matter of legal regulations; their goals should be stressed any time.

Framework Decisions: Known and trusted? – the FDs are based on the principle of mutual trust between EU Member States in each other’s criminal justice system. However, there is reason to believe that the option of the transfer of sentences to other EU Member States is still little known. To what extent is “unknown, unloved”?

Marco Brok points out that probation workers immediately understood the importance of FD 947. According to him, it are more judges and prosecutors that see FD 947 as an obstacle, rather than as an opportunity.

Anton van Kalmthout responds that defence lawyers are an important group to target as they are to defend the interest of their clients. According to him, trust is not so much the problem in cases of transfer. He identifies time, effort and money as clearer obstacles for transfer. After all, why would anyone spend so much of his time for the transfer of an offender? An ordinary sentence is more efficient in terms of time and costs. Benefits for the transferring states in FD 947/829 remain unclear. This is contrast with the European Arrest Warrant, in which there is a clear benefit for both countries. FD 909 is a relative success, as the issuing state can get rid of prisoners. But here we come back to the previous theme: this all is from the perspective of the criminal justice professionals. We do not speak about the interests of the offenders here.

In reaction Daniel Motoi and Marina Beun remind that in some criminal cases there is no lawyer involved. That makes it difficult to target lawyers in our communication.

Tony Grapes argues that the “interest of the offender” is politically not a strong currency. Maybe there should be a shift in the language. For instance “we do not want people coming back who are dangerous and who will not be under supervision” would make more sense in a political environment.





Gerry McNally resumes that for addressing the issue of the promotion of the application of the FDs , we should clearly identify the different groups of professionals that we want to target, and design messages that underpin the relevance of each FD for each professional target group. So for instance FD947 > pre-sentence: judges & prosecutors / post-sentence: probation officers.

Theme: Collaboration and mutual trust in the transfer process? – apart from the legal implementation of the FDs, there is their practical implementation. How do the transfers work out in practice? What are the obstacles encountered in the transfer processes?

In a presentation Melinda Lewis and Marco Brok outline the commitment of the International Desk of the Dutch probation Service to make a transfer case possible. Ownership of the case, and the promotion of and the dissemination of information regarding the FDs among Probation Officers are essential elements in the work of the International Desk. .

Anton van Kalmthout makes the remark that the International Desk has collected a wealth of data on transfers. According to him this should be used for research, to be published in articles for scientific journals. This could work as a kind of leverage for judges, prosecutors and the judiciary. This would be a very interesting assignment for a student in her/his last year of study.

Jesca Benender expresses these research results are also very interesting on an EU level. In the negotiations with the UK on the implementation of FD947, the UK had asked for success stories in 947-transfers. Possibly this research will bring up these success stories. Anton van Kalmthout stressed that not only success stories but also obstacles in practice are to be communicated, as this will show the need to jointly work on solutions to overcome these.

Tony Grapes and Ioan Durnescu add that this could also be an element of a FD training module for the judiciary, and possibly also in training courses targeted towards other (professional) groups. Notably the judiciary is identified as the group where FD learning is most needed in order to make the FDs an efficient instrument. Jesca Benender informs that uniform interpretation of the FDs is needed, which could be greatly enhanced by (e-)training programmes. Also, the European Judicial Network had a meeting in Riga where the FDs were on the agenda. That was a very successful meeting: exchange with judges, prosecutors. This should be done more often.





Theme: Framework Decisions and Human rights – although the Framework Decisions are built on existing international legislation regarding human rights, it seems that sometimes the FDs and Human Rights are in conflict with one another. How should be dealt with this?

Anton van Kalmthout tells that for his work in the Commission for the Prevention of Torture conditions in some European prisons have been identified as below the international standard. These prisons thus cannot be used for transfer under 909. There are examples of prisoners that have been very disappointed and angry regarding the transfer process.

A discussion is started on the perceived flaws in FDs arrangements, e.g. the possibility under 909 to refuse transfer of sentences less than six months, whereas under 947 and 829 sentences under 6 months can be transferred. Also questions rise about complexities in transfer cases.

Jesca Bener informs that there may be additional EU legislation on the FD pre-trial detention in the future, but EU Member States are hesitant to do so for other FDs.

Gerry McNally wraps up that this is theme was mainly addressed from the perspective of FD909, but he concluded that for FD947 careful attention has to be paid to consent and other issues.

Best practices in transfers under 947/829

In the last topic of the day best practices in FD947/829 transfers were discussed. Alex Tinsley states that he is not aware of any transfers under FD 829, which is confirmed by the other delegates. However, the possibility of FD 829 transfer is good and thought should be given how to make best use of it.

Marco Brok mentions that the informal transfers with the Caribbean , Germany and Belgium were very challenging for Probation Officers to work at. Tony Grapes confirms this from the perspective of his work for the European project DOMICE and SOMEK: the professionals that made transfers happen by cutting through the bureaucracy did regard that as very rewarding.

Jonas Grimheden suggested that monitoring instruments for the FDs should be better connected to the better the reality of the EU in which the transfers take place.

Gerry McNally agrees that with regard to the FDs there is no research loop at present. When an offender is transferred, we just hope that the transfer is for the better of all involved parties. The reality is though, that we do not know the effect of transfers that have taken place. CEP will take this into account when developing actions to enhance the implementation and application of FD 947/829.





On the second day of the CEP expert meeting, a discussion was held to inventory the actions and projects that have taken place, and tools that have been made, aimed to support the implementation of the FDs. Then it was discussed what actions are needed to further support the implementation of the FD's, which of these actions could be started by CEP.

For the promotion of the FDs, Anton van Kalmthout reminds us that FD 947 and 829 were in essence also designed to avoid imprisonment. There is a strong agreement that these FDs help to reduce prison overcrowding, and in the slipstream of that, there is the cost benefit argument. These three arguments should be put together in one rationale when promoting the FDs.

Ioan Durnescu adds that also other perspectives could be included in this rationale, like the FDs contributing to public protection and compliance, or even the aspect of victim protection.

Annie Devos warned for netwidening. In the promotion of alternatives to detention it should be stressed that these should really remain alternatives, and not extras.

Jesca Bener stresses the importance of making a clear distinction between the different target groups in the promotion of the FDs. Judges are a very special group, as are defence lawyers, judiciary, administration etc. Judges and prosecutors could be taken together as one group, but maybe not so much administration. For judges awareness raising is strongly needed.

Ioan Durnescu informs that there is a project on FD 909 and 947 in Romania in which judges and prosecutors from Romania, Poland, France, Italy and Spain are trained. One of the deliverables of the project will be a training handbook, which could be shared with the judiciary in other EU Member States. He also briefly mentions a project on the FDs in Craiova, taking place with Belgian partners.

Jonas Grimheden remarks that it also is worthwhile thinking about a catchy name to brand the FDs; 909, 947, 829, ESO are not very appealing names.

In addition to the CEP tools for dissemination of the promotion of the FDs (Newsletter, website, EuroVista, conferences and workshops), the Probation Journal of Ireland is mentioned, as is Eurocrim, a magazine for shorter article on judicial matters from a practitioner/academic perspective.

Gerry McNally asks if there is value in CEP making a newsletter with the latest news and developments regarding FD 947/829. Ioan Durnescu and Marina Beun react that there is already an overkill of newsletters in their mail box. Therefore they advise to integrate FD-news and developments in existing newsletters.

Anton van Kalmthout stresses that on top of updating the current tools that have been designed to support the implementation and application of FDs 947/829, we need new information to enhance the FDs. E.g. identification and evidencing of best practices. Therefore research analysis of experiences of best practices. He suggests that possibly an evaluation form (which is to be designed) could be used in transfer cases. Jonas Grimheden agrees with the value of evaluation and adds that it would be strong if evaluation has a place in legislation.





Marco Brok reacts that among practitioners there is a strong need for more contact. Stress should be put on developing mechanisms that enhance the contact between practitioners in FD947/829 transfers. Jesca Beneder suggests to create a network of practitioners then similar to what EuroPris has done for practitioners working in FD909 transfers

Alex Tinsley tells about his experience that training workshops often are the start of a network of professionals, notably when these workshops have international breakout sessions. He believes that it would be very valuable to link defence lawyers to probation officers. Jesca Beneder informs that the European Judicial Network can fund regional organised workshops, which logically also contribute to the creation of a network of professionals.

Annie Devos commits to consulting her Flemish counterparts as well as the Belgian Ministry of Justice to organise a practitioner meeting.

Tony Grapes suggests that a staff directory/ a who-is-who in the FDs would be very valuable, also because it is easy to update.

Gerry McNally adds that CEP is a network organisation in itself. Therefore it could also act as an incubator for more specialized networks within probation, e.g. practitioner networks.

Suggested actions for CEP for 2016 and 2017

- Make a webpage with an overview of tools and actions that support the FDs
- Create a network for FD 947/829 practitioners and/or competent authorities, regardless whether these are centralized or decentralized (and provide liaison with academics). In such a network CEP should aim to bring together smaller (regional)(working) groups in which concrete individual cases could be discussed
- Make updates of the tools, and promote these. The updates should be part of an integrated FD947 support strategy. A similar strategy for FD 829 should be developed
- Develop a plan to enhance the evaluation of FD947/829 practice
- Liaise with EuroPris and develop a plan to bring together professionals in their FD networks
- Hold a follow-up meeting to this expert meeting.

