

PONT project results: Problems and Barriers to Implementation of FD 947 and FD 829

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Common Barriers and Problems

- ***Initiation of the procedure***
- The sentenced person must agree!
- S/He may initiate procedure

- ***Forwarding a judgment and/or a decision***
- Poor quality of the certificate or the lack of details cause important delays.



To make the **consent procedure** more **transparent and straightforward** and to **reduce delays**:

Develop a form for the sentenced person to express his/her consent.




PONT training manual dedicated to the completing the certificate
FD947 Checklist at the end of the manual


Common Barriers and Problems

- ***Lawful residence may require consultation***
- Lawful and ordinary residence
- Proving intent to return

- ***Finding and consulting with the right competent authority***
- Identify via the European Judicial Network EJN
- Send one Certificate at a time.

 The competent authority in the executing State can **verify an address** with official data.

PONT manual: tips on forwarding certificate **where the sentenced person does not have residence.**

 PONT training manual: step by step guide to using EJN competent authority finder.

National tools like 'Prontuario' in Spain and **Penal codes** from the EU member states are usually **available in different languages** on EJN under heading – *Info about national systems.*

Common Barriers and Problems

- ***Making sure the sentence is transferrable***

For example, can electronic monitoring or community service be transferred?



First **check on the European Judicial Network website** – under the *Notification* heading – to see if the executing state is ready to exercise that sanction.

Probation and alternative sanctions FD 2008/947

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- **Facilitating social reintegration**

- Judgement and/ or probation decision must be sent with the signed certificate

- **Refusing recognition**

- 11 grounds for refusal
- Time limit: 60 days from receipt to recognize judgement.



Probation services of both states can exchange **additional documents that would facilitate social reintegration** (e.g. pre-sentence report, risk assessment, psychiatric report etc.).

Consultations are strongly recommended!




Before deciding not to recognize the judgment or the probation decision, executing State should inform the issuing State: supply all **additional information** required without delay!

Probation and alternative sanctions FD 2008/947

- ***Trials in absentia***


- One of 5 conditions must be met

 PONT manual details conditions, and indicates relevant case law.

Details must be provided! If not, the forwarding of the certificate is not possible.

- ***FD 947/2008 or FD 909/2008?***

Important distinction between deprivation of liberty and restriction of liberty

 FD 909/2008 should be used in case of **custodial sentences** or measures involving deprivation of liberty

FD 947/2008 should be used for **non-custodial sentence**, supervision of probation measures or alternative sanctions.

Probation and alternative sanctions FD 2008/947

- ***Double criminality***

Offences for which a verification would not be necessary, so long as punishable in the issuing state.

- ***Communication continues after authority has been handed over***

Inform of all modifications or revocation of the probation measure, alternative sanctions or custodial sentences.



PONT gives tips on **making sure the judgment or probation decision are very well described.**



Not always possible in practice to supervise the probation measures or alternative sanctions, but still communicate!

An amnesty or pardon can be **granted by the issuing state AND the executing state.**

PONT Manual FD Flow Charts

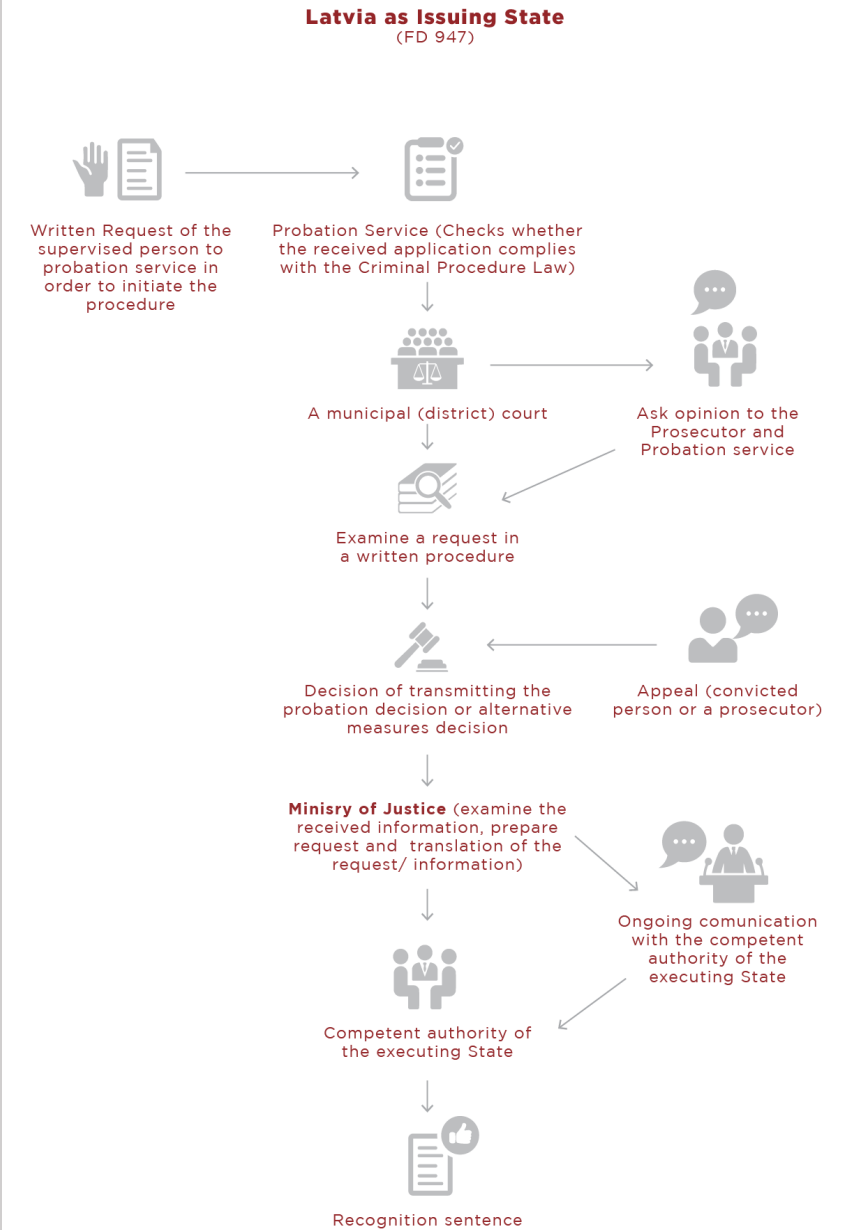
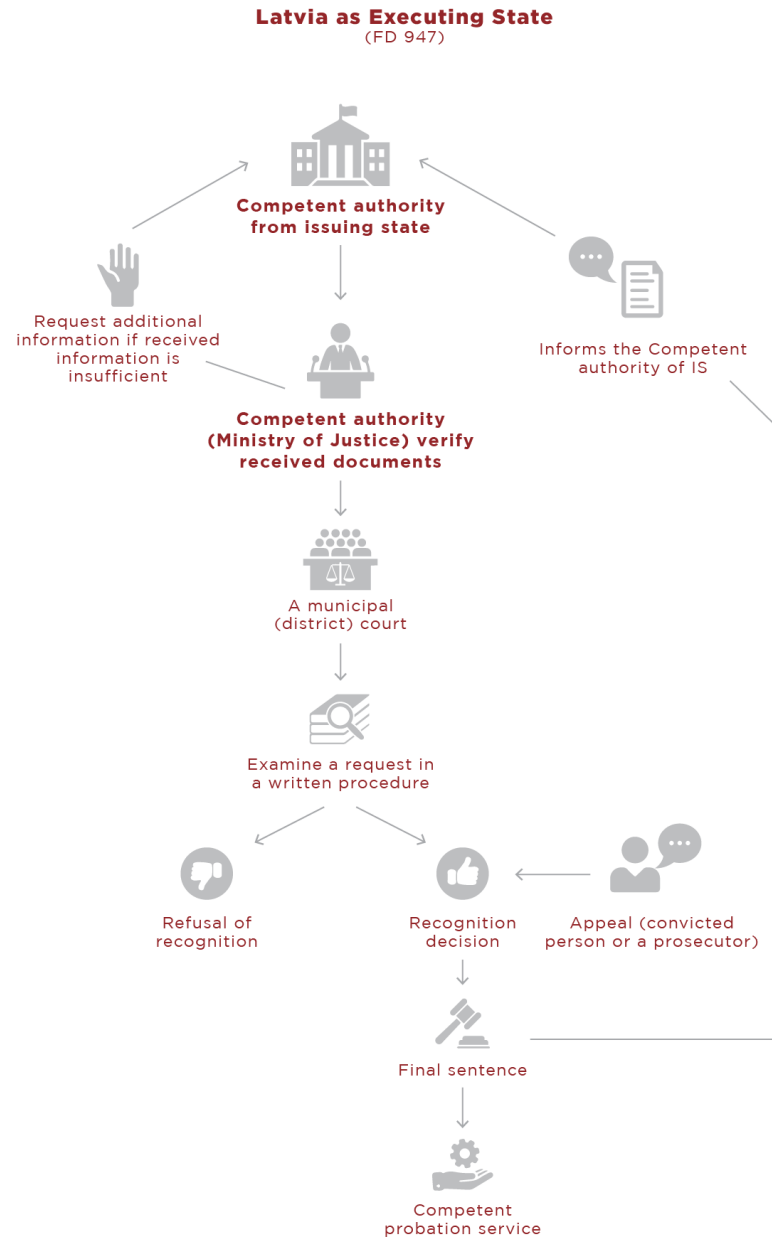
Process map of how
the following states
deal with the transfer
under FD 2008/947

Federal State of
Bremen, Germany

Latvia

Romania

Spain



European Supervision Order (ESO) – FD 2009/829


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- **Time limit**


The executing State has 20 working days to adopt a recognition decision.

- **Medical treatment**

When medical treatment is not possible in the executing State.

 If a legal remedy has been introduced against the decision the time limit is extended by **another 20 working days**.

PONT vignettes help us understand this procedure.

 Another kind of measure provided for under national legislation can be proposed (**adaptation of the nature of the measure**) or the same measure with another period of time (**adaptation of the length of the measure**).

PONT Manual FD Flow Charts

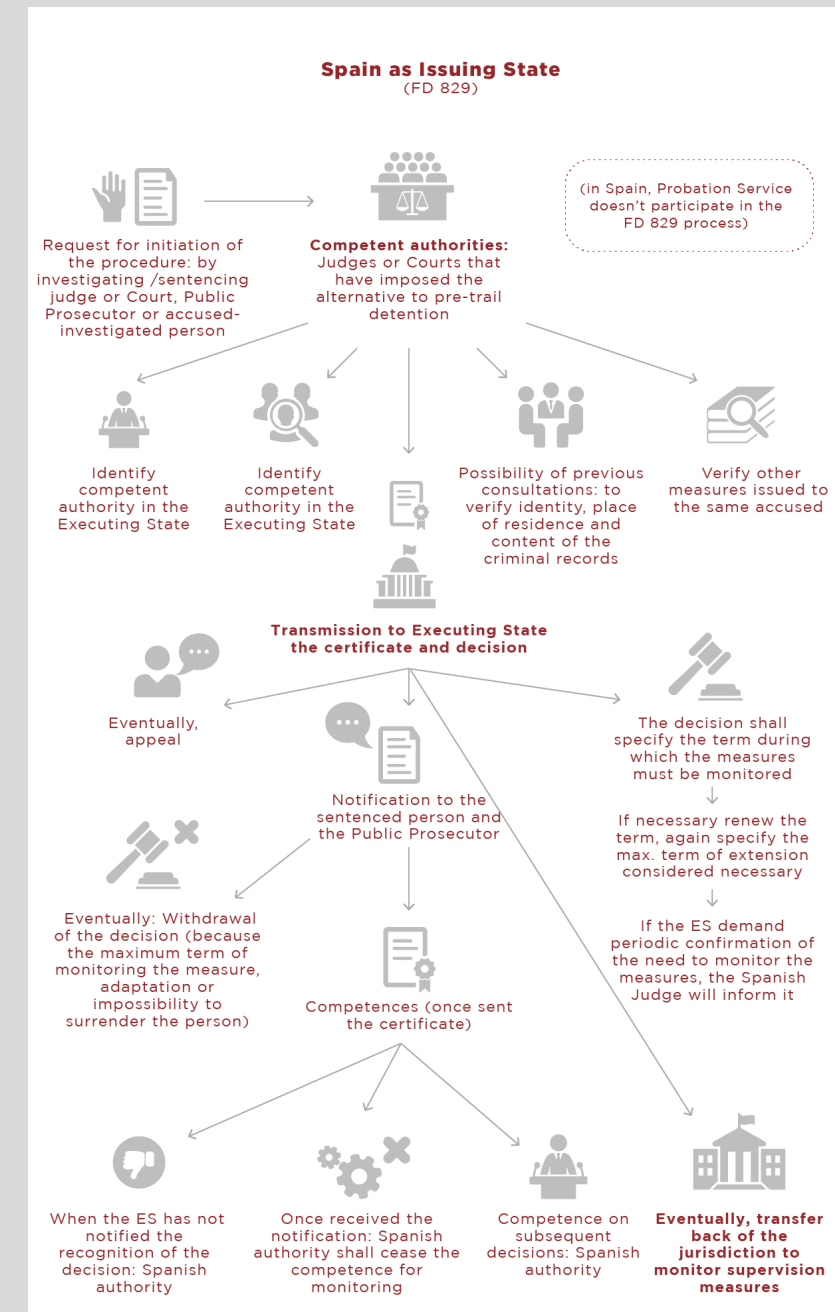
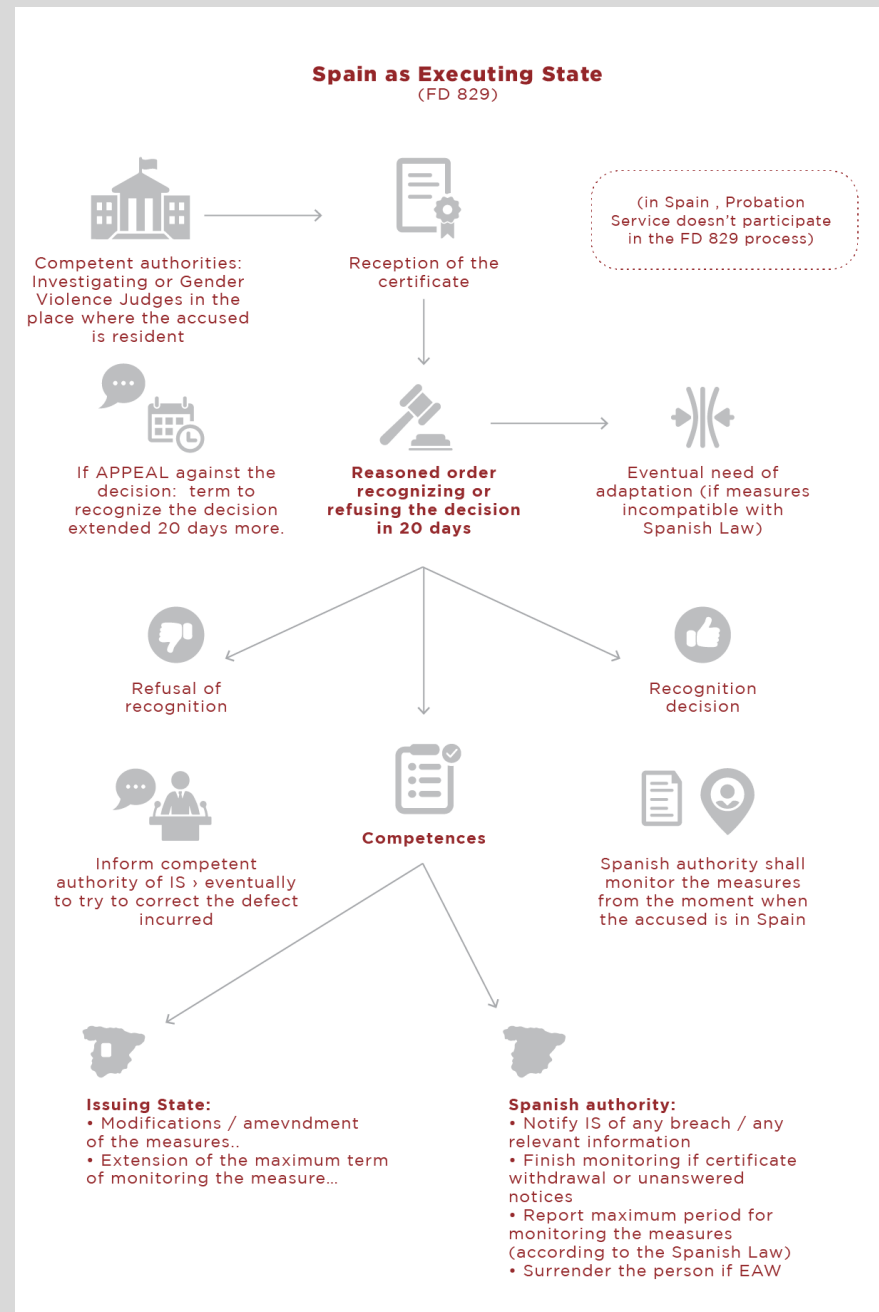
Process map of how the following states deal with the transfer under FD 829

Federal State of Bremen, Germany

Latvia

Romania

Spain



PONT Checklists and Vignettes

9.2. Annex 2 – Checklist for filling out the Certificate FD 947/2008

General:

- Is this certificate the latest form as amended by FD 299/2009?
- Will the certificate be forwarded by any means which leaves a written record? (regular post, email etc.)
- Will the certificate be accompanied by the translation of the judgment or the probation decision?
- Is the language used in the certificate accepted by the executing State? (see the declarations on the EJN website)
- Is the certificate signed by the competent authority in the issuing State?
- Is the certificate forwarded only to one competent authority of the executing State?
- Are all the sections completed? (from a.to k.)

Special attention to:

- Accuracy of the names and addresses (including tel. numbers)
- Accuracy of the data regarding the natural person (e.)
- Accuracy of the data regarding the executing State and reasons for forwarding (f.)
- Accuracy of the data regarding the judgment or probation decision (g.)
- Did you provide full description of the offence – the facts - if this is not among those 32 mentioned at point 2. or the executing State will check for double criminality?
- Did you provide the full description of how the person was summoned if not appeared in person in the final proceedings?
- Did you classify carefully the judgment or the probation decision as suspended sentence, conditional sentence, alternative sentence or conditional release? (i.)
- Did you provide clear instructions regarding the length of deprivation of liberty to be served upon revocation or breach?
- Did you provide accurate information about the duration and the nature of the probation measure or alternative sanction?
- Did you mention other relevant reports? (j.)

Final notes:

- Did you consult with the competent authority in the executing State regarding any unclear issues?
- Is the probation decision or the alternative sanction compatible with the system in the executing State?

9.4. Annex 4 – Vignettes



1. G.F. transferred from Portugal to Spain – 829/JHA

Case history

G.F. (female, 28 years old) is a Spanish citizen awaiting trial in detention in the island of Madeira since 24-03-2019. She is awaiting trial for aggravated drug trafficking – she is suspected of being a part of an international “network” that acquires cocaine in the Caribbean and introduces it to Europe using cruise ships. G.F. has her legal and usual residence in Spain and has no connection to Madeira or Portugal. She was pregnant and her partner lives in Spain.

G.F. requested preventive detention to be substituted by house arrest with EM. Court accepted this decision in 26-06-2019, attending to the pregnancy state, as long as she could execute the supervision measure in her home country.



Transfer procedure

The Madeira Court asked the Court in Spain (Oficina Decanato of A. Coruna, para su reparto a juzgados de instruccion) for the recognition of the decision to apply an alternative sanction to detention in 16-07-2019. The certificate

User friendly!

PONT used practitioner research to develop checklists, vignettes, relevant case law, practical tips, dilemmas and reflection points throughout the manual.

PONT Manual: Finding the Competent Authority

1.1. Finding the competent authorities in the Executing State

In order to find the competent authorities involved in the process, the best option is to use the European Judicial Network website (EJN) (https://www.ejn-crimjust.europa.eu/ejn/EJN_Home.aspx). Certainly, some countries have developed their own tools, such as 'Prontuario'¹ in Spain.

Therefore, as explained, the most-used tool to find the competent authority in a Member State to send a certificate according to the FD 2008/947 or 2009/829, and any other legal cooperation instrument, is the web page created by the EJN, that establishes a network of all the national contact points, in order to facilitate the judicial cooperation in criminal matters. We are therefore beginning with detailed instructions on how to use this as the first step: https://www.ejn-crimjust.europa.eu/ejn/EJN_Home.aspx |

3 page step by step guide to finding the competent authority in the executing state on the EJN website, with links and screenshots

Details of other search tools which have been developed on a national level

