

**THE ITALIAN IMPLEMENTATION OF THE  
COUNCIL FRAMEWORK DECISION  
2009/829/JHA OF 23 OCTOBER 2009 ON THE  
APPLICATION OF THE PRINCIPLE OF MUTUAL  
RECOGNITION TO DECISIONS ON  
SUPERVISION MEASURES AS AN  
ALTERNATIVE TO PROVISIONAL DETENTION**

# FD 2009/829

FD 2009/829 has been implemented by Legislative Decree 15.2.2016 n. 36 (LD 36/2016)

- **incoming cases** (Italy as Executing State) Spain and France are the MSs mainly involved
- **outgoing cases** (Italy as Issuing State) one case with Slovenia (see after)

# Procedure under FD 2009/829

- The Ministry of Justice receives requests for recognition
- The Ministry of Justice forwards the decision, along with the certificate, to the Court of Appeal
- The Court of Appeal decides within 10 days
- The Court of Appeal forwards the decision to the Prosecutor General
- The Prosecutor General monitors the supervision measure

# Supervision measures

- 1) Obligation to report at specified times to the Police
- 2) Obligation to inform the judicial authority of any change of residence
- 3) Obligation not to leave the territory of the Executing State

# House Arrest?

FD 2009/829

VS

FD 2002/584

# Incoming Cases (Spain/Italy)

Italian nationals charged in Spain with attempted robbery

The Court of Appeal recognized the decision on supervision measure and adapted it in line with domestic legislation:

- 1) maximum length of the measure**
- 2) authority to report to (Police, not the Court)**

# Breach of the supervision measure

**The competent authority of the Issuing State will take all decisions concerning renewal, withdrawal or modification of the measure**

**The Court of Appeal rejected the application filed by the Prosecutor General with the purpose of aggravating the measure and imposing a custodial measure**



# Breach of the supervision measure Critical issue

Forwarding of standard form provided for by  
Annex II of FD 2009/829

Lack of any reaction from the competent  
authorities of the Issuing State



## Outgoing case (Italy/Slovenia)

- Slovenian national charged with drug trafficking
- Sentenced to 7 years' imprisonment
- Pending appeal, released from detention on remand after more than two years
- Obligation to report daily to the Police and not to leave the Italian territory
- Forwarding decision to Slovenian authorities

# Outgoing case (Italy/Slovenia)

Slovenian authorities refused recognition of the Italian decision

**In Slovenia all provisional measures cannot exceed two years**



# Critical issue

**FRAGMENTATION  
OF NATIONAL SYSTEMS  
(LACK OF HARMONISATION)**



Best practice (suggestion)

**PREVIOUS CONSULTATIONS TO AVOID  
UNNECESSARY COSTS AND TIME-  
CONSUMING PROCEDURES**



ITALIAN SUPREME COURT OF CASSATION

(judgment n. 26526 issued on 9/3/2017)

*The competent authority retains a wide discretion in deciding whether to forward the decision on supervision measures to the Member State of execution*



ITALIAN SUPREME COURT OF CASSATION  
(judgment n. 26526 issued on 9/3/2017)

**RIGHTS OF THE SUSPECTS**

**VS**

**PROTECTION OF VICTIMS, GENERAL PUBLIC  
AND INTERNAL SECURITY INTERESTS (Article 3  
FD 2009/829)**