



**MINISTÈRE
DE LA JUSTICE**

*Liberté
Égalité
Fraternité*



**CEP Expert Workshop on Enhancing the
Implementation of
Framework Decisions 2008/JHA/947 &
2009/JHA/829**

Framework decisions – French experiences

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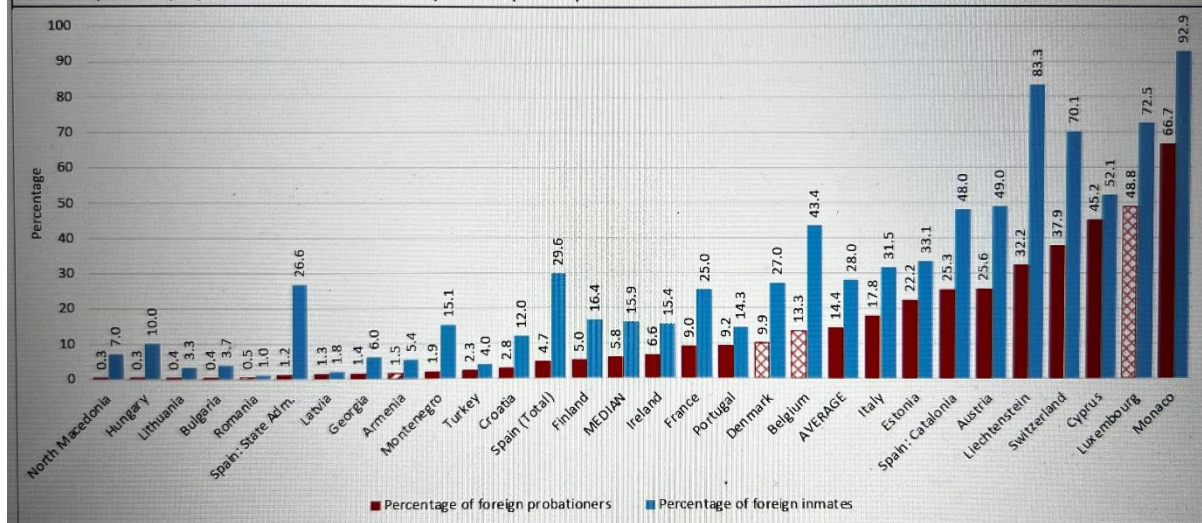
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WHY IT MATTERS ?

- ❑ The European Union has become a genuine area of freedom and mobility for its citizens following the **Schengen Agreement (1987)** and the Treaties of **Maastricht (1992)** and **Lisbon (2007)**.
- ❑ The introduction of this **freedom of movement** has also made it necessary to strengthen police and **judicial cooperation** and to adapt the various criminal justice systems.

WHY IT MATTERS ?

Figure 8. Percentage of foreign probationers in the probation population and percentage of foreign inmates in the prison population on 31 January 2022 (N=28)*



An average of **8% of probationers** at European level are foreign nationals, while at the same time, **16% of people incarcerated** in European prisons are of foreign nationality

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LEGAL FRAMEWORK

□ FD 947

The Framework Decision of the Council of the European Union of 27 November 2008, transposed into French law by Act no. 2015-993 of 17 August 2015, the provisions of which have been applicable since October 15th, 2015 and codified in articles 764-1 to 764-43 of the Criminal Procedure Code, established the recognition and enforcement of sentences and probation decisions within the Member States of the European Union.

A circular issued on August 10th 2016 provides further guidance on the application of the law of passed on August 17th, 2015.

FRANCE AS THE ISSUING STATE

➤ Competent authority

- The public prosecutor in the jurisdiction where the offender was originally sentenced

- The public prosecutor of the court of justice who issued a probation order

FRANCE AS THE EXECUTING STATE

➤ Competent authority

- The public prosecutor of the sentenced person's place of habitual residence

- The public prosecutor at the Paris judicial Court (in the absence of any address or exact location)

Sentences or decisions that could potentially be subject to enforcement across national borders :

- Conditional sentence (deferral of sentence),
- simple probation,
- probation with or without an obligation to perform community service,
- socio-judicial supervision,
- conditional release,
- post-release supervision,
- judicial supervision and security supervision,
- electronic monitoring,
- community service.

Probation measures which can forwarded :

Article 764-3 1° to 11° sets out a list of obligations and injunctions that may be followed by the competent authorities in the Member States:

- Obligation of the sentenced person to inform a specific authority of any change of residence or working place,
- Obligation not to enter certain localities, places or defined areas in the issuing or executing State
- Obligation imposing limitations on leaving the territory of the executing State,
- Obligation to undergo therapeutic treatment or treatment for addiction,
- Obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons.....

METIS Project

➤ Handbooks, guidelines and practical guidance :

- 2005/214/JHA: Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to **financial penalties**
- 2008/909/JHA: Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing **custodial sentences or measures involving deprivation of liberty** for the purposes of their enforcement
- 2008/947/JHA: Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of **probation measures and alternative sanctions**

9th round of evaluation report on France

➤ FD 947 struggling path is multifactorial:

- The first is that French practitioners need sufficient human resources (magistrates, court clerks and/or specialist (judges, court registrars and/or specialized assistants and probation officers) in order to be able to apply this mutual recognition instrument.
- The second reason is linked to a certain lack of knowledge of the Framework Decision among French practitioners and consequently demonstrates the need to reinforce training on this point. This lack of knowledge is also explained by the lack of centralization of the competent authorities in this area.
- Discussions with the French authorities also highlighted the differences between Member States in the definition of probation sentences. While a sentence of imprisonment is fairly to be recognized by another Member State, this possibility is not self-evident where a sentence certain types of care or prohibition for which the executing authority has no equivalent in its equivalent in its own country.

J CAP Project

The J-CAP “Judicial cooperation for the enhancement of mutual recognition regarding probation measures and alternative sanctions” is a transnational European project.

- Objective: To improve the execution of FD 947 by raising awareness and promoting judicial cooperation between EU member states
- Primary target group: Judges and magistrates, but also involving lawyers

Reflections

- ❑ Both the presentation and the discussions at the round table provided an opportunity to revisit the various European projects carried out in the field of enforcement of sentences in Europe and also to discuss certain tools available to judicial colleagues, such as the EJM network (Belgian fact sheets, atlas of contact points, etc.). However, it emerged from the discussions that many colleagues in the courts and lawyers are still unaware of these tools and means of communication. The need to organise inter-professional training and professional groups and to encourage practitioners to take part in forums and conferences to disseminate useful practical information was highlighted.

- ❑ The discussions also highlighted the fact that the principle of mutual trust is insufficient to ensure the implementation of this instrument, which is nonetheless conducive to the rehabilitation of sentenced offenders and provides greater security in the fight against re-offending.

Reflections

- ❑ Relations between the authorities of the issuing and executing countries should be well coordinated and information should be shared in a timely manner in order to increase the number of certificates of recognition of sentence issued and to ensure that probationers are better looked after.
- ❑ The practitioners at the round table also recalled that cooperation and communication between judicial authorities and probation services to verify the conditions in the executing state with a view to transferring the execution of the sentence to that Member State is fundamental. All practitioners at the Round Table agreed that the role of probation services in the transfer procedures of Framework Decision 2008/947 needs to be strengthened, in order to ensure that the national implementation of the Framework Decision fully achieves its objective of contributing to the rehabilitation of the sentenced person (article 1 of Framework Decision 2008/947).

Reflections

- ❑ The role of the probation service is even more crucial in the case of people convicted of sexual offences, for example, or who require closer monitoring, including obligations to undergo treatment. Practitioners have also noted that the role of lawyers in preparing the transfer request may prove to be fundamental in order to provide magistrates with information on the conditions under which the sentenced person will be settled in the executing state.
- ❑ Finally, it emerged from the discussions that judicial authorities in general do not plan to use the Framework Decision, due to a lack of awareness and knowledge of the instrument, and that this instrument is generally better mastered in cross-border areas. This observation highlights the value of projects such as METIS or J CAP in disseminating useful information on the implementation of such instruments to all players in the criminal justice system.
- ❑ CEP role

Good practices