

Expert Workshop on Framework Decisions 829 and 947

5 December 2023, Brussels, Belgium

Number of participants: 24 participants (Probation, Prosecutors office, Ministry of Justice, partnership organisations – EJNI, ERA, European Commission) from 15 EU jurisdictions + representative of the EC

Background

As a follow-up to the expert workshop of September 2022, the Confederation of European Probation (CEP) invited Experts on the Framework Decisions, Members of the European Commission, European policymakers, representatives of EU Member States and other interested people to discuss the state of play regarding FD 2008/JHA/947 and FD 2009/JHA/829 in order to support and promote the implementation of the Framework Decisions throughout Europe and make recommendations/actions on how to enhance that implementation: “what works, what doesn’t work and what needs to be done”.

Presentations

Gerry McNally - The findings of the 9th Round evaluation reports

The Coordinating Committee in the area of police and judicial cooperation in criminal matters (‘CATS’) decided in November 2018 that the 9th round of mutual evaluations would be devoted to the principle of mutual recognition. There have been a lot of political will to kick for the FD 829 as there are many people in pre-trial detention. In the presentation Gerry McNally focused on summarizing findings and recommendations as well as some resources available to practitioners.

The final report was published in March 2023 with following findings:

- Lack of applications, lack of awareness and knowledge among practitioners (probation) and potential beneficiaries – FD 947 dependent on the consent of an individual;
- Complexity and length of proceedings stressing on how do we do the transfer – need for an active knowledge;
- Need for timely communication - mutual trust is crucial (not knowing how the courts and criminal justice works in a different country, “lack of curiosity”)
- “Running down the clock” – if you do not want to answer, you just do not answer, no penalty or sanction if not responding;
- Significant difference between national systems regarding the nature and duration of the applicable probation and alternative measures - how do we



understand them, what does probation mean in other jurisdiction, what happens, what is the maximum or minimum number of the community sanction – leading to willingness to ask;

- Differences in interpretation of terms – “lawfully and ordinarily residing” – does that mean you legally live there?;
- Infrequent application of the FD 829 – difficult to find cases and identify them,
- Cross-border “supervision” – e.g. call from the Czech Probation Service to Irish Probation Service to see if you are doing well, without local knowledge – how do you address misbehavior, dangerous behavior? etc;
- Complexity of paperwork – bureaucracy connected to it;
- Raising awareness, providing guidance to practitioners.

Recommendations:

- Training to all practitioners – regular and systematic – and joint one with judges, prosecutors etc;
- Promote participation of practitioners in training activities on EU level – sharing knowledge, increase knowledge leading to mutual trust;
- Adequate level of specialization – single point of contact – different state of play in each and every country, better to have a lower number of people than too many not knowing anything;
- EU handbooks containing practical guidance – the EC with EJM and Eurojust;
- The EJM, in cooperation with the Member States, is encouraged to include relevant information on all national systems and the non-custodial measures they provide for, as well as up-to-date information on all Member States’ authorities (points of contact) competent to apply these Framework Decisions, on the EJM website;
- Raise awareness and promote the use of Eurojust and the EJM and the tools they offer, taking into account the added value they can provide in;
- System for the collection of statistics.

Gerry McNally then provided a few resources to check upon – PONT project, METIS, project, CEP website etc.

Ana Cristina Neves - Raising awareness about FD947: the experience of the Portuguese Probation Service

Ana Cristina Neves presented some background information and data on Portugal (prison and probation population, number of inhabitants etc). Probation Service has handled around 31 000 probation measures in 2022, 10% of probationers comes from foreign countries - Ukraine, Spain, Italy, Romania, Bulgaria, Germany. In general, Portugal transposed the FDs into its law in 2015. The most used one is the FD 909 with the FDs 947 and 829 that are not so known.

The requests to supervise community measures of probationers residing abroad come from the courts but many times the court knows that the probationers reside in a different country but it does not forward the decision or even consider a possibility to apply the FD947 – this applies to cases of both foreign nationals living in Portugal or Portuguese living in different country.

Probation Service is not a competent authority under the FD 947. There is no central authority for the FD 947 - competent authorities are prosecutors, judges, courts. The Portuguese Probation Service is central authority under the FD 829, but only with an advisory role. All decisions are gathered in central department of the Probation service that has its internal rules and guidelines for probation practitioners to ensure that the answers are in well-founded and standardized manner. In more complex cases collaboration with prosecutors office is crucial.

Probation Service handled about 58 cases in between 2019-2022. Out of it in 11 cases the court accepted the suggestion of the Probation Service – in the end only 2 recognitions were completed (as of 5.12.2023). Around 60% of all 58 cases had already been in another EU MS when they were convicted. Most of the cases were male (54) of average age of 37. Majority of cases Probation Service dealt with were: suspended sentences, provisional suspension (prior to conviction – are they eligible?), cases of security measure (e.g. mental illness), conditional release and community work. Other data provided can be found in the presentation (see the link at the end of the report).

Actions of the Probation Service:

- The Portuguese Probation service continues a thorough analysis of each court request at central level;
- (More) references to the FD 947 on pre-sentence assessments and assessments for conditional release;
- Meetings with Magistrates; promote training;
- European projects and networking.

Discussion:

- Training – case by case basis, no internal training for FDs;
- Interpreting - time problems and lack of finances (as everywhere);
- Mental disorders – some countries refusing sentences which becomes a real problem as there is an increase of cases of probationers with mental disorders but more and more refusals – e.g. of a man sentenced for arson for 13 years and the country refuses to transfer the offender back.
- Reply from the court – need for a contact for each court, not on regular basis, but the plan is to work with database.



Daniel Danglades - Framework Decisions: French experience

Generally, in France there has been a strong political will to be more involved in the European matters, focus is on the FDs. 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, in France it is 25%.

France transposed the FDs back in 2015. Competent authorities for France as issuing state are: the public prosecutor in the jurisdiction where the offender was originally sentenced and/or the public prosecutor of the court of justice who issued a probation order. For France as executing state: the public prosecutor of the sentenced person's place of habitual residence and/or the public prosecutor at the Paris judicial Court (in the absence of any address or exact location).

A list of sentences or decisions that could potentially be subject to enforcement across national borders and probation measures which can forwarded can be found in the presentation (see the link at the end of the report).

France took an active part in various projects, e.g. METIS which resulted in numerous outcomes – publications, guidelines incl. videos for staff, for inmates and for lawyers – for more information please see the EJM website; J-CAP project – ends in March 2024.

Discussion:

- The process is time-consuming, lack of knowledge is connected also to the lack of centralization of the competent authorities;
- Judicial academy – providing the language training for the staff,
- Good practices – language courses, language barrier, international projects and open calls from the EC;
- Statistics – completely decentralized, need for improvement.

Marija Andriuskaja - European Judicial Network: future changes on the website related to alternative sanctions and probation measures

Marija presented the involvement of the EJM in the 9th round of mutual evaluation, Marija involved in the Sweden visit. The summary of actions taken following the recommendation to the EJM can be found in her presentation (see the link at the end of the report). To help those who are not so familiar with the EJM website Marija the e-tools that are publicly available as well as presented the Atlas, Fiches Belges and Judicial Library.



Ramin Farinpour - The Academy of European Law: work and experience in implementing training projects on the Framework Decisions for practitioners

Ramin presented the work of the Academy of European Law, its activities and trainings provided. For more information please see the presentation (link at the end of the report).

Group sessions

CEP asked participants to the workshop to come back with questions / suggestions / experience regarding the implementation of the two FDs in practice. The first group discussion handled the suggestions from participants.

During the second session, CEP asked participants to share the which specific topics to address in the 2024 FD workshop as well as the set-up for the workshop for the years to come.

Results – for more information please see Mentimeter results.

Actions to take

- List of participants to share
- Report to share and publish including the Mentimeter results
- Plan on the 2024 with EuroPris
- Agenda – take into account the Mentimeter results and find specialists
- Questionnaire to distribute with CEP members

Links: <https://www.cep-probation.org/recap-cep-expert-workshop-on-eu-framework-decisions-2008-947-jha-2009-829-jha/>

