



PROBATIONER ABROAD

What to do?

A guideline for probation officers

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Guideline to Frameworks decision 2008/947/JHA

What is a framework decision (FD)?

A framework decision is a form of legislative act from the EU within the field of judicial cooperation. The date for the implementation of the Framework Decision (FD) 2008/947/JHA was decided for 06.12.2011. In March 2016, 26 member states had implemented it, with the exception of Ireland and the UK. The UK opted joined out of FD 947 as part of it's 2014 Justice and Home Affairs (JHA) block opt-out. Legislation is progress for transposition of the FD in Ireland

What does 947 mean for me and my clients?

FD 947 on Probation and Alternative Sanctions allows a person, who is convicted to a probation measure and sentenced to an alternative sanction in an EU member state, to serve that sentence in another EU member state where he/she is lawfully and ordinarily resident.

As mentioned in art. 1, the FD is aimed at "facilitating the social rehabilitation of sentenced persons, improving the protection of victims and of the general public, and facilitating the application of suitable probation measures and alternative sanctions, in case of offenders who do not live in the state of conviction."

Who is the target group?

Persons sentenced to probation, with probations decisions and supervision or other alternative sanctions who are lawfully and ordinarily resident in another EU country. It can also be applicable for persons who are moving to another country where the move promotes social rehabilitation.

What do I have to know as a probation professional?

You need to inform your client (who is lawfully and ordinarily residing in another EU country) about the Framework Decisions and the possibility of transferring the probation sentence.

If your client is sentenced in your country, but has returned or wants to return to the state where he/she is a lawfully and ordinary resident, you should consider initiating the procedure for an application to transfer the measure.

Or, if your client wishes to forward the measure to a member state other than the one where he/she is lawfully and ordinary resident, the client can make an application that is sent to the competent authority in your country. The decision on the application is dependent on the other EU member state consenting to execute the measure. You should contact the competent authority in your country for further information about how to handle the case.

In some EU countries the case is handled by an expert within the probation service, check how it is organised in your country.

For information about competent authorities: www.ejn-crimjust.europa.eu

What do the terms issuing state and executing state mean?

The issuing state is the EU member state where the original measure was issued. The executing state is the EU member state to which the applicant wishes the measure to be transferred. The Framework Decision lays down rules according to which EU member states recognise each other's measures.

Applicable probation decisions are imposed by the issuing state. After the recognition and transfer of the measure, it becomes a measure of the executing state that then supervises the measure and where agreed takes all decisions in relation to the implementation and enforcement of that measure.

What is a probation measure according to Framework Decision 947?

By 'probation measure' the FD understands conditions and obligations imposed by a competent authority on a natural person in the form of a suspended sentence, a conditional sentence or a conditional release. The offender is given a

certain (probation) period to fulfil these conditions and obligations.

If he fails to do so, the competent authority may revoke the suspended or conditional sentence or conditional release. Across Europe, there are several probation measures that are common and all EU member states are, in principle, willing to supervise.

In probation measures the following obligations may be included:

- To inform the relevant authority on any change in residence or working place;
- Not to enter certain defined localities or places;
- Not to leave the territory of the executing state;
- To follow the instructions issued relating to behavior, residence, education, training, leisure activities, or limitations on or modalities of carrying out professional activities;
- To report at specified times to the relevant authority;
- To avoid contact with specific persons and objects;
- To compensate for the harm caused by the offence;
- To carry out community service;
- To cooperate with a probation officer or a relevant representative of a social service;
- To undergo therapeutic treatment or treatment for addiction.

Apart from these conditions and obligations explicitly mentioned in art. 4 of the FD, EU member states will supervise standard probation and other measures to the usual standard applicable in their jurisdiction.

Who are the competent authorities designed by the member states?

See the website www.ejn-crimjust.europa.eu for more information about competent authorities in member states.

What sanctions and measures are not eligible for transfers to another member state?

FD 947 cannot be applied to: probation measures and alternative sanctions that are connected with a decision taken by a non-judicial authority. FD 947 only applies to court decisions. The only exceptions to this are probation measures that are imposed involving a conditional release. This means that FD 947 does not apply to any alternative sanction or probation measure, imposed in the pre-trial stage by the public prosecutor as is possible in many countries, such as Belgium, the Czech Republic, Germany and the Netherlands. It also means that a conditional pardon, notwithstanding the probation measures that may be attached to it, is excluded from the application of FD 947.

FD 947 does not apply to the execution of custodial sentences and measures, involving deprivation of liberty.

These are addressed by FD 2008/909. Community service imposed as a measure, as a condition of a suspended sentence and a condition of another measure are transferable. Financial penalties and financial payments as a condition of probation measures do not fall in the scope of FD 947.

Are some types of offences excluded from the application of FD 947?

The answer is no. FD 947 can be applied to all offences. The only condition is that the recognition of the judgment and, where applicable, the probation decision and the supervision of probation measures and/or alternative sanctions by the issuing state is based on a judgment that relates to acts which also constitute an offense under the law of the executing state, whatever its constituent elements or in whatever way it is described. However, this basic principle of double criminality does not apply for all offences. Find the list here: www.ejn-crimjust.europa.eu.

Is a transfer possible if the nature of the probation measure or alternative sanction or the probation period is not compatible with the law of the executing state?

EU member states apply different probation measures and alternative sanctions and also the duration of these measures and sanctions and the length of the probation period may differ from EU Member State to EU Member State.

This does not mean that when the nature or duration of the measure or sanction or the length of the probation period is not compatible with the law of the executing state, the transfer of such probation measure or alternative sanction cannot take place. On the contrary, the FD offers the competent authority of the executing state the possibility to adapt the sentence in line with its own national law.

Does my client have to consent to the transfer?

Yes, FD 947 does require that the person has given his/her consent to the transfer of the judgement or probation measure. No transfer will be carried out when this is against the wishes of the person involved. Without the consent of the convicted person a forced transfer and return to another member state would run contrary to the intention of the Framework Decision, which presumes that the person concerned has been released in the issuing state and may return to his/her country of residence to complete the imposed alternative sanction and/or probation measure(s).

Which documents have to accompany the transfer request?

The following documents should accompany the forwarding:

- [The certificate – in the standard form \(set in Annex 1 of the FD\), in original;](#)
- The judgment or the probation decision: in original or in certified copies.

The certificate is in the possession of the competent authority. In most cases the competent authority is a public prosecutor or a court.

The certificate comprises the essential elements of the judgment and, where applicable, of the probation decision. The certificate should assist the competent authorities in the executing state in taking decisions under the FD, such as decisions on recognition, supervision or adaptation of probation measures and alternative sanctions, or subsequent decisions in case of non-compliance. The certificate must be written in or translated to the official language or one of the official languages of the executing state. Each EU member state may, however, deposit a declaration with the General Secretariat of the Council that it will accept a translation in one or more of the official languages of the institutions of the European Union.

Is the transfer bound by time limits?

It also has to inform, by any means that leaves a written record, without any delay the competent authority of the issuing state. In exceptional cases when the competent authority of the executing state cannot comply with this time limit, it shall immediately inform the competent authority of the issuing state and:

Which country is responsible for the costs connected to the transfer and execution?

1. Give the reasons of the delay and
2. Indicate the estimated extra time needed for the final decision to be taken.

The costs resulting from the application and implementation of the FD shall be borne by the executing state apart from those costs arising exclusively within the territory of the issuing state.

What are the consequences for my client when the transfer is refused by the executing state?

When the judgment or the probation decision is not recognised or accepted by the executing state, the sentenced person will have to comply with the legislation and complete the probatio measure in the issuing state.

Which law is applicable after the transfer to the executing State?

The supervision and application of the probation measure and alternative sanction is governed by the law of the executing state.

The competent authority of the executing state may supervise an obligation to compensate the victim for the prejudice caused by the offence by requiring the sentenced person to provide proof that he has complied with this obligation.

When ends the responsibility and the jurisdiction of the executing state?

The responsibility of the executing state is ended:
1. If the sentenced person does not move or cannot be found in the territory of the executing state;

2. If the sentenced person absconds or no longer has a lawful and ordinary residence in the executing state. In this case, the competent authority of the executing state may transfer back the supervision and all the subsequent decisions to the competent authority of the issuing state;
3. If new criminal proceedings are taking place in the issuing state. In this case the competent authority of the executing state may transfer back the supervision and all the subsequent decisions to the competent authority of the issuing state.
4. If the person does not comply with the conditions of the probation measure and full responsibility for the measure has been transferred, the executing state will deal with the non-compliance as it would with any other similar order made in its jurisdiction;
5. When the conditions of the supervised probation measure are completed successfully or the supervision period expires having been complied with.

Where cases are returned to the issuing state under points 1,2 or 3 above and the competent authority of the issuing state resumes jurisdiction it will take into account the duration and the degree of compliance of the person concerned.

Which organisation is responsible for supervising the transferred probation measure or alternative sanction?

The organisations under the national law in the executing state responsible for supervising probation measures or alternative sanctions will be responsible for supervising the offenders transferred from other jurisdictions. In most member states, probation services are responsible for supervising offenders in the community. There are exceptions such as Austria an NGO, Neustart, implements community sanctions and measures.

Where can I get more information about probation transfers?

Information about the Framework Decision 2008/947/JHA can be found at: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52014DC0057>

Information about the state of play, declarations and notifications, competent authorities etc. and so on can be found on the European Judicial Network (EJN) website: www.ejn-crimjust.europa.eu.

More information can also be found at the Confederation of European Probation website: www.cep-probation.org/knowledgebase/frameworkdecisions



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