



**La coopération franco allemande
dans le domaine de
la probation // Deutsch-französische
Zusammenarbeit im Bereich
der Bewährungsüberwachung**

STATUS OF implementation Framework decision

947/2008

**EUROPEAN PARLIAMENT
STRASBOURG, THURSDAY 10th OF MARCH 2016**



OVERVIEW

FD 947/2008
on alternative to detention and probation decision

Rationale	Too many FNP, overcrowding and minimum reintegration prospects
Precursors	CoE Convention on the Supervision of Conditionally Sentenced or Conditionally Released Prisoners – 1964 (1975) – only 19 of 47
Aim and purpose	Enhance social rehabilitation by: <ul style="list-style-type: none">- preserving family, social, linguistic ties,- improving monitoring of compliance- prevent recidivism- protect the victim and the public



OVERVIEW

	FD 947/2008 on alternative to detention and probation decision
Where?	To the MS where the person is lawfully and ordinarily residing – if they returned or want to return Another MS – upon request and consent of the MS
Characteristics	The system of competent authorities Eleven types of probation measures – added more if ...
Procedure	Certificate and the sentence EJN - http://www.ejn-crimjust.europa.eu/ejn/EJN_Home.aspx Adaptation – nature and duration ES – 60 days to decide Double criminality – 32



OVERVIEW

	FD 947/2008 on alternative to detention and probation decision
Grounds for non-recognition	Certificate incomplete Not willing to return Other measures than the 11 Less than 6 months until the end etc.
Law governing supervision	ES takes all subsequent decision except alternative sentence if custody is not an option in case of breach. Transfer jurisdiction back



STATE OF IMPLEMENTATION

EJN 22nd of February 2016	FD 947/2008
Transposed	25 MS
In process of transposition	1 MS (Ireland) Expected for 2016
Not transposed	2 MS (Italy, United Kingdom)
Practice	Occasional Hub countries – BE, NL and DE – 81 cases in August 2015.



One case study

Mr. CV is an adult under the supervision of the Probation Service in MS1. He is currently working in MS2 and therefore expressed his wish to be transferred to this country. The offence was committed while Mr. CV was at MS1 visiting some relatives living at MS1

He has asked the Probation service in MS1 to be transferred to MS2. Probation service asked the competent judge to start the procedure.

As the procedure is new, none of the above knew what to do. The judge asked the Probation service about the procedure. The Probation service asked the Probation Directorate about the procedure.

This delay and uncertainty created some frustration in the supervised person



One case study

At a latter stage, when the Probation service received the information from the Probation Directorate – official request 11.02.2014

CV had to make many trips from MS1 to MS2 and back to collect documents and attend supervision appointments. He was not informed about how supervision will look/feel like in MS2

On the 29.09.2014 – the transfer was approved by the court in MS2



One case study

The transfer was possible because MS2 declared in the light of art. 5(4) of the FD 947:

*'MS2 declares that monitoring of supervision measures or alternative sanctions by the competent MS2 court can be approved **irrespective** of whether the sentenced person has their domicile or permanent residence in MS2, if **because of specific circumstances ties exist between the sentenced person and MS2 of such intensity** that it can be assumed that monitoring in MS2 will help facilitate the **social rehabilitation and reintegration of the sentenced person.**'*

CV has a job in MS2!!!



CONCLUSIONS

Based on the case study and on EU Projects

(Probation measures and alternative sanctions in the EU www.euprobationproject.eu; STEP www.probation-transfers.eu; STREAM www.stream-probation.eu; CEP Expert Group)

The procedure is still **unknown** by the judiciary and the probation services

The procedure is **not seen** in connection of potentialities of **FD 829/2008**.

The procedure is still taking **very long** and sometimes too **bureaucratic**



CONCLUSIONS

Based on the case study and on EU projects (Probation measures and alternative sanctions in the EU www.euprobationproject.eu; STEP www.probation-transfers.eu; STREAM www.stream-probation.eu; CEP Expert Group)

Probationers should be informed about **how** supervision is constructed in the ES: how is the frequency of the meetings decided, if they can expect any practical help or not, how is the relationship with the probation counselor, how is the breach procedure, etc.

Informed consent – the core of legitimacy and the substantive compliance. Now it is implicit and not-informed

- A) Too many competent authorities
- B) The FD covers mainly the judicial process and not the supervision process logic –
- C) No information exchange between probation services, continuity, etc.
- D) Poor state of implementation



SOME SOLUTIONS ?!!

Commission **handbooks** (expected by 2016, Prof. Anton van Kalmthout + Ioan Durnescu)

Need to link 947 with 829, and 909 + the “European arrest warrant” and the “European Supervision order”

The potential help from the **Criminal Justice Platform in Europe (CEP – EUROPRIS – EFRJ)**

The importance of **Probation services** been present **as soon as possible** in all the criminal chain, in order to check and inform Prosecutors and/or Judges about the availability of the application of 947 or 829.



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