

# Better applying European Criminal Law

## ERA Court staff training

*Mutual recognition I*  
*FD 2008/909*



Co-funded by the  
Justice Programme  
of the European Union



# Transfer of judgements

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- FD 2008/909 replaces Council of Europe Convention 1983
- Goal: facilitating social rehabilitation of the sentenced person (art.3)
- No consent necessary, unless (art.6)
- Recognition, unless application of grounds for refusal (art.8), NB: no conversion anymore!
- Introduction of grounds for refusal
- Legislation MS execution governs enforcement, including early release, amnesty and pardon (art. 17) (C-554/14, cpa Ognyanov)

# Aspects of Enforcement of Foreign Judgements

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- Continued enforcement
- Adapted sentence (art. 8 FD):
  - incompatibility with maximum penalty (para. 2)
  - modality is incompatible (para. 2)
  - threshold: the adapted sentence shall not aggravate the sentence passed in terms of its nature or duration (para. 3)
- Nominal sentence
  - early release
  - penitentiary regime

# Anticipating Transfer of Judgements

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- EU-nationals standing trial in another MS
- Chance to be transferred is high
- Wide variety of detention facilities
- Wide variety of rules on early release
- Consequences differ for MS and for sentenced persons depending on the combination of cooperating MS => longer penalties/shorter penalties

# Again: anticipation required

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- Even more: non-nationals more often receive unconditional sentences than nationals
- In sentencing hearings: the possibility of transferring the supervision must be discussed

# Uncertainties

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- Will the sentencing MS offer the decision for transfer?
- If so, when will it do so?
- Which rules on enforcement and early release apply?