

Better applying European Criminal Law

ERA Court staff training

*Mutual recognition III –
Council Framework Decision
2008/947/JHA*



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Content:

- *Fact sheet – FD 2008/947*
- *Objectives*
- *Scope of application*
- *Competent authorities*
- *Criteria for forwarding a decision on supervision measures*
- *Procedure for recognition of a decision on supervision measures*
- *Grounds for refusing recognition and supervision & adaptation of the decision*
- *Governing law and subsequent decisions*
- *Consultations and languages*

Fact sheet

- Deadline for transposition of the FD - **6 December 2011**
- **27 MS** have implemented it, **UK is not taking part in this FD**
- FD **lays down rules** according to which an MS, *other than the MS in which the person concerned has been sentenced*, **recognises** judgments and, where applicable, probation decisions, **supervises** probation measures imposed on the basis of a judgment, or alternative sanctions contained in such a judgment, and **takes all other decisions relating to that judgement**, *unless otherwise provided for in this FD*

Objectives

- Facilitating **the social rehabilitation of sentenced persons** and **enhancing the prospects of the sentenced person's being reintegrated into society**, by enabling that person to preserve family, linguistic, cultural and other ties
- **Improve monitoring of compliance with probation measures and alternative sanctions**, with a view to preventing recidivism
- **Improving the protection of victims and of the general public**
- Facilitating **the application of suitable probation measures and alternative sanctions**, in case of offenders who do not live in the state of conviction

Scope of application

- FD **shall apply** only to:
 - (a) the recognition of judgements and, where applicable, probation decisions
 - (b) the transfer of responsibility for the supervision of probation measures and alternative sanctions
 - (c) all other decisions related to those under (a) and (b); as described and provided for in this FD

- FD **shall not apply** to:
 - (a) the execution of judgements in criminal matters imposing custodial sentences or measures involving deprivation of liberty which fall within the scope of FD **2008/909/JHA**
 - (b) recognition and execution of financial penalties and confiscation orders which fall within the scope of FD **2005/214/JHA** of 24 February 2005 on the application of the principle of mutual recognition to financial penalties
 - (c) FD **2006/783/JHA** of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders

Competent authorities

- Each MS shall inform the General Secretariat of the Council which **authority or authorities**, under its national law, are competent to act according to this FD in the situation where that MS is the issuing state or the executing state.
- MS may designate **non-judicial authorities** as the competent authorities for taking decisions under this Framework Decision, provided that such authorities have competence for taking decisions of a similar nature under their national law and procedures
- If a decision under Article 14(1)(b) or (c) is taken by a competent authority other than a court, the Member States shall ensure that, **upon request of the person concerned**, such decision may be **reviewed** by a court or by another independent court-like body
- The General Secretariat of the Council **shall make the information received available** to all Member States and to the Commission

Criteria for forwarding a decision on supervision measures

- ✓ The competent authority of the issuing state may forward a judgement and, where applicable, a probation decision to the competent authority of the Member State in which **the sentenced person is lawfully and ordinarily residing**, in cases where the sentenced person **has returned or wants to return to that state** (art. 5 para. 1)
- ✓ *Exc.* - **upon request of the sentenced person**, forward the judgement and, where applicable, the probation decision to a competent authority of a MS **other than the MS in which the sentenced person is lawfully and ordinarily residing**, on condition that **this latter authority has consented to such forwarding** (art. 5 para. 2)
- ✓ **Consent of the convicted person is mandatory in all cases**
- ✓ For para. 2 the consent of the executing MS shall be obtained **in advance**
- ✓ Member States shall determine **under which conditions** their competent authorities may consent to the forwarding of a judgement and, where applicable, a probation decision under paragraph 2 (art. 5 para. 3)
- ✓ The General Secretariat shall make the information received available to all MS and to the Commission – see the link below with the information regarding article 5 para. 3 FD:

<https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties/EN/3187>

Procedure for recognition of a decision on supervision measures and time limits

- ✓ The CA of the issuing state **directly forwards** a judgement and, where applicable, a probation decision to the competent authority of the other MS, accompanied by the certificate set out in Annex I and **continues** to have competence in relation to the supervision of the probation measures or alternative sanctions imposed
- ✓ The competent authority of the executing state shall decide, according to the national law applicable, **whether to recognise** the judgement **or not** and, where applicable, the probation decision and **assume responsibility** for supervising the probation measures or alternative sanctions **as soon as possible**, and **within 60 days** of receipt of the judgement and, where applicable, the probation decision
- ✓ When in **exceptional circumstances** it is not possible for the competent authority of the executing state to comply with the time limit provided for in paragraph 1, it shall immediately **inform** the competent authority of the issuing state by any means, giving the reasons for the delay and indicating the estimated time needed for the final decision to be taken

Grounds for refusing recognition and supervision & adaptation of the decision

- ✓ Grounds for refusing recognition and supervision **expressly** and **limited** provided in the **article 11 let. a)-k) of the FD**
- ✓ If the **nature of the probation measure or alternative sanction** is incompatible with the law of the executing state => may adapt it in line with the nature of the probation measures and alternative sanctions, which apply, under the law of the executing state, to equivalent offences. (see e.g. obligation to carry out community service).
- ✓ In case of **duration of the probation measure or alternative sanction** is incompatible with the law of the executing state => may adapt it in line with the duration of the probation measures and alternative sanctions, which apply, under the law of the executing state, to equivalent offences
- ✓ If the **duration of the probation period** is incompatible with the law of the executing state => may adapt it in line with the duration of the probation period, which apply, under the law of the executing State, to equivalent offences
- ✓ The duration of the adapted probation measure, alternative sanction or probation period **shall not be below the maximum duration provided for equivalent offences under the law of the executing state**
- ✓ The adapted probation measure, alternative sanction or probation period **shall not be more severe or longer than the probation measure, alternative sanction or probation period which was originally imposed**

Governing law and subsequent decisions

- ✓ The supervision and application of probation measures and alternative sanctions **shall be governed by the law of the executing state**
- ✓ The competent authority of the executing state **shall have jurisdiction** to take all subsequent decisions, in particular in case of non-compliance with a probation measure or alternative sanction or if the sentenced person commits a new criminal offence. Such subsequent decisions include notably:
 - (a) *the modification of obligations or instructions contained in the probation measure or alternative sanction, or the modification of the duration of the probation period*
 - (b) *the revocation of the suspension of the execution of the judgement or the revocation of the decision on conditional release*
 - (c) *the imposition of a custodial sentence or measure involving deprivation of liberty in case of an alternative sanction or conditional sentence*
- ✓ Each MS may declare that as an executing state **it will refuse to assume the responsibility to take subsequent decisions for the cases provided for in article 14 para. 3 of the FD**. In this situation the executing state **shall transfer jurisdiction back** to the competent authority of the issuing state in case of non-compliance with a probation measure or alternative sanction if the competent authority of the executing state

Consultations (art. 15) and languages (art. 21)

- ✓ Where and whenever it is felt appropriate, competent authorities of the issuing state and of the executing state **may consult** each other with a view to facilitating the smooth and efficient application of this Framework Decision
- ✓ The certificate referred to in Article 6(1) **shall be translated** into the official language or one of the official languages of the executing state. Any Member State may, on adoption of this Framework Decision or later, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the institutions of the European Union.