



EU Framework Decisions related to Detention Issues

FD Transfer of Prisoners
FD Probation and Alternative Sanctions
FD European Supervision Order



EU legislation in the field of detention

Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments imposing custodial sentences or measures involving deprivation of liberty (Transfer of Prisoners) had to be implemented by 5 December 2011

Transfer of prison sentences: conditional release falls under Probation and Alternative Sanctions

Example: Peter is a national of Member State A where he habitually lives. He is convicted of an offence in Member State B and is sentenced to 2 years in prison. The authorities of Member State B may return him to Member State A to serve the sentence without seeking his consent.



EU legislation in the field of detention

Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions **(Probation and Alternative Sanctions)** had to be implemented by 5 December 2011

Example: Anna is a national of Member State A but is on holiday in Member State B. She is convicted of an offence in Member State B and sentenced to carry out community service in lieu of a custodial sentence. She can return to her home Member State and the authorities of that Member State are obliged to recognise the community sentence and to supervise Anna's execution of it.



EU legislation in the field of detention

Council Framework Decision 2009/829/JHA of 23 October 2009 on the application of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention (**European Supervision Order**) had to be implemented by 1 December 2012

Example: Hans, who is a resident of Member State A is arrested and charged with an offence in Member State B. His trial will not start for 6 months. If he was a resident of Member State A, the judge would be inclined to release him on bail, with a condition of reporting to the police station, but the judge is reluctant to do so because Hans lives in another Member State and will return there pending trial. The judge fears that Hans will not return and may even flee. Under the ESO, the judge can allow Hans to return home can impose a reporting condition, and can ask the authorities in Member State A to ensure that Hans does report to the police station in accordance with the order of the court in Member State B.

Table on State of Play implementation Framework Decisions

FD 909 (Transfer of Prisoners)	FD 947 (Probation and Alternative Sanctions)	FD 829 (European Supervision Order)
15 Member States	11 Member States	7 Member States
AT, BE, DK, FI, FR, HR, HU, IT, LU, LV, MT, NL, PL, SK, UK	AT, BE, BG, DK, FI, HR, HU, LV, NL, PL, SK	AT, DK, FI, HU, LV, NL, PL

State of Play

- Implementation deadline passed in December 2011 (FD 909 and 947) and December 2012 (FD 829)
- Green Paper on Detention June 2011, 81 replies
- Summary of the replies on:
<http://ec.europa.eu/justice/newsroom/criminal/opinion>
- No majority support for new legislative action
- Concentrate on existing legal instruments
- Implementation report Autumn 2013
- Experts' meetings in March and November 2012 and Autumn 2013



Background

- Initiatives of Member States
- In line with other procedural rights instruments
- Existing Council of Europe Conventions not very efficient and limited application

General characteristics of the FDs

- System of certificates
- System of Competent Authorities (CAs)
- Obligation to accept a transfer, unless grounds for refusal apply
- No double criminality check for list of 32 offences
- At the request of the concerned person or one of the Member States involved
- However, no obligation to transfer for the issuing State (no right to a transfer)

General characteristics of the FDs

- Strict time limits: 90 days (+ 30 days for the actual transfer of the prisoner), 60 days and 20 (+20 days in case of legal remedy)
- Mutual recognition: not to re-examine the decision of the IS
- Adaptation of the sentence is only possible if the nature or duration of the sentence is incompatible with national law (e.g. a maximum penalty)
- Social rehabilitation should always be assessed

Importance of timely implementation

- Very often, criminal courts order the detention of non-residents because of risk of absconding
- Substitution of prison sentences by transferable non-custodial sentences (e.g. 1-4 months imprisonment to community service)
- Petty crimes committed by non-residents no longer left unpunished

Importance of timely implementation

- Potential to lead to a reduction in pre-trial detention of non-resident offenders, reduce overcrowding and reduce costs on prison budgets
- Positive side-effect: promotion and approximation of alternative sanctions
- Figures on practical application of *Transfer of Prisoners* are hopeful



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