



J-CAP

E-MAGAZINE

ISSUE 1 | MAY 2023





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THE J-CAP PROJECT

The J-CAP project aims to improve the execution of 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, through an awareness-raising approach, and the development of practical materials for judges, prosecutors and lawyers.

Particularly, J-CAP intends to lay the groundwork for a successful implementation of FD 2008/947 by judicial practitioners and to contribute to an increased capacity among practitioners to use FD 2008/947, deepening understanding of its goals and operational aspects, as well as of other EU Member States judicial systems and available measures. Additionally, we aim to foster reflection among practitioners and to support the rehabilitation and respect for the rights of foreign individuals on probation while simultaneously reiterating the relevance of judicial cooperation instruments in this respect.

The J-CAP e-Magazines present up-to-date information on project activities and tangible results, particularly emphasising the achievement of milestones and deliverables. They are available in English, Italian, Portuguese, French, Romanian, German, and Dutch.

This first issue introduces the Consortium, the scope and core objectives of J-CAP and what has been done up to the month of April 2023.



THE CONSORTIUM

Cooperation between various actors is essential to achieve the project's goals. Thus, the Consortium's composition was foremost based on each organisation's expertise and applicability in forwarding the project's goals.

J-CAP counts with a broad geographical scope within its partnership, covering all EU regions in Southern, Eastern, Western and Northern Europe, providing a comprehensive setting. This insight will be fundamental to inform and enrich the project's results and facilitate participant selection, mobilisation and involvement.

The **Judicial Training Institute** (IGO-IFJ) is a Belgian governmental body responsible for initial and continuous training for national judges, prosecutors and court staff.



IPS Innovative Prison Systems (IPS) is a Portuguese research and consulting firm specialising in advancing criminal justice systems.



The **Department of Applied Sociology of Law and Criminology** (IRKS) at the University of Innsbruck consists of an interdisciplinary team that conducts research on topics including security, crime and criminal law with a special interest in access to justice.



European Strategies Consulting (ESC) is a Romanian research/development & consultancy company aiming to promote good practices in the area of corrections and social inclusion.



Netherlands Helsinki Committee (NHC) is one of the key non-governmental organisations contributing to dialogue and cooperation amongst actors in the areas of the rule of law and human rights.



Agenfor International Foundation (AGF) is officially recognised by the Italian Ministry of Interior as a body of public interest, specialising in participative security, international law, and human rights focusing on innovative technologies.



National School for the Judiciary (ENM) is a public institution under the supervision of the Ministry of Justice and the only school in France for judges and prosecutors.





THE CONTEXT

The J-CAP activities aim to improve the execution of **Framework Decision 2008/947**, through a broad awareness-raising approach, and the development of practical materials to facilitate the use of this instrument.

Schengen and, more specifically, the introduction of the fundamental principle of freedom of movement within the **European Union acquis** (Article 45 of the Treaty of the Functioning of the European Union) **has given way to an era of prosperity whereby internal borders ceased to exist and EU citizens enjoy the right to freely travel and establish themselves anywhere within the European space.** Regardless, this has also widened the doors for individuals to be tried and convicted outside their country of origin or habitual residence.

According to the Council of Europe's SPACE II latest information estimates there were nearly 800.000 probationers under the supervision of the 25 European Union probation services that contributed to the report. The report also highlighted that a little under 45.000 of these probationers are foreign nationals – according to the data provided by 17 EU probation services.

Additionally, according to the Council of Europe's latest SPACE I report, close to 15% of the inmates held in Europe are foreigners. **Foreigners seem to be overrepresented** in the prison population of various EU jurisdictions, such as Austria (53%), Belgium (43%), and Italy (33%), therefore **indicating a tendency of judges and magistrates to resort to custodial measures instead of probation measures or alternative sentences.** Furthermore, **Austria, Belgium, France, Italy, Portugal, and Romania are among the countries with the largest probationer population.** The first five are also positioned in the top 10 regarding the largest number of foreign probationers.

Taking into account the associated consequences and difficulties faced by this non-negligible number of foreign national probationers, and the central objective of achieving social rehabilitation of offenders, **Framework Decision 2008/947 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** focuses precisely on governing the transfer of these individuals amongst EUMSs.



After a troublesome path to achieve the instrument's transposition to national legislation, many obstacles to the full implementation of this FD persist, especially in what concerns its use by professionals. In fact, according to the findings of a survey carried out by the European Judicial Network, mutual recognition instruments such as FD 2008/947 are not commonly used by practitioners in EUMSs for various reasons.

J-CAP intends to **highlight the importance of Framework Decision 2008/947** and the fundamental issues hindering its successful implementation, and **work towards deeper cooperation between judicial authorities**.

Concretely, **J-CAP expects to achieve:**

- increased knowledge of Framework Decision 2008/947's implementation issues by judges, magistrates and lawyers;
- convergence of practices of stakeholders in the partner countries, supporting international judicial cooperation in criminal matters and fostering harmonisation of legal and judicial cultures;
- increased efficiency and success of monitoring and control measures aiming at offenders' rehabilitation.





WHAT HAS BEEN ACHIEVED SO FAR

Thematic Workshops

The national Thematic Workshops were planned by each partner (either face-to-face or virtually) to investigate the implementation of the Framework Decision 2008/947 through the focus groups with judicial experts as participants who share their experiences regarding probation and the application of the regional legislative tool, discussing how to better apply it at the national level.

Informative materials

Informative Materials is a comprehensive document drafted to offer concrete support to judges, magistrates (and lawyers), gathering information on how the Framework Decision is applied in the different EU Member States, and focusing on the partner countries.



THEMATIC WORKSHOPS

Between December 2022 and March 2023, each partner organized a national Thematic Workshop **to investigate the implementation of the Framework Decision 2008/947 through focus groups with judicial experts as participants who share their experiences regarding probation and the application of the regional legislative tool, discussing how to better apply it at the national level.**

The meetings were held in Austria, the Netherlands, Portugal, Romania, Italy, Belgium and France, and gathered a total of **54 participants**, from judges, prosecutors, lawyers, judicial experts and representatives from national probation services.

Although each country presents its peculiarities in relation to the implementation of Framework Decision 2008/947 and probation, several common points emerged from the Thematic Workshops that **highlight the crucial need for projects such as J-CAP.**

Indeed, the first point already arose from the Preliminary Meetings concerns the **limited knowledge about legal systems and sanctioning practices in other MSs, consequently leading to a lack of trust in the adequate execution of measures abroad and thus to a reluctance of the judiciary to initiate a supervision request.** Moreover, the lack of knowledge of other legal systems includes the competent authority to be contacted in the application of an alternative measure abroad, causing further complications in the implementation process.

It seems therefore pivotal to provide international and national awareness-raising campaigns and training are suggested to address the limited knowledge, targeting, not only judges and prosecutors, but also defence lawyers or even prison staff and probation officers. The training is expected to be provided both at the national and regional level: **cross-border training is to be appointed as a promising practice and should be held particularly between countries where transfers are applied more frequently** (e.g., between Italy and Romania). This approach will guarantee a broader application of alternative measures enabling practitioners to inform potential clients about the rights connected to Framework Decision 2008/947, and properly supporting the rehabilitation and respect for the rights of foreign individuals on probation



Another relevant virtuous practice is undoubtedly the **production of public and reader-friendly informative materials** (such as a list of equivalent and/or similar sanctions in the different European legal systems; a comparative table of nationally existing measures; or a glossary of the content of the used terminology and measures) can disseminate and facilitate the access to knowledge, thereby supporting a better application of the regional legislative instrument. Indeed, many of the measures provided in the different Member States have similarities, but in detail, even the similar ones differ.

The production of informative materials is already foreseen by the project, yet covering only the partners' Member States. Therefore, the document drafted within the framework of J-CAP can serve as a model for other States within the EU territory.

Other challenges worth to be mentioned related to the **lack of trust** among MSs concern the **information on the certificate, non-compliance with deadlines or incomplete or incorrect submitted documents**, and **linguistic difficulties that prolong the implementation process**, resulting in an additional workload, lack of flexibility in the interpretation and adaptation of measures, and a lack of cooperation and communication between the involved national authorities.

Events such as the Preliminary Meetings and the Thematic Workshops offer the chance to create space to discuss, debate, brainstorm and suggest concrete solutions by experts and practitioners daily working in the probation field.

J-CAP is a first step towards better judicial cooperation in the view of implementing the Framework Decision 2008/947, whose outcomes could serve as virtuous examples for other regional tools.





INFORMATIVE MATERIALS

Informative Materials is one of the technical outcomes of J-CAP, providing, firstly, **a glossary that allows for a quick comparison of various aspects within the partner countries**. It combines information about the national authorities in charge of incoming and outgoing requests; national available probation measures and alternative sanctions; and lists and explains decisions of general criminal law and juvenile justice for which supervision can be requested. Furthermore, **the document offers a more detailed overview of the situation in each MSs represented in the project consortium**.

This document includes **seven national reports** – Austria, Romania, Portugal, Italy, France, Belgium and the Netherlands – **which offer a structured overview of regulations and information relevant to the application of Framework Decision 2008/947 and are intended for practitioners (judges, prosecutors, magistrates, lawyers and beyond) in EU Member State**.

These documents are intended to provide insights into some of the most critical aspects of the respective national systems of potential executing States within the scope of Framework Decision 2008/947 and thus promote its application. The national reports are divided into two parts: the first presents the respective national probation system with its legal basis, nationally available probation and alternative measures that fall within the scope of Framework Decision 2008/947, and their national providers; part 2 covers the national implementation of Framework Decision 2008/947 from the perspective of both issuing State and executing State.



UPCOMING EVENTS AND TOOLS

▶ TRANSNATIONAL AWARENESS-RAISING SYMPOSIA

Brussels | 13-14 June 2023

Bordeaux | 7-8 September 2023

▶ GUIDANCE BOOKLET FOR PRACTITIONERS



J-CAP

