



J-CAP

Guidance Booklet on FD 2008/947



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TABLE OF CONTENTS

02	Table of contents
03	Introduction
05	How to evaluate the reintegration prospects of the sentenced person?
07	How to find out the sentencing options and the probation decisions in the ES ?
08	How to identify the competent authority in the Executing State?
09	Practical demonstration
10	How to fill out the Certificate?
12	How to find out more about the probation service in the Executing State?
13	Examples of good practice in sentence adaptation
14	How to deal with language difficulties
15	Relevant resources



Disclaimer:

This Guidance Booklet has been designed for online consultation purposes. As such, the content contained within may include references to various links, websites, and online resources not easily accessible in the physical format of this booklet.

Please scan the QR code on the back cover to access the virtual version of this booklet for the complete online experience.

INTRODUCTION



The aim of this booklet is to provide the judiciary (judges and prosecutors) and other interested practitioners (lawyers) with a fast route to the answers for the most pressing questions related to the recognition of judgements and probation decisions and subsequent transfer of the responsibility for the supervision of probation measures and alternative sanctions. The present booklet sits on the assumption that by providing the judiciary with a compendium of common obstacles and their corresponding possible solutions, the use of the 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 (hereinafter FD 2008/947), will be enhanced.



Framework Decision 2008/947 is a mutual recognition instrument based on the Amsterdam Treaty that allows judgements and probation decisions issued in one EU Member State to be recognised and enforced in another EU Member State. For a more detailed description of FD 2008/947, please see the e-manual for the implementation, available [here](#).

For a brief presentation of the main points of FD 2008/947, please take a look at the European Guidebook on Mutual Recognition, produced under the project Mutual Recognition in Europe Through Intervisitation Studies (METIS), available [here](#).

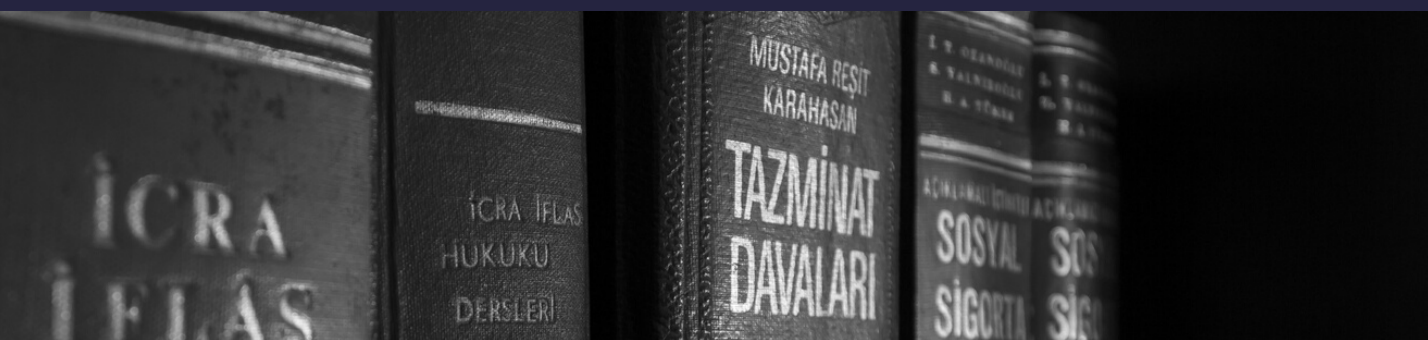


To better respond to the current challenges, several European standards were taken into consideration when drafting this booklet, such as the Council of Europe Recommendation R(2010)1 on the European Probation Rules and the European Commission Gender Equality Strategy 2020-2025. The questions selected in this Booklet are based on the current practice as well as on the conclusions of different thematic workshops, focus-groups and training needs assessments conducted with the stakeholders under different projects, including in the J-CAP project.

If you have more questions that are not answered in this booklet, you can continue your search through dedicated websites (e.g. jcap-probation.eu) or liaise with the European Judicial Network (EJN) contact point for your jurisdiction. If you are a member of the judiciary, you can register with the EJN Secretariat and use the national contact points section of the EJN website by using this [link](#).

Previous consultations with judges, prosecutors and lawyers working with FD 2008/947 pointed to the following questions as relevant for its implementation:

- how to evaluate the prospects for reintegration;
- how to find out what are the sentencing options in the Executing State (ES);
- how to identify the competent authority in the ES;
- how to properly fill out the Certificate;
- how to find out more information about the probation service in the ES.



HOW TO EVALUATE THE REINTEGRATION PROSPECTS OF THE SENTENCED PERSON?

One of the main aims of FD 2008/947 is to ‘enhance the prospects of the sentenced person’s being reintegrated into society’ (Recital 8). Reintegration prospects are, in line with this instrument, enhanced by seeking to preserve the familial, linguistic, cultural and other relevant ties with the Member State and by improving the monitoring and compliance with probation measures and alternative sanctions, with a view to preventing recidivism while paying due regard to the protection of victims and the general public.

Looking at Recital 8, three sets of priorities apply when measuring the reintegration prospects:

1. The ties with the ES;
2. Preventing recidivism;
3. Victim protection.

These objectives were also indicated in the judgement to the Case C-2/19 wherein it was held that (para 52):

“It is apparent from Article 1(1) and recitals 8 and 24 that the framework decision pursues three complementary objectives, namely facilitating the social rehabilitation of sentenced persons, improving the protection of victims and of the general public by preventing recidivism, and facilitating the application of suitable probation measures and alternative sanctions, in the case of offenders who do not live in the Member State of conviction.”

Corroborating these objectives with some of the rules of the Council of Europe Recommendation R.(2010)1 on the European Probation Rules (e.g. Rules 59, 60, 61), the following questions may guide the decision-makers.





BRIEF QUESTIONNAIRE

FOR MEASURING THE REINTEGRATION PROSPECTS

Ties

1. What are the most important people in your life?
2. What do they do for a living?
3. Where do they live?
4. Do you have children? (in case of women, focus more on the childcare needs)
5. If so, where do they live?

Preventing recidivism

1. How would you make a living in the ES?
2. Where is it likely for you to get a meaningful job?
3. Where will you live? Describe the area where you will live.
4. Who would be there for you if you need help?
5. Do you have debts? If so, how will you deal with them?

Victim Protection

1. Where is the victim living?
2. Are you in contact with the victim?
3. In countries where victims may be informed / consulted regarding the situation of the sentenced person, you could ask for a victim impact statement or a similar report that can inform you about the victim's position in relation to the person's movement to the ES.

As in any decision-making process, these questions are to be considered on a case-by-case basis and only together as they interact with each other. They are only detailed in this manner so as to structure your evaluation regarding the reintegration prospects.



HOW TO FIND OUT THE SENTENCING OPTIONS AND THE PROBATION DECISIONS IN THE ES ?

To understand the sentencing options in the potential ES, there are a few options to consider:

1. Indirect Action - EJM contact point in the Issuing State (IS) or in the ES can be contacted to clarify any outstanding issues. If necessary, the EJM contact point will liaise with the contact point in the potential ES and will obtain the information.
2. Direct Action – the following websites can be accessed to gather more information:
 - a. Fiches Belges on the EJM Website. This video tutorial can be consulted on how to use this website in general.
 - b. N-Lex – A common gateway to national law.
 - c. The website of the Confederation of European Probation (CEP) Probation in Europe section, where all countries have a chapter describing the probation system and the relevant legislation. Those interested in the sentencing options may want to go directly to section 5 of each chapter – Different Stages of the Criminal Justice Process.
 - d. The websites of the ministries of Justice where the penal code of the country can be found.
 - e. The J-CAP website - where updated information about the sentencing options in Austria, Belgium, France, Italy, Portugal, Romania, and the Netherlands can be found. Other relevant information and reference to other EU projects can also be found on this website.



When consulting different websites for relevant legislation, one should verify if websites are official or belong to credible sources or if the information provided is updated.



HOW TO IDENTIFY THE COMPETENT AUTHORITY IN THE EXECUTING STATE?



The easiest way to identify the competent authority in the ES is to use the [Judicial Atlas](#) of the European Judicial Network.

Those interested in using this website might want to watch this [video tutorial](#) before.

Step-by-step procedure to identify the competent authority

1. Go to the [Judicial Atlas](#).
2. Select ([click on](#)) the potential ES where you would like to transfer the judgment or the probation decision, either from the interactive map or from the list.
3. Choose the [measure](#) from the list by scrolling down to position G.3. 'Probation measure'. [Click on Continue](#).
4. Choose from the two options. '[Search by locality](#)', if you know the potential address of the sentenced person or '[Search by competent authority](#)', if you know that competent authority. Click on '[Search authorities](#)'.
5. Usually, if you do not select any of these options, you are directed to one authority that can redirect your request to the competent authority.
6. In the section '[Search Results](#)' you can find the postal address of the competent authority, its telephone number and the email address.
7. You can copy this data from this table, or you can go to '[Import authority details into Compendium](#)' to fill out the Certificate online.

PRACTICAL DEMONSTRATION



The screenshot shows the J-CAP website interface. At the top, there is a navigation bar with the text 'J CAP How to find the competent authority' and a 'Copy link' button. Below the navigation bar is a large banner with the title 'JUDICIAL COOPERATION IN CRIMINAL MATTERS' and a red YouTube play button. The banner also includes the text 'The European Judicial Network in criminal matters (EJN) Network of national Contact Points for the facilitation of cooperation in criminal matters.' and a 'READ MORE' button. Below the banner is a section titled 'EJN Tools for Judicial Cooperation' and a 'Watch on YouTube' button.

[Source](#)

- According to article 6 (7) of the Framework Decision, if the certificate was forwarded by mistake to a competent authority that has no competency to recognise it, this competent authority has the duty to forward the certificate to the right competent authority. Therefore, there are mechanisms in place to respond in case of wrongful forwarding of the certificate.



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HOW TO FILL OUT THE CERTIFICATE?



There are two main ways to fill out the Certificate:

1. To use the form offered in Annexe I of the FD, available [here](#).
2. To use the [Compendium function](#) of the EJN website.

The second option appears to be faster and easier to use.

Step-by-step guide on filling out the Certificate

1. Go to the Compendium page – see above.
2. Select the country where you would like to transfer the Certificate to.
3. Select option G.3 'Enforcement of probation measures' from the list and click on 'Continue'.
4. If you are not comfortable using English, you can change the language of the Certificate from the 'Change language' button (the third block of the form, after 'Title' and 'Create a Certificate').
5. You can upload a logo, if you have one, in the 'Upload a logo' option.
6. Fill out all sections of the Certificate from a) to k) in the language required by the ES.
7. If you cannot finish all work in one session, click on 'Save as a work file'.
8. Once you finish it, you can either 'Save and print' in order to send the Certificate for translation and signature or, if the content is already translated into the accepted language of the ES, you can add the stamp in the last section (if any) and click on 'Save and Send'. In this case, the Certificate will be automatically sent to the email address deposited in the Judicial Atlas.
9. **Do not forget** to send in a separate file – via email or regular mail – the judgment or the probation decision translated into one of the accepted languages of the ES. You can find out what languages are accepted by the ES within the 'Fiches Belges'. In most cases, it will be the national language of the ES.

Attention!

Other projects indicated that some sections of the Certificate require special attention (see METIS Project), such as:

1. Section e) Information regarding the natural person in respect of whom the judgement and, where applicable, the probation decision has been issued. It can be useful to mention here the last known residence and the language understood by the person.
2. Section f) Information regarding the Member State to which the judgement and, where applicable, the probation decision, together with the certificate are being forwarded. In this section, it should be indicated the criterion used as a basis for the choice of the ES to which the judgement and the certificate will be forwarded.
3. Section g) Indications regarding the judgement and, where applicable, the probation decision. In this section, it is expected that the competent authority in the IS provides details about the judgment, ensuring that the relevant sections of the judgement are described accurately: facts, circumstances, the role of the convicted person, qualification, and the applicable law. It is important here to be aware of whether the ES will check for double criminality. This can be done by reading the declaration lodged by the ES to the General Secretariat of the Council, available here.
4. Section h) Indicate if the person appeared in person at the trial resulting in the decision. The ES competent authority may refuse recognition and enforcement of the sentence if the judgement was rendered in absentia unless the person was summoned personally or the conditions mentioned in art. 11(1)(h) were fulfilled.
5. Section k) Other circumstances relevant to the case, including relevant information on previous convictions or specific reasons for the imposition of the probation measure(s) or alternative sanctions(s) (optional information): It is important for the competent authority of the IS to duly verify if the competent authority of the ES can accept the electronic signatures. In some Member States, this can be challenging.



HOW TO FIND OUT MORE ABOUT THE PROBATION SERVICE IN THE EXECUTING STATE



Several resources are available at the European level to describe the probation systems on an EU level:

- Confederation of European Probation (CEP) – [Knowledge Base/Probation in Europe](#). You can go directly to sections 3 and 4 of each chapter to see the legislative basis and also the organisation of the probation service in every country in Europe. For a more visual representation of how the system works, you can also visit the system maps.

Press [HERE!](#)



- [EU Project](#) – Probation measures and alternative sanctions in the EU.
- Most of the ministries of Justice have sections dedicated to the probation systems.



As mentioned, before using data from these websites, make sure that the data is updated.

EXAMPLES OF GOOD PRACTICE IN SENTENCE ADAPTATION

The following practices have been identified as being beneficial to a successful mutual recognition of sentences and transfer of proceedings:

Adapting the sentence, ab initio, to the ES legal system in order to ensure easier transfer and execution.

Well-established and standardised workflows between courts and probation service.

National probation services acting as clearing agencies assessing options to adapt incoming supervision requests.

Cross-border training for better international cooperation (e.g., between Germany and Austria).

A central authority being in charge of cross-border cases.



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HOW TO DEAL WITH LANGUAGE DIFFICULTIES



Language specificities constitute a barrier to an increased use of FD 2008/947. In this sense, we recommend the use of the IATE (Interactive Terminology for Europe') platform, the EU's terminology database.

Steps to take:

1. Chose the source language (i.e., language of the term to be translated);
2. Chose the target language(s);
3. Write the term in the “search” bar, then click “enter” or on the search icon.

The following results will show possible translations, including one selected as the “preferred choice”. Similarly, by selecting the “Expand/Collapse” icon (), one will be able to access complementary information such as term definition, references, contextual usage, and additional notes.

For the cases of Austria, Belgium, France, Italy, the Netherlands, Portugal and Romania the J-CAP glossary, included in the “Informative Materials”, provides a practical overview of available sentences or measures related to certain sentence modalities.

RELEVANT RESOURCES

More information relevant for the use of the FD 2008/947 can be found in the [EJN Judicial Library](#) (e.g. forms, word forms, handbooks and guidelines etc.). Similarly, one may also access the [J-CAP project website](#).



The J-CAP “Judicial cooperation for the enhancement of mutual recognition regarding probation measures and alternative sanctions” project intends to improve the execution of FD 2008/947, through an awareness-raising approach, but also through the development of practical material (e.g., guidance booklet, contextualised glossary, updated software) to facilitate the execution of FD 2008/947) – having judges and magistrates as its primary target group, but also involving lawyers.

PARTNERSHIP

The J-CAP Project is led by the [Belgium Judicial Training Institute](#) (BE) and integrates as partners [IPS Innovative Prison Systems](#) (PT), the [Department for Applied Sociology of Law and Criminology of the University of Innsbruck](#) (AT), [European Strategies Consulting](#) (RO), [Netherlands Helsinki Committee](#) (NL), [Agenfor International Foundation](#) (IT), and the [French National School for the Judiciary](#) (FR),



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