

**MINUTES OF THE EXPERTS' MEETING ON THE IMPLEMENTATION OF THE FRAMEWORK DECISIONS 2008/909/JHA
(TRANSFER OF PRISONERS), 2008/947/JHA (PROBATION AND ALTERNATIVE SANCTIONS) AND 2009/829/JHA
(EUROPEAN SUPERVISION ORDER)
Brussels, 14 November 2012**

Executive summary

The aim of the Experts' Meeting was to discuss problems that EU Member States (MS) have in implementing the Framework Decisions (FDs) 2008/909/JHA on the Transfer of Prisoners, 2008/947/JHA on Probation and Alternative Sanctions and 2009/829/JHA on the European Supervision Order.

So far, 13 MS plus Croatia have implemented FD 909 (deadline 5 December 2011), 8 plus Croatia have done so for FD 947 (deadline 6 December 2011) and 4 MS have done so for FD 829 (deadline 1 December 2012).

Craig Georgiou and Natalie Woodier from the National Offender Management Service in the UK gave a joint presentation about ISTEP (Implementation Support for the Transfer of Probation Sentences), a project to develop country factsheets to support MS with the implementation of FD 947.

During the discussion between MS on FD 947, the problem of finding equivalences in measures between MS was raised because measures in one MS are sometimes unknown in another MS. Another problem relates to consent. The question of who bears the costs of transport under FD 947 also came up. COM stressed the importance of close cooperation between authorities to ensure probation measures are implemented in the country of execution. COM also concluded that financing of the transfer of a person is not covered in the FD but needs reflection. With regard to the competent authorities, COM would prefer that MS appoint one central contact point which could then transfer the requests to the different courts.

This was followed by the presentations of the projects implementing FDs 909 and 829 by Mr Wender van Mansvelt of the Dutch Ministry of Justice and by Mr Francis Stoliaroff of the French Ministry of Justice.

With regard to FD 909, the question arose as to whether a sentence imposed by the issuing MS is adapted, where applicable, before or after the transfer.

The issue of what to do if MS have not implemented FD 909 on time (the 'transitional period') was also raised. As per Article 28 of FD 909, requests for transfer of prisoners received before 5 December 2011 will be dealt with via the existing legal instruments on the transfer of sentenced persons, such as the Council of Europe Convention and after that date by the FD. However, if there is no structure in place in the requested state, it will be very difficult to implement the FD in practice. Some are of the view that the Council of Europe Convention on prisoner transfer should be maintained with those who have not yet transposed the FD.

Also regarding FD 909, the UK asked if it would be possible for MS to agree among themselves what would constitute a reasonable time period to qualify for residency. COM noted that it is not possible to have something mandatory here but that it would be useful to agree on guidelines.

With respect to the information given to the sentenced person, COM noted that it would be difficult for a person to give its consent to a transfer if that person did not know what to expect (e.g. prison conditions and the duration or nature of the (adapted) sentence in the executing MS).

COM stressed that the FD is about the social reinsertion of people who have been convicted. A MS would not execute the measure where the social rehabilitation criterion is not met based on consultations between the two MS.

Another issue which came up was that MS have different approaches in case of multiple offences committed by the sentenced person. Some MS add up the number of sentences that an offender may have been given and others take the most severe of the sentences. This attitude will therefore be reflected in the adaptation of the sentence by the executing MS.

A tour de table of MS asking for an update on their implementation of the various FDs ensued.

Another experts' meeting will be held in 2013 to further look at the state of play on the implementation of the three FDs. For that meeting, COM will prepare a questionnaire. MS are invited to send to COM, by 15 January 2013, issues that are worth discussing at that meeting and are encouraged to come forward with presentations of concrete cases. COM will adopt implementation reports on the three FDs by mid-2013.

Introduction to the workshop

Lotte Knudsen, the Director of the Criminal Justice Directorate of the European Commission's Directorate General Justice (COM), welcomed participants to the workshop.

The workshop follows an expert meeting in March 2012, which demonstrated the need for an exchange of views on the transposition and implementation of the FDs and on best practices.

As deadlines approach or have passed, the hope is that the intensity of MS work is growing.

COM has presented a Green Paper on detention and has received about 80 replies from MS plus NGOs, practitioners and academics. COM has prepared a summary of these replies that MS can see on COM's website. There was broad consensus on a number of issues (e.g. the excessive length of pre-trial detention). Most MS are not in favour of new legislation at EU level. The workshop today is a part of the follow-up to the Green Paper.

So far, 13 MS have implemented FD 909 (deadline 5 December 2011), 8 have done so for the FD 947 (deadline 6 December 2011) and four MS for FD 829 (deadline 1 December 2012). This shows that there is a lot of work to be done.

COM is trying to help MS with their implementation strategy as gaps in terms of implementation can create problems. One of the aspects of the FD 909 is that it can ease the problem of overcrowding. A proper application of the European Arrest Warrant depends on implement of other instruments such as the FD 909.

2013 is the year of the citizen, which makes it all the more important that the instruments are properly applied.

The backdrop for these discussions is that COM will have enforcement powers as from December 2014, which it does not currently have. Hence COM's decision to have more expert meetings to help MS.

There may be grounds for more discussion and therefore more meetings as MS gain experience via practical implementation of the FDs.

Another meeting is planned in March 2013 before a COM implementation report on the three FDs comes out in mid 2013. COM is aware of the fact that there are a lot of problems with implementation. Many can be dealt with via training, exchange of best practices and exchange of information.

MS can apply for funding from the COM criminal justice programme. There was a presentation in March on flanking measures from Ghent University. There is also a Belgian project on probation measures. The idea is to take the website arising from this and integrate it into E-justice portal.

Presentation about ISTEP (Implementation Support for the Transfer of Probation Sentences)

A joint presentation was given by Craig Georgiou and Natalie Woodier from the National Offender Management Service in the UK.

Natalie Woodier

The project is developing country factsheets to support MS with the implementation of FD 947.

The project is looking at the challenges and solutions with regard to the practicalities of transferring probation and alternative sanctions.

It is also looking at the obstacles and challenges in the implementation of FD 947. So far, there has been a workshop in Amsterdam in September, which identified a lot of obstacles. The plan is to come up with solutions/case studies that can help MS in January/February 2013.

One of the issues to have come up is that of social rehabilitation. Every country sees this in a different way and has different ways of dealing with it. The question is – what does supporting social rehabilitation really mean?

The legislative challenges include:

- Consent (to a transfer or to a sentence for example)
- Lawfully and ordinarily resident: there is no set definition and MS may interpret this in different ways
- Competent authorities: some MS have one while others have lots. Should this be streamlined? Can every MS have one? The challenge is to know who to contact.

- Additional probation measures: Can they be transferred and applied in other MS?
- Age of offenders: There are differences between MS (e.g. an adult in one country may not be an adult in another country)
- Its relationship with FD 909 and FD 829

The practical challenges include:

- Social inquiry/report: some MS have this while some do not. Is there a requirement for all MS to have this? It is important to know things about an offender (e.g. risk assessment).
- Method of communication: How will information be sent across borders?
- Languages: How are translations done and who pays?
- Third party involvement in criminal penalties: Do they get a say?
- Cost of transfer: Where does the money for this come from and who pays?
- First contact in the executing state: Who arranges the first meeting? Is it the responsibility of the offender or the judge in the issuing state? How does one ensure that the offender meets the probation officer in the executing MS?
- The 60 day deadline: Is this enough time for the translation, speaking to the court and gathering information on the offender?
- Establishment of the competent authority: Most MS have established it – how do the other MS know about it? Via factsheets?
- Will the FD have some flexibility in terms of informal transfers?

Craig Georgiou

This is a work in progress. Information is needed from MS to make it work.

Country factsheets will enable MS to:

- Access sentencing information about other MS
- Access the contact details of competent authorities
- Understand what practical solutions are needed to start the transfer process
- Access quick links to sentencing information
- Access a full understanding of the executing states' understanding of the FD process and language (the language that they require certificates in)
- Access to information on documentation required for the transfer to take place
- Have a central point for all MS competent authorities to access information

The project website will be a good tool to help MS in the early days of transfer of probation and alternative sanctions. The information on the website via the factsheet will be especially useful when MS are transferring probation or alternative sanctions to another MS for the first time.

The project has developed four main factsheets.

For example, take the factsheet on the 'General overview of Alternative Sanctions and Probation Measures'.

Here there are 'Yes / No' boxes where information is needed by executing MS.

Under Community Service, there is a box where executing MS fill in what it means in their country. That will help MS align two sentences if they have a different understanding of a particular concept. It is very important that factsheets are detailed, up to date and current.

The section with a minimum/maximum supervisory period for different levels of sentences can help judges in their decisions about what sentence to give an offender.

Question: Has any MS having transposed FD 947 transferred probation or alternative sanctions under it? Answer: No

Question: Has any MS transferred probation or alternative sanctions outside FD 947? Answer: No

- Are these the right headings?
- Are the questions sufficiently clear or might they be misunderstood?
- Is there anything missing in the factsheets?
- Assist the project in filling in the factsheets and returning them to the project.
- The process is that MS will be sent partially filled in factsheets (from the Belgian project) and then MS will need to complete them.

Focus groups will be run in January/February 2013 (in Spain, the Netherlands and Romania).

An international conference will take place in May 2013 in Vilnius, Lithuania.

COM noted that there were no practical cases at all on FD 947. Regular meetings will be needed as there will be useful information when there are practical cases on the table.

Craig Georgiou

The project should have a working website (hopefully with factsheets filled in) by the time of the March meeting.

The challenges include the consent procedure, the notion of social rehabilitation and how it is applied in practice and the competent authority.

Netherlands (NL)

One of the biggest challenges is to have a list of probation measures. This seems obvious but different MS have different interpretations. It will be a challenge to transfer a measure from one country to another without changing it too much. Questions include how that will actually work and what will need to be done in terms of adaptation. The Dutch law transposing FD 947 came into force earlier this month.

Romania (RO)

RO transposed FD 947 by adopting a law last month.

Poland (PL)

PL agreed with NL that there may be a problem of finding equivalences in measures between MS. Measures in one MS are sometimes unknown in another MS.

PL stressed that the large number of Polish emigrants in other MS may be a problem.

Finland (FI)

FI has transposed the FD but has no practical experience yet. It has provisions on consent (always needed) and social rehabilitation in the implementing legislation.

Czech Republic (CZ)

CZ expects transposition of the FD some time in 2013.

CZ opted to have lots of different competent authorities when acting as the executing state because, with regard to a decision about probation measures, the best solution is the courts where the individual is resident as they are first instance contacts that know the individual's personal situation.

CZ does not anticipate difficulties in finding a contact point in the other MS. Here the European Judicial Network in criminal matters can play a role.

CZ asked if the country factsheets could be put on the EJM's web pages.

CZ does not see consent as being so important on probation.

COM

With regard to the competent authorities, it is up to MS to appoint as many courts as they want. However, it would be preferable if MS would appoint one central contact point who could then transfer the requests to the different courts.

Austria (AT)

Is there a link between the European Arrest Warrant and the FD 947? If FD 829 is implemented, would the EAW be wound down?

COM

COM stressed the importance of implementing all the FDs to improve the EAW, especially FD 909 and 829.

For FD 909, there is no obligation to have the consent of the person being transferred if certain conditions are met. For FD 947 the consent is implicit. It is difficult to see how it can be used for social rehabilitation without the person's consent.

Netherlands (NL)

For FD 947, consent is required in NL's implementation law. The person has to want to return to the state he/she comes from. NL has no intention to transfer people under FD 947 as NL's perception is that they go themselves of their own volition.

Germany (DE)

DE does not see costs arising from a transfer as it sees the person as leaving voluntarily or having gone back to the MS already.

DE has not implemented the FD. It has a decentralised system and will probably have several competent authorities. DE does not see a problem here but sees it as speeding things up rather than going through a centralised authority.

Ireland (IE)

IE agrees with NL. If a person is granted a probationary measure, it is up to the person concerned to travel to the country concerned. IE does not envisage transporting them.

IE intends to have a central authority to make the FD workable as it needs a central authority to ensure that a request goes to the right competent authority.

COM

When a person goes to another MS, the executing and issuing MS must work together and coordinate. Often the people concerned do not have money to pay for their transport for example.

MS have mutual responsibilities. It is about ensuring that x person goes from country a to country b and not to country c.

Czech Republic (CZ)

Coordination between the executing and issuing authorities is very important.

CZ agrees with NL. Costs do not arise because a person has decided voluntarily to leave the issuing state and live in another MS. The person has to go to probation/mediation services themselves and take responsibility.

Greece (EL)

EL had drafted legislation for FDs 947 and 909. It is with the Ministry of Justice and will then go to the parliament to be voted on. The hope is that it will be wrapped up soon.

For FD 829, EL has set up a legislative committee responsible for work on the draft law.

EL has concerns about resources and if it will have enough money to pay for it all.

EL is also concerned about how conditional release can be dealt with. A person released might choose one of the many islands in EL and wonders how that can be dealt with.

EL stressed the need for practical implementing structures.

Germany (DE)

If a person is let out of prison or subject to probationary sentence in DE, then they are not behind bars. Supervision cannot then be transferred from one court to another. It is not a transfer of an

arrested person. It has to be a voluntary step taken by the person as the person is roaming free. He says that he will return to a MS and if he does not then he is infringing probation measures. The probation measure can then be rescinded and something else can be done.

COM

COM stressed the importance of close cooperation between authorities to ensure probation measures are implemented in the country of execution.

Financing the transfer of a person is not covered in the FD but is not something that can be ignored. It is not something that can be regulated at EU level but it needs to be thought about.

Wender van Mansvelt, Dutch Ministry of Justice, Presentation of WETS project implementing FDs 909, 947 and 829 in NL

A project-based approach can be very useful in implementation. There are lots of legal issues with practical implications for organisations.

Re: implementing FDs 909, 947:

- A new Dutch law: WETS, came into force on 1 November 2012

There was a declaration by the Netherlands:

- Full verification of double criminality (both FD 909 and 947)
- Only accepts final judgments issued after 5 December 2011, art. 28(2) (FD 909)
- Receives certificates in Dutch or English, article 23(1)
- NL may request a translation of the judgment into Dutch or another official language of the EU

Implementing FD 829

- New Dutch law on FD 829: Transfer of Alternatives to Pre-trial Detention, sent to parliament
- The implementation project has started

NL has estimated the number of convictions with potential for transfer in MS:

- FD 909: Incoming 540 and outgoing 80
- FD 947: Incoming unknown and outgoing 100

Francis Stolaroff, French Ministry of Justice

With regard to FD 909, there is a need to determine the applicable procedure to reply to a state requesting FR to execute a decision. Where there is a need to adapt the sentence, it can either be adapted *before* the transfer of the prisoner or the sentence can be tailored *after* the transfer of the prisoner

FR will not execute a request in the absence of double criminality. For example, writing bad cheques is not a criminal act in FR but is in DE. We receive EAWs where people have written cheques for cars. FR might well extradite but it will not execute this as it is no longer a criminal act in FR.

As for how to determine permanent residence, FR deems that this is the case when a person has legally resided continually in FR for five years (regardless of their nationality).

Where a person is found guilty of different offences, while in countries like the US these can be added together (e.g. drug trafficker / holding firearms), this cannot be done in FR. In FR, the maximum is always the maximum for the most severe crime.

If there are three infractions, of which two are illegal in FR and one is not, FR will just look at the two and ignore the other one and will make its judgment based on these two.

With regard to the transitional period, the question arises as to what MS should do when other MS have not transposed the FD. The idea is that all MS shift to the new system on the same day but this is unlikely to be the case. FR is of the view that the Council of Europe Convention on prisoner transfer should be maintained with those who have not yet transposed the FD.

In discussions with the UK, it emerged that the UK will immediately transfer FR citizens in the UK meeting the conditions.

FR has produced a table looking at what will happen when the FD is implemented in all MS and if all MS decide to send non-nationals back to their home countries.

The overall result for FR is that it would free up 700 prison cells in FR. At a cost of 700 euro per week for each prisoner, that would amount to a saving of about 30m euro for FR. Some MS will save and others will lose money on this. It might not play out this way in practice but it gives an idea of how it might be.

COM

For double criminality, COM's spontaneous reaction was that there would be no checking in principle – i.e. if a MS has ticked 'fraud' as one of the listed offences subject to double criminality, then it has to be executed.

With regard to the figures, this is a kind of cost benefit analysis. In some MS they want the measure transposed so that they can empty their prisons but that is likely to be an illusion.

The FD is about the social reinsertion of people who have been convicted. Executing MS would not execute the measure based on consultations where the social inclusion criterion is not met. For example, it is unlikely that a French person married to UK citizen with a family in the UK and in a UK jail will be transferred to FR.

Francis Stolaroff

FR does check double criminality even in the 32 categories. This is authorised in the FD. MS can derogate from a particular provision covering this via a declaration sent to the General Secretary of the Council.

Czech Republic (CZ)

Where applicable, CZ noted that it had chosen the route of adapting the sentence *before* transfer. CZ asked about the appeal process in this situation.

CZ asked how Dutch legislation dealt with the issue of victim information.

Poland (PL)

PL agreed with FR that the Council of Europe Convention needs to be applied where some MS have implemented the FD and others have not because it is important not to have a vacuum. PL asked if MS could use this convention in situations where MS had not implemented the FD.

In PL, double criminality must be systematically verified.

PL asked how a situation in which sentences are adapted when merging sentences together and where they are not totalled individually.

PL asked what happens if there are, for example, three individual offences and FR says that two apply in its legislation and one does not. How are such discrepancies dealt with?

France (FR)

In Spain, a number of combined offences might attract a sentence of 63 years in prison. If Spain sends this sentence to be carried out in FR, FR will give the most severe of the sentences (e.g. kidnapping a child – 20 years) but will not combine the three and come up with 63 years. That is why it is important that the adaptation of the sentence is done before the transfer of the prisoner and not after. ES can then accept the 20 years or decide to withdraw its certificate.

In another hypothetical case, there is a French national working in Ireland who carries out an abortion. He is not a doctor. FR will set aside the offence [in Ireland] of abortion and sentence the person to three years prison (the maximum penalty in FR) for illegal practice as a doctor.

Netherlands (NL)

As for informing the victim, the procedure is that when the Dutch central authority gets some information from the MS about executing an imprisonment, NL puts it in its system and automatically sends it to its victim support organisation.

COM

COM cannot launch infringement proceedings until 2014 (Protocol 36 TFEU).

As per Article 28 of FD 909, requests for transfer of prisoners received before 5 December 2011 will be dealt with via the Council of Europe Convention and after then by the FD.

If there is no structure in place in the requested state, it will be very difficult to implement the FD in practice. This is all the more reason for everyone to implement the FD as soon as possible as, otherwise, there is a legal vacuum.

With regard to remedies, COM believes that implementing legislation in MS should respect the Charter of Fundamental Rights and MS should therefore foresee an appeal procedure.

Italy (IT)

IT has implemented FD 909 but not the other two FDs yet and does not know when that process will be completed.

IT has not made a declaration about the 32 infringements where no double criminality applies.

IT has come up with similar mathematical calculations to FR on the practical use of the instruments. Use of the tool would probably mean more prisoners leaving IT than coming back, i.e. leading to reduction in IT's prison population.

Austria (AT)

AT is in favour of discussing specific problems at a regional meeting. A subject such as translations (here a number of countries do not require the translation of a sentence and others do) could be discussed in smaller, regional meetings.

COM

COM is very happy for MS to hold regional or bilateral meetings but sees these types of issues as also being of interest to other MS.

There will be another experts' meeting in 2013, ahead of which COM will send MS a questionnaire.

UK

The UK has received its first prisoner back from DK. An example of the difficulties is that the prisoner has lodged an internal complaint against the UK for complying with the Danish government in not looking after his rights. There is also a Belgian and Italian case.

Using the certificates is a vast improvement on the Council of Europe Convention as it simplifies previous procedures.

If a sentence were to be adapted, the UK would hope to be aware of it *before* the prisoner was transferred so that it could withdraw the request if it felt that that was necessary.

The UK currently has no information to give the prisoner when seeking their view on a possible transfer. This means that the quality of the prisoners' representations against transfer are not good. The UK does not have information on, e.g., if conditions are tougher in the other country or if the person would have to serve a longer sentence there. So the UK is not providing the prisoner with the information to come up with an informed opinion.

The UK is not making any declaration on double criminality.

The UK asked if it would be possible for MS to agree among themselves what would constitute a reasonable time period to qualify for residency. It asked if, where the potential transferee has a job in the UK and is paying taxes there, this is enough to prevent his transfer.

For merged sentences, the UK takes the offence generating the longer sentence and applies that one in the UK.

The UK will be looking to transfer as many prisoners (meeting the conditions for transfer) as possible.

COM

For the time period for residence, it is not possible to have something mandatory but it would be useful if we could agree on guidelines. Guidelines on practicalities (a *vademecum* and not binding rules) will be needed.

COM noted that it would be difficult for persons to give their consent to a transfer if they do not know what to expect (e.g. prison conditions and the length of the penalty in the requesting MS) and what needs to be taken into account. A transfer should not make the person's situation worse.

Germany (DE)

DE has not yet implemented the FD. Among its preliminary reactions are that rules on consent are dealt with in the FD and so there should not be any difficulty. Resocialising the person is the

objective. DE plans to work on a case by case basis and wants to find out if the person consents and, if not, then if there is a good reason to send them to the other country (i.e. if there are more chances of social rehabilitation in the other country).

It is up to the courts to decide where the place of habitual residence of the person is. DE suggested a European term that could be interpreted by the European Court of Justice.

With regard to adding up sentences, DE comes up with a total based on individual sentences. If DE has a six month, a four month and a two month sentence for someone, this should be coordinated between MS so that the person serves the whole sentence in one MS and does not serve bits and pieces of the sentence in different countries.

DE sees the biggest challenge as being the link with the European Arrest Warrant and is looking closely at the intersection between FD 909 and the European Arrest Warrant.

COM

Transferring someone from one prison to another is very difficult to do without their consent in one MS let alone between two MS. COM has received complaints that someone has been transferred and did not want to be and vice versa.

COM stressed how important it was to avoid a transfer being refused in one instrument and not the other (i.e. with regard to the European Arrest Warrant and FD 909).

COM accepts the European Court of Justice case law and noted that there is a certain margin for discretion in the implementation of certain grounds for refusal.

Netherlands (NL)

Where a request is incompatible with a MS law, this is a ground for refusal. For example, if a MS issues a request relating to a sentence for someone who is ten years old, there is no margin for discretion. It is very clear that this has to be refused.

If a MS sends NL a European Arrest Warrant, NL would expect to try to convince them to withdraw the European Arrest Warrant and apply an FD 909 decision. NL foresees that the European Arrest Warrant for execution of sentences would gradually disappear.

Austria (AT)

The courts have a role to evaluate whether the grounds for refusal are justified or not. There is room for interpretation.

COM

The ECJ decision in the Lopez de Silva case is to be noted and complied with.

France (FR)

If one has a set of judgements, even if only one is for less than six months, this optional approach cannot be tested. A judgement must cover the totality of the sentences.

COM

The FD transfers the judgement and are not leftovers from prison sentences. Is there a transfer certificate listing several decisions issued? Are each dealt with on an isolated basis?

France (FR)

If there is a series of judgements, there are a number of conditions. For the transfer, it should not be six months or less to be served. It does not matter if it is one decision or if several decisions are added up. Anything less than six months would be a waste of a judicial administration's efforts.

Netherlands (NL)

FDs 909 and 947 are a simplified view of reality. In some cases, there are several judgements relating to the same person. Deprivation of liberty and probation measures may be in one judgement.

If a Dutch person was being transferred to FR with three sentences of four months, the competent authorities should consult each other and send three certificates and not apply the six-month rule. One cannot prepare someone to go back into society in four months so NL would refuse that.

COM

FDs 909 and 947 apply simultaneously – it is not impossible to apply them simultaneously but it would require consultations.

The FD 829 deadline for implementation is close at hand.

Only Latvia has notified that it has implemented the ESO and possibly Poland too. COM asked for MS to say where they stand on implementation in their countries.

Austria (AT)

AT hopes a law on both FDs will be through parliament by the summer of 2013.

Belgium (BE)

BE has just finished draft legislation for FD 829 and discussions are due to start in the week of 19 November.

Bulgaria (BG)

BG is in the drafting phase for FD 909. A law is ready but is being coordinated by the Ministry of Justice and is not yet with the Council of Ministers. It is expected in mid 2013.

The law regarding FD 829 is due to be ready by the end of January and adoption is planned for mid 2013.

Croatia (HR)

HR has already transposed the FDs 909 and 947.

HR plans to transpose FD 829 in the first six months of 2013.

Czech Republic (CZ)

The law relating to FD 829 is in parliament and CZ hopes it will make it through by mid 2013.

Denmark (DK)

The law relating to FD 829 is due to come into force in December 2012.

Estonia (EE)

All the FDs are in one package. A draft law is ready and is in interministerial consultations. EE hopes to pass it to the parliament by the end of the year / early next year and hopes that parliament will adopt it in the first half of 2013.

Finland (FI)

The implementing legislation will be in force from December 2012.

Germany (DE)

DE has no exact time frame for now.

Greece (EL)

Draft laws for FD 909 and 947 were sent to the Ministry of Justice in February 2012 and are awaiting adoption by parliament.

For FD 829, EL has set up a legislative committee to draft the legislation before sending it to the Ministry of Justice.

Hungary (HU)

A package of implementing acts is before the parliament.

Ireland (IE)

IE cannot say when its law on FD 829 will be implemented as it depends on the priorities of other legislation but it expects to bring forward proposals next year.

Latvia (LV)

LV has implemented all three FDs.

UK

On FD 829, ministers are considering their options. There is no time scale.

The UK has implemented FD 909 and is considering its options on FD 947.

Sweden (SE)

SE is drafting a proposal for the 3 FDs, expects to send it to parliament in late spring 2013 and anticipates it being in force by early January 2014.

Spain (ES)

ES is dealing with all three FDs in the same legal text and expects it to be finalised by the end of 2013.

Slovenia (SI)

SI has not implemented the FDs and is in the drafting process. It expects the parliamentary process to start in December.

Romania (RO)

RO hopes to have laws adopted in early 2013. Work is ongoing on FD 829.

Portugal (PT)

PT is in the final stage of drafting political consultations in government.

Poland (PL)

PL expects to transpose FD 829 at the end of the year.

Netherlands (NL)

NL has introduced a draft law implementing FD 829 into parliament and is awaiting parliament's response. NL hopes that the legislation is adopted some time in 2013.

Luxembourg (LU)

LU has recast its entire legal system, set up new legal authorities, attributed powers differently. This will have a knock-on effect. Issues such as competent authorities, inter alia, will need to be clarified. Once it has dealt with that, it can deal with FD 947 and FD 829.

Lithuania (LT)

LT decided to transpose all three FDs in one national law, which is with the Ministry of Justice in draft form. It is close to being finalised and LT hopes that it will be sent to the parliament in near future.

COM

COM noted that this was generally very encouraging as most MS are in the process of transposing the FDs.

COM asked MS what would happen if an issuing MS refers a decision to an MS as an executing MS and the sentence is handed down after December 2011 or December 2012 respectively, i.e. earlier than the date that the MS transposed the FD. Normally the MS should apply the FD to any sentences handed down before the date on which it transposed.

France (FR)

The procedural provisions apply retroactively. Once FR transposes, it will apply the FDs retroactively.

For FD 909 FR may need to apply the protocols of the Council of Europe Convention before transposition and even afterwards to deal with MS that have not transposed.

COM

The relationship between FD 829 and the European Arrest Warrant is tied up with the issue of long pretrial detention. Especially in replies to the Green Paper, MS all referred to implementation of FD 829 as giving them a tool to deal with long pre-trial detention. The focus of most MS is on the implementation of this instrument and not new legislation.

For the FD 829 to be operational, we need the European Arrest Warrant (Article 21) and for judges to have the comfort that, if they agree to an European Supervision Order and have someone on provisional detention, then they can get that person back reasonably quickly with a European Arrest Warrant if there is a difficulty. The practical issue is about whether or not a person may try to abscond.

The issuing authorities need to consider the options and go for something effective but less onerous for the accused person.

Germany (DE)

DE wonders whether FD 829 can also be applied when the person is already in the MS of execution so that it should not be necessary to issue a European Arrest Warrant. DE wants to know how MS in the process of implementation feel about that.

Netherlands (NL)

NL agrees with DE that it is reasonable that one should be able to apply FD 829 if a person has returned to their state. Article 9, paragraph 1, does not mention that possibility. It was in there in the early draft but was deleted because, for those cases, one should apply the European Arrest Warrant. It does make sense to apply this if a person has returned to their home state. But does the FD allow for this?

COM

COM said that it would reflect on it and the issue would be discussed again later.

COM

These three FDs are considered very important for mutual recognition between MS. COM wants to help MS with sound implementation of instruments. There will be a meeting in 2013 (date to be confirmed), which will look again at the state of play on the implementation of the three FDs. COM will prepare for this meeting with a questionnaire, mainly focussing on FD 909.

COM asked MS to send it, by 15 January 2013, issues that are worth discussing at the next meeting. COM will then send a questionnaire to MS, set a deadline, analyse the replies and prepare a working document for the next meeting, which will discuss implementation difficulties. At the next meeting, it would be interesting to work on the presentation of concrete cases. MS should send them to COM if they have them as well as their draft legislation.