



J-CAP

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CONVERGENCE OF PRACTICES TOWARDS A FLUID IMPLEMENTATION OF FD 2008/947 AT EU-LEVEL



The two Transnational Awareness-raising Symposia (TARS) held in June and September 2023, demonstrated the need to raise awareness on the relevance of the FD 2008/947, defining the basis for further actions directly involving practitioners and experts of the judicial field.

In this regard, the J-CAP Consortium has organized pivotal events at the national and international levels, strengthening the cooperative framework and broadening the existing networks of judges, magistrates, lawyers and probation officers to implement the EU tool better.

Between September and November 2023, National Roundtables were organized in each partner's country (Austria, Belgium, France, Italy, Portugal, Romania and the Netherlands) highlighting issues in the operationalisation of FD 2008/947 and potential solutions, calling on stakeholder groups to action in fostering respect for EU law.

On the 15th and 16th of November 2023, Agenfor International, supported by all the partners, held J-CAP's International Virtual Conference, hosting experts and practitioners from each Partner Country, as well as Member States external to the J-CAP project, to share common challenges and virtuous practices.



NATIONAL ROUNDTABLES

Between September and November 2023, each partner organized a national event, the National Roundtables, in their countries (Austria, Belgium, France, Italy, Portugal, Romania and The Netherlands), **building from J-CAP's international awareness-raising intervention to constitute focus points to discuss specific issues highlighted by the low use of FD 2008/947.**

In total, the events were attended by 75 practitioners from the judicial sector.



The Italian Roundtable, held in Venice on the 29th of September 2023

These national events aimed to **transmit conclusions from the symposia to national audiences and**, on the other hand, **allow for focus points to debate concrete topics stemming from previously held discussions and events**, as well as **identified needs by practitioners and justice professionals**. As such, the main discussion topics included:

- ❖ Advantages of the FD's instrument for foreign probationers;
 - Ensuring appropriate information sharing between the Issuing State (IS) and
- ❖ Executing State's (ES) governmental bodies (both courts and probation services) for a thorough assessment of each individual case;
- ❖ Promising practices derived from European Union (EU) countries, which promote the usage of the FD;
- ❖ Cross-professional collaboration (judges, prosecutors, lawyers and probation officers).



The National Roundtables, although providing with a plethora of views, both across countries and professions, allowed to verify the existence of points common to all countries.

In Austria, the national transferability of already identified international Promising Practices was discussed, exemplified by a case between Italy and Austria. In the case of transfer adaptation ab initio, practitioners emphasized that the recognized advantages of such a procedure would not outweigh the possible obstacles that practitioners would then face, such as **time pressure and administrative burden**. Concerning the existence of national central authorities for cross-border judicial cooperation and proceedings, practitioners were in favour of such an institution but raised several follow-up issues, such as the exact responsibilities or the necessity of such an authority considering the few national cases that fall under the FD's jurisdiction.



The Dutch Roundtable, held in Utrecht on the 23rd of October 2023

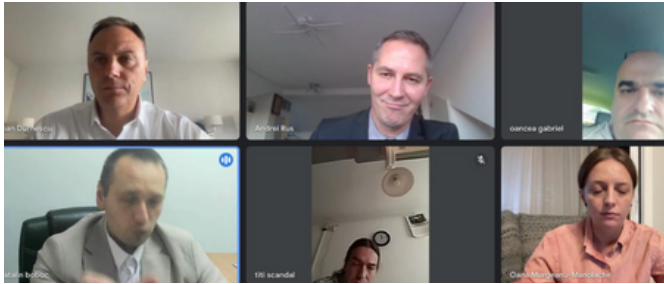


The Portuguese Roundtable, held in Lisbon on the 10th of October 2023

The Belgian practitioners signalled the **decisive importance of obtaining and consolidating meaningful and sustainable flows of information**, both cross-professionally and cross-nationally.

The French National Roundtable addressed the **systematic issues hindering a better implementation of FD 2008/947**, underlining how the element of communication is pivotal to the streamlined national (and European) implementation of the FD 947.

The Italian practitioners focused on the need to **adequately equip professionals with the knowledge of how to implement the FD and the available tools and agencies** which can contribute to assisting their daily work concerning the transfer procedures. Similarly to the French case, participants in the Italian Roundtable underscored the **role that communication, between professionals and MS, can have in forwarding a streamlined application of the legal instrument**.



The Romanian Roundtable, held online on the 16th of October 2023



The Romanian National Roundtable focused on how Romanian law adapts the EU tool, especially as an ES. In particular, discussions focused on the difficulties faced by Romanian authorities when adapting foreign sentences and how to supervise them, given the possible lack of proper clarity in the national law. As Romanian practitioners duly pondered, however, is that there is both a **lack of a legal basis and significant practical challenges Romanian professionals would then face.**

The key insight of the Portuguese meeting stemming therein concerned the **fundamental role of probation services in ensuring conditions for a streamlined transfer process.** For the Portuguese participants, this however requires facilitated and fast communication between national judicial authorities and probation services and, especially, **adequate financial and human means** for these services to verify the conditions present in the ES and the environment in which the probationer will be reintegrated.

Lastly, the Dutch National Roundtable focused its attention on **various measures that Dutch authorities have undertaken to increase awareness of the FD** among those professional groups who, in the Netherlands, have lesser experience with the instrument, mainly Judges and Defence attorneys.

Finally, it is worth highlighting how **all practitioners agreed on the need and added value of elevating the role of probation services in EU tool's procedures.** In both Portugal and France, professionals shared that persons sentenced for sexual crimes, when put on probation or alternative sanctions, require close monitoring by probation services, not only when it comes to the supervision of the person's rehabilitation and reintegration, but also in the assessment of the person's external environment. Furthermore, in the unique Dutch organisational set-up for addressing FD 947, the role of probation services is front and centre. This means, inter alia, **better preparedness to address the rehabilitation prospects of probationers while meeting the strict time frames.**



INTERNATIONAL VIRTUAL CONFERENCE

J-CAP's International Virtual Conference took place online in the mornings (10:00 – 13:00 CET) of the 15th and 16th of November 2023.

A total of 55 people, among them, practitioners and experts from the judiciary field, who were already engaged in previous J-CAP activities and events, such as judges and magistrates (Ministry of Justice, Regional Courts, Surveillance Court, and preliminary investigation judges), lawyers, jurists and legal counsel, probation and penitentiary officers, but also researchers and PhD students, policy and programme officers.



The online event was dedicated to sharing the results of the National Roundtables (NR), highlighting best practices, advantages and insights on the effective application of the Framework Decision 2008/947 in each partner country (Austria, Belgium, France, Italy, Portugal, Romania, the Netherlands,) and external countries (Spain, Poland and Germany), focusing particularly on the advantages of the FD 947 for foreign probationers, the information sharing between the Issuing State and Executing State's governmental bodies, the best practices derived from European Union countries, and the importance of cross-professional collaboration.

The virtuous example provided by the Conference itself was well-welcomed by all participants, who **highlighted the relevance of such events that offer the chance to learn and discuss with colleagues from other MSs, presenting similar challenges from different experiences.**



J-CAP International Virtual Conference
The implementation of the Framework Decision 2008/947

Agenda
15th of November 2023

10:00 - 10:15
Welcoming and introduction to J-CAP
Pietro Suchan, former magistrate, Public Prosecutor's Office of Lucca and Eurojust

10:15 - 10:45
European Judicial Training - ensuring justice in the EU
Lena Giesche, Policy Officer, European Judicial Training Unit - European Commission

10:45 - 11:00
Coffee break

11:00 - 11:30
National and regional perspectives on implementing the FD 2008/947
Eva-Maria Mörten, Jurist in Penitentiary Institutions and Doctor in Criminology and Lecturer of the Loyola Andalucía University - Spain
Mariona Marcos Almagro, Prosecutor, Barcelona Prosecution Office, International Cooperation Unit - Spain

11:30 - 11:45
Coffee break

11:45 - 12:45
Practices at the national level
Kris Van Goolenbosch, Civil Servant, Central Authority International Cooperation in Criminal Matters of the Federal Public Service Justice - Belgium
Paola Di Francesco, Magistrate, Venice Court of Appeal - Italy
Marina Baur, Public Prosecutor, International Legal Assistance Centre in Criminal Matters - the Netherlands

12:45 - 13:00
Final remarks
Pietro Suchan, former magistrate, Public Prosecutor's Office of Lucca and Eurojust

www.jcap-probation.eu

J-CAP International Virtual Conference
The implementation of the Framework Decision 2008/947

Agenda
16th of November 2023

10:00 - 10:15
Opening and recap of day 1
Pietro Suchan, former magistrate, Public Prosecutor's Office of Lucca and Eurojust

10:15 - 10:45
Practices at the national level
Ana Cristina Neves, Senior Probation Officer, Directorate-General of Rehabilitation and Prison Services - Portugal
Franck Dandoulis, Deputy Head of the European and International Relations Unit, French Prison and Probation Services - France

10:45 - 11:00
Coffee break

11:00 - 11:30
Practices at the national level
Cristina Frenzel, Judge, Department International Criminal Cases of the Austrian Federal Ministry of Justice - Austria
Gabriel Ciuraru, Head of Bucharest Probation Service and Associate lecturer, University of Bucharest, Faculty of Sociology and Social Work - Romania

11:30 - 11:45
Coffee break

11:45 - 12:30
National and regional perspectives on implementing the FD 2008/947
Lukasz Nierwoch, Judge, Gdansk Regional Court - Poland
Sharon Williams, Researcher and Project Coordinator, Bremen Ministry of Justice and Constitution - Germany
Alexander Vollbach, Deputy Director General, Prison and Probation, Bremen Federal Ministry of Justice - Germany

12:30 - 13:00
Outcomes of the IVC and closing remarks
Pietro Suchan, former magistrate, Public Prosecutor's Office of Lucca and Eurojust

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Surely, the contribution of experts and practitioners from Spain, Poland and Germany who are not part of the J-CAP Consortium brought added value to the Conference, considering that previous events and project material focused mainly on the partner countries.

Considering the Spanish case, it is interesting to underline the **advantage** provided by the **absence of a central authority, according to the Catalanian expert**, Ms Marcos, because the forwarding of the certificate can be promoted ex officio by the judge of courts in charge at the request of the Public Prosecution when requisites are met, or at the request of the sentenced person. On the other hand, **other speakers delineated the absence of a central authority as problematic**: i.e., the Polish expert indicated that practice and interpretation on the implementation of FD 947 may not be uniform, similarly, in Belgium there is a need for coordination at the national level.

Another interesting point on this issue is presented by the **Dutch case, where having a central authority dealing with the in and outcoming cases is considered a strong advantage** because it allows for gathering knowledge and experience on the subject, which should also be the case for **Italy, although it has not be indicated as a particularly relevant advantage**, except for the exchange of supplementary information between the IS and the ES.



The problem of having or not having a central authority, as the German expert stated, is relevant precisely in communication, in **knowing who exactly to contact**, especially regarding, for instance, different treatments for the offenders available in the ES. In this sense, a promising practice is provided by the Polish judge, who mentioned his experience of private cooperation with German courts and prosecutor offices through **immediate and direct contacts, facilitating the gathering of information required**. In the debate, the advantages of having a centralised system from a cross-border perspective emerged.

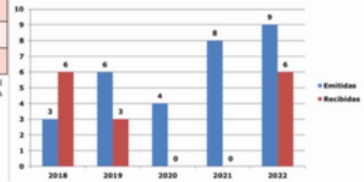
Nevertheless, according to the data provided by the Spanish General Council of the Judiciary, the use of the FD 947 is almost residual...

> ... the figures on the use of FD 947 are unbalanced ...

European probation orders issued/received in Spain

Year	FD 947 Certificates issued	FD 947 Certificates received
2020	4	12
2021	8	0
2022	9	6

Source: Table of own elaboration based on data from the Spanish National Institute of Statistics International Relations Department of the Spanish General Council for the Judiciary



Ms Esther Montero, Spanish jurist and criminologist of Penitentiary Institutions, presented the implementation of FD 947 in Spain

PONT project results: Problems and Barriers to Implementation of FD 947 and FD 829

<https://www.cep-probation.org/projects/probation-observatory-network-and-training-pont/>

Ms Rhianon Williams, Researcher and Project Coordinator for the Bremen Ministry of Justice and Constitution, presented the German probation challenges together with Mr Alexander Vollbach, Deputy Director Prison and Probation Bremen MOJC.

The moderator, Pietro Suchan, together with the Italian judge Paola De Franceschi, suggested establishing a sort of operational centre to catalyse the exchange of information, in other words, improving the EJM's ATLAS to overcome the common challenges.

Indeed, the most problematic challenge, common to all the countries represented at the IVC, concerns the **lack of knowledge of FD 947, resulting in its low application**. All the speakers underlined that judges as well as prosecutors and lawyers do not have a comprehensive knowledge of this EU tool, in some cases, they do not even know its existence. In this regard, **strengthening cross-professional collaboration** is pivotal and requires a proactive approach – as the Dutch example, followed by Belgium, demonstrated.

This first point has been pointed out as the most problematic because it undoubtedly leads to an under-application of this legislative tool, and therefore, in most cases, **it undermines the core aim of rehabilitation of convicted individuals in their own country** (either of origin or residence, where they have certain strong links). Not to mention the issues arising concerning the common trust aimed at the EU level, which could be strengthened by implementing tools precisely such as the FD 947.



EU Policy Officer at the European Judicial Training Unit, presented the core of the European Commission (EC)

In this regard, another interesting point that emerged from the IVC concerns precisely the **need for direct contact with foreign counterparts**. Speakers from Belgium, Germany, the Netherlands, and Poland stressed the relevance of direct contact, i.e. by meeting foreign colleagues to discuss,

raise awareness and find common solutions applicable on a larger scale. As the Austrian representative stressed, **cross-border cooperations need to be structured** and require the involvement of national probation services/organisations for a more constructive exchange of information and efficient connection between the contact points of the IS and the ES. However, although strengthening transnational collaboration is pivotal, and despite English being the common EU language, as the German expert, Ms Williams, mentioned, practitioners are not always able to properly communicate the required information. Therefore, the identified contact point in each country should also include **specialised staff able to support practitioners in transnational communications**.

Furthermore, the overall challenge related to the implementation of FD 947 can also be explained by the prison-centric culture in several countries, where alternative measures are hardly taken. This means that other EU instruments, such as FD 909, are more likely to be applied, which was mentioned several times during the IVC. It requires a thorough effort by institutions, given the requirements for the convicted person, to **avoid imprisonment if possible**, as Mr Vollbach claimed. Moreover, in several MSs - Spain and Portugal, for instance, but also in Italy - **timeframes for transfer processes** are complex, the length of the procedures is relevant in this case and could lead to unsuccessful experiences, or that a person “is blocked” in another country while waiting for the implementation of FD 947 – as the Spanish expert, Ms Montero, mentioned.

It has become clear during the IVC that the **organisation of regional, national and international training and awareness-raising events** is pivotal. As the Romanian representative stated, it is imperative to systematically train practitioners on FD 947 at every level, nationally as well as through transnational meetings, such as the IVC. Trainings and conferences, but also the dissemination of informative materials and other useful tools constitute the foundation of more effective implementation of probation measures and/or alternative sanctions within the framework of the FD 947. Thus, EU MSs must develop a proactive but also **multidisciplinary approach**.



IN NEXT ISSUE



*a few insights into some of J-CAP's practical materials and into the **Final International Conference - 12 March 2024***



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