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# Workshop II - Legislative Implementation

Carla Deveille-Fonthina

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# 1. State of Play of implementation process

## 2. Specific issues

### a. Orientations concerning the implementation of this Framework decision

- Competent authorities (nature, functions, relation with other authorities involved, ...)
- Additional probation measures and alternative sanctions according to Article 4.2 (e.g. electronic monitoring)
- Additional criteria to the lawful and ordinary residence (Article 5)
- Legal remedies
- Subsequent decisions (Article 12)
- Languages (Article 21)
- Existing Arrangements and agreements (Article 23.4)
- Electronic monitoring
- Adaptation
- Double criminality

### b. Link with other Framework decisions (ESO, EAW, in absentia and Custodial sentence)

### c. Information and follow-up of the implementation

Handbook and/or national fact sheet

### d. Horizontal issues relating to the implementation of mutual recognition instruments

- Grounds for refusal

# 1.State of Play of implementation process

- Complexity of the FD which explains the delay needed to implement
- Deadline: 6 december 2011
- Germany, Denmark and France have initiated the implementation process.
- Hungary, Bulgaria, Cyprus, Portugal should start the drafting soon.
- Implementation process has not yet started in England and Wales, Greece and Belgium due to governmental issues.
- Conclusion : Usefulness of this seminar unanimously agreed upon.

## 2. Specific issues

### a. Orientations concerning the implementation of this Framework decision

#### I. Competent authorities

##### - Member States of conviction (issuing Member State)

Competent authority determined in relation to articles 2 and 3 that require a judgment, excluding therefore any decisions taken by public prosecutors.

However the public prosecutor can be envisaged as the competent authority to :

Decide the transfer of the measure after the judgment and/or be competent to transfer the request.

##### - Member state of execution

Multiplicity of possible competent authorities : judicial and/or administrative authorities (probation services)

- General agreement on the idea of having as few authorities as possible type of authorities possible.
- If possible one single point of entry for the request : a central authority.
- As regards the decision on recognition : could be designated one single type of judicial authority (executing judge instead of all possible competent courts)
- Having a judicial authority deciding on adaptation when needed and modification of the measure, and also the possibility of having judicial review or “court-like authority” (article 3.3).

##### - In any case need to assist judicial authorities in identifying competent authorities in member states :

- ❖ Some member states intend to designate a central authority
- ❖ EJM Contact points
- ❖ EJM Judicial Atlas website

## 2. Specific issues

### a. Orientations concerning the implementation of this Framework decision

#### **II . Additional probation measures and alternative sanctions according to Article 4.2**

In absence of a specific catalogue of possible probation measures which is the case in various member states, one member state (DE) envisages to declare that it will accept the supervision of any other type of measure that would seem appropriate in view of social rehabilitation of the person.

(Issue of electronic monitoring adressed further on).

## 2. Specific issues

### a. Orientations concerning the implementation of this Framework decision

#### **III. Additional criteria to the lawful and ordinary residence (Article 5)**

Most of Member States are still reflecting on this issue.

However, it appears that there should be some connection (i.e previous residence, place of work) with the Member State of execution, in order to avoid any risk of “forum shopping”.

Different situations may occur in the Member States :

- In Germany this possibility may be envisaged on a case by case basis.
- In France this possibility will not be implemented because it could entail a discrimination between sentenced persons convicted in France and those convicted abroad (for, the competence of the execution judge is based on ordinary residence)

## 2. Specific issues

### a. Orientations concerning the implementation of this Framework decision

#### IV . Legal remedies

Generally a judicial authority but in some cases the FD provides for the possibility of having the decision taken on revocation or imposition of a custodial sentence reviewed by another authority (probation service) then review has to be provided by:

- ❖ a court, or
- ❖ another independent “court-like” body when the initial decision is taken by another authority than a court.

(Article 3.3).

## 2. Specific issues

### a. Orientations concerning the implementation of this Framework decision

#### V . Subsequent decisions (Article 14)

At this stage Germany and France intend to make use of declarations provided for by article 14.3.

In France for instance, this is due to the situation where there would be no legal basis for imposition of a custodial sentence in case of breach (not contained in the initial decision of the issuing state).

Besides, implementing paragraph 4, may give rise to a dispute on the appropriate follow-up to non-compliance : where the executing Member State considers that there are grounds for revocation and sends the measure back to the issuing state, what happens when the latter does not revoke ?

**In this situation contacts provided for in article 15 should exist to prevent this type of difficulty.**



## 2. Specific issues

### a. Orientations concerning the implementation of this Framework decision

#### VI . Languages (Article 21)

Good practice could be that the same declarations are made as in the EAW.

What should be translated ?

Article 21 states that only the certificate should.

Meaning that the executing state would only translate the judgment in case of need, which is the best way to make sure that an adequate translation is provided for.

## 2. Specific issues

### a. Orientations concerning the implementation of this Framework decision

#### VII . Existing Arrangements and agreements (Article 23.4)

Out of time to proceed to notification provided for in article 23.4 (existing agreements that Member States wish continue applying).

## 2. Specific issues

### a. Orientations concerning the implementation of this Framework decision

#### VIII . Electronic monitoring

Question of the nature of this measure (measure of probation *per se*, or a mean of supervising a probation measure or alternative sanction or an execution modality of imprisonment).

Most of Member states are still thinking about it, however it seems that if electronic monitoring would be a probation measure decided as such in the issuing member state, then there would be grounds for supervision in the state of execution, as soon as this measure exists and if legal and technical requirements are complied with.

Where the judgment or decision does not provides for electronic monitoring as probation measure, then it is at the discretion of the executing competent authority to decide whether it should be used as an execution modality of the measure or not.

## 2. Specific issues

### a. Orientations concerning the implementation of this Framework decision

## IX . Adaptation

General view that adaptation should be used to adapt measures **according to the existing categories of article 4.1 :**

- These categories should exist in all MS
- Adaptation should not be used to convert into another measure provided for in that list.

## 2. Specific issues

### a. Orientations concerning the implementation of this Framework decision

#### X . Double criminality

##### Various possibilities offered by the FD :

- Excluding supervision in the absence of double criminality ☹️
- Allowing for supervision in absence of double criminality where offence listed 😐
- In case of no double criminality and where offences are not in the list, supervision may be allowed (in agreement between authorities involved), but subsequent decisions will not be taken 😊

(art 11.4 / 11.1.d)

## 2. Specific issues

### B. Link with other Framework decisions (ESO, EAW, in absentia and Custodial sentence)

One MS envisages to implement probation, in absentia, custodial sentences and perhaps ESO jointly.

One MS envisages to implement Probation with in absentia.

One MS envisages to implement all framework-decisions separately, but making sure that there are no discrepancies and that authorities in charge contact one another.

## 2. Specific issues

### C. Information and follow-up of the implementation

- National Fact sheets “fiches françaises” : in relation to EAW, good practice to have them in this case.
- Discussion on whether a handbook should be drafted at european level.
- Unanimously found very useful as practitioners need for guidance in this particular area.
- Welcome the project of the Belgian presidency intending to compile the questionnaire in a handbook.

## 2. Specific issues

### d. Horizontal issues relating to the implementation of mutual recognition instruments

- Grounds for refusal : discussion on whether Member States can decide that these grounds are mandatory or not, the FD providing for a discretionary decision of competent authorities.
- However some grounds should always be implemented as being mandatory like “ne bis in idem”.
- Mutual recognition principle : Ground for refusal should not give rise to an investigation by the executing authority.
- Medical treatment : situations where you can not impose medical treatment.
- Practitioners need guidance.
- Another discretionary ground for refusal could be the territorial ground (k).
- Ground in relation to human rights.



THE END

Merci beaucoup.

Thank you.

Best wishes of success to the belgian presidency.

[Carla.deveille-fontinha@justice.gouv.fr](mailto:Carla.deveille-fontinha@justice.gouv.fr)