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Training Gap Analysis

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Training Gap Analysis on FD 829/2009 and FD 947/2008

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Executive Summary

In order to identify the training gaps in the relation to the implementation of Framework Decisions (FDs) 947/2008 and 829/2009, an European survey has been conducted with the assistance of the European Judicial Network. The survey was placed on the *EU Survey* platform and competent authorities from the European Union (EU) were invited to fill out the questionnaire. By the end of April, a total of 35 respondents had registered their answers on the platform.

As far as FD 829/2009 is concerned, most of the respondents self-evaluated their knowledge as medium. The FD was considered by respondents as very useful in reducing the proportion of pre-trial detainees, yet complicated and “difficult to implement”. Some of the most important obstacles in the implementation of this FD are

- *not knowing the legal options in the Executing State (ES),*
- *not being familiar with the procedure and*
- *not receiving the documents in an accessible language.*

Some level of anxiety regarding the trust in another jurisdiction to follow the supervisory measures was also present.

In relation to FD 947/2008, respondents evaluated their level of knowledge slightly higher than for FD 829/2009. This can be explained also by the fact that almost half of them have had experience of using this regulation in the past. As for FD 829/2009, this FD is also considered important and useful, yet time consuming, complicated and confusing. The main difficulties mentioned in relation to the implementation of FD 947/2008 were:

- *not being sure about the legal options in the ES,*
- *not being sure that the obligations will be carried out in the ES,*
- *not having clear standards of how to measure the rehabilitation prospects and so on.*

Practical issues such as how to fill out the certificate, how to adapt the sentence/decision and how to identify the competent authority in the ES were also mentioned among the difficulties.

Most of the respondents stated that they would like to benefit from training that should be delivered in an interactive and case-base manner.

The conclusion of this evaluation is that implementation of these two FDs is still in an early phase, with practitioners still anxious of working together at the EU level for two reasons. One reason is that the competent authorities from different member states still do not know each other and their systems very well. The second is that these procedures are relatively new for the judiciary and demand a different framework of thinking from the judiciary. When dealing with a foreign citizen, the judiciary has to take into account not only the regulations from its own jurisdiction but to think wider, taking into account also the legislation from another jurisdiction. This paradigm shift will require some time to fully embed. Another important observation that derives from this study is that competent authorities need more support in implementing these FDs. "Not knowing where to find help" was mentioned many times in the course of this study.

Based on this evaluation, the PONT project will design an e-manual focusing on: helping the competent authorities to become more familiar with each other and their systems, providing more detailed information on the procedures that both FDs involve and focus on the main difficulties mentioned in the assessment (e.g. how to adapt a sentence / decision, how to identify the competent authority in the ES, how to conduct a rehabilitation test etc.).

At the same time, the e-manual will include practical examples where these difficulties will be debated and solved.

I. Introduction

In order to identify the training needs of the competent authorities in relation to FD 947/2008 and FD 829/2009, a pan European survey was organized. The survey was agreed among the members of the consortium and pre-tested in Romania, Spain and Latvia. Following some revision, the survey was distributed to all contact points of the European Judicial Network with the request to pass it on to the competent authorities responsible for the implementation of the two FDs. At the same time, members of the PONT consortium directly contacted the competent authorities in their own jurisdictions with the same request.

The survey was uploaded on the EU Survey platform and links were provided to those interested to fill out the questionnaire:

FD 829 - <https://ec.europa.eu/eusurvey/runner/SurveyFD829>

FD 947 - <https://ec.europa.eu/eusurvey/runner/SurveyFD947>

In order to collect as many answers as possible, the survey was open for two months: March and April 2019.

By the end of this period, a total of 35 answers were registered in the system: 15 for FD 829 and 20 for FD 947. More details about the respondents will be given in a subsequent section of the report. Although the number of the respondents was quite modest, it mirrors the experience of consortium partners, and as such indicates that this study provides a useful snapshot of existing training needs in relation to the implementation of these two FDs.

II. Survey on FD 829/2009

II.1. The profile of respondents to the survey on FD 829/2009

A total of 15 respondents completed the questionnaire dedicated to FD 829/2009. The table below describes the gender, country of jurisdiction and professional status of these respondents:

Table 1. The profile of respondents for the FD 829/2009

| Gender | Jurisdiction | Professional status in relation to the FD 829 |
|-----------------|-------------------|---|
| Male 10 | Slovakia 2 | Comp. authority as ES |
| | Italy 1 | Comp. authority as ES |
| | Finland 1 | Comp. authority as ES |
| | Saxony/ Germany 1 | |
| | Germany 1 | Comp. authority as ES |
| | Spain 1 | Comp. authority as ES |
| | Romania 1 | Comp. authority as IS |
| | Latvia 1 | Comp. authority as both IS and ES |
| | | |
| Female 5 | Portugal 1 | |
| | Poland 1 | |
| | Lithuania 1 | Comp. authority as ES |
| | Croatia 1 | Comp. authority as ES |
| | The Netherlands 1 | Comp. authority as ES |

II.2. The level of knowledge and previous experience

In terms of previous experience in relation to the implementation of FD 829/2009, only three respondents stated that they have used this FD. However, most of the respondents evaluated their own level of knowledge regarding the use of FD 829/2009 as medium (7), good (4) or very good (3). Only one competent authority (Italy) self-evaluated its

level of knowledge as very low. Those with past experience tend to evaluate their knowledge higher.

II.3. The general perception of the FD 829/2009

Two questions were designed to capture the perception of respondents regarding the use of FD 829/2009.

In general, respondents acknowledged that FD 829/2009 is very useful in reducing the pre-trial detention for foreign offenders from other EU member states.

However, responses indicate that the FD is very rarely used for several reasons: "the possibility for applying it is very limited", "there is no experience in dealing with it" and it is "difficult to implement".

Those who used this FD appreciate it as useful, important but also complicated and time consuming.

Most respondents had no experience in using this FD as issuing state. Nevertheless, two respondents found it difficult "to rely on the other member state to supervise the offender". As difficulties in implementing the FD 829/2009, the respondents mentioned:

- **not knowing the legal options in ES – 5**
- not having someone to consult with – 1
- prosecutors not being very aware or interested in this option – 1 (the same respondent stated that 'the prosecutor wants the accused to be available')

II.4. Conclusions of previous experiences

Only two respondents briefly described a positive or a negative experience in relation to the use of FD 829/2009 as IS.

The positive experience was reported from Romania with a case that involved a transfer to Italy. In this case all went well due to "the personal contact between the competent authorities in both countries".

The two negative experiences were reported in relation to failing to provide complementary information by the Issuing State and a misunderstanding of one member state regarding the interpretation of the *obligation not to leave the country* (which is often taken as not to leave the place). In that jurisdiction the measure of 'not leaving the place' has to be renewed every four months which creates more paperwork.

As Executing State, the respondents stressed again the isolated use of FD 829/2009. The main difficulties they mentioned were common to other FDs (e.g. how to determine the habitual residence or the links with the ES). Another difficulties cited were:

- **not being familiar with the procedure – 3**
- **not receiving documents in an accessible language – 3**
- the lack of procedure when the person is already in the ES prior to the transferring procedure - 1
- not having clear guidelines - 1
- difficulties in adapting the supervision conditions to the national context – 1
- time limits too tight – 1
- not having someone to consult with - 1

Only one participant had to refuse one transfer due to the lack of information.

II.5. The training

Ten out of 15 respondents stated that they would like training in how to effectively implement FD 829/2009.

As far as content is concerned, respondents suggested the following topics:

1. **how to identify the competent authority in the ES - 3**
2. **how to adapt the measure in the national context - 3**
3. general knowledge about the FD - 2
4. how to fill out the certificate - 2
5. what are the options in the ES in the pre-trial stage - 2
6. where to find help - 2

Most respondents suggested the use of practical examples and case discussions as the main way of training delivery.

Four respondents favored a two-day training format, while others suggested self-study based on manuals (4), webinar (2) and serious game and simulation (1).

The reason they seem to suggest self-study formats is the lack of time.

Two respondents mentioned some such training materials already exists in their jurisdictions. These respondents have been contacted to request access to the materials.

III. Survey on FD 947/2008

III.1. The profile of the respondents in the survey for FD 947/2008

A total of 20 respondents undertook the survey on FD 947/2008. In the table below, one can find the main respondents characteristics' in terms of gender, jurisdiction and professional capacity.

Table 2. The profile of the respondents in the survey on FD 947/2009

| Gender | Jurisdiction | Professional status in relation to FD 947/2008 |
|--------|-----------------|--|
| Male | Slovakia | Min of Justice |
| | Slovakia | Min of Justice |
| | Italy | Min of Justice |
| | Saxony/Germany | Min. of Justice |
| | Greece | Min of Justice |
| | Germany | Competent authority as IS and ES |
| | Spain | Competent authority as IS and ES |
| | Romania | Competent authority as IS |
| Female | Portugal | Min. of Justice |
| | Italy | Competent authority as ES |
| | Greece | Min of Justice |
| | Latvia | Competent authority as IS and ES |
| | Finland | Competent authority as IS and ES |
| | France | Min of Justice |
| | Croatia | Competent authority as IS and ES |
| | Czech Republic | Competent authority as IS |
| | The Netherlands | Competent authority as IS and ES |
| | Romania | Probation staff |
| | Romania | Probation staff |

III.2. The level of knowledge and previous experience

The level of knowledge regarding FD 947/2009 is self-assessed as low by five respondents. Eight respondents assessed their level of knowledge as moderate. Six respondents assessed their level of knowledge as good and very good.

Almost half of the sample (9) had had previous experience in implementing FD 947/2008.

III.3. The general perception of FD 947/2008

Many respondents (8) stated that FD 947/2008 is very important for those individuals “in a mobility situation” to preserve their family links and job stability in the country of domicile.

However, its application seems to be complicated, confusing and time-consuming for some respondents (3). It seems that the application of this FD poses some difficulties also from perspective of domestic legislation.

One respondent explained the limited application of the FD by mentioning the weak application of the Council of Europe Convention of 1964. Another one mentioned the relative conservatism of the judiciary in accepting new procedures. One mentioned the lack of training for the judiciary and lawyers.

Overall, it seems that the respondents in the survey found this FD very useful but also too complicated and time-consuming to use in practice. These conclusions were reinforced especially by those with previous experience with this FD.

When asked to select the most relevant words for describing the FD 947/2008, the respondents mentioned:

- Important – 9
- Useful - 9
- Time consuming - 5
- Complicated – 4
- Confusing - 2

The answers to this question emphasize the same perception as the previous one: the FD is useful and important but also time-consuming and complicated. This perception could be explained by the novelty of this tool for the judiciary but also by the huge diversity in the penal field across Europe, that makes cooperation between member states cumbersome and stressful.

III.4. Conclusions of the previous experience

Those who have experience in working with FD 947/2008 as IS mentioned the following key general difficulties:

- searching for the competent authority in the ES, especially when there is more than one competent authority in that jurisdiction,
- not knowing the legal possibilities in the ES,
- difficulty of adapting some measures that are specific to one jurisdiction (e.g. probation of social services - Italy),
- lack of response from the ES or difficulty to obtain information about the rehabilitation prospects,
- time consuming,

- need to rely on the probation service to obtain information about the case,
- limited knowledge about this FD.

When asked to select from the pre-established words and expressions, they selected the following difficulties as IS:

- **Not knowing the legal options in the ES – 9**
- **No being sure that the obligation will be carried out in the ES – 9**
- **Not having clear standards to measure the rehabilitation prospects – 5**
- Not having someone to consult with - 4
- Filing the certificate – 3
- Hearing the convicted person – 3
- Time limits too tight – 3
- Finding the competent authority in the ES - 3
- Getting the documents translated – 1

Most of the respondents were not in the position to provide examples of good practice in implementing FD 947/2008. However, the Romanian respondents mentioned one case (which could be the same case) with a Bulgarian sentenced person transferred to Bulgaria, although the Romanian sentence was a complex one: combining the obligation to undertake a program with community service.

Three types of cases were mentioned as negative examples: where there was a lack of sufficient information, when community service could not be transferred to Germany and when due to the length of the procedure, the 6 month-limit was no longer complied with.

Only a few respondents were in the position to respond to the question about their perception of FD 947/2008 as ES in general terms (6). Overall, the respondents evaluate the experience of this FD implementation from the ES perspective as a positive one. However, they mention as difficulties:

- receiving cases that have no domicile on the ES territory,
- difficulties in adapting the sentence – the nature of the obligations and the duration of the probation period. Community service from Spain seems to be difficult to adapt in France.
- difficult to adapt the duration of the sentence when the maximum possible in the ES was already passed in the IS.
- difficulties to assess the domicile criteria (in Spain)
- difficulties when the competence should be transferred back in case of breach.
- the poor quality of the information in the certificate.
- the lack of information about how supervision was progressing in the IS.

Such difficulties are not observed among jurisdictions that work closely together or which share the same of legal traditions (e.g. Slovenia and Czech Republic). In these instances, once the sentence is adapted and recognized by the ES competent authorities, the probation services have no difficulties in enforcing it.

When asked to select from the existing options, the respondents referred to the following difficulties as ES:

- **Difficulties in adapting the obligations and measures - 7**
- **Not receiving the documents in an accessible language - 5**
- **Not having clear standards to test rehabilitation prospects – 5**
- **Not being familiar with the procedure – 5**
- Time limits too tight – 4
- Probation service overcrowded - 3
- Not having someone to consult with – 2
- Not knowing what probation service is doing in my country – 1
- Too busy – 1

To some extent, the difficulties are related to the cases when the ES had had to refuse recognition and supervision. Most of the respondents were not in a position to give concrete examples of refusal. However, four respondents provided useful examples where they had had to refuse the transfer:

- where there were no ties between the person the ES – no nationality, no domicile and no family ties
- when there was no correspondence between the IS and ES legislation – for instance:
 - ✓ community service in Romania is an obligation attached to other sanctions and not a main sanction in itself,
 - ✓ the rate of alcohol in blood is regulated differently in different countries and that makes it a criminal case or not.
 - ✓ some substances are classified as drugs only in some countries.
 - ✓ conditional release in Romania comes under probation supervision only if the probation term is at least 2 years. If this period is lower, there is no supervision during conditional release.

III.5. The training

Twelve out of 20 respondents stated that they would need further training. Five do not need training and three respondents did not answer. Some of those with previous experience mentioned they would need training. Some others do not need further training.

The following subjects were suggested for the training on the FD 947/2008:

- 1. How to adapt the sentence – 13**
- 2. How to fill out the certificate – 9**
- 3. How to identify the competent authority in ES – 8**
- 4. What are the competencies of the probation services – 8**
- 5. How to do the rehabilitation test – 6**
- 6. Where to find help – 7**

One participant mentioned also that it could be useful to have more information about the existing rehabilitation programs in the ES.

Thirteen respondents stated that they would like to attend a two-day training on FD 947 / 2008, where they would like to discuss concrete / practical examples of transfer. In this respect, they have suggested working on completing the certificate, discussing common difficulties and looking at supervision measures and obligations in a comparative manner.

Only authorities from France and Spain mentioned that they would need translation in their national languages during training.

Apart from the two day training, respondents seem to prefer also other forms of more independent learning – serious games, simulations, self-study materials, webinar etc.

Only one respondent suggested training material already available to contribute to the consortium's collection.