An tSeirbhís Phromhaidh
The Probation Service

CEP
Confederation of European Probation

Community Sanctions, Framework Decisions and Mobility in the European Union

Gerry McNally
President, Confederation of European Probation (CEP)
Assistant Director, The Probation Service

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Confederation of European Probation

Is the largest European Network Organization for Probation

Founded in 1981

Mission:

To promote the rehabilitation and social inclusion of offenders through sanctions and measures implemented in the community.

Objectives:

1) To **unite probation organisations** all over Europe
2) To **professionalize** the sector of probation in Europe
3) To **raise the profile** of probation in the global arena of criminal justice systems

CEP Representation - 2016

60 EU Member organizations

34 Countries

38 jurisdictions

9 Universities

16 Individual members

7 Affiliate members

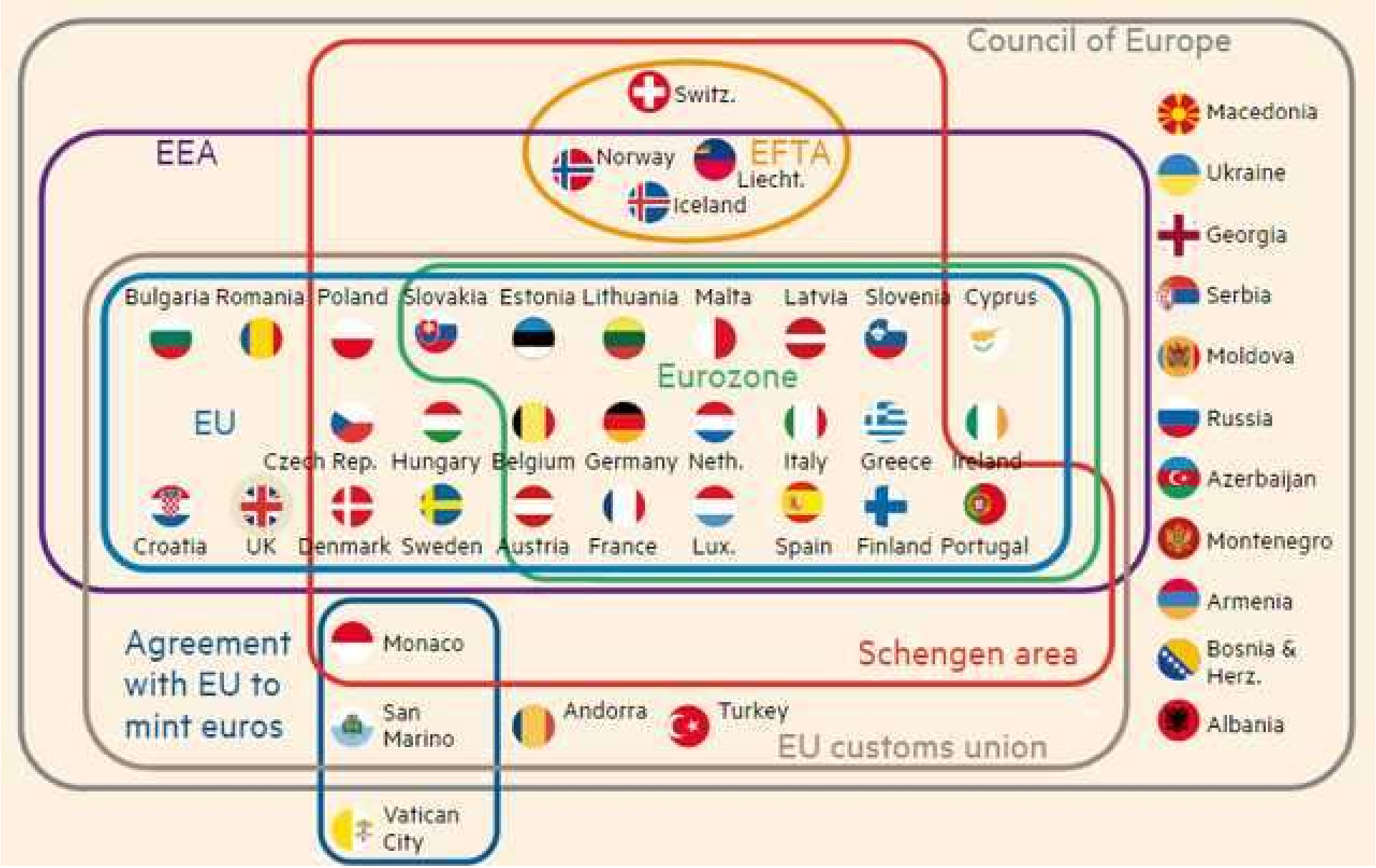
More than **370** Online documents

1700 CEP Newsletter subscribers

1100 Twitter followers

1000 Linkedin followers

Many Europes (reddit)



European Criminal Law

- ‘European Criminal Law’ is an umbrella term covering norms and practices of criminal and criminal procedural law
- based on the law and activities of the EU (European law in the narrower sense) and the Council of Europe (European law in the wider sense),
- leading (or aiming to lead) to widespread harmonisation of national criminal (procedural) law

Framework Decisions

- EU legislative acts used exclusively within the EU's competences in police and judicial co-operation in criminal justice matters
- Framework Decisions created in the Amsterdam Treaty
- Requirement to transpose Framework Decisions into domestic law
- EU has limited enforcement powers through the European Court of Justice
- EU can now enact directives and regulations in criminal justice through ordinary legislative procedures
- United Kingdom negotiated an opt-out from Framework Decisions

FD 909, 947 and 829

- **Council Framework Decision 2008/909/JHA**

•on the application of the principle of **mutual recognition** to judgments in criminal matters imposing **custodial sentences or measures involving** deprivation of liberty for the purpose of their enforcement in the European Union https://goo.gl/CFbDyD

- **Council Framework Decision 2008/947/JHA**

•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 https://goo.gl/GXZkwi

- **Council Framework Decision 2009/829/JHA**

•on the application, between Member States of the European Union, of the principle of **mutual recognition** to decisions on **supervision measures as an alternative to provisional detention** https://goo.gl/NHWdXT

http://eur-lex.europa.eu/homepage.html

FD 909, 947 and 829

FDs background

- Too many FNP, overcrowding, minimum reintegration prospects and long pre-trial detention
- Ad hoc transfers existed before but largely in principle and not in practice
- European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders. COE ETS No.051 Strasbourg, 30/11/1964
- Differences between “neighbour countries” and “Europe”
- 2006 joint German/French initiative in 2006 to develop a mutual recognition instrument to replace the COE convention and benefit Member States and provide the possibility of serving their probation period or alternative sanction in their home country.
- European Judicial Network Information https://www.ejn-crimjust.europa.eu/

FD 947

The principal aims of Framework Decision 947 are to

- facilitate the social rehabilitation of sentenced persons,
- improve the protection of victims and the general public and
- facilitate the application of suitable probation measures and alternative sanctions in case of offenders who do not live in the State of conviction.

Framework Decision 947

Art. 5(4) of FD 947:

'Country B declares that monitoring of supervision measures or alternative sanctions by the competent Country B court can be approved ***irrespective*** *of whether the sentenced person has their domicile or permanent residence in Country B, if* ***because of specific circumstances ties exist between the sentenced person and Country B of such intensity*** *that it can be assumed that monitoring in Country B* ***will help facilitate the social rehabilitation and reintegration of the sentenced person.'***

Case study

Offender: *"Not only that they did not know the procedure they didn't even treat me seriously"*

FD 947 and 829 Comparative Overview

	FD 947/2008 on alternative to detention and probation decision	FD 829/2009 on alternatives to provisional detention
General target group	Offenders that being sentenced with an alternative to detention or probation measure want to go back to their countries (consent)	Suspected offenders that want to go back to their country under an alternative to provisional detention (consent)
Aim	Enhance social rehabilitation by preserving offender's ties.	Protection of the victim and general public. Enhancing the right to liberty and the presumption of innocence
Deadline of implementation	6th December 2011	1st December 2012
Countries that have implemented	all EU member states countries except UK. Ireland (in progress)	All EU member states countries except: Ireland, Cyprus and ?
Documentation	Certificate + sentence (Adaptation – nature and duration)	Certificate + Decision on the supervision measure (Adaptation – nature and duration)
Grounds of non recognition	Certificate incomplete Art. 11	Certificate incomplete Art. 15

Framework Decision 2008/909/JHA (transfer of prisoners)

- Enforcement of the sentence by the executing State should serve the purpose of facilitating the **social rehabilitation** of the sentenced person.
- **Mutual Trust** – no adaptation of the sentence. Adaptation only in limited cases where the nature and the duration of the sentence are not compatible.
- **Consent of the Person** Article 6 (Limited)
- **Time Limits** 90 days of receipt of the judgment and the certificate. Article 12(2)

- **STEPS 2 Resettlement** (Support for Transfer of European Prison Sentences towards Resettlement) supports effective delivery of FD 909 and resolving legal and practical obstacles to implementation and execution in MS. http://steps2.europris.org/en/
- https://www.ejn-crimjust.europa.eu/ejn/EJN_Library_StatusOfImpByCat.aspx?CategoryId=36

Framework Decisions in Practice

- Early stage of implementation
- Good initial 2016-7 results in FD 947 transfers in some jurisdictions e.g. Netherlands, Latvia
- Most jurisdictions have single figure FD 947 transfers
- FD 829 little used, relatively unknown. An 'Orphan'?
- Differences in Knowledge, Experience and Promotion
- Procedures are sometimes unknown, long and bureaucratic
- Lack of information and trust
- Language, translations and costs issues
- Data protection to be taken into account in transferring data
- Data gathering and evaluation needed

Next Steps…

- Transpose legislation
- Competent Authority (Article 3(1))
- Processes and time limits
- Legal handbook and practitioner guides
- Information and promotion
- Realistic expectations
- Monitoring, data gathering and evaluation

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Ireland…International Desk

- International Desk established 2010
- Single point of contact internationaldesk@probation.ie.
- All queries regarding movement of offenders from another jurisdiction to Ireland or vice versa,
- All requests for various assessment reports from probation or related services
- provides advice and information on relevant community sanctions available in Ireland
- streamlines processing communications to ensure in an efficient, timely and consistent service.
- maintain an accurate and up to date database recording all transactions.

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International Desk 2017

Transfer of Supervision:

- 10 people have transferred from the UK to Ireland with a further three cases currently pending.
- Most are offenders on license who have all served sentences in prison.
- No transfer made out of this jurisdiction via the International Desk. If a person wishes to leave the jurisdiction, they go back to Court to request leave to do so

Reports for Court:

- The Probation Service has requested 12 reports from PBNI (Northern Ireland) so far this year
- PBNI have requested 9 reports from the Probation Service.

Information

- Council of Europe Recommendation CM/Rec(2010)1 of the Committee of Ministers to member states on the **Council of Europe Probation Rules**

- European Rules for juvenile offenders subject to sanctions or measures

Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures

- Council of Europe Recommendation of the Committee of Ministers to member States on the European Rules on **community sanctions and measures** (2017)

- United Nations Standard Minimum Rules for **Non-custodial Measures** (The Tokyo Rules);

- http://www.coe.int/t/dghl/standardsetting/prisons/Recommendations_en.asp

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Reading…….

Transfer of Probation Supervision between Member States: An EU Initiative. O'Donovan, D. (2009) Irish Probation Journal www.probation.ie

Implementation of the Framework Decision on the transfer of Probation Measures between States in the European Union. McNally,G. and Burke,I. (2012) Eurovista Vol2#2 www.euro-vista.org

European Judicial Training Network (EJTN) http://www.ejtn.eu/

https://www.cep-probation.org

Brexit and European Criminal Law (2017) Kai Ambos (University of Gottingen) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3004451

European Criminal Law After Brexit. Valsamis Mitsilegas Criminal Law Forum (2017) 28:219–250

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www.probation.ie

Thank you!
Merci!
Dank!
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Grazie!

www.cep-probation.org

info@cep-probation.org

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