



J-CAP

D5.5 | News articles and booklet in Justice Trends

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Date: 29/03/2024

Change Control

Document Properties

Deliverable No.		D5.5	
Work Package No.	WP5	Work Package Title	Strategical dissemination and exploitation programme
Author/s		GOMES, João (IPS)	
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Reviewer		APÓSTOLO, Joana (IPS)	
Name		News articles and booklet in Justice Trends	
Date		29th of March 2024	
Dissemination Level		Public	

Revision Control

Version	Date	Comments
1.0	29 th of March 2024	IPS shared consolidated version

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Executive summary

The J-CAP “Judicial cooperation for the enhancement of mutual recognition regarding probation measures and alternative sanctions” project aims to improve the execution of Council Framework Decision 2008/947/JHA of 27 November 2008 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 (hereon after FD 2008/947). This objective will be pursued via an awareness-raising approach and the development of practical materials to facilitate the execution of the instrument among judges, prosecutors, lawyers, and probation officers.

The present deliverable (D5.5. News articles and booklet in Justice Trends) is integrated within Work Package 5 (Strategical dissemination and exploitation programme) and specifically Task 5.4 (J-CAP's news articles and project booklet). The following deliverable provides with the collection of J-CAP's promotion activities in the JUSTICE TRENDS magazine and those involving the support of JUSTICE TRENDS.

Deliverable overview

The present deliverable (D5.5. News articles and booklet in Justice Trends) is integrated within Work Package 5 (Strategical dissemination and exploitation programme) and specifically Task 5.4 (J-CAP's news articles and project booklet).

The following document brings together all materials related to the J-CAP's activities involving the [JUSTICE TRENDS](#) magazine. JUSTICE TRENDS is a premium printed and online magazine that features exclusive content such as interviews with Ministers of Justice, Directors-General of prison and probation administrations, and articles on pressing current criminal justice topics globally. Founded in 2017, it is distributed to Ministers of Justice, Directors-General and interested practitioners across +120 countries, and is available in 3 languages (English, Portuguese and Spanish).

Activities related specifically with J-CAP included:

- Promotion materials;
- Article;
- J-CAP Project booklet.

Promotion materials

J-CAP was promoted in 2 JUSTICE TRENDS issues (fall 2022 and spring 2023 editions). Although initially foreseen to be included in 4 issues, editorial issues and scheduling conflicts related to the fall 2023 and spring 2024 edition, respectively (which, in fact, will be released after the project's end), impeded the inclusion of J-CAP promotion. Notwithstanding, IPS, WP5 leader, will work to promote the project in the spring 2024 edition.

This promotion took the form of a full-page showcase, in both English and Spanish, displaying the project's objective and Partnership. These can be found in annexe I to the present document.

Article

J-CAP was featured in an article published in the JUSTICE TRENDS website. Developed in the context of the spring 2023 edition, which delved into the integration of technology in corrections, this article, with the title "*Judicial supervision of foreign nationals in the EU: Can technology help overcome the challenges?*" was published on the 12th April 2023, and can be accessed [here](#).

A full-print version of the article can be found in annex II to the present document.

J-CAP Project booklet

To complement the aforementioned, a final project booklet was created. The Booklet, titled “*Spotlight on the implementation of FD 2008/947*” provided an overview on the activities carried out by the J-CAP Consortium over its 24-month time-frame, and signalled the several insights, recommendations and conclusions in relation to the implementation of FD 2008/947, derived from the aforementioned activities, as well as the project’s outputs.

Additionally, during initial development of the booklet, the Task leader (IPS) considered additional features which could bring added value to the publication, especially to justice professionals, concretely those targeted by J-CAP’s intervention (judges, prosecutors, lawyers, and probation officers).

In this sense, it was decided to use the publication as a platform for practitioners to give insights into their daily work with FD 2008/947, highlighting challenges, solutions, and recommendations¹. Although the booklet was foreseen to be included in the JUSTICE TRENDS magazine spring 2024 edition, scheduling conflicts (see above) diffculted this inclusion. Simultaneously, editorial requirements, such as page limit, diffculted the inclusion of a comprehensive booklet, such as the one developed, in the physical version of the outlet.

As such, the 28-page Booklet will be published in the JUSTICE TRENDS website and in the J-CAP Project website ([Library section](#)). Additionally, a smaller version of the booklet will be planned to be published in a future magazine. The document, in its entirety, can be found in annexe III to the present document.

¹ Practitioners were informed on the objectives of the publication and scope of dissemination. In this sense, all practitioners signed a Data Protection Consent Form.

Annexes

Annexe I – J-CAP promotional materials in the JUSTICE TRENDS magazine

Fall 2022 edition

RESEARCH & DEVELOPMENT
INVESTIGACIÓN Y DESARROLLO



J-CAP

Judicial cooperation for the enhancement of mutual recognition regarding probation measures and alternative sanctions
Cooperación judicial para mejorar el reconocimiento mutuo de medidas de libertad vigilada y penas sustitutivas



EN J-CAP aims at improving the execution of Framework Decision 2008/947, which lays down rules for facilitating the recognition and application of probation measures and alternative sanctions among the European Union Member States. This project focuses on an awareness-raising approach while also developing practical materials to facilitate the execution of the Framework Decision. With judges and magistrates as its primary target group and including lawyers at a second level, J-CAP's activities highlight the importance of the instrument and the fundamental issues that hinder its successful implementation. By fostering strengthened cooperation and exchange of information between competent national authorities, the project ultimately advances the objective of more effective and holistic rehabilitation policies and practices.

ES J-CAP tiene como objetivo mejorar la ejecución de la Decisión Marco 2008/947, que establece reglas para facilitar la aplicación del principio de reconocimiento mutuo de sentencias y resoluciones de libertad vigilada con miras a la vigilancia de las medidas de libertad vigilada y las penas sustitutivas entre los Estados miembros de la UE. Este proyecto se centra en la sensibilización al mismo tiempo que desarrolla materiales prácticos para facilitar la ejecución de la Decisión Marco. Los jueces y magistrados constituyen el principal grupo objetivo del proyecto; además, en un segundo nivel, también están incluidos los abogados. Las actividades de J-CAP resaltan la importancia del instrumento y los problemas fundamentales que dificultan su implementación exitosa. Al fomentar una cooperación fortalecida y el intercambio de información entre las autoridades nacionales competentes, el proyecto promueve el objetivo de alcanzar políticas y prácticas de rehabilitación más efectivas y holísticas.

PARTNERS / SOCIOS

- Instituut Voor Gerechtelijke Opleiding – Institut De Formation Judiciaire, Belgium
- Netherlands Helsinki Committee (NHC), The Netherlands
- IPS_Innovative Prison Systems, Portugal
- Agenfor International, Italy
- University of Innsbruck (LFUI), Austria
- National School for the Judiciary (NEM), France
- European Strategies Consulting, Romania

www.prisonssystems.eu/projects/jcap



Spring 2023 edition

RESEARCH & DEVELOPMENT
INVESTIGACIÓN Y DESARROLLO



Judicial cooperation for the enhancement of mutual recognition regarding probation measures and alternative sanctions
Cooperación judicial para mejorar el reconocimiento mutuo de medidas de libertad vigilada y penas sustitutivas



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- European Strategies Consulting, Romania

 www.jcap-probation.eu



Annexe II – J-CAP article published in the JUSTICE TRENDS website

Judicial supervision of foreign nationals in the EU: Can technology help... <https://justice-trends.press/judicial-supervision-of-foreign-nationals-in-...>



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📅 April 16, 2023 ⌚ 102 min read

Judicial supervision of foreign nationals in the EU: Can technology help overcome the challenges?

Since 1995 and the entry into force of the Schengen Agreement, Europe has seen a prosperous era where citizens can freely move between 27 countries [23 European Union (EU) Member States (MS) plus Norway, Iceland, Switzerland and Liechtenstein] (Schengen Visa Info, 2023). Now part of the EU acquis and enshrined in Article 45 of the Treaty of the Functioning of the European Union (TFEU), freedom of movement has, nonetheless, opened the door for EU citizens to be tried and convicted outside their country of origin or habitual residence.

Council of Europe Annual Penal Statistics, namely the Space II Report about non-custodial sanctions and measures, identified that, in 2021, in Europe, an average of “**6% [of probationers] were foreign citizens**” while “**15% of the inmates placed in European penal institutions were foreigners**” (Aebi et al., 2022).

In this line, evident challenges to the rehabilitation of convicted individuals emerge – be it due to the **absence of meaningful links to society in the country of conviction or to clear language barriers** (Tudela et al., 2020). By putting forward a simpler mode of transferring the execution of probationary or alternative measures (Article 1 of FD 2008/947) and advocating for stronger mutual cooperation and trust between EU MSs (Recital 2 of FD 2008/947), Framework Decision (FD) 2008/947 tries to offer a response to said challenges.

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This instrument sits on the **core belief that resocialisation is significantly more effective if conducted in a place to which the convicted person holds meaningful ties, ultimately resulting in a more humane and dignified rehabilitation process.** (Recital 8 of FD 2008/947)

What is preventing the widespread application of the European legal instrument on the transfer of the execution of probationary or alternative measures?

Despite the clear value awarded to Framework Decision 2008/947, its implementation has been far from the desired (Wahl, 2019). Several reasons may be appointed to this phenomenon: practitioners tend to focus on (1) the **strenuous bureaucratic nature of the procedure** (e.g., difficulties associated with the issuing of the required certificates); (2) the **absence of effective dedicated communication channels** for the transfer of important information regarding both the national legal systems of each EU MS and the convicted individual; (3) the **lack of cooperation** and, fundamentally, **mutual trust** among Member States (Tudela et al., 2020).

It bears mentioning that the encountered difficulties are intrinsically connected, and, as such, an effective response should adopt a holistic approach.

The role of technology and concerns about data protection

In this light and considering the mainstreaming of technology within society and the growing rates of technological literacy, **a possible solution may well sit the integration of Information and Communications Technology (ICT) into the FD 2008/947 transfer process.**

For instance, aside from the creation of informative materials, initiatives like the European Judicial Network¹, J-CAP Project or the EU Probation Project², which propose to explore the potential of the virtual world, are paramount. Such initiatives are developing online platforms that translate acquired knowledge into comprehensive and easy-to-use tools. These have, in some cases, taken the format of comparative systems that allow practitioners to look at different EU legal systems and get access to readily available relevant information on the existence of equivalent or similar probation or alternative measures.

Such platforms allow for a **faster and more efficient application of FD 2008/947 and facilitate the implementation of best practices**, identified by practitioners, for instance, in focus groups held within the scope of the J-CAP project, such as adapting sanctions ab initio to best fit the legal system of the Executing State (ES).

As significant as these solutions might be, it is **important to note that they are only as useful as they are acknowledged by the targeted audience**, i.e., judges, prosecutors and lawyers. Hence, the role that new communication channels can play here is crucial. They allow one to reach large numbers of persons, with a targeted and filtered approach. Additionally, social media and newsletter-style mailing campaigns allow for creative ways to ensure dissemination and permit effective and well-thought-out dissemination campaigns that contribute to enhancing awareness of the subject.

Similarly, by making use of new platforms that came to the fore in the COVID-19 pandemic period (Iqbal, 2023), it is possible to promote online joint cross-border activities between practitioners such as conferences, transnational awareness-raising symposia, moot courts, and roundtables. These allow for the **conversion of practices and, ultimately, the engraining of core principles such as mutual**

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cooperation among Member States.

In addition, practitioners point out that lack of trust in the penal system of the ES is often a deterring factor for implementing the cooperation-focused FDs. **In this context, activities in line with the abovementioned and promoted by the J-CAP project, strive to foster informal networking and communication that contribute to building and/or restoring faith in other systems and close the gap that tends to hinder cooperation in criminal matters.**

Finally, the integration of technology and new communication channels between competent authorities could potentially and **greatly improve the transfer process, allowing for a faster, streamlined and more informed approach**. As per Article 6 of FD 2008/947, this, however, would necessarily entail transborder online processing of personal data of convicted individuals, in the transfer procedure (e.g. the Issuing State is required to forward the judgment accompanied by a certificate).

The respect for “fundamental rights and adherence to the principles recognised in Article 6 of the Treaty on European Union” (recital 5) is an underlying objective of FD 2008/947, as such “personal data processed when implementing this Framework Decision should be protected” (recital 23).

However, the lack of EU Court of Justice jurisprudence regarding FD 2008/947, but also the fact that this FD entered into force in 2008, essentially means that more recent regulations on data protection, such as General Data Protection Regulation (GDPR) Directive 2016/680 (LED), have not been duly accounted for. This matter remains relevant given the type of data processed when implementing Framework D 2008/947³.

Judicial cooperation in criminal matters implies the processing of personal data. However, data should be processed in a secure and confidential way. This may well include the prevention of unauthorised access to or use of personal data. Herein, state-of-the-art technology should be available to competent authorities, so as to prevent data breaches to the best of their ability (Recital 28 of LED).

This *new data protection revolution* awarded data subjects with a set of rights and data controllers with new obligations that need to be acknowledged to **ensure the lawful transfer of judicially sentenced individuals**. Most relevant to the transfer of probationers one should identify the **right to information**, whereby the data subjects should be informed about the purpose and legal basis of data processing, the identity and contact of the controller and other relevant information regarding his/her rights (Articles 12-14 LED) and right to rectification of inaccurate or incomplete personal data (Article 16 LED).

Regarding data controllers, one should highlight **data protection by default and by design** (Article 20 LED)⁴, the **obligation of logging**, namely the “collection, alteration, consultation, disclosure including transfers, combination and erasure” of data (Article 25 LED), and the **requirements to guarantee security of processing and to notify the data subject in case of a data breach** (Article 30-31 LED). Furthermore, principles such as fairness, proportionality, lawfulness, transparency, and data minimisation must be respected (Leiser & Custers, 2019).

Concerns about data protection should, however, not be seen as obstacles to the implementation of FD 2008/947, but rather as precautionary measures that guarantee its lawful and transparent application, safeguarding the rights of the convicted person. J-CAP, amongst other projects, is also committed to assessing how EU practitioners are taking this challenge into account, as it may pose a **future hindrance stemming from the more frequent implementation of the mentioned FD**.

Framework Decision 2008/947: Today’s progress to support the level of implementation and success of the legal instrument

From providing practitioners with a fast track to relevant information to promoting meaningful

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communication and trust amongst EU legal systems and practitioners, ICTs should be at the forefront of transborder collaboration, especially when referring to criminal matters. The success of the Schengen Information System II further corroborates this (European Union Commission, 2023).

Nonetheless, the migration to the technological poses concerns of data processing that should be duly accounted for. Here LED can provide a solid framework that will ensure that FD 2008/947 is applied lawfully and proportionately, potentially even helping mitigate some of the concerns associated with the instrument when it was issued.

It is important to refer to the valuable contribution of projects such as J-CAP. The latter responds to the European Commission's political priorities advocating not only for a quantitative increase of the instrument's application, but also privileging a qualitative approach regarding its implementation.

¹ Tools like the [Judicial Atlas](#), [Fiches Belges](#) and [Judicial Library](#) are extremely useful and user-friendly for practitioners. EJN has been identified as “the best place for EU practitioners to find relevant information about mutual recognition instruments applicable at UE level” (Presidency of the Council of Europe, 2019).

² The EU Probation Project has set up a comparative search tool that allows practitioners to confirm the existence of equivalent sanctions in the different MS

³ For instance, the certificate includes data on, inter alia, Name, Sex, Nationality, Social Security, place of birth and residence. (See Annex I and Annex II to FD 2008/947). Additionally, biometric and health related data may be processed in FD 2008/947 transfers. These imply a more zealous care insofar as they constitute special categories of personal data as provisioned under Article 10 LED.

⁴ Under Article 20 LED, Member States should ensure, taking into account the state of the art and cost of implementation, as well as scope, purpose and risks associated with the processing of data, that by design and by default data is processed in a lawful manner.

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Annexe III – J-CAP project booklet

The booklet can be found in the following page.

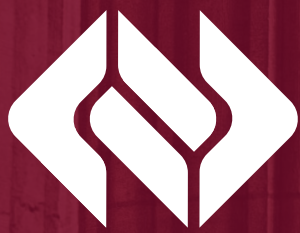
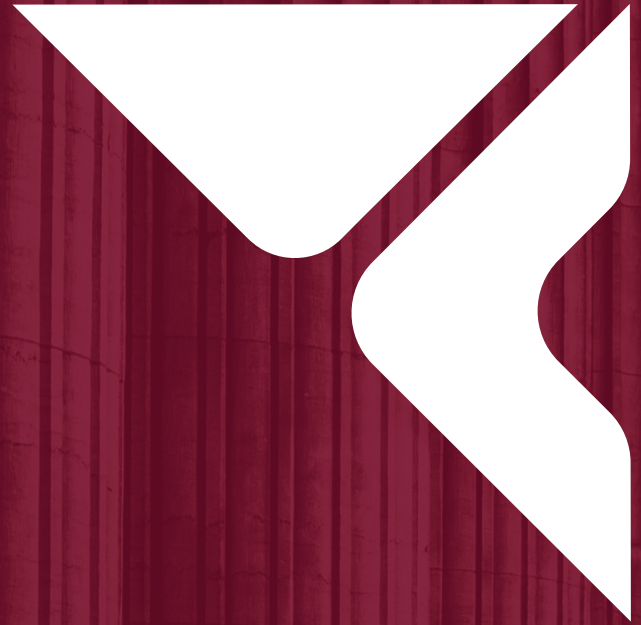


J-CAP

Judicial cooperation for the enhancement of mutual recognition regarding probation measures and alternative sanctions

This report was co-funded by the European Commission's Directorate-General for Justice and Consumers. This document reflects the views only of the author, and the Commission cannot be held responsible for any use which may be made of the information contained therein.





J-CAP

Spotlight on the implementation of FD 2008/947

Primary dissemination outlet:

JUSTICE TRENDS // Magazine

Technical Sheet

Author: IPS_Innovative Prison Systems (www.prisonssystems.eu)

Project: J-CAP — Judicial Cooperation for the Enhancement of Mutual Recognition Regarding Probation Measures and Alternative Sanctions (www.jcap-probation.eu)

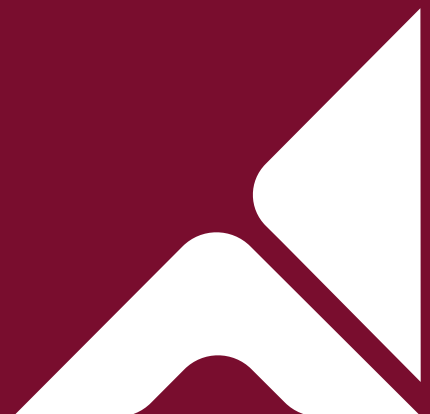
Contributions: Ana Cristina Neves, Alexandra Marques Pereira, Claudia Jderu, Daniel Danglades, Emmanuelle Laudic-Baron, Gabriel Oancea, Joana Apóstolo, Kris van Opdenbosh

Text Revision and Design: IPS_Innovative Prison Systems (www.prisonssystems.eu)

Dissemination Partner: JUSTICE TRENDS Magazine (www.justice-trends.press)

March, 2024

Foreword





Raf van Ransbeeck

Director, Judicial Training Institute
Belgium

Dear readers,

It is my pleasure to present you this Booklet, entirely dedicated to the J-CAP “Judicial cooperation for the enhancement of mutual recognition regarding probation measures and alternative sanctions” project.

While the European Arrest Warrant and the European Investigation Order are routinely utilised, the same cannot be said for the mutual recognition of probation measures and alternative sanctions. Despite the fact that Framework Decision (FD) 2008/947 is already 15 years old, it is rarely implemented in practice.

Every EU country has a wide variety of judicial measures or sanctions, which often do not have a corresponding counterpart in other jurisdictions. Sometimes the sanctions are quite identical, but the terminology differs. Even if an alternative measure or probation sentence could be imposed on a national for the same offence, they often don’t know if this measure exists in the home country of a foreign sentenced person and whether there will be follow-up.

Practitioners are also reluctant to apply alternative sanctions or probation measures to foreign nationals as they sometimes have no real ties with the country pronouncing the sanction, making follow-up difficult and reintegration pointless. Consequently, there is a tendency to resort to effective prison sentences, which are universally recognised and easily executed in the offender’s home country. However, this solution in no way favours the person’s reintegration into society.

In short, it is essentially a lack of knowledge and trust that prevents judicial authorities from widely applying alternative sanctions.

The EU funded J-CAP-project aimed to bolster the awareness and capacity of judiciaries to use FD 2008/947. It sought to enhance understanding of the FD’s goals and operational intricacies, as well as familiarity with other EU Member States’ systems and available measures. By fostering strengthened cooperation and exchange of information between competent national authorities, the project ultimately strove for more effective and holistic rehabilitation policies and practices.

J-CAP made significant strides toward fostering transnational cooperation and closer interaction between judges and magistrates, as well as probation services and lawyers in different EU Member States. The project sought to create avenues for this cooperation by tackling the structural challenges in the execution of the instrument with informative and guidance materials and the organisation of national and transnational experience-exchanging events.

In this booklet, you will find an overview of the project's actions, including its activities and outputs, which have been and will be widely disseminated to justice professionals throughout the EU.

Additionally, the booklet also gathers the daily experiences of judges, prosecutors and probation officers working with FD 2008/947 transfer procedures. These testimonials highlight the difficulties and solutions found when using the instrument, especially in the context of ensuring the rehabilitation prospects of probationers.

As Director of J-CAP's coordinating organisation, I would like to thank our partners IPS_ Innovative Prison Systems, from Portugal, the Netherlands Helsinki Committee, from the Netherlands, the University of Innsbruck, from Austria, European Strategies Consulting, from Romania, Agenfor International Foundation, from Italy, and the National School for the Judiciary, from France, for their excellent cooperation and dedication.

Also, a special thanks goes to our associated partners, namely the Association of Austrian Judges; Bremen Senate of Justice and Constitution; Catalan Centre of Legal Studies and Specialised Training; European Association of Judges — as the relevant regional body of the International Association of Judges; Romanian National Institute of Magistracy; Dutch Training Institute for the Judiciary; Slovenian Probation Administration, and the Polish School of Judiciary and Public Prosecution.

Most of the materials and information resulting from the project can be found in J-CAP's [website](#). Please take a closer look.

Thank you very much!

Raf Van Ransbeeck

15th of February 2024

Introduction



“Assessing the ‘life project’ of the convicted individual entails a holistic evaluation, considering their social situation and their will. While family and social ties often take precedence, factors like access to accommodation and job prospects within the Executing State should not be overlooked.”

Esther Montero Pérez de Tudela

Jurist at the General Secretariat
of Penitentiary Institutions, Ministry
of the Interior
Spain

In its Criminal Justice Handbook Series (2012), the United Nations (UN) Office on Drugs and Crime emphasises that the rehabilitation and successful social reintegration of offenders should be fundamental goals of criminal justice systems.

This sentiment is echoed in various global documents, including the United Nations Standard Minimum Rules for the Treatment of Prisoners (commonly known as the Nelson Mandela Rules) and the International Covenant on Civil and Political Rights. These documents highlight the significance of implementing robust rehabilitation programmes to reduce recidivism and enhance public safety.

Instead of prolonged periods of incarceration, which have proven not to result in reduced recidivism nor in the security of society, community sanctions and rehabilitation programmes can become drivers of increased social reintegration, reduced exposure to the criminal element and crime prevention (UNDOC, 2012).

Despite its added value, assessing the application of these measures entails a multidimensional analysis, including the degree of the crime or infraction committed, the person’s health conditions (be they physical or psychological, or related to substance abuse and the need for medical treatments), prior history of interactions with the criminal justice system and degree of danger they might pose to society and victims (for instance, in cases of domestic violence).

In the case of foreign citizens, additional considerations arise regarding constraints related to the person’s residence and the existence of social, economic, and familial ties.

In the European Union, the increase in the flow of EU nationals across its Member States, resulting from the creation of the Schengen area, inevitably led to an increase of EU citizens sentenced for crimes in another jurisdiction. As the latest Council of Europe SPACE I and II reports demonstrate, the percentage of foreign probationers in European countries amounts to an average of 8%. In addition, the percentage of foreign prisoners in Europe is currently on an average of 16% (Aebi & Hashimoto, 2022). Accordingly, experts argue that the increased foreign inmate population may be the result of a lack of eligibility for these persons to serve community sentences (Aebi & Hashimoto, 2022).

For this purpose, in the EU, a number of Framework Decisions (FD) emerged to fast-track the mutual recognition of sentences between Member States. In the area of probation and alternative sanctions, FD 2008/947/JHA (hereinafter FD 2008/947), 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, was created to address this critical issue.

Recital 8 of FD 2008/947 states that “The aim of mutual recognition and supervision of suspended sentences, conditional sentences, alternative sanctions and decisions on conditional release is to enhance the prospects of the sentenced person’s being reintegrated into society [...]” (Council of the European Union, 2008). The consideration is derived from the interpretation of Articles 3, 5(1) and 8 of the ECHR, thereby imposing obligations to national authorities “with a view to fostering the wrongdoers’ chances of resocialisation” (Montaldo, 2019, p. 931).

Nonetheless, the very nature of this FD implies a delicate balance between collective and individual needs (Montaldo, 2019). On the one hand, these instruments are to be considered from the point of view of the judicial systems’ need to ensure the collective security of a given society. On the other hand, these should also be framed by the fundamental and human right to ensure proper opportunities for rehabilitation and reintegration into society, while fostering a sense of agency and responsibility.

However, research has highlighted the difficulties in upholding this balance. In fact, the rehabilitation prospects of individuals are often overlooked in comparison with other concerns, and the promotion of probation measures and alternative sanctions are often framed in larger societal and security discussions. When addressed, this promotion can also be largely debated from a utilitarian standpoint (i.e., prison systems’ budgetary concerns and prison overcrowding), which most likely also ignores an in-depth look into the actual prospects for rehabilitation and reintegration of the person.

As the number of foreign probationers is at its highest level in Europe, it stands to reason that more focus should be given to this matter, not only to EU citizens who are faced with probation and alternative sanctions but also to non-EU citizens, who in many countries are disproportionately represented in criminal justice systems (Montero Pérez de Tudela & Ríos, 2023). Although legal specificities are naturally different, this group should be given the same opportunities when considering probation and alternative sanctions.

However, when looking into the overall context in the implementation of FD 2008/947, the assessment of rehabilitation prospects is but one of the several hindrances that constraint a streamlined use of this instrument. These include a lack of awareness on the existence of this instrument and respective implementation procedure and a lack of knowledge of other EU Member States’ legal systems, as well as language barriers, difficulties in the identification of the authorities in the executing State, and in filling in transfer certificates (Montero Pérez de Tudela & Ríos, 2023).

“Evaluations by the European Commission and DG Justice-funded projects identify the absence of clear guidelines for assessing rehabilitation potential as one of the key factors in the Framework Decision’s limited application. Given that social rehabilitation is the FD’s core goal, accurately gauging this metric is crucial for its successful implementation.”

Ioan Durnescu

Professor, University of Bucharest
Romania

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Council of the European Union (2008). *Council Framework Decision 2008/947/JHA of 27 November 2008 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*.

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The J-CAP Project





It is in this overarching context that the J-CAP project developed its activities. J-CAP, which stands for “Judicial cooperation for the enhancement of mutual recognition regarding probation measures and alternative sanctions”, is a two-year European co-funded project which aimed to promote the use of FD 2008/947, thereby working to upscale the utilisation of these measures for individuals sentenced outside of their country of origin.

This objective was pursued via a three-pronged approach — by enhancing the awareness of justice professionals on FD 2008/947, designing accessible materials to facilitate the use of the instrument, and providing a space for the exchange of experiences and best practices.

For the most part, the project focused on addressing the main difficulties associated with the use of the instrument. In fact, each round of awareness-raising and experience exchanging events allowed the partnership to direct its focus to the issues that practitioners identified as the most pressing in their daily work.

Not only did this ensure that the project’s actions aligned with the needs of professionals, but also extended the project’s intervention to new areas which proved valuable for a cohesive approach to the difficulties in implementing the Framework Decision.

About this booklet & Acknowledgments

The aim of this publication is to highlight the experiences of professionals working with instrument and provide readers a look into the daily challenges that these professionals face. Afterwards, we will present a brief overview of the J-CAP project’s two-year action.

On behalf of the J-CAP Consortium, we would like to thank Ana Cristina Neves, Alexandra Marques Pereira, Claudia Jderu, Daniel Danglades, Emmanuelle Laudic-Baron, Esther Montero Pérez de Tudela, Gabriel Oancea, Ioan Durnescu and Kris van Opdenbosh for their valuable contributions to this document. We would especially like to thank the Director of IGO-IFJ, Raf van Ransbeeck, for his foreword to this publication.

The J-CAP project in a nutshell:

01

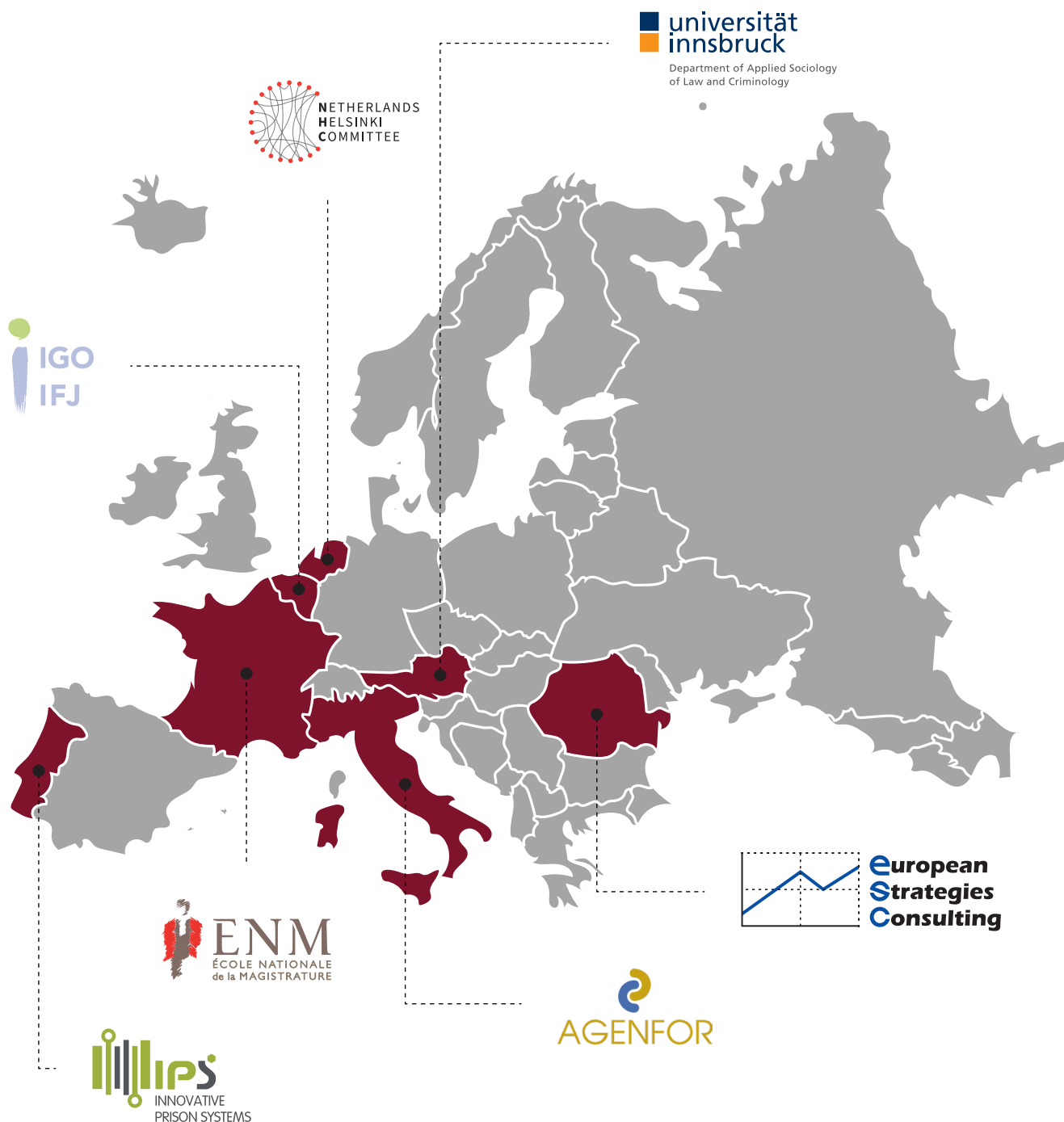
**Comprehensive awareness
raising intervention**

02

**Development of practical
materials and guidance**

03

**Cross-professional and
international exchange of
experiences and practices**



Associated Partners:

Association of Austrian Judges (AAJ - Austria) | Centre for Legal Studies and Specialised Training of Catalonia (CLS - Spain)
 National Institute of Magistracy (NIM - Romania) | National School of Judiciary and Public Prosecution (NSCJP - Poland)
 Training Institute for the Judiciary (SSR - The Netherlands) | Slovenian Probation Administration, of the Slovenian Ministry of Justice (UPRO - Slovenia) | Bremen Senate of Justice and Constitution (BMoj - Germany) | European Association of Judges (EAJ)
 Belgium Federal Public Service Justice (BEMoj - Belgian's Ministry of Justice)

Insights from practitioners



“The first time I encountered a transfer request under FD 2008/947, it was stressful for both me and the enforcement court. Despite the Framework Decision being transposed into national law, the notion of transferring seemed rather ‘exotic’.”

Gabriel Oancea

Head of the Bucharest Probation Service
Romania

Achieving a more effective implementation of FD 2008/947 requires a varied approach — from the point of view of probation services, judicial authorities, as well as the necessary cooperation between judiciaries at the EU level.

In this sense, probation services and those professionals working daily with probationers are essential in this regard. Although the role of these services in FD 2008/947 has steadily been consolidated over past several years, that was not always the case.

Gabriel Oancea, Head of the Bucharest Probation Service (Romania), recalled that, in the years following the publication of the FD, professionals were often confronted with a new and “exotic” piece of legislation. Indeed, the pressure to quickly respond to transfer requests increased pressure on the part of probation officers, arising from the need for respecting time frames, but also to analyse requests and provide a referral to the courts as well as to identify national competent authorities and fill transfer certificates.

As Gabriel Oancea remarked, initial difficulties quickly subsided with practice, and “requests for transfer gradually became integrated as a natural part of the Service’s practice”.

These words bring forth an important element highlighted in the Council of the European Union’s report on the final report on the 9th round of mutual evaluations on mutual recognition legal instruments in the field of deprivation or restriction of liberty. The report signalled that professionals often perceive the use of FD 2008/947 as a highly complex procedure that could be addressed by daily practice and increased training.

“We ensure that the assessment reflects not only the reintegration prospects of the sentenced individual but also addresses the protection needs of the victim.”

Ana Cristina Neves

Head of Division, International Relations Unit, Directorate-General of Reintegration and Prison Services
Portugal

Nonetheless, each country presents its specific set of challenges, beyond those most commonly known.

Ana Cristina Neves, Head of the International Relations Unit at the Directorate-General of Reintegration and Prison Services (DGRSP as per the acronym in Portuguese), highlighted that, in Portugal, practitioners’ work has been hindered by difficulties in analysing documentation attesting to the requested person’s conditions and integration in the country of residence, as probation officers do not have a dedicated translation service. These difficulties often apply to communication with the family members of the individuals on probation.

An important point brought by Ana Cristina Neves must also consider the victims’ position, especially when these reside in Portugal. For her, these situations require a balanced approach, accounting for the sentenced person’s rehabilitation prospects, but also the need to safeguard the protection of victims.

She further recalled a case in which the competent court requested the DGRSP to assess the place that could be better suited to the rehabilitation of Portuguese individual sentenced to a suspended internment measure, Portugal or France (the country to which the person had moved to). At the time of the court's request, the person had already moved to France and, having been unable to contact them, DGRSP reached out to the person's family in Portugal, thus only discussing the person's conditions in one country.

Probation services can only be as effective as they are adequately equipped.

In this regard, and considering Portugal, **Alexandra Marques Pereira**, a Portuguese Judge working at the Central Criminal Courts in Lisbon, highlighted the fact that some of the difficulties faced by Probation Services are also related to the lack of human resources, which hinders their capacity to adequately and timely assess reintegration conditions in the executing State. She denoted that probation staff, who are extremely professional and dedicated, often carry out their duty "with great personal sacrifice".

Efforts by Probation Services to assess rehabilitation prospects for foreign probationers involved in FD 2008/947 procedures cannot be fully harnessed without the necessary cooperation and interaction with judicial authorities. This is an essential element to ensure successful transfers and, hopefully, a likewise social reintegration process.

For Alexandra Marques Pereira, "[...] the rehabilitation and reintegration of sentenced citizens demands a particular awareness from each one of [judicial] operators to the existence and advantages" of FD 2008/947.

Achieving a degree of awareness on the part of practitioners continues to be a significant hurdle to the implementation of the instrument. The report on the 9th Round of mutual evaluations illustrates this point, highlighting that "the instruments are not widely known among EU practitioners, and this has led to a lack of experience and delays in execution."

Awareness — and by extension — knowledge on the application of this instrument is only a first step. Transfer procedures require strong communication and cooperation between probation services and judicial authorities.

Alexandra Marques Pereira rightly highlighted that clear communication channels with minimum bureaucracy are fundamental to the articulation between the authorities and probation services, particularly in complex conditions or complex sentence execution.

"Clear communication channels are essential for effective communication between decision-makers and probation services."

Alexandra Marques Pereira

Judge

Portugal

“The limited understanding of each other’s legal frameworks, operational practices, and capabilities is undermining the mutual trust necessary for the initiation or execution of transfers.”

Claudia Jderu

Judge

Romania

Accordingly, **Claudia Jderu**, a Romanian judge, believed that the main challenges found in this daily work come from the difficulties in obtaining essential information about the incoming probationer. Specifically, the person’s ties with Romania, employment situation, family and social information, as well as health and medical information are essential in ensuring that their criminogenic elements are properly addressed, in way of a meeting the aim of the FD. Jderu further noted that this communication should be improved by consistent exchanges between authorities, including national systems.

In this regard, **Daniel Danglades**, deputy head of the European and International Relations Unit at the French Ministry of Justice, highlighted that it has become necessary to develop innovative strategies to drive enhanced knowledge-sharing and collaboration within the EU.

From everyday experiences, the stronger the communication between the authorities of the Executing and Issuing states the more likelihood of achieving effective transfers of probationers, especially in complex cases, including in situations where the person has residence in a third state. As Danglades underscored, a coordinated approach is an essential step forward in aligning national perspectives, which in turn could set up the stage for collaborative strategies eyeing the rehabilitation and reintegration of the probationer.

Also from France, **Emmanuelle Laudic-Baron**, prosecutor and project manager at the French National School for the Judiciary, considers both the need for further development of discussion channels, so that a consistent and upstream information flow can better inform authorities regarding applicable legislation, and the individual’s characteristics, in way of favouring the due course of the sentence. Furthermore, this cooperation should be extended to EU Probation Services, “to ensure better training for their staff”.

Practitioners from throughout the EU are thusly aware of the benefits of increasing cross-professional and international exchange of information, benefiting both knowledge of Member States’ judicial systems as well as specific knowledge of persons being transferred. Accordingly, the latter information may be highly beneficial for the Executing State’s authorities, particularly to better understand the characteristics of the sentenced person and forwarding their rehabilitation.

This was another matter highlighted in the report from the 9th round of mutual evaluations, in that “contacts between probation services dealing with Framework Decision 2008/947/JHA from all Member States could be enhanced at EU level, as this would facilitate consultation and cooperation on specific cases when needed.”

“The need for innovative strategies to foster improved knowledge-sharing and collaboration within the European landscape has become increasingly evident.”

Daniel Danglades

Deputy Head of the European and International Unit, French Prison and Probation Services

France

Addressing the difficulties in the implementation of FD 2008/947 requires a number of approaches. Among these, training is paramount.

For Alexandra Marques Pereira, both initial and continuous training are essential to normalise the use of the instrument. Daniel Danglades believes that it is important to also include probation officers in training activities on FD 2008/947.

Kris van Opdenbosh, European Judicial Network (EJN) contact point in Belgium, looks into the Belgian context to highlight this need, and that, although training of practitioners in these matters was relatively low in the past, new activities have started this year.

Claudia Jderu underlines the need for more training but also elevates the essential role of overall awareness-raising activities, for practitioners as well as among probationers, providing them with information on the “opportunities provided to complete the sanctions or measures in their home jurisdiction”.

In addition, sharing promising practices among European Union Member States can be an effective vehicle for practitioners.

Ana Cristina Neves underscores that divulging success cases throughout the EU can be an excellent way of increasing awareness, looking to the case of the Netherlands, for example, as a successful example in this regard.

From a broader perspective, practitioners emphasize that both bottom-up and top-down efforts are essential to a more streamlined application of the instrument.

Ana Cristina Neves suggests that a political and legislative impulse is necessary, given that, in Portugal, the numbers in the application of the FD are quite lower than the number of potential cases.

Kris van Opdenbosh defends that both mechanisms are necessary, highlighting that “every Member State should repeatedly inform their judicial authorities and practitioners about the instruments”.

Lastly, awareness and knowledge of FD 2008/947 can only aid its implementation if there is effective mutual trust — the core element underlying the principle of mutual recognition. This principle was endorsed by the European Council in 1999, emphasizing that “[e]nhanced mutual recognition of judicial decisions and judgements and the necessary approximation of legislation would facilitate co-operation between authorities and the judicial protection of individual rights”. However, the European Council recognized, in 2018, that “mutual recognition is founded on mutual trust”.

“Developing networks and communication channels among colleagues is essential for exchanging information proactively, covering both aspects of applicable criminal legislation and the personality of the sentenced individual.”

**Emmanuelle
Laudic-Baron**

Prosecutor

France

“Each Member State should consistently inform their judicial authorities and practitioners about the instruments.”

Kris van Opdenbosh

European Judicial Network

Contact Point

Belgium

Unfortunately, the application of these principles has been challenging over the years. For Alexandra Marques Pereira, EU Member States appear to remain skeptical about fully employing the principle of mutual trust, perhaps due to a desire, even in abstract terms, to maintain a degree of control over the supervision of sentences and the sentencing process.

On the other hand, both Claudia Jderu and Kris van Opdenbosh see mutual trust as obstacle hindering effective mutual recognition. Accordingly, the Belgian practitioner suggested that Member States should be more willing to apply this principle on a daily basis and when they receive transfer requests. Steps to ensure a greater degree of trust can also be taken through increased exchanges between professionals and a more streamline sharing of experiences and practices.

Conclusion

It is evident from practitioners’ testimonies that achieving a sustainable increase in the implementation of FD 2008/947 requires an integrated approach, that addresses awareness of the opportunities presented by the instrument and the necessary knowledge for practitioners to navigate its application procedural steps effectively.

Simultaneously, this approach must include a coherent and comprehensive action to promote mutual knowledge and understanding, looking to create mutual trust and, consequently, mutual recognition.

The J-CAP project has worked with this multidimensional view in mind, providing judges, prosecutors, lawyers, and probation officers with both elements while fostering increased mutual understanding of EU Member States’ legal cultures.

An overview of J-CAP activities



The J-CAP project aimed for significant achievements over its 24-month duration, between April 2022 and March 2024.

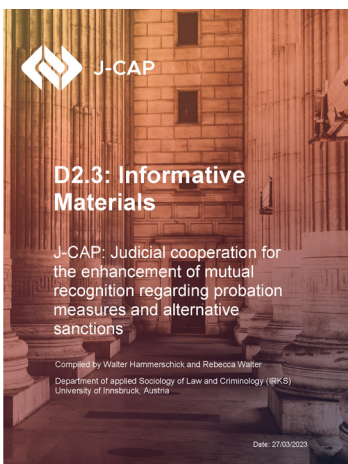
The initiative remained steadfastly committed to a primary goal: Improving the implementation of Framework Decision 2008/947 by raising awareness and providing training to justice professionals, including judges, magistrates, lawyers, and probation officers.

To achieve this, activities were carried out and practical materials were developed to facilitate the implementation of Framework Decision 2008/947.

J-CAP's activities underscored the importance of this instrument and addressed key issues hindering its successful implementation. By promoting enhanced cooperation and exchange of information among competent national authorities, the J-CAP project has been fostering the adoption of more effective and holistic rehabilitation policies and practices within the EU.



J-CAP Informative Materials as Crucial Resources for Legal Practitioners



The first major outcome stemming from the J-CAP project were the **Informative Materials**. This document provides detailed insights into the application of Framework Decision 2008/947 across partner countries, being an essential resource for practitioners involved in the judicial process within EU Member States.

Specifically, the Informative Materials document includes:

- A glossary, facilitating a quick comparison of probation measures and alternative sanctions across the partner countries (Austria, Belgium, France, Italy, Portugal, Romania and The Netherlands). The Glossary also includes information on national authorities responsible for incoming and outgoing requests.
- National reports, detailing the partner countries' legal framework regarding probation measures and alternative sanctions, as well as comprehensive information on the national implementation of FD 2008/947 from the perspective of both issuing and executing States.
- Information on national authorities responsible for incoming and outgoing requests, available probation measures, alternative sanctions, and decisions of general criminal law and juvenile justice eligible for supervision requests.

By providing insights into critical aspects of national systems, these materials aim to promote mutual knowledge and understanding of EU Member States' legal systems, a critical aspect of the overall dynamics in the implementation of this instrument. Hence it can be an essential resource for practitioners involved in the judicial process within EU Member States.



Thematic Workshops

Between December 2022 and March 2023, practitioners convened in seven national workshops, held in each of the partner countries. These sessions provided a platform for around a total of 50 judges, prosecutors, probation officers and lawyers to exchange insights on probation practices and the implementation of FD 2008/947.


These sessions fostered deep discussions on the most pressing issues hindering the streamlined implementation of this instrument and provided input on possible practices that could help reduce barriers to its application.

Some of the key insights deriving from the Thematic Workshops revealed that practitioners continue to identify the limited understanding of EUMS' legal systems as a hindrance to mutual trust, including reluctance on the part of judiciaries to accept supervision requests. This is coupled by continuing difficulties in the adaptation of sentences. This is added by daily challenges faced by professionals, such as lack of information to include in the transfer certificate, difficulties in complying with deadlines, language barriers, as well as reduced communication with national authorities.

To face these issues, participants signalled a number of practices which could be beneficial to the instruments' streamlined application.

Promising Practices Identified by Practitioners

- Adapting the sentence, *ab initio*, to the executing State legal system in order to ensure easier transfer and execution;
- Well-established and standardised workflows between courts and probation service;
- National probation services acting as clearing agencies assessing options to adapt incoming supervision requests;
- Cross-border training for better international cooperation (e.g., between Germany and Austria);
- A central authority being in charge of cross border cases.



J-CAP represents a crucial step in improving cooperation and addressing challenges in implementing Framework Decision 2008/947. The project outcomes hold potential as models for other European instruments.

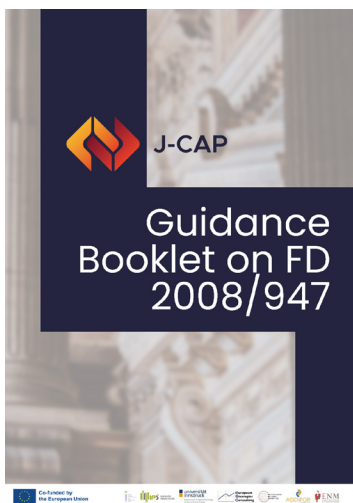


Guidance materials for practitioners

The J-CAP Consortium's following work focused on developing guidance materials for practitioners.

Guidance booklet for practitioners

J-CAP's **Guidance Booklet on FD 2008/947** is a short, practitioner-oriented guidebook, aiming to provide answers to the most pressing questions professionals face when implementing FD 2008/947. The document includes, among others:



01

Guidelines to evaluate rehabilitation and reintegration prospects

02

Advice in the identification of competent authority in the Executing State

03

A step-by-step tutorial on filling in the transfer certificate

04

Examples of promising practices



Transnational Awareness-Raising Symposia

J-CAP's efforts continued at the international level, with two Transnational Awareness-Raising Symposia, held in June 2023, in Brussels (Belgium), and September 2023, in Paris (France).

These symposia brought together practitioners from the seven partner countries to discuss the day-to-day barriers that hinder the successful transfer of sentences throughout the European Union. Professionals involved in real-life proceedings shared their experiences, shedding light on the significant difficulties often encountered in the mutual recognition of sentences.

The symposia included presentations, roundtables, case studies, and study visits.

Considering the high levels of satisfaction reported by the participants, these symposia proved valuable to the attending legal practitioners. Some of the **key insights** from the Transnational Awareness-Raising Symposia were that:

- Establishing a seamless collaboration and communication chain among the judiciary, public prosecution service, probation service, and defence attorneys is essential for the proper implementation of FD 2008/947;
- A comprehensive understanding of the legal systems and probation regimes of EU Member States is paramount, particularly regarding sentence and sanction adaptation, as well as the evaluation of rehabilitation prospects.



A total of 46 practitioners from all countries represented in the project consortium attended the Transnational Awareness-Raising Symposia.



National Roundtables

From September to November 2023, J-CAP project partners engaged in more in-depth discussions on conclusions drawn from the two symposia through seven National Roundtables, organised in each of the European countries comprising the consortium.

These roundtables convened a total of 75 participants to address the underuse of Framework Decision (FD) 2008/947 and enhance international judicial cooperation. The discussions aimed to promote effective utilisation of the FD and enhance international judicial cooperation among EU member states.

Some of the **key conclusions** from the J-CAP National Roundtable Discussions are:

- Challenges in legal adaptation and practical implementation;
- Importance of communication in streamlining the application of the FD;
- Role of probation services in facilitating transfer processes;
- Practitioners emphasized the need to elevate the role of probation services, particularly in monitoring individuals convicted of sexual crimes and ensuring timely rehabilitation;
- Proposed measures included increasing awareness among professionals and providing adequate resources for probation services.

These insights underscore the significance of collaborative efforts in addressing challenges and maximizing the effectiveness of judicial cooperation among EU Member States.



J-CAP International Virtual Conference

J-CAP's International Virtual Conference, held on November 15th and 16th, 2023, brought together 55 participants from various EU Member States and legal backgrounds, including judges, lawyers, probation officers, and researchers. The focus was on sharing insights, best practices, and challenges related to the effective application of Framework Decision 2008/947.

The event aimed to highlight the benefits of FD 2008/947 for foreign probationers and promote cross-professional collaboration. Moreover, it emphasized the sharing of best practices derived from experiences in European Union countries. Some of the **main challenges** discussed in the Conference were:

- **Presence or absence of central authorities:** Different approaches and their impacts were discussed, with examples from various countries;
- **Knowledge Gap:** Lack of comprehensive understanding of the instrument among legal professionals hindered its effective application.

From this conference a number of **recommendations** were brought forward. Among these were:

- **Improve Information Exchange:** Suggestions were made to enhance systems like the European Judicial Network's Judicial Atlas to facilitate smoother communication;
- **Make direct contact** with foreign counterparts is critical for awareness and problem-solving;
- **Develop structured frameworks and proper communication channels** to foster collaboration;
- **Involve specialised support staff**, who are essential to overcome the language barrier that still hinders communication;
- **Train and raise awareness of practitioners** to promote the effective implementation of the FD 2008/947.

The J-CAP International Virtual Conference underscored the importance of collaboration, knowledge sharing, and proactive measures to overcome challenges and ensure the effective implementation of FD 2008/947 across European Union Member States.



J-CAP JUDICIAL TALKs

A final piece of guidance materials developed by the J-CAP Consortium were the JUDICIAL TALKs — a series of videos featuring practitioners' views on FD 2008/947, the potential that the instrument holds, promising practices, thoughts on the inter-institutional communication and live experiences of professionals when using the instrument. In addition, 3 video tutorials were developed, on the Guidance Booklet for professionals, the online filling of transfer certificates and the use of materials such as the *Fiche Belges*, available in the EJN website.



Explore J-CAP's JUDICIAL TALKs and Tutorials.

Follow the link to watch!

Featured topics in the J-CAP JUDICIAL TALKs

- 01 Introduction to FD 2008/947 and main concerns and issues identified
- 02 Identified and promising solutions related to the transfer process
- 03 Sharing of real-life cases
- 04 Advantages of the implementation of FD 2008/947
- 05 Cross-professional collaboration
- 06 Tutorial on relevant available tools

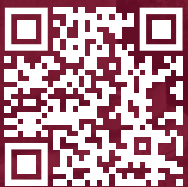
The work carried out throughout the last two years goes beyond what was described above. Practitioners involved in J-CAP activities have consistently highlighted the role of EU-funded initiatives in creating the ground for a sustained understanding and implementation of EU instruments in the field of judicial cooperation in criminal matters. The work carried out by the J-CAP Consortium aimed at creating immediate awareness but also with long term considerations. Ultimately, the partnership intended for this initiative to achieve concrete results as well as to be fully replicable and disseminated in future initiatives.


We hope you have enjoyed delving into the J-CAP project's intervention. If you want to know more, about this project, please feel free to consult our [website](#).



J-CAP

Judicial cooperation for the enhancement of mutual recognition regarding probation measures and alternative sanctions



 www.jcap-probation.eu

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Judicial cooperation for the enhancement of mutual recognition regarding probation measures and alternative sanctions

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