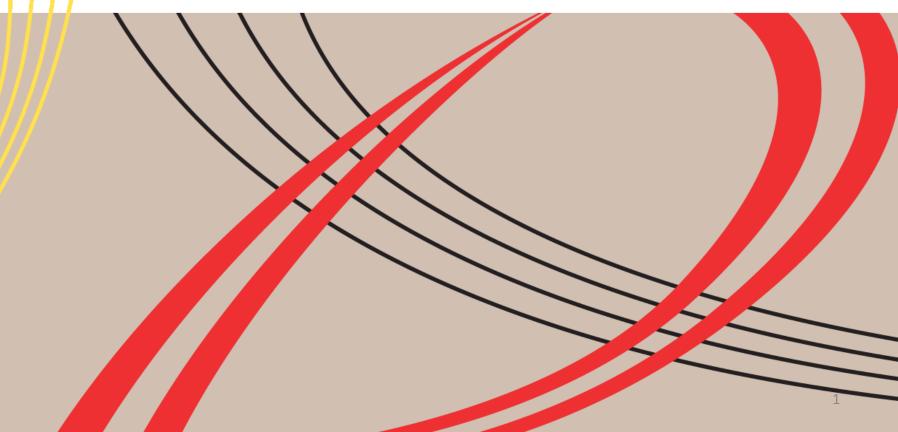


Workshop I - Legislative Implementation Amandine Honhon





State of Play of implementation process

- Majority MS : Early stage
- One MS has finalized the implementation process (MT)
- Two MS have finalized a draft text (FI and NL).

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Orientations concerning the implementation of this Framework decision

- 1. Competent authorities
 - Judicial authorities :
 - » Court : Majority of the MS
 - » Public Prosecution Office (NL, BE)
 - » Social inquiry from probation services (RO, PL, SE, MT, EE, CZ)
 - Administrative authorities (e.g. FI)
 - Difficult for judicial authorities to recognize a decision issued by an administrative authorities.

2. Additional probation measures and alternative sanctions

- Majority of MS : Specific list of probation measures and alternative sanctions
- Some MS: no exhaustive list of probation measures (NL, CZ, BE)
- Article 4. (d): Wide range of probation measures
- E.g.: SE, NL and BE have indicated that they will include electronic monitoring



3. Additional possibility in accordance with Article 5.2 and 5.3)

- A few MS have already an orientation on this point
- E.g: General criteria facilitate the social rehabilitation

4. Legal remedies

- Distinction between legal remedies with regard to recognition/adaptation and in case of infringement
- In general, MS will apply legal remedies already existing in their domestic law
- No specific kind of legal remedies

3. Subsequent decisions

- Some MS envisage the possibility to make a declaration in accordance with Article 14.3 (NL, ES, RO,FI) in specific cases.
 - » Examples of cases (FI, NL)
 - » Under the discretion of the Court (FI)
 - » The judgement or probation decision does not provide for custodial sentence in case of infringement (SE, CZ)

4. Languages

- Some MS could accept English (MT, IE, RO, SE, FI, EE, NL)
 - » Practical reason Quality of the translation
 - » Political issue
- Some MS could accept a certificate translated in a neighbouring country's language

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5. Existing arrangements and agreements

CoE and Nordic Agreement.

6. Electronic monitoring

- Some MS use the electronic monitoring (BE, SE, EE, NL)
 - » Different nature
 - » If part of custodial sentence, MS will nevertheless accept to recognize it (SE, NL, BE) Article 4.2.
- Other MS do not know electronic monitoring (MT, RO, SK, LV, CZ)
- Some MS intend to provide for this possibility in the future (MT, FI, CZ)

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Specific issues

1. Consent of the person - Distinction between the consent regarding :

- The application of probation measures (e.g. therapeutic treatment)
- The forwarding of probation measures to another MS :
 - » No express consent provided in the FD in case the person has returned Implicit consent?
 - » Interpretation of the notion « the 'person has returned' »
 - » Importance of consultation between competent authorities



Specific issues

- 2. Adaptation of a probation measure into an alternative sanction
 - e.g. Community service may be considered as an alternative sanction or as suspended sentence with community service

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

Specific example:

- Execution by NL of a SE judgement without responsibility for subsequent decisions
- In case of infringement, person sentenced in SE less than 6 months.
- Enforcement of the sentence ?
 - » Application of the FD on custodial sentence Possibility to refuse the request in accordance with this FD
 - » No application of the EAW

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Information and follow-up of the implementation

- Proposal for national fact sheet including the following information :
 - » Language, competent authorities (contact details), list of different probation measures, declarations.
- Handbook What is the finality ?
 - » Explanatory memorandum (legislative) Preimplementation stage
 - » Tool for practitioners (practical)— Post-implementation stage



Conclusion