

The slide features decorative curved lines. On the left, several thin yellow lines curve upwards. On the right, several thick red lines curve downwards. In the background, several thin black lines curve across the middle section of the slide.

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).

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

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)

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

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

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)– Pre-implementation stage
 - » Tool for practitioners (practical)– Post-implementation stage

Conclusion

