

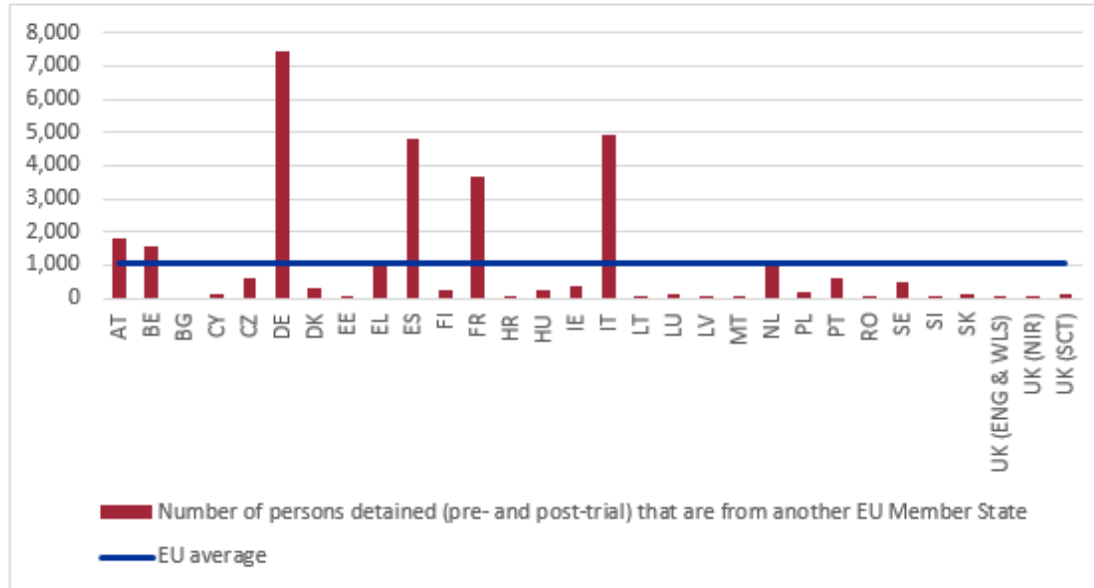
Context
Background
Findings
Concerns

Detention: information, rehabilitation and victims' rights



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Freedom and Justice Dep't

Figure 24: Number of persons detained (pre- and post-trial) that are from another EU Member State, by EU Member State, compared to EU average



Some 30,000
across the EU –
roughly 5 % of
total in
detention

- ‘customer base’ +
not detained

Note: Data used is the non-adjusted.

Source: Council of Europe, SPACE I, 2013, Table 4, pp. 90–91, available at:
<http://wp.unil.ch/space/>

Background

- EC request in May 2014
- FRA's AWP 2015 and 2016
- In-house research 2014
 - Attempts to interview transferees under ESO but no cases (then)
- FRA's research network spring 2015 (detailed guidelines)
- Consultations / interviews with experts (EC, other projects, MSs)
- Comparative report drafted during 2015/2016
- Published report November 2016 + **'INFOCRIM'**
 - Focus on the three aspects, across the three FDs
 - Outlook on what the EU could do – FRA Opinions

Contents

1. Detention and alternatives + fundamental rights standards (instruments and jurisprudence)
2. Social rehabilitation – how is it perceived and dealt with
3. Information and consent – how well are consequences understood
4. Victims of crime – right to information and involvement
5. Vulnerable groups
6. Visions for improvements – boosted mutual trust through enhanced monitoring

Figure 2 Additional criteria while assessing prospects of social rehabilitation in the issuing EU Member States

<p>Detention conditions 10 EU Member States</p>	<ul style="list-style-type: none"> •Not specified: CZ, DE, DK, FR, HR, HU, LT, SE, SI, UK
<p>Humanitarian concerns 12 EU Member States</p>	<ul style="list-style-type: none"> •Health condition: BE, FR, PT •Not specified: CZ, DE, DK, HU, IE, LT, MT, SI, UK
<p>Family and social ties 22 EU Member States</p>	<ul style="list-style-type: none"> •Language: EE •Citizenship: AT •Presence of children: SE •Bond with executing State: EE, NL •Not specified: AT, BE, BG, CZ, DE, DK, FI, FR, HU, IE, IT, LT, LV, MT, PL, PT, SI, SK, UK

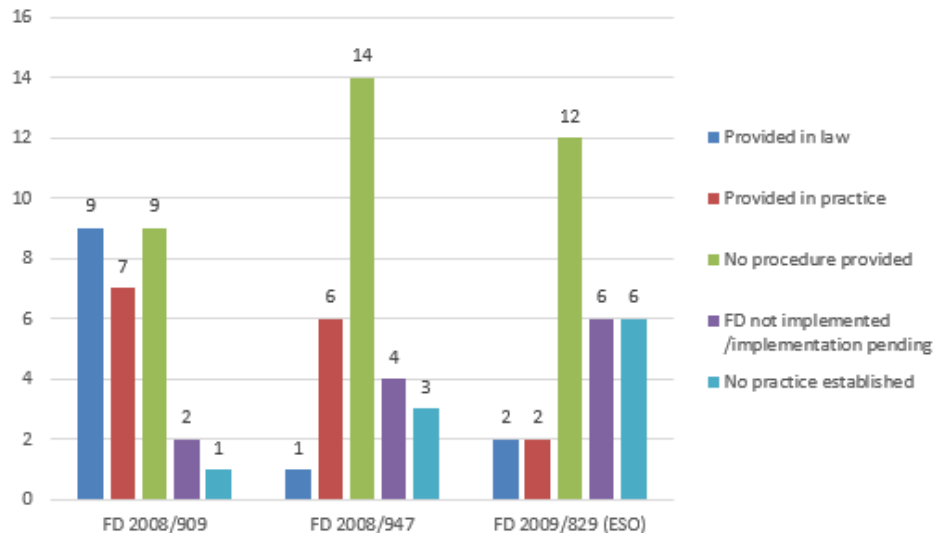
Note: A number of Member States have more than just a single criteria. Therefore, they are named repeatedly in the chart.

Source: FRA, 2016.

ICCPR 10 (3)

The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. [...]"

Figure 2 Existence of the procedure in the issuing state to inform the suspect/sentenced person of the option to transfer the judgment or decision to another Member State

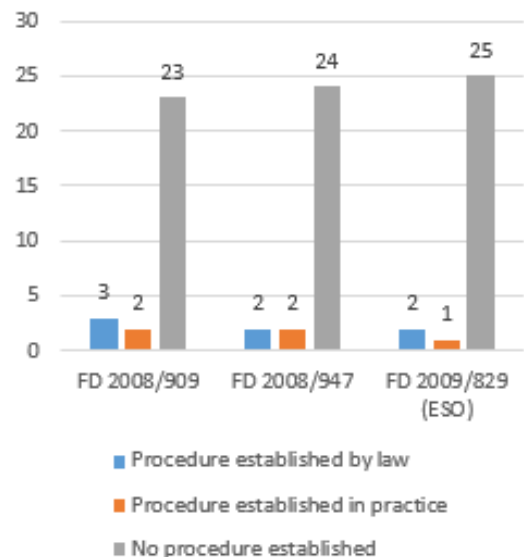


Note: Bulgaria and Ireland did not implement the FD 2008/909, however transfer is possible in accordance with the CoE Transfer Convention. Those states are both listed as having established procedures and also as states that did not implement the decision.

Ireland did not implement the FD 2008/947, however transfer is possible according to the bilateral agreements, the state is listed both as having procedure and as a state that did not implement the decision

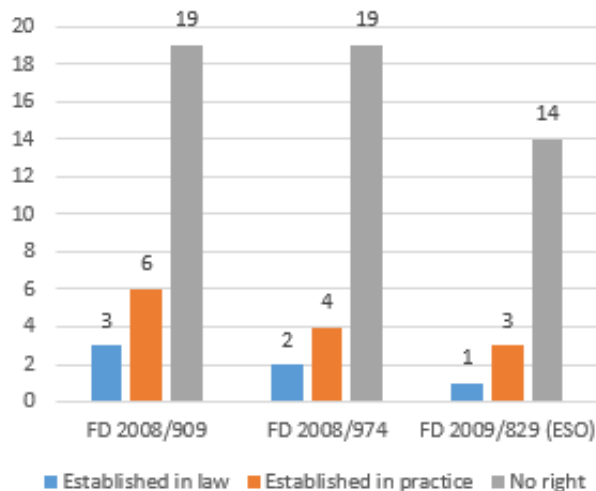
Source: FRA, p015.

Figure 1: EU Member States that have a procedure to provide information to victims



Source: FRA 2016, data as of 1st June 2015.

Figure 4: Number of EU Member States providing the victims' right to receive information on the decision to transfer



Note: The Czech Republic has established this right in law for all three Framework Decisions, Belgium for 2008/909 and 2008/94 and the United Kingdom for 2008/909.

Source: FRA 2016, data as of 1st June 2015.

Concerns

- Rehabilitation seen as a rather narrow concept
 - Continuity of level of security ‘gained’, training, education, medical/psychological treatment, etc – for rehabilitation (form with multiple choice needed?)
 - Social inquiry report (e.g. BE)
- Definitions ‘home country’ v rehabilitation
- Level of understanding of ‘transferred to what’
 - Consent / information
 - Prison conditions / calculations of time, benefits, etc (909)
- Transfer – information to victims of crime?
 - Victims chose what to be informed about (SE)
- Translations
- E-tools (CoE proposal for secure file transfer)
- Data collection

	Transfer of prisoners	Probation and alt. sanctions	European Supervision Order (ESO)
Aim (emphasis added to the cited text))	Art 3 (1): “The purpose of this Framework Decision is to establish the rules under which a Member State, with a view to facilitating the social rehabilitation of the sentenced person, is to recognise a judgment and enforce the sentence.”	Art. 1: “This Framework Decision aims at facilitating the social rehabilitation of sentenced persons, improving the protection of victims and of the general public, and facilitating the application of suitable probation measures an alternative sanctions, in case of offenders who do not live in the State of conviction. [...]”	Art. 2 “Objectives: due course of justice non-custodial measures to improve the protection of victims and of the general public. The recitals provide for elaborated objectives.”
Article on fundamental rights (no differences exist)	3 (4) “This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 [TEU].”	1 (4) “This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 [TEU].”	5 “This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 [TEU].”
Recital on fundamental rights (differences in bold)	(13) “This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 [TEU] and reflected by the [Charter], in particular Chapter VI thereof. Nothing in this Framework Decision should be interpreted as prohibiting refusal to execute a decision when there are objective reasons to believe that the sentence was imposed for the purpose of punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person’s position may be prejudiced on any one of those grounds.”	(5) “This Framework Decision respects fundamental rights and adheres to the principles recognised in Article 6 [TEU], which are also expressed in the [Charter], especially in Chapter VI thereof. No provision of this Framework Decision should be interpreted as prohibiting refusal to recognise a judgment and/or supervise a probation measure or alternative sanction if there are objective reasons to believe that the probation measure or alternative sanction was imposed to punish a person because of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation or that this person might be disadvantaged for one of these reasons.”	(16) “This Framework Decision respects fundamental rights and observes the principles recognised, in particular, by Article 6 [TEU] and reflected by the [Charter]. Nothing in this Framework Decision should be interpreted as prohibiting refusal to recognise a decision on supervision measures if there are objective indications that it was imposed to punish a person because of his or her sex, race, religion, ethnic origin, nationality, language, political convictions or sexual orientation or that this person might be disadvantaged for one of these reasons.”

Recitals

Articles

General
fundamental
rights

General
fundamental
rights

Discrimination

Proportionality /
least intrusive
means /
procedural rights

Proportionality /
least intrusive
means /
procedural rights

Constitutional
rules possible

Right to move
and reside freely
within the EU

Shared
understanding of
fundamental
rights

Ne bis in idem

Ne bis in idem

Data protection

Data protection



FRA Opinion April 2016 – EP Request

- Comparative data and information
 - UN and Council of Europe monitoring bodies
 - CPT
 - ECSR
 - ECtHR
 - EU, National
- Context through these bodies
- Bodies – independence and effectiveness
 - National Human Rights Institutions, NPMs, etc



08/04/2016

This opinion underlines the importance of drawing on existing data and information in any assessment of the values in Article 2 TEU, and outlines how this could be done.



May 2015

Child-friendly justice – Perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States

Report

Each year thousands of children take part in criminal and civil judicial proceedings, affected by parer



November 2015

Surveillance by intelligence services: fundamental rights safeguards and remedies in the EU

Report

This report, drafted in response to the European Parliament's call for thorough research on fundamental rights protection in the context of surveillance, maps and



June 2015

Severe labour exploitation: workers moving within or into the European Union

Report

Worker exploitation is not an isolated or marginal phenomenon. But despite its pervasiveness in everyday life, severe labour exploitation and its adverse effects on third-

jonas.grimheden@fra.europa.eu

August 2015

Freedom to conduct a business: exploring the dimensions of a fundamental right

Report

This report seeks to fundamental rights c achieve the strategi

February 2016

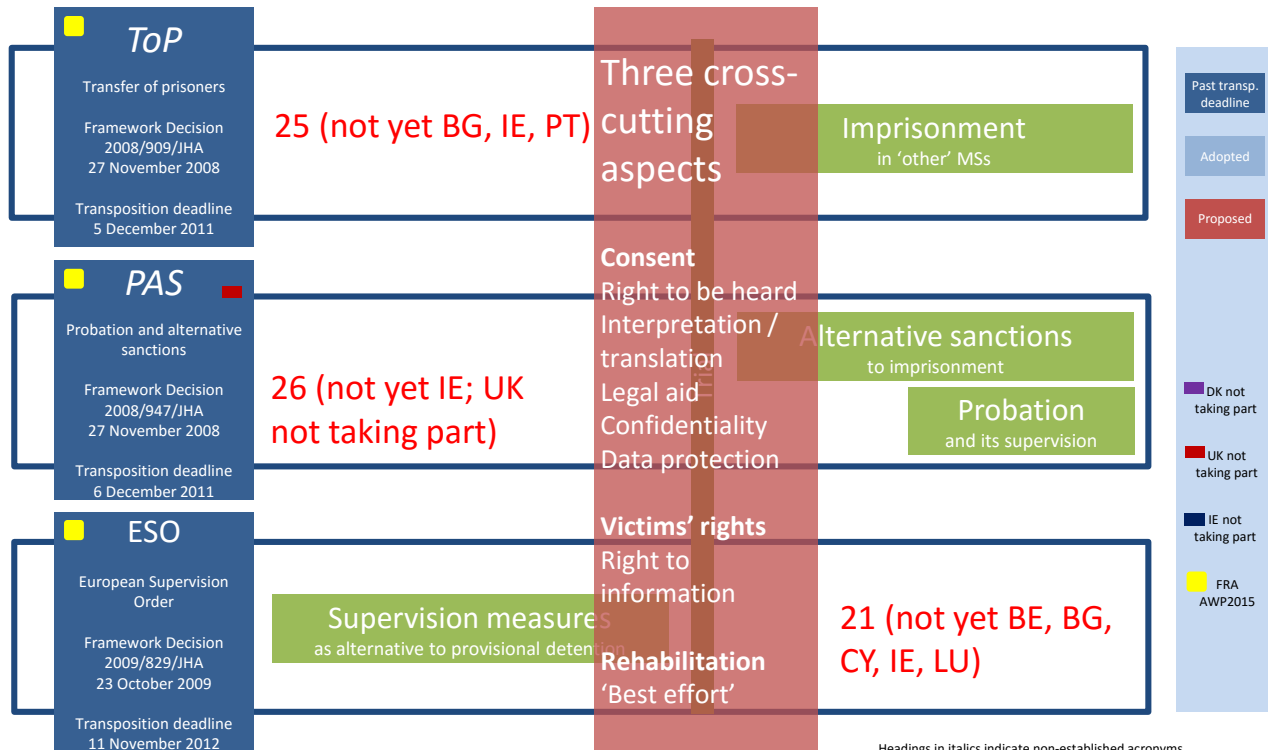
How is the EU Charter of Fundamental Rights used at national level

Promotional material

This leaflet explains how national parliaments, governments and courts can use the Charter and shows how the Charter was used at the national level in 2015

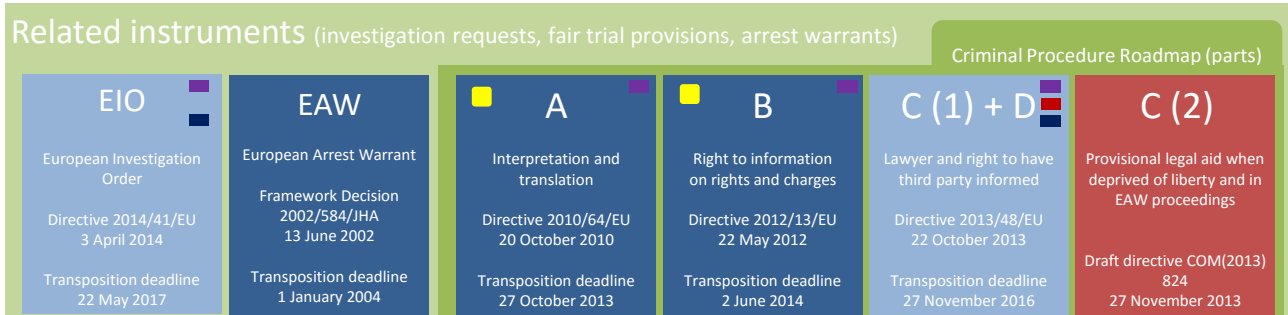
fra.europa.eu

FRA AWP2015 project: Rehabilitation and mutual recognition – practice concerning EU law on transfer of persons sentenced or awaiting trial (PAD)



State of implementation updated as of 1 April 2016 (EJN)

Headings in italics indicate non-established acronyms



Nat'l Liaison Officers

28, respective MS appoints

Management Board

Planning and Monitoring,
1/MS + 1CoE + 2 COM

Information networks

Executive Board

Prepares decisions by MB,
advises Director

Ad hoc working parties

Fundamental Rights Platform

Civil society representatives

Scientific Committee

11 independent members,
scientific guidance

Staff

Around 100 appointed by
Director

Director

implements tasks, manages
staff, represents externally

FRA's bodies, networks, and staff

Selected through
open calls for
applications

'In the
building'

UN

OHCHR
ROE – OHCHR
CDRP Cttee
UNDP
UNICEF
...

CoE

ECtHR
ECSR
Commissioner
ECRI
CEPEJ
...

EU

EC DGs
EP Cttees
Council
(FREMP, etc)
Ombudsman
EDPS
(JHA) agencies
...

National

NHRIs
Equality
bodies
Ombuds
institutions
Parliaments
...

FRA bodies

FRA 'Working
methods'

Charter of Fundamental Rights of the EU

Preamble	Peace – common values	Universal values	Diversity, etc	Rights more visible	Reaffirms const. and int'l rights	Rights, duties, responsibilities	Rights, freedoms and principles
I Dignity (Articles 1–5)	1 Human dignity	2 Life	3 Integrity of the person	4 Torture and inhuman degrading treatment or punishment		5 Slavery and forced labour	
II Freedoms (Articles 6–19)	6 Liberty and security	7 Private and family life	8 Personal data	9 Marry and found family	10 Thought conscience and religion		
	11 Expression and information	12 Assembly and association	13 Arts and sciences	14 Education	15 Choose occupation and engage in work		
	16 Conduct a business	17 Property	18 Asylum	19 Removal, expulsion or extradition			
III Equality (Articles 20–26)	20 Equality before the law	21 Non-discrimination	22 Cultural, religious and linguistic diversity	23 Equality: men and women	24 The child	25 Elderly	26 Integration of persons with disabilities
IV Solidarity (Articles 27–38)	27 Workers right to information and consultation		28 collective bargaining and action	29 Access to placement services	30 Unjustified dismissal	31 Fair and just working conditions	
	32 Prohibition of child labour and protection of young people at work		33 Family and professional life	34 Social security and assistance	35 Health care	36 Access to services of general economic interest	
	37 Environmental protection	38 Consumer protection					
V Citizens' rights (Articles 39–46)	39 Vote and stand as candidate to EP	40 Vote and stand as candidate at municipal elections		41 Good administration	42 Access to documents	43 European ombudsman	
	44 Petition (EP)	45 Movement and residence	46 Diplomatic and consular protection				
VI Justice (Articles 47–50)	47 Effective remedy and fair trial	48 Presumption of innocence and right of defence		49 Legality and proportionality of criminal offences and penalties		50 <i>Ne bis in idem</i>	
VII General provisions (Articles 51–54)	51 Application	52 Scope and interpretation	53 Level of protection	54 Prohibition of abuse of rights			

<u>Short name</u>	<u>Transfer of prisoners</u>	<u>Probation and alternative sanctions</u>	<u>European Supervision Order (ESO)</u>
<u>Reference</u>	2008/909/JHA	2008/947/JHA	2009/829/JHA
<u>Date of adoption</u>	27 November 2008	27 November 2008	23 October 2009
<u>Deadline for implementation</u>	5 December 2011	6 December 2011	1 December 2012
<u>Full name (emphasis added)</u>	“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”	“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 ”	“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 ”