PROBATION MEASURES AND ALTERNATIVE SANCTIONS
IN THE EUROPEAN UNION
PROBATION MEASURES AND ALTERNATIVE SANCTIONS IN THE EUROPEAN UNION

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In recent years, several framework decisions aiming at the enhancement of the principle of mutual recognition have been adopted in the field of judicial cooperation in criminal matters. I am strongly aware that integrating these European instruments into the national judicial systems will require from the Member States of the European Union heavy legislative work in which the needs and interests of several and very diverse stakeholders will have to be taken into account. It is obvious that many obstacles stand in the way of an effective, efficient, practical and timely implementation of these instruments.

Considering this, the Belgian Presidency of the Council of the European Union decided to prioritize the follow-up of the implementation of mutual recognition instruments and proposed a specific methodology consisting of a set of practical measures to be taken at European Union level. This set of practical measures is aimed at facilitating and improving the implementation of these instruments. It wants to ensure exchange of information on their follow-up in the Member States and to provide judicial authorities with relevant information for their day-to-day application. The Council of Justice and Home Affairs Ministers endorsed this methodology during its meeting of 7 and 8 October 2010. This priority is also consistent with the Stockholm Programme, which expressly underlines the need to pay more attention to the full and effective implementation of existing instruments.

In parallel to the development of this methodology, the Belgian Presidency decided to emphasize the practical implementation of one of these mutual recognition instruments, namely the Framework Decision on the supervision of probation measures and alternative sanctions. The choice of this instrument was inspired not only by the fact that Member States must transpose this instrument by 6 December 2011, but primarily by the finding that this instrument covers a range of probation measures who are characterised by various practices in the Member States. Being aware of the enormous challenge waiting for us, we decided to tackle this not alone, but in a joint project.

This project, co-funded by the European Commission and carried out in partnership with France, Luxembourg, Spain, Slovakia, Hungary, Germany, the United Kingdom and the European Organisation for Probation, aims to improve mutual knowledge of national probation systems and to identify the difficulties
related to the implementation of this Framework Decision. The objective is therefore to facilitate its practical application, to make the transposition more uniform for practitioners and to maintain this transposition on the European political agenda.

I strongly believe that an effective application of this instrument that allows the recognition and supervision of probation measures in a Member State other than in the country that supervision the sentence is essential in order to build a common area of freedom, security and justice. The free movement of citizens within the Member States has been increasingly simplified. This evolution involves that the Member States are regularly confronted with situations of foreign origin, without having any longer the means to adequately supervise alone a person sentenced to a non-custodial measure. Cooperation between the probation services of the various Member States is essential to set up a concrete supervision procedure that meets the actual needs of the stakeholders as well as the person subject of such a measure. We must not forget that the probation services are in the frontline. Once the decision taken to ‘transfer’ a probation measure, they are the first to be confronted with the most concrete and daily questions and problems on how to supervise the person involved. The differences between the national judicial systems in this matter are not facilitating their important work. A seminar bringing together around seventy experts was organised in Durbuy during the Presidency to start reflecting on this topic.

To illustrate this, let me take the example of electronic monitoring. This measure, which diverges between Member States both with regard to its nature (sentence, probation measure, instrument for the execution of sentences… ) as well as to its related practical methods (focused on control only, more or less starting from an integration approach, technical issues…), is a textbook case of the disparities existing between the Member States. Indeed, it is precisely this coexistence of different systems that confronts the practitioners with questions and even significant practical difficulties when it comes to cooperation and mutual recognition. Another example of a probation measure where the concern of practitioners can occur because of the differences between national legislations is the requirement to follow therapeutic treatment. In some Member States, therapeutic treatment is subject to the consent of the person concerned. Will this condition still have to be applied if the monitoring is carried out by a Member State that does not require this type of request?

In addition to the difficulties linked to the discrepancies between national legal systems, other problems will be raised that are more directly related to the transposition of the framework decision. Will the social investigation, which lies in most Member States at the basis of a probation measure, be transmitted to the Member State in charge of the supervision? There is no such provision in the
framework decision, whereas this kind of information is one of the key factors in the success of the supervision of the sentenced person. Only a prior effective consultation between the judicial authorities could be a solution for this possible shortcoming.

The examples that I just have quoted, taken from the reality of day-to-day work in the field, demonstrate the scope of the questions raised by the implementation of this instrument in this particular field of probation. Clearly, the exchange of information and practices are a necessary, even indispensable, prerequisite if we want to take up this challenge. In my opinion they will be the key to a successful implementation and application of this instrument. This information and, as a result, this understanding will make it possible to create a trust-building approach between our authorities, confirming mutual recognition and encouraging the desired legal cooperation.

You are holding the result of the work carried out by the project team. This book offers a structured analysis of the national probation systems already up and running within the Member States of the European Union. It paves the way for a better understanding of the practical and legislative differences linked to the transposition of the framework decision and puts forward some recommendations that will facilitate its implementation.

I congratulate the project partners for the enormous work they have done, work that has been made possible by the support of the European Commission. I end this foreword by remembering the origin of the notion of probation. John Augustus, a cobbler living in Boston in the 19th century, and seen as the father of the probation in the United States, derived this word from the Latin word ‘probare’, which means ‘to test, to prove’. I hope that this project has passed the test and that it will proof to become a standard work in the bookcase, particularly of everyone working in the probation sector, but also in the bookcase of all interested in justice topics and their handling both on national level as on European level.

Stefaan De Clerck
Former Minister of Justice of Belgium
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