

ABBOZZ TA' LIĠI
msejjah

ATT biex jemenda l-Att dwar il-Probation, Kap. 446.

Il-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità ta' l-istess, hareġ b'dan li ġej:-

1. (1) It-titolu fil-qosor ta' dan l-Att huwa l-Att tal-2009 biex jemenda l-Att dwar il-*Probation*, u għandu jinqara u jiftiehem haġa waħda mal-Att dwar il-*Probation*, hawn iżjed 'il quddiem imsejjaħ "l-Att prinċipali".

Titolu fil-qosor
u bidu fis-seħħ.

Kap.446

(2) Id-dispożizzjonijiet ta' dan l-Att għandhom jidhlu fis-seħħ f'dik id-data li l-Ministru responsabbli għall-ġustizzja jista', b'avviż fil-Gazzetta, jistabilixxi, u dati differenti jistgħu jiġu hekk stabbiliti għal dispożizzjonijiet differenti jew għal għanijiet differenti ta' dan l-Att.

2. L-artikolu 2 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-
artikolu 2 tal-
Att prinċipali.

(a) minnufih qabel it-tifsira ta' "dikjarata hatja ta' reat", għandhom jidhlu t-tifsiriet ġodda li ġejjin:

"awtorità kompetenti" tfisser l-awtorità kompetenti ta' Malta mwaqqfa taħt l-artikolu 26;

"Deċiżjoni Qafas" tfisser Deċiżjoni Qafas tal-Kunsill 2008/947/ĠAI tas-27 ta' Novembru 2008, dwar l-applikazzjoni tal-prinċipju ta' rikonoxximent reċiproku ta' sentenzi u deċiżjonijiet li jinvolvu *probation* bil-ħsieb ta'

sorveljanza ta' miżuri ta' *probation* u ta' sanzjonijiet alternattivi;"

(b) minnufih wara t-tifsira ta' "rapport ta' qabel is-sentenza", għandha tidhol it-tifsira ġdida li ġejja:

" "sanzjoni alternattiva" tfisser ordni ta' servizz lill-kommunità, jew ordni ta' *probation* u servizz, jew ordni għal libertà kondizzjonata, u t-termini "ordni ta' servizz lill-kommunità", "ordni ta' *probation* u servizz", u "ordni għal libertà kondizzjonata" għandhu jkollhom l-istess tifsira mogħtija lilhom f'dan l-Att;"

(ċ) minnufih wara t-tifsira ta' "sanzjoni komunitarja" għandhom jidhlu t-tifsiriet ġodda li ġejjin:

" "Stat emittenti" tfisser dak l-Istat Membru minn fejn tingħata s-sentenza;

"Stat ta' esekuzzjoni" tfisser dak l-Istat Membru fejn l-ordnijiet ta' *probation* u s-sanzjonijiet alternattivi jiġu sorveljati, wara deċiżjoni skont l-Artikolu 8 tad-Deċiżjoni Qafas tal-Kunsill 2008/947/ĠAI tas-27 ta' Novembru 2008;"

Emenda tal-artikolu 7 tal-Att prinċipali.

3. L-artikolu 7 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartikolu (2) tiegħu, it-tieni *proviso* għandu jiġi sostitwit bil-*proviso* ġdid li ġej:

"Izda wkoll meta ordni ta' *probation* li kienet magħmula, tkun għal perjodu ta' inqas minn sena, dik l-ordni għandha titqies bħala ordni għal sena."; u

(b) fis-subartikolu (8) tiegħu, minflok il-kliem "Il-qorti li tagħmel l-ordni ta' *probation* għandha minnufih tagħti kopja ta' l-ordni lil min ikun taħt *probation*, lid-Direttur" għandu jiġi sostitwit il-kliem "Il-Qorti li tagħmel l-ordni ta' *probation* għandha minnufih tagħti kopja ta' l-ordni lil min ikun taħt *probation*, u tħarrek lid-Direttur fil-presenza tiegħu".

Emenda tal-artikolu 10 tal-Att prinċipali.

4. L-artikolu 10 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) is-subartikolu (1) tiegħu għandu jiġi sostitwit bis-subartikolu ġdid li ġej:

"(1) Il-Qorti Kriminali tista', fuq rikors li jsir mid-

Direttur jew minn min ikun taht *probation*, tħassar l-ordni.";

(b) is-subartikolu (2) tiegħu għandu jiġi emendat kif ġej:

(i) minflok il-kliem "Il-qorti li tkun għamlet l-ordni ta' *probation* tista'", għandhom jiġu sostitwiti l-kliem "Il-Qorti Kriminali tista'", u

(ii) fil-paragrafu (b) tiegħu, minflok il-kliem "kull ħtieġa tal-ordni kif emendata", għandhom jiġu sostitwiti l-kliem "kull ħtieġa tal-ordni kif emendata:"; u minnufih wara għandu jizdied il-*proviso* ġdid li ġej:

"Izda wkoll il-Qorti għandha tappunta għas-smieġ tar-rikors fi żmiem għoxrin ġurnata mill-preżentata tal-imsemmi rikors."

5. L-artikolu 11 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 11 tal-Att prinċipali.

(a) fis-subartikolu (2) tiegħu, minflok il-kliem "jew aktar minn mitejn u erbghin siegħa" għandhom jiġu sostitwiti l-kliem "jew aktar minn erba' mija u tmenin siegħa"; u

(b) fil-paragrafu (a) tas-subartikolu (3) tiegħu, minflok il-kliem "jkun adatt li jagħmel xogħol taht dik l-ordni;" għandhom jiġu sostitwiti l-kliem "jkun adatt li jagħmel xogħol taht dik l-ordni:"; u minnufih wara għandu jizdied il-*proviso* ġdid li ġej:

"Izda meta l-qorti tkun hekk sodisfatta, tista' wara li tikkunsidra ċ-ċirkostanzi tal-ħati, tneħħi l-ħtieġa ta' rapport ta' qabel is-sentenza bil-miktub u tordna illi jkun sottomess rapport verbali, u dak ir-rapport verbali għandu jkun debitament reġistrat fil-proċedimenti tal-qorti."

6. L-artikoli 26, 27, u 28 tal-Att prinċipali għandhom jiġu numerati mill-ġdid bħala l-artikoli 35, 36 u 37, rispettivament.

Numerazzjoni mill-ġdid tal-artikoli 26, 27, u 28 tal-Att prinċipali.

7. Minnufih wara artikolu 25 tal-Att prinċipali, għandhom

Żieda ta' artikoli godda għall-Att prinċipali.

jidhlu l-artikoli godda li ġejjin:

"Hatra ta' awtorità kompetenti skont id-Deċiżjoni Qafas.

26. B'ordni tal-Ministru għandha titwaqqaf awtorità kompetenti, li l-funzjonijiet tagħha ikunu li tiegħu d-deċiżjonijiet rigward ordnijiet ta' *probation* u sanzjonijiet alternattivi, partikolarment, f'każijiet fejn ikun hemm nuqqas ta' konformità mal-ordni ta' *probation* jew sanzjonijiet alternattivi jew jekk il-persuna sentenzjata tikkommetti reat kriminali ġdid, skont l-artikolu 31(1), fejn Malta tkun jew l-Istat emittenti jew l-Istat ta' esekuzzjoni għall-finijiet ta' rikonossiment reċiproku ta' sentenzi u servizzi ta' *probation* bejn l-Istati Membri.

Tipi ta' miżuri ta' *probation* u sanzjonijiet alternattivi.

27. Skont id-Deċiżjoni Qafas, l-ordnijiet ta' *probation* u s-sanzjonijiet alternattivi li ġejjin għandhom ikunu regolati mill-awtorità kompetenti:

(a) obbligu li l-persuna sentenzjata tinforma lil awtorità speċifika dwar kwalunkwe bidla ta' residenza jew post tax-xogħol;

(b) obbligu li ma tidholx f'ċerti lokalitajiet, postijiet jew żoni definiti fl-Istat emittenti jew ta' esekuzzjoni;

(ċ) obbligu li jkun fih limitazzjonijiet dwar it-tluq mit-territorju ta' l-Istat ta' esekuzzjoni;

(d) istruzzjonijiet marbuta ma' imġiba, residenza, edukazzjoni u taħriġ, attivitajiet ta' divertiment, jew li jkun fihom limitazzjonijiet dwar jew modalitajiet ta' twettiq ta' attività professjonali;

(e) obbligu li tirrapporta f'ħinijiet speċifiċi lil awtorità speċifika;

(f) obbligu li tevita kuntatt ma' persuni speċifiċi;

(g) obbligu li tevita kuntatt ma' oġġetti speċifiċi, li jkunu ntużaw jew li x'aktarx jintużaw mill-persuna sentenzjata bil-ħsieb li twettaq reat kriminali;

(h) obbligu li tikkumpensa finanzjarjament għall-ksara kkawżata mir-reat u, jew obbligu li ttipprovdi evidenza ta' konformità ma' tali obbligu;

(i) obbligu li twettaq servizz komunitarju;

(j) obbligu li tikkopera ma' uffiċjal tal-*probation* jew ma' rappreżentant ta' servizz soċjali b'responsabbiltajiet fir-rigward tal-persuni sentenzjati; u

(k) obbligu li jsirilha trattament terapewtiku jew trattament għal xi vizzju.

(2) L-awtorità kompetenti għandha tinnotifika lis-Segretarjat Ġenerali tal-Kunsill tal-Unjoni Ewropea, meta jkun qed timplimenta din id-Deċiżjoni Qafas, liema ordnijiet ta' *probation* u sanzjonijiet alternattivi, barra minn dawk imsemmija fis-subartikolu (1), hija lesta tissorvelja. Is-Segretarjat Ġenerali tal-Kunsill għandu jagħmel l-informazzjoni li jirċievi disponibbli għall-Istati Membri kollha u għall-Kummissjoni.

Sentenzi jew ordnijiet ta' *probation* mibghuta lill-awtoritajiet kompetenti tal-Istati Membri meta Malta hija l-Istat emittenti.

28. (1) Meta Malta hija l-Istat emittenti, l-awtorità kompetenti, għandha fuq inizjattiva tagħha jew fuq talba tal-persuna sentenzjata, tibgħat is-sentenza jew l-ordni ta' *probation* lill-awtorità kompetenti tal-Istat Membru li fih il-persuna sentenzjata hija legalment u ordinarjament residenti, f'kazijiet fejn il-persuna sentenzjata rritornat jew trid tiritorna f'dak l-Istat:

Izda l-awtorità kompetenti għandha tagħti l-kunsens tagħha sabiex tintbghat is-sentenza jew l-ordni ta' *probation*, fuq it-talba tal-persuna sentenzjata, meta l-persuna sentenzjata ma kkommettietx reati sussegwenti u taht dawk il-kondizzjonijiet li tħoss li huma xierqa li timponi.

(2) Meta, fl-applikazzjoni tad-dispożizzjonijiet tas-subartikolu (1), l-awtorità kompetenti tibgħat sentenza u, fejn applikabbli, ordni ta' *probation* lill-Istat ta' esekuzzjoni, għandha tiżgura li din tkun akkumpanjata b'ċertifikat, fil-forma li tiġi preskritta mill-Ministru permezz ta' regolamenti magħmulin taħt dan l-artikolu.

(3) Ladarba l-awtorità kompetenti ta' l-Istat ta' esekuzzjoni tkun irrikonoxxiet l-ordni ta' *probation* li tkun intbagħttilha u tkun infurmat lill-awtorità kompetenti dwar l-istess rikonoxximent, l-awtorità kompetenti ta' Malta ma għandux ikollha aktar il-kompetenza fir-rigward tas-sorveljanza tal-ordni ta' *probation* imposta, u lanqas biex tiegħu xi deċiżjoniet sussegwenti msemmin fl-artikolu 31(1).

(4) Il-kompetenza msemmija fis-subartikolu (3) għandha tmur lura għand l-awtorità kompetenti:

(a) hekk kif l-awtorità kompetenti tkun innotifikat lill-awtorità kompetenti tal-Istat ta' esekuzzjoni dwar l-irtirar ta' ċertifikat imsemmi fis-subartikolu (2), sakemm is-sorveljanza fl-Istat ta' esekuzzjoni ma tkunx diġà bdiet;

(b) fil-każijiet jew kategoriji ta' każijiet li jiġu speċifikati mill-Istat ta' esekuzzjoni fejn dan l-Istat jista' jirrifjuta li jassuma r-responsabilità tas-sorveljanza, partikolarment:

(i) f'każijiet relatati ma' sanzjoni alternattiva, fejn is-sentenza ma tkunx waħda ta' kustodja jew fiha xi miżura li tinvolvi ċaħda ta' libertà li għandha tiġi enforzata f'każijiet ta' nuqqas ta' konformità mal-obbligi jew l-istruzzjonijiet konċernati;

(ii) f'każijiet relatati mal-libertà kondizzjonata; u

(iii) f'kazijiet fejn is-sentenza tirrigwarda atti li ma jikkostitwixxux reat skont il-liġi tal-Istat ta' eżekuzzjoni, indipendentament mill-elementi kostitwenti jew mid-deskrizzjoni tiegħu;

(ċ) fil-kazijiet fejn il-gurisdizzjoni tal-Istat ta' eżekuzzjoni tintemm skont id-dispożizzjonijiet tal-artikolu 32.

Rikonixximent ta' sentenzi jew ordnijiet ta' *probation* fejn Malta hija l-Istat ta' eżekuzzjoni.

29. (1) Fejn Malta hija l-Istat ta' eżekuzzjoni, l-awtorità kompetenti għandha fi żmien sittin jum min meta tirċievi s-sentenza u fejn applikabbli, id-deċiżjoni tal-*probation*, tirrikonoxxi s-sentenza u fejn applikabbli l-ordni ta' *probation* mibgħuta, u ssegwi l-proċeduri neċessarji msemmija fl-artikolu 28(2), u għandha mingħajr dewmien tiegħu dawk il-miżuri neċessarji għas-sorveljanza tal-ordni ta' *probation*, sakemm ma tiddeċidix li tirrifjuta r-rikonoxximent u s-sorveljanza minhabba r-raġunijiet imsemmija fl-artikolu 30:

Iżda meta, f'kazijiet eċċezzjonali, ma jkunx possibbli għall-awtorità kompetenti li tikkonforma mal-limitu ta' żmien previst fis-subartikolu (1), hija għandha minnufih tinforma lill-awtorità kompetenti ta' l-Istat emittenti, bi kwalunkwe mezz, waqt li tagħti r-raġunijiet għad-dewmien u tindika kemm bi ħsiebha tiegħu żmien biex tagħti deċiżjoni finali.

(2) Meta Malta hija l-Istat ta' eżekuzzjoni, l-awtorità kompetenti tista' tipposponi d-deċiżjoni dwar ir-rikonoxximent tas-sentenza u, fejn applikabbli, l-ordni ta' *probation* fis-sitwazzjoni fejn iċ-ċertifikat imsemmi fl-artikolu 28(2) huwa inkomplet jew ma jikkorrispondix mas-sentenza jew, fejn applikabbli, l-ordni ta' *probation*, sa dik l-iskadenza raġonevoli stabbilita biex iċ-ċertifikat ikun kompletat jew ikkoreġut.

Raġunijiet għar-
rifjut ta'
rikonoxximent u
sorveljanza.

30. Meta Malta hija l-Istat ta' esekuzzjoni, l-awtorità kompetenti tista' tiċċad li tirrikonoxxi s-sentenza u l-ordni ta' *probation* u tassumi r-responsabbiltà għas-sorveljanza ta' ordnijiet ta' *probation* jew sanzjonijiet alternattivi skont l-Artikolu 11 tad-Deċiżjoni Qafas jekk:

(a) iċ-ċertifikat imsemmi fl-artikolu 28(2) ma jkunx komplet jew ma jkunx jaqbel manifestament mal-ordni ta' *probation* u ma jkunx ikkompletat jew ikkorreġut f'terminu raġonevoli stabbilit mill-awtorità kompetenti;

(b) il-kriterji stabbiliti fl-artikolu 28(1) m'humiex sodisfatti;

(ċ) ir-rikonoxximent tal-ordni ta' *probation* u l-preżunzjoni tar-responsabbiltà għas-sorveljanza tal-ordnijiet ta' *probation* jmorru kontra l-prinċipju *ne bis in idem*;

(d) is-sentenza tirrigwarda atti li ma jkostitwixxux reat taħt il-liġijiet ta' Malta;

(e) l-infurzar tas-sentenza huwa prekluz bil-preskrizzjoni skont il-liġijiet ta' Malta u jirrigwarda att li jaqa' fil-kompetenza tagħha skont dik il-liġi;

(f) ikun hemm immunità skont il-liġijiet ta' Malta, li tagħmel is-sorveljanza ta' l-ordnijiet ta' *probation* impossibbli;

(g) taħt il-liġijiet ta' Malta, il-persuna sentenzjata, minhabba l-età tagħha, ma tistax tinzamm kriminalment responsabbli għall-atti li fuqhom ingħatat is-sentenza;

(h) is-sentenza ngħatat *in absentia*, sakemm iċ-ċertifikat ma jiddikjarax li l-persuna kienet għet imsejha personalment jew infurmata permezz ta' rappreżentant kompetenti skont il-liġijiet ta' Malta dwar il-hin u l-post tal-proċeduri li rriżultaw fis-sentenza li tkun ingħatat *in absentia*, jew li l-persuna indikat lil awtorità kompetenti li hi ma tikkontestax il-każ;

(i) l-ordni ta' *probation* tipprovdi għal trattament mediku u, jew terapewtiku li Malta ma tistax tissorvelja minhabba s-sistema legali jew tal-kura tas-saħha tagħha;

(j) l-ordni ta' *probation* hija ta' tul ta' żmien ta' inqas minn 6 xhur; jew

(k) is-sentenza tkun relatata ma' reati kriminali li taħt il-liġijiet ta' Malta huma meqjusa bħala li twettqu kollha kemm huma jew f'parti kbira jew essenzjali fit-territorju tiegħu, jew f'post ekwivalenti għat-territorju tiegħu.

Ġurisdizzjoni għat-tehid tad-deċiżjonijiet kollha sussegwenti u l-liġi regolatorja meta Malta hija l-Istat ta' esekuzzjoni.

31. (1) Meta Malta hija l-Istat ta' esekuzzjoni, l-awtorità kompetenti għandu jkollha l-ġurisdizzjoni li tiegħu d-deċiżjonijiet sussegwenti kollha relatati ma' ordni ta' *probation* jew sanzjoni alternattiva, b'mod partikolari f'każ ta' nuqqas ta' konformità ma' ordni ta' *probation* jew sanzjoni alternattiva jew jekk il-persuna sentenzjata twettaq reat kriminali għdid. Tali deċiżjonijiet sussegwenti jistgħu jinkludu:

(a) il-modifika ta' l-obbligi jew l-istruzzjonijiet li jinsabu fl-ordni ta' *probation* jew is-sanzjoni alternattiva, jew il-modifika tat-tul ta' żmien tal-perjodu ta' *probation*;

(b) ir-revoka tas-sospensjoni ta' l-esekuzzjoni tas-sentenza jew ir-revoka tad-deċiżjoni dwar sanzjoni alternattiva;

(ċ) l-impożizzjoni ta' sentenza ta' kustodja jew miżura li tinvolvi ċ-ċaħda tal-libertà f'każ ta' sanzjoni alternattiva.

(2) Jekk in-natura jew it-tul ta' żmien tal-ordni ta' *probation* jew tal-perjodu ta' *probation*, ikunu inkompatibbli mal-ligijiet ta' Malta meta Malta hija l-Istat ta' esekuzzjoni, l-awtorità kompetenti tista' tadattahom b'mod konformi man-natura u t-tul ta' żmien tal-ordnijiet ta' *probation* jew it-tul ta' żmien tal-perjodu ta' *probation*, li japplikaw, skont il-ligijiet ta' Malta, għal reati ekwivalenti. L-ordni ta' *probation*, is-sanzjoni alternattiva jew it-tul ta' żmien tal-perjodu ta' *probation* adattati għandhom jikkorrispondu kemm jista' jkun ma' dawk imposti fl-Istat emittenti:

Iżda fejn l-ordni ta' *probation*, is-sanzjoni alternattiva jew il-perjodu ta' *probation* jkunu ġew adattati peress li t-tul ta' żmien tagħhom jaqbeż it-tul ta' żmien massimu previst taħt il-ligijiet ta' Malta, meta Malta hija l-Istat ta' esekuzzjoni, it-tul ta' żmien tal-miżura ta' *probation*, is-sanzjoni alternattiva jew il-perjodu ta' *probation* adattati ma għandux ikun inqas mit-tul ta' żmien massimu previst għal reati ekwivalenti skont il-ligijiet ta' Malta:

Iżda wkoll l-ordni ta' *probation* adattata, is-sanzjoni alternattiva jew il-perjodu ta' *probation* m'għandhomx ikunu aktar severi jew itwal mill-ordni ta' *probation*, is-sanzjoni alternattiva jew il-perjodu ta' *probation* li kien impost originarjament.

(3) Meta Malta hija l-Istat ta' esekuzzjoni, l-awtorità kompetenti għandha tinforma mingħajr dewmien lill-awtorità kompetenti ta' l-Istat emittenti, bi kwalunkwe mezz li jhalli rekord bil-miktub, bid-deċiżjonijiet kollha dwar:

(a) il-modifika tal-ordni ta' *probation* jew tas-sanzjoni alternattiva;

(b) ir-revoka tas-sospensjoni tal-esekuzzjoni tas-sentenza jew ir-revoka tad-deċiżjoni dwar sanzjoni alternattiva;

(ċ) infurzar ta' piena ta' kustodja jew miżura li tinvolvi ċ-ċaħda tal-libertà minhabba fin-nuqqas ta' konformità ma' ordni ta' *probation* jew sanzjoni alternattiva;

(d) l-iskadenza tal-ordni ta' *probation* jew tas-sanzjoni alternattiva.

(4) Jekk tintalab hekk mill-awtorità kompetenti ta' l-Istat emittenti, l-awtorità kompetenti għandha tinformaha dwar it-tul massimu taċ-ċaħda tal-libertà li hija prevista fil-ligijiet nazzjonali ta' Malta għar-reat, li rriżulta fis-sentenza, u li jista' jiġi impost fuq il-persuna sentenzjata fil-każ ta' ksur tal-ordni ta' *probation*. Din l-informazzjoni għandha tiġi pprovduta immedjatement wara li jiġu riċevuti s-sentenza u, fejn applikabbli, l-ordni ta' *probation*, flimkien maċ-ċertifikat imsemmi fl-artikolu 28(2).

Tmiem tal-
ġurisdizzjoni ta'
l-Istat ta'
esekuzzjoni.

32. (1) Meta Malta hija l-Istat ta' esekuzzjoni, jekk il-persuna sentenzjata taħrab jew ma tibqax ikollha residenza legali f'Malta, l-awtorità kompetenti tista' tittrasferixxi l-ġurisdizzjoni fir-rigward tas-sorveljanza tad-deċiżjonijiet ulterjuri kollha relatati mas-sentenza lura lill-awtorità kompetenti ta' l-Istat emittenti.

(2) Jekk ikunu qed jittieħdu proċeduri kriminali godda kontra l-persuna kkonċernata fl-Istat emittenti, l-awtorità kompetenti ta' l-Istat emittenti tista' titlob lill-awtorità kompetenti ta' l-Istat ta' esekuzzjoni biex tittrasferixxi l-ġurisdizzjoni fir-rigward tas-sorveljanza tal-ordni ta' *probation* u fir-rigward tad-deċiżjonijiet ulterjuri kollha relatati mas-sentenza lura lilha.

(3) Meta, fl-applikazzjoni ta' dan l-artikolu, il-gurisdizzjoni tiġi trasferita lura lill-Istat emittenti, l-awtorità kompetenti ta' dak l-Istat għandha terġa' tibda tali gurisdizzjoni. Għas-sorveljanza ulterjuri tal-ordnijiet ta' *probation* jew sanzjonijiet alternattivi, l-awtorità kompetenti ta' l-Istat emittenti għandha tiegħu kont tat-tul ta' żmien u l-grad ta' konformità mal-ordnijiet ta' *probation* jew is-sanzjonijiet alternattivi f'Malta, kif ukoll ta' kull deċiżjoni meħuda minn Malta skont l-artikolu 31(3).

Informazzjoni mill-Istat ta' esekuzzjoni fil-kazijiet kollha.

33. Meta Malta hija l-Istat ta' esekuzzjoni, l-awtorità kompetenti għandha, skont l-Artikolu 18 tad-Deċiżjoni Qafas, tinforma minghajr dewmien lill-awtorità kompetenti ta' l-Istat emittenti, b'kull mezz li jhalli rekord bil-miktub:

(a) dwar it-trasmissjoni tas-sentenza u, fejn applikabbli, l-ordni ta' *probation* flimkien maċ-ċertifikat imsemmi fl-artikolu 28(2) lill-awtorità kompetenti responsabbli għar-rikonoxximent tagħha u għat-teħid ta' miżuri riżultanti għas-sorveljanza tal-ordni ta' *probation* u meta ma jkollhiex kompetenza biex tirrikonoxxiha u biex tiegħu dawk il-miżuri għas-sorveljanza, hija għandha *ex officio*, tibgħatha lill-awtorità kompetenti tal-Istat emittenti;

(b) dwar il-fatt li fil-prattika huwa impossibbli li jkunu sorveljati l-miżuri ta' *probation* jew is-sanzjonijiet alternattivi għar-raġuni li, wara t-trasmissjoni tas-sentenza u, fejn applikabbli, l-ordni ta' *probation* flimkien maċ-ċertifikat imsemmi fl-artikolu 28(2) lill-Malta, il-persuna sentenzjata ma tkunx tista' tinstab fit-territorju ta' Malta, f'liema każ ma għandu jkun hemm l-ebda obbligu għall-Malta li tissorvelja l-ordni ta' *probation*;

(ċ) dwar id-deċiżjoni finali għar-rikonoxximent tas-sentenza u, fejn applikabbli, id-deċiżjoni ta' *probation* u t-teħid tar-responsabbiltà għas-sorveljanza tal-ordni ta' *probation*;

(d) dwar kull deċiżjoni li ma tiġix rikonoxxuta s-sentenza u, fejn applikabbli, l-ordni ta' *probation* u li tassumi responsabbiltà għas-sorveljanza tal-ordni ta' *probation* skont l-artikolu 31(2), flimkien mar-raġunijiet għad-deċiżjoni;

(e) dwar kull deċiżjoni biex tiġi adattata l-ordni ta' *probation* skont id-dispożizzjonijiet tal-artikolu 31(2), flimkien mar-raġunijiet għad-deċiżjoni;

(f) dwar kull deċiżjoni dwar amnestija jew maħfra mogħtija mill-Istat emittenti jew mill-Istat ta' esekuzzjoni li jwasslu biex ma jkunx hemm sorveljanza tal-ordni ta' *probation*, flimkien, fejn applikabbli, mar-raġunijiet għad-deċiżjoni.

Konsultazzjoni-
jiet bejn l-
awtoritajiet
kompetenti.

34. Fejn u kull meta jinħass li huwa xieraq, l-awtorità kompetenti għandha tikkonsulta ma' l-awtorità kompetenti ta' Stat Membru ieħor, sew jekk ikun l-Istat emittenti jew l-Istat ta' esekuzzjoni, skont il-każ xi jkun, bil-ħsieb li jiffaċilitaw l-applikazzjoni bla xkiel u effiċjenti ta' din id-Deciżjoni Qafas."

Għanijiet u Raġunijiet

L-għanijiet ta' dan l-Abbozz huma li jittrasponi d-dispożizzjonijiet tad- Deciżjoni Qafas tal-Kunsill 2008/947/ĠAI tas- 27 ta' Novembru 2008 dwar l-applikazzjoni tal-prinċipju ta' rikonoxximent reċiproku ta' sentenzi u deċiżjonijiet li jinvolvu *probation* bil-ħsieb ta' sorveljanza ta' miżuri ta' *probation* u ta' sanzjonijiet alternattivi, fil-liġijiet ta' Malta, u u speċifikament fl-Att dwar il-*Probation* (Kap. 446) u biex jintroduċi emendi ulterjuri għall-imsemmi Att.

**A BILL
entitled**

AN ACT to amend the Probation Act, Cap. 446.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

Short title and
commencement
Cap. 446.

1. (1) The short title of this Act is the Probation (Amendment) Act, 2009, and this Act shall be read and construed as one with the Probation Act, hereinafter referred to as "the principal Act".

(2) The provisions of this Act shall come into force on such date as the Minister responsible for justice may, by notice in the Gazette, establish, and different dates may be so established for different provisions and for different purposes of this Act.

Amendment of
article 2 of the
principal Act.

2. Article 2 of the principal Act shall be amended as follows:

(a) immediately before the definition "combination order", there shall be inserted the following new definition:

" "alternative sanction" means a community service order, or a combination order, or a conditional discharge, and the terms "community service order", "combination order" and "conditional discharge" shall have the same meaning assigned to them in the Act;"

(b) immediately after the definition "community service order", there shall be inserted the following new definition:

" "competent authority" means the competent authority of Malta established under article 26;"

(c) immediately after the definition "Director", there shall be inserted the following new definitions:

" "executing State" means the Member State in which the probation orders and alternative sanctions are supervised following a decision in accordance with Article 8 of the Council Framework Decision 2008/947/JHA of 27 November 2008;

"Framework Decision" means Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principal of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions;"; and

(d) immediately after the definition "institution", there shall be inserted the following new definition:

" "issuing State" means the Member State in which the judgment is delivered;".

- 3.** Article 7 of the principal Act shall be amended as follows: Amendment of article 7 of the principal Act.
- (a) in sub-article (2) thereof, the second proviso shall be substituted by the following new proviso:

"Provided further that where a probation order which has been made is of a period of less than one year, that order shall be deemed to be of one year."; and

- (b) in sub-article (8) thereof, for the words "The court by which a probation order is made shall forthwith give copies of the order to the probationer, to the Director" there shall be substituted the words "The court by which a probation order is made shall forthwith give copies of the order to the probationer, and summon in his presence the Director".

- 4.** Article 10 of the principal Act shall be amended as follows: Amendment of article 10 of the principal Act.

- (a) sub-article (1) thereof shall be substituted by the following new sub-article:

"(1) The Criminal Court may, on an application made by the Director or by the probationer, cancel the order.";

(b) sub-article (2) thereof shall be amended as follows:

(i) for the words "The court by which the probation order was made may," there shall be substituted the words "The Criminal Court may,"; and

(ii) in paragraph (b) thereof, for the words "the requirements of the order as amended.", there shall be substituted the words "the requirements of the order as amended."; and immediately thereafter there shall be added the following new proviso:

"Provided further that the Court shall appoint for hearing the application within twenty days of the filing of the said application."

Amendment of article 11 of the principal Act.

5. Article 11 of the principal Act shall be amended as follows:

(a) in sub-article (2) thereof, for the words "or more than two hundred and forty hours" there shall be substituted the words "or more than four hundred and eighty hours"; and

(b) in paragraph (a) of sub-article (3) thereof, for the words "to perform work under such an order;", there shall be substituted the words "to perform work under such an order:."; and immediately thereafter there shall be added the following new proviso:

"Provided that where the court is so satisfied, it may, after considering the offender's circumstances, dispense from the need of a written pre-sentencing report and order that a verbal report be submitted, and such verbal report shall be duly recorded in the court's proceedings."

Re-numbering of articles 26, 27 and 28 of the principal Act.

6. Articles 26, 27 and 28 of the principal Act shall be re-numbered as articles 35, 36 and 37, respectively.

Addition of new articles to the principal Act.

7. Immediately after article 25 of the principal Act, there

shall be inserted the following new articles:

"Designation of competent authority in accordance with Framework decision.

26. There shall be a competent authority, to be designated by order of the Minister, whose functions shall be the taking of decisions relating to probation orders and alternative sanctions, in particular, in case of non-compliance with a probation order or alternative sanctions or if the sentenced person commits a new criminal offence, in accordance with article 31(1), where Malta is either the issuing or executing State for the purposes of the mutual recognition of judgments and probation services between Member States.

Types of probation measures and alternative sanctions.

27. (1) In accordance with the Framework Decision, the following probation orders and alternative sanctions shall be regulated by the competent authority:

(a) an obligation for the sentenced person to inform a specific authority of any change of residence or working place;

(b) an obligation not to enter certain localities, places or defined areas in the issuing or executing State;

(c) an obligation containing limitations on leaving the territory of the executing State;

(d) instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity;

(e) an obligation to report at specified times to a specific authority;

(f) an obligation to avoid contact with specific persons;

(g) an obligation to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence;

(h) an obligation to compensate financially for the prejudice caused by the offence and, or an obligation to provide proof of compliance with such an obligation;

(i) an obligation to carry out community service;

(j) an obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons; and

(k) an obligation to undergo therapeutic treatment or treatment for addiction.

(2) The competent authority shall notify the General Secretariat of the Council of the European Union, when implementing the Framework Decision, which probation orders and alternative sanctions, apart from those referred to in sub-article (1), it is prepared to supervise. The General Secretariat of the Council shall make the information received available to all Member States and to the Commission.

Forwarding of judgments or probation orders to competent authorities of member states where Malta is the issuing State.

28. (1) Where Malta is the issuing State, the competent authority shall, on its own initiative, or upon the request of the sentenced person, forward a judgment or probation order to the competent authority of the Member State in which the sentenced person is lawfully and ordinarily residing, in cases where the sentenced person has returned or wants to return to that State:

Provided that the competent authority shall only consent to the forwarding of a judgment or probation order, upon the request of the sentenced person, where the sentenced person has not committed subsequent offences and under such conditions it may deem fit to impose.

(2) When, in applying the provisions of sub-article (1), the competent authority forwards a judgment and, where applicable, a probation order to the executing State, it shall ensure that it is accompanied by a certificate, in such form as may be prescribed by the Minister by regulations made under this article.

(3) Once the competent authority of the executing State has recognised the probation order forwarded to it and has informed the competent authority of such recognition, the competent authority in Malta shall no longer have competence in relation to the supervision of the probation order imposed, nor to take any subsequent decisions referred to in article 31(1).

(4) The competence referred to in sub-article (3) shall revert to the competent authority:

(a) as soon as the competent authority has notified the competent authority of the executing State about the withdrawal of the certificate referred to in sub-article (2), provided that supervision in the executing State has not yet begun;

(b) in cases or categories of cases to be specified by the executing State where it may refuse to assume the responsibility of supervision, in particular:

(i) in cases relating to an alternative sanction, where the judgment does not contain a custodial sentence or measure involving the deprivation of liberty to be enforced in case of non-compliance with the obligations or instructions concerned;

(ii) in cases relating to a conditional discharge; and

(iii) in cases where the judgment relates to acts which do not constitute an offence under the law of the executing State, whatever its constituent elements or however it is described;

(c) in cases where the jurisdiction of the executing State has ended in accordance with the provisions of article 32.

Recognition of judgments and probation orders where Malta is the executing State.

29. (1) Where Malta is the executing State, the competent authority shall within sixty days of receipt of the judgment and, where applicable, the probation decision, recognise the judgment and, where applicable, the probation order forwarded, and follow the necessary procedure referred to in article 28(2), and shall without delay take all necessary measures for the supervision of the probation order, unless it decides to refuse recognition and supervision on the grounds referred to in article 30:

Provided that when, in exceptional circumstances, it is not possible for the competent authority to comply with the time limit provided for in sub-article (1), it shall immediately inform the competent authority of the issuing State by any means, giving the reasons for the delay and indicating the estimated time needed for the final decision to be taken.

(2) Where Malta is the executing State, the competent authority may postpone the decision on recognition of the judgment and, where applicable, the probation order in the situation where the certificate referred to in article 28(2) is incomplete or does not correspond to the judgment or, where applicable, the probation order, until a reasonable deadline is set for the certificate to be completed or corrected.

Grounds for refusing recognition and supervision.

30. Where Malta is the executing State, the competent authority may refuse to recognise the judgment and the probation order and assume responsibility for supervising probation orders or alternative sanctions on the following grounds, in accordance with Article 11 of the Framework Decision:

(a) the certificate referred to in article 28(2) is incomplete or manifestly does not correspond to the probation order and has not been completed or corrected within a reasonable period set by the competent authority;

(b) the criteria set out in article 28(1) are not satisfied;

(c) the recognition of the probation order and assumption of the responsibility for supervising probation orders would be contrary to the principle of *ne bis in idem*;

(d) the judgment relates to acts which do not constitute an offence under the laws of Malta;

(e) the enforcement of the sentence is barred by prescription according to the laws of Malta and falls within its competence according to that law;

(f) there is immunity under the laws of Malta, which makes it impossible to supervise probation orders;

(g) under the laws of Malta, the sentenced person cannot, owing to his age, be held criminally liable for the offences in respect of which the judgment was issued;

(h) the judgment was rendered *in absentia*, unless the certificate states that the person was summoned personally or informed through a representative competent according to the laws of Malta of the time and place of the proceedings which resulted in the judgment being rendered *in absentia*, or that the person has indicated to a competent authority that he does not contest the case;

(i) the probation order provides for medical and, or therapeutic treatment which Malta is unable to supervise in view of its legal or health-care system;

(j) the probation order is of less than six months' duration; or

(k) the judgment relates to criminal offences which under the laws of Malta are regarded as having been committed wholly or for a major or essential part within its territory, or in a place equivalent to its territory.

Jurisdiction to take all subsequent decisions and governing law where Malta is the executing State.

31. (1) Where Malta is the executing State, the competent authority shall have jurisdiction to take all subsequent decisions relating to a probation order or alternative sanction, in particular in case of non-compliance with a probation order or alternative sanction or if the sentenced person commits a new criminal offence. Such subsequent decisions may include:

(a) the modification of obligations or instructions contained in the probation order or alternative sanction or the modification of the duration of the probation period;

(b) the revocation of the suspension of the execution of the judgment or the revocation of the decision regarding an alternative sanction; and

(c) the imposition of a custodial sentence or measure involving deprivation of liberty in case of an alternative sanction.

(2) If the nature or duration of the relevant probation order or the probation period are incompatible with the laws of Malta when Malta is the executing State, the competent authority may adapt them in line with the nature and duration of the probation orders or duration of the probation period, which apply under the laws of Malta, to equivalent offences. The adapted probation order, alternative sanction or duration of the probation period shall correspond as far as possible to that imposed in the issuing State:

Provided that where the probation order, alternative sanction or probation period has been adapted because its duration exceeds the maximum duration provided for under the laws of Malta, where Malta is the executing State, the duration of the adapted probation measure, alternative sanction or probation period shall not be below the maximum duration provided for equivalent offences under the laws of Malta:

Provided also that the adapted probation order, alternative sanction or probation period shall not be more severe or longer than the probation order, alternative sanction or probation period which was originally imposed.

(3) Where Malta is the executing State, the competent authority shall without delay inform the competent authority of the issuing State, by any means which leaves a written record, of all the decisions taken on:

(a) the modification of the probation order or alternative sanction;

(b) the revocation of the suspension of the execution of the judgment or revocation of the decision on alternative sanction;

(c) the enforcement of a custodial sentence or measure involving deprivation of liberty, because of non-compliance with a probation order or alternative sanction;

(d) the lapse of the probation order or alternative sanction.

(4) If so requested by the competent authority of the issuing State, the competent authority shall inform it of the maximum duration of deprivation of liberty that is foreseen in the national laws of Malta for the offence which gave rise to the judgment and that could be imposed on the sentenced person in case of breach of the probation order. This information shall be provided immediately after receipt of the judgment and where applicable, the probation order, together with the necessary certificate set out in article 28(2).

End of
jurisdiction of
the executing
State.

32. (1) Where Malta is the executing State, if the sentenced person absconds or no longer has a lawful residence in Malta, the competent authority may transfer the jurisdiction in respect of the supervision of all further decisions relating to the judgment back to the competent authority of the issuing State.

(2) If new criminal proceedings against the person concerned are taking place in the issuing State, the competent authority of the issuing State may request the competent authority to transfer jurisdiction in respect of the supervision of the probation order and in respect of all further decisions relating to the judgment back to it.

(3) When, in the application of this article, jurisdiction is transferred back to the issuing State, the competent authority of that State shall resume jurisdiction. For the further supervision of the probation orders or alternative sanctions, the competent authority of the issuing State shall take account of the duration and degree of compliance with the probation orders or alternative sanctions in Malta, as well as of any decisions taken by Malta in accordance with article 31(3).

Information
from the
executing State
in all cases.

33. Where Malta is the executing State, the competent authority shall, in accordance with Article 18 of the Framework Decision, without delay inform the competent authority of the issuing State, by any means which leaves a written record, of:

(a) the transmission of the judgment and, where applicable, the probation order, together with the certificate referred to in article 28(2) to the competent authority responsible for its recognition and for taking the ensuing measures for the supervision of the probation order and where it has no competence to recognise it and take the said measures for the supervision, it shall, *ex officio*, forward it to the competent authority of the issuing State;

(b) the fact that it is in practice impossible to supervise the probation measures or alternative sanctions for the reason that, after transmission of the judgment and, where applicable, the probation order, together with the certificate referred to in article 28(2), to Malta, the sentenced person cannot be found in the territory of Malta, in which case Malta shall be under no obligation to supervise the probation order;

(c) the final decision to recognise the judgment and, where applicable, the probation decision and to assume responsibility for supervising the probation order;

(d) any decision not to recognise the judgment and, where applicable, the probation order and to assume responsibility for supervising the probation order in accordance with article 31(2), together with the reasons for the decision;

(e) any decision to adapt the probation order in accordance with the provisos to article 31(2), together with the reasons for the decision;

(f) any decision on amnesty or pardon granted by the issuing or executing State which leads to not supervising the probation order, together, where applicable, with the reasons for the decision.

Consultations
between
competent
authorities.

34. Where and whenever it is felt appropriate, the competent authority shall consult with the competent authority of another Member State being the issuing State or the executing State as the case may be, with a view to facilitating the smooth and efficient application of the Framework Decision."

Objects and Reasons

The objects of this Bill are to transpose the provisions of Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principal of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions into the laws of Malta, and more specifically into the Probation Act (Cap. 446) and to introduce further amendments to the said Act.