

DRAFT

**Rapid literature assessment
on Council Framework Decision 2008/909/JHA of 27 November 2008 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
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Rapid literature assessment

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Introduction

When implementing sentences of imprisonment, considerable attention is paid to the rehabilitation of offenders to ensure that they are resocialized and eventually reintegrated into the community. In other words, the objective of rehabilitation may become more significant than it was at the time when the sentence was initially imposed. At that imposition of the sentence, the primary objective of sentencing may have been to ensure that offenders received retributive punishment for the crime they had committed. In the same time, the punishment should also observe the need to rehabilitate offenders in order to become a productive member of society. It may be the case that a sentence can be implemented in different ways that would all meet the requirements of the initial sentence but differ in their effectiveness in terms of rehabilitating the sentenced individual.

Each year tens of thousands of EU citizens are prosecuted for alleged crimes or convicted in another Member State of the European Union. Very often, criminal courts order the detention of non-residents because there is a fear that they will not turn up for trial. A suspect who is resident in the country would in a similar situation often benefit from a less coercive supervision measure, such as reporting to the police or a travel prohibition. These might be the reasons why in countries like Luxembourg, Austria, Switzerland and so on, the proportion of foreign prisoners is

very high, sometimes over 70% (for more see <http://www.prisonstudies.org/world-prison-brief>).

The transfer of foreign sentenced persons to serve their sentences in their home countries is an alternative way of implementing a sentence. Arguably, all things being equal, sentenced persons who serve their sentences in their home countries can be rehabilitated, resocialized and reintegrated into the community better than elsewhere. This is a positive reason for transferring sentenced persons to a state with which they have social links to serve their sentences. Imprisonment in a foreign country, away from family and friends, may also be counterproductive as families may provide prisoners with social capital and support, which improve the likelihood of successful resettlement and reintegration¹.

Methodology

The general aim of this rapid literature assessment is to collect and analyze the existing literature available on the adoption and the implementation of the Council Framework Decision 2008/909/JHA of 27 November 2008 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 (hereinafter FD 909).

The ultimate aim of this analysis is to inform the research conducted under the project Support for Transfer of European Prison Sentences towards Resettlement (hereinafter STEPS 2).

The inclusion criteria for the papers to be covered in this assessment were:

1. to be published in Europe,
2. to be published after 2005, when the discussions on the FD 909 started at the EU level,
3. to be in any EU language
4. to deal with the FD 909 – conception, adoption and implementation.

Colleagues from the universities², partner in the STEPS 2 project, Workstream 1 contributed extensively to the desk search and also to the elaboration of this rapport.

The main sources of literature are:

1. Consultation of laws and preliminary documents.
2. Consultation of evaluation reports.
3. Consultation of other projects websites, such as <http://www.euopris.org/> , <http://www.euprobationproject.eu> etc.

Background

The first cross-border enforcement of custodial sentences between the Member States is the Convention of the Transfer of Sentenced Persons, adopted by the Council of Europe in 1983.

According to this document, sentenced persons may be transferred to serve their

¹“Handbook on the International Transfer of Sentenced Persons”.UNODC. 2012.

² University of Huelva and University of Brescia

custodial sentence only to their state of nationality and only with their consent and that of the states involved. All members of the Council of Europe ratified this Convention (64). Due to its limited application, in 1997, the Council of Europe adopted the Additional Protocol to the Convention which allows transfer without the person's consent, subject to certain conditions. Only a few countries (36) adopted this Protocol and therefore its application is still very limited. Furthermore, neither of these two documents was explicit in the obligation of the states regarding the enforcement or in setting any time limits for the decisions on the enforcement or for the transfer.

Therefore, this Convention was considered insufficient to adequately respond to the needs of the reality.

According to the Report from the Commission³, in a common European area of justice based on mutual trust, the EU has taken action to ensure that non-residents subject to criminal proceedings are not treated differently from residents. This is particularly important in view of the important number of EU citizens who are imprisoned in other Member States. It is in this spirit that the EU adopted in 2008 and 2009 three complementary Framework Decisions: Council Framework Decision 2008/909/JHA1 on the application of the principle of mutual recognition to judgments imposing custodial sentences or measures involving deprivation of liberty (Transfer of Prisoners); Council Framework Decision 2008/947/JHA2 on the application of the principle of mutual recognition of probation decisions and alternative sanctions (Probation and Alternative Sanctions) and Council Framework Decision 2009/829/JHA3 on the application of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention (European Supervision Order)

The Framework Decisions have to be seen as a package of coherent and complementary legislation that addresses the issue of detention of EU citizens in other Member States and has the potential to lead to a reduction in pre-trial detention or to facilitate social rehabilitation of prisoners in a cross border context. There are in fact operational links between the three Framework Decisions, but also between the Framework Decisions and the Framework Decision on the European arrest warrant.

The framework Decision 2008/909/JHA (hereinafter FD 909), which is the main focus of this paper, was initiated by Austria, Finland and Sweden and was adopted by the Council based on the following documents:

1. The Tampere European Council (1999) that stressed that mutual recognition of court decisions should become the cornerstone of judicial cooperation.
2. The measures adopted by the Council in 2000 regarding the implementation of the principle of mutual recognition of decisions in criminal matters, including the sentences involving deprivation of liberty and for the extended application of the principle of transfer to cover persons resident in a Member State.
3. The Hague Programme on strengthening freedom, security and justice in the

³REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the implementation by the Member States of the Framework Decisions 2008/909/JHA, 2008/947/JHA and 2009/829/JHA on the mutual recognition of judicial decisions on custodial sentences or measures involving deprivation of liberty, on probation decisions and alternative sanctions and on supervision measures as an alternative to provisional detention. Brussels, 5.2.2014.COM(2014) 57 final

EU.

4. The Greed Paper submitted by the European Commission on the approximation, mutual recognition and enforcement of criminal sanctions in the EU where it was envisaged that recognition and enforcement of custodial sentences in another Member State is incomplete and capable of improvement.
5. Art. 31(1)(a) – ‘facilitating and accelerating cooperation between competent ministries and judicial In relation to proceedings and the enforcement of decisions’ and 34(2)(b) – ‘the Council may adopt framework decisions for the purpose of approximation of the laws and regulations on the Member States’ of the EU Treaty.

As stated in the Explanatory note, the main elements of the proposal were:

- a duty on the executing State to allow nationals, permanent residents and persons with other close links to serve their custodial sentences or detention orders on the territory of that State, subject to certain grounds for refusal;
- waiver of the double criminality requirement with regard to convictions for certain offences on a list corresponding to that contained in the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, OJ L 190 of 18 July 2002;
- if the sentenced person is in the issuing State, he shall, if possible, be given an opportunity to state his opinion orally or in writing before a ‘European enforcement order’ is issued;
- the consent of the sentenced person is not required when he is a national of the executing State or when he has his permanent legal residence in that State;
- recognition of the foreign final custodial sentence or detention order and its execution on the basis of a form (so-called European enforcement order);
- time-limits for the decision on the European enforcement order and for the transfer of the sentenced person to the executing State;
- enforcement of the final custodial sentence or detention order imposed by the sentencing State without conversion proceedings;
- the duration of the sentence may be adapted to the maximum level provided for a criminal act under the national law of the executing State only where the sanction is incompatible with fundamental principles of the law of the executing State;
- the nature of the sentence may, if it is incompatible with the law of the executing State, be adapted to the punishment or measure provided for under the national law of the executing State for a criminal offence of the same type.

Based on this proposal, COPEN dedicated several meetings with Member States delegates where different issues related to the prisoner transfer were discussed: the national rules for conditional / early release and / or measures involving full and/or partial deprivation of liberty; the double criminality issue, consent of the executing State and the consent of the sentenced person and so on.

Special discussions took place on issues such as the social rehabilitation, if the lack of it should or should not be a ground for refusal of transfer. In the end the compromise was that the prisoner will be heard.

When adopting the FD 909 it was agreed that the deadline for the implementation (transposition) was 5 December 2011. By their nature, the Framework Decisions are binding upon the Member States in terms of the result, but it is a matter for the

national authorities to choose the form and the method of implementation. Framework Decisions can not have a direct effect. They need to be transposed in the national legislation. However, the principle of conforming interpretation is binding in relation to the Framework Decisions.

In order to facilitate the implementation of the FD, the EC organized several expert meetings where different impediments were discussed.

For instance, in the meeting that took place in Brussels at 14th of November 2012, participants expressed their concern regarding the 'transition period' when the requests are received before the states did not transposed the FD. In this case, some participants were of the opinion that the existing instruments (such as the Council of Europe Convention) should be maintained with those who have not yet transposed the FD.

One of the participants (the UK representative) asked if it is not possible to agree on what constitutes a reasonable time period to qualify for residency. Although something mandatory was not agreed, the participants suggested that some kind of guidelines would be useful.

The discussions also stressed the importance of information. It would be impossible for a sentenced person to agree on a transfer unless he/she knows what to expect (e.g. prison conditions, conditional release etc.).

Other issues were discussed regarding the social rehabilitation ('social reinsertion') and the multiple offences. In both these cases the MS will have to communicate among themselves and agree the best solution that would facilitate the social reinsertion.

The European Parliament was also consulted and adopted a resolution in 2006 recommending the Council to strengthen the procedural rights of the prisoners in the criminal proceedings.

The Framework Decision 2008/909/JHA

The framework decision was adopted on 5.12.2008 and it sets out the rules whereby judgments that impose custodial sentences or measures involving the deprivation of liberty delivered in one Member State are to be recognized and enforced in another Member State. The aim is to thus facilitate the social rehabilitation and reintegration of sentenced persons.

Member States must designate the competent authorities for issuing and executing judgments. The competent authority of the issuing state is responsible for forwarding the judgment accompanied by the certificate annexed to the framework decision directly to the competent authority of one executing state at a time and in a manner that leaves a written record.

When the sentenced person is located in the issuing or executing state and, under certain circumstances, has given his/her permission for forwarding the judgment, it may be transmitted to:

- the Member State of which the sentenced person is a national and where s/he lives;
- the Member State of which the sentenced person is a national and to which s/he could be deported following the judgment, even if this is not his/her place of residence;

- any other Member State, provided that its competent authority agrees to the forwarding.

A judgment may be forwarded only once the issuing state has ensured that the enforcement of the sentence in the executing state would serve the purpose of facilitating the sentenced person's social rehabilitation and reintegration. The latter may provide the issuing state with a reasoned opinion indicating that enforcement by it would not serve this purpose. The executing state, as well as the sentenced person, may also request the initiation of the procedure for forwarding judgments.

Upon receiving the forwarded judgment and certificate, the executing state must decide within a maximum of 90 days whether it will recognize the judgment and enforce the sentence.

The competent authority of the executing state has to recognise the judgment and take all necessary measures to enforce the sentence, unless it decides to invoke one of the grounds for non-recognition and non-enforcement provided in the framework decision. The non-recognition of the judgement and non-enforcement of the sentence is possible when the:

- certificate is incomplete or does not correspond to the judgement;
- criteria for forwarding the judgement and the certificate have not been fulfilled;
- enforcement would contravene the *ne bis in idem* principle;
- offence is not recognised as such under the law of the executing state, with certain exceptions;
- enforcement is statute-barred under the law of the executing state;
- law of the executing state provides for immunity;
- sentenced person cannot be held liable under the law of the executing state due to his/her age;
- remaining sentence is less than six months when the executing state receives the judgement;
- sentenced person had not appeared in person at the trial where the judgement was passed, with certain exceptions;
- issuing state rejects the request of the executing state to prosecute, sentence or otherwise deprive the liberty of the sentenced person for another offence committed before the transfer;
- sentence requires for psychiatric or health care or for another measure involving the deprivation of liberty that the executing state cannot provide;
- offence was committed on the territory of the executing state.

In case the certificate is incomplete or does not correspond to the judgement, the executing state may postpone its recognition.

The framework decision provides a list of offences that must be recognised and enforced without a double criminality check, if they result in a custodial sentence or a measure involving deprivation of liberty of a maximum of at least three years in the issuing state. For all other offences, the executing state may require that they constitute an offence also under its national law in order for them to be recognised and enforced. Where the duration or nature of the sentence is not compatible with the national law of the executing state, it may adapt the sentence. However, the

adapted sentence must correspond as closely as possible to and in no case be harsher than the original sentence.

In line with the law of the issuing state, the consent of the sentenced person is required for the forwarding of a judgment and certificate to the executing state for recognition and enforcement of the sentence. However, this consent is not required when the executing state is the Member State:

- of which the sentenced person is a national and where s/he lives;
- to which the sentenced person is deported upon release, by reason of the order included in the judgement;
- to which the sentenced person has fled or returned, while criminal proceedings against him/her are pending or following a conviction in the issuing state.

In any event, if the sentenced person is in the issuing state, s/he must be given the opportunity to provide an oral or written opinion.

When the sentenced person is located on the territory of the issuing state, s/he must be transferred to the territory of the executing state within a period of 30 days from the date when the latter has recognised the judgement.

Both the issuing and executing state may grant amnesty or pardon. However, only the issuing state may decide on the review of the judgement⁴.

State of play - implementation

In February 2014 the European Commission adopted a report called Report from the Commission to the European Parliament and the Council on the implementation by the member states of the Framework Decisions 2008/909/JHA, 2008/947/JHA and 2009/829/JHA on the mutual recognition of judicial decisions on custodial sentences or measures involving deprivation of liberty, on probation decisions and alternative sanctions and on supervision measures as an alternative to provisional detention.

As stated in this report, the non-implementation of the Framework Decisions by some Member States is very problematic since those Member States who have properly implemented the Framework Decisions cannot benefit from their co-operation provisions in their relations with those Member States who did not implement them in time. Nowadays, nineteen **member states have adapted the Framework Decision**⁵ The principle of mutual recognition, which is the cornerstone of the judicial area of justice, requires a reciprocal transposition; it cannot work if instruments are not implemented correctly in the two Member States concerned. As a consequence, when cooperating with a Member State who did not implement in time, even those Member States who did so will have to continue to apply the corresponding conventions of the Council of Europe when transferring EU prisoners or sentences to other Member States.

The objective of developing an area of freedom, security and justice for all EU citizens as laid down in Article 3 of the Treaty on European Union cannot be

⁴This summary can be found at http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_criminal_matters/jl0016_en.htm

⁵This information is up-to-date as at 31 October 2014. Romania, Italy and Spain have implemented it. <http://www.europis.org/state-of-play-eu-framework-decisions-909-947-829/>

achieved if Member States do not properly implement the instruments they all agreed upon.

It is necessary to remind the power of the Commission to start infringement proceedings as of 1 December 2014⁶.

Difficulties and obstacles

Different sets of obstacles and difficulties can be found in the literature. Some of these difficulties are more theoretical and apply to all FD, not only to the FD 909.

1. Theoretical Issues:

Two theoretical issues seem to be of great importance:

- The first one, refers to the principle of mutual recognition, that regulates mainly the relations between the states and neglects to a large extent to procedural rights of the prisoners. Most often the FDs mention the fundamental rights and the right of the person to be heard or give consent. Apart from that no other remedies or procedural rights are defined.

Regarding this issue, one can claim that in the European Union there are national mechanisms in place that deal with human rights and procedural guarantees for offenders. However, the Commission reaffirmed its interest in positive justice by adopting for instance The Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of the crime.

- The second theoretical difficulty is associated to the double criminality principle. The framework decision provides a list of offences (32) that must be recognised and enforced without a double criminality check, if they result in a custodial sentence or a measure involving deprivation of liberty of a maximum of at least three years in the issuing state. For all other offences, the executing state may require that they constitute an offence also under its national law in order for them to be recognised and enforced.

2. Implementation obstacles:

The report mentioned above mentioned summarizes the main difficulties mostly dealing with the way states transposed the FD into their own domestic legislation.

Considerations regarding the transfer

a. An obligation to accept the transfer unless there are grounds for refusal. While there is an obligation for the executing state to accept the forwarding, there is no obligation on the issuing state to transfer. As noted by the Commission, some countries adopted the grounds for refusal as mandatory or even added other grounds for refusal. Both situations are contrary to the letter and spirit of the FD. The same position is shared by the European Court of Justice in Luxembourg which already

⁶REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the implementation by the Member States of the Framework Decisions 2008/909/JHA, 2008/947/JHA and 2009/829/JHA on the mutual recognition of judicial decisions on custodial sentences or measures involving deprivation of liberty, on probation decisions and alternative sanctions and on supervision measures as an alternative to provisional detention. Brussels, 5.2.2014.COM(2014) 57 final

ruled that the FD should be interpreted in a very restrictive manner⁷.

b. The principle of mutual trust – no adaptation of the sentence. The sentence adaptation is allowed only in limited cases where the nature and the duration of the sentence are not compatible. Some countries (PL and LV) widened the possibilities of adaptation undermining the spirit of the mutual trust.

c. Regarding the crime: double criminality principle: list of offences that must be recognised and enforced without a double criminality check.

d. The link between the FD and European Arrest Warrant. Both FDs allow for the Member States to refuse to surrender a person under a European arrest warrant (or allow for a surrender under the condition that the person has to be returned) where the requested person is a national, a resident or is staying in that Member State if that member State undertakes to enforce the prison sentence. Some Member States regulated this situation only for the nationals.

e. Declarations on transitional provisions. Based on the FD text, Member States can adopt declarations stating that they use the existing legal instruments on the transfer but not after the 5 December 2011, when is the final date of adoption. It seems that some Member States adopted declarations stating that they use the existing legal documents even after this date.

f. The EJN website is designated to provide to practitioners in the field of international judicial co-operation in criminal matters essential, comprehensive and accurate information about all relevant EU instruments. As the Framework Decision 2008/909 provides for direct communication between the competent authorities in the Member States, not only comprehensive and up-dated information on the implementation of the Framework Decision and on declarations made by Member States would facilitate the co-operation in practice, but also an adjusted Atlas at the website of the EJN should be provided in order to allow an immediate identification of the competent authority in the respective executing State.

Requirement for transfer

a. Subsequent decisions. In principle, the subsequent decisions need to be adopted by the executing state. However, there are large differences between Members

⁷ In this sense, the Court of Justice of the European Union (Grand Chamber) has delivered a sentence in the case C-396/11, REQUEST for a preliminary ruling under Article 267 TFEU from the Curte de Apel Constanța (Romania), made by decision of 18 May 2011, received at the Court on 27 July 2011, in proceedings relating to the execution of European arrest warrants issued against [Ciprian Vasile Radu](#). This Court has stated: “rules: Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as meaning that the executing judicial authorities cannot refuse to execute a European arrest warrant issued for the purposes of conducting a criminal prosecution on the ground that the requested person was not heard in the issuing Member State before that arrest warrant was issued”.

States regarding the conditional release. In order to consolidate the mutual trust, executing states need to inform the issuing states regarding the early or conditional release so the issuing states can make an informed decision on whether to transfer or not.

b. Consent: the role of the person concerned in the transfer process – not all the Member States provide enough opportunities for the prisoners to express their views regarding the transfer.

c. Definition of "social rehabilitation" .

In the case of Spain this concept has been broadly interpreted, and *The consent of the sentenced person shall not be required where the judgment together with the certificate is forwarded: (a) to the Member State of nationality in which the sentenced **has ties with, considering his habitual residence and his familiar or professionals bonds.***

Though the Framework Decision does not contain such a ground for non-recognition and non-enforcement, a request according to Article 4, para. 1b of the Framework Decision to the Member State of nationality, to which, while not being the Member State where the sentenced person lives, but he or she will be deported once released from the enforcement of the sentence on the basis of an expulsion or deportation order, is very often refused due to considerations that such a transfer would not serve the purpose of social rehabilitation of the sentenced person. The Framework Decision however provides that the final assessment, that the enforcement of the sentence by the executing State would serve the purpose of facilitating the social rehabilitation of the sentenced person, falls within the responsibilities of the issuing State. A higher level of imprisonment (related to work and skills training, education, medical treatment, accommodation, etc.) cannot serve as a ground for non-recognition due to reduced prospects of social rehabilitation in the executing State. A single European Justice area governed by the principle of mutual recognition and enforcement requires an approximation of standards in the prison systems of all Member States.

d. The Framework Decision aims at facilitating the procedure of cross-border enforcement of sentences by **reducing the number of documents** which have to be provided by the issuing State to the executing State in comparison with previous existing legal instruments (see especially the Convention of 21 March 1983 on the Transfer of Sentenced Prisoners – CETS 112 and its Additional Protocol – CETS 167). Though the Framework Decision does not contain an obligation to provide an existing expulsion or deportation order, frequently the competent authorities of the executing States request not only a transmission of the certificate, the judgment and the statement of the sentenced person, but also of the expulsion or deportation order. According to the text in the certificate only the name of the authority that issued that order, the date of issue and, if available, the reference number have to be provided. In addition sometimes not only the certificate in the language of the executing State, but also the original of the certificate (in the language of the issuing State) is requested. Due to this practice the objective of the Framework Decision to facilitate the cross-border enforcement of sentences is not achieved. In fact the proceedings have become more cumbersome due to the new legal framework.

e. Though the certificate contains on a regular basis already all required relevant information for a decision on the enforcement, **a translation** also of the judgment is requested in most cases, at least partly. A further facilitation of procedure is expected due to restricted translation requirements under Article 23 of the

Framework Decision. In principle only the certificate has to be translated in the/an official language of the executing State. The judgment or essential parts of it have only to be accompanied by a translation into the/an official language of the executing State, where the respective Member State made a declaration according to Article 23, para. 3 of the Framework Decision and where it finds the content of the certificate insufficient to decide on the enforcement of the sentence.

Transfer process

The time limits in Article 12 para 2 and Article 15 para 1 of the Framework Decision are not respected in most cases. To meet the time limit established in Article 15 para 1 an immediate confirmation of the proposed date/circumstances of the transfer is requested⁸.

Another major difficulty is the high costs of transferring prisoners from one country to another⁹.

Post transfer considerations

a. Material detention conditions

There are still huge differences between Member States regarding the detention conditions. This might hinder the transfer procedure.

b. Victims

There are still questions about the role and the position of victims in the transfer decision and procedure. What is their role in the transfer process and when should they be informed are only two of such questions

Concluding remarks

The need of rehabilitation has inspired the regulations such as the FD 2008/909. In our opinion, in order to improve its implementation, it is necessary to pay attention first to the transposition process.

In this sense, the Report from the Commission established that the level of implementation is far from satisfactory. There are too many states that have not adapted the Framework Decision. At the same time, in the case of those that have done it, the Commission has detected important omissions and discrepancies that should be corrected in order to respect the spirit of the Decision.

Throughout this paper, we have identified the most challenging difficulties presented by the FD as theoretical issues and implementation obstacles. For each category, we have identified concrete issues that may threaten effective and smooth implementation.

In this regard, the Workshop “Operational links between the Framework Decisions ISTEP. Final Conference”, held in Lithuania in 2013 has been very useful to identify

⁸Austrian delegation to: Working Party on Cooperation in Criminal Matters (Mutual recognition experts)COPEN 151 EUROJUST 98

⁹EU Framework Decisions related to Detention Issues, Strasbourg, France 20-21 June 2013

them. Together with the problems and obstacles it is necessary to determine possible solutions to them. Several documents, like Minutes of the Experts' Meeting on the implementation of the Framework Decisions 2008/909/JHA (Transfer of Prisoners), 2008/947/JHA (Probation and Alternative Sanctions) and 2009/829/JHA (European Supervision Order) Brussels, 14 November 2012 and evaluation reports made by the Commission or the COPEN have contributed to become more aware of the problems and to provide more appropriate solutions.

Annex A

Obstacles and difficulties

Obstacle	Identified in	Possible solutions
The consent	Commission report Feb.2014	Check the transposition laws to make sure the person has the opportunity to state his/her opinion.
Definition of "social rehabilitation"	EU Framework Decisions related to Detention Issues (...)Strasbourg, France 20-21 June 2013	"Social reintegration": to assess social rehabilitation the place of lawful and ordinary residence is often decisive
The proceedings have become more cumbersome due to the new legal framework.	Note from: Austrian delegation to: Working Party on Cooperation in Criminal Matters (Mutual recognition experts)COPEN 151 EUROJUST 98 EJM 56	Not to follow this practice and respect the text of the Framework Decision
Though the certificate contains on a regular basis already all required relevant information for a decision on the enforcement, a translation also of the judgment is requested in most cases.	Note from: Austrian delegation to: Working Party on Cooperation in Criminal Matters (Mutual recognition experts)COPEN 151 EUROJUST 98 EJM 56	A further facilitation of procedure is expected due to restricted translation requirements under Article 23 of the Framework Decision
Time limits: Decision are not respected in most cases.	Note from: Austrian delegation to: Working Party on Cooperation in Criminal Matters (Mutual	To meet the time limit established in Article 15 para 1 an immediate confirmation of the proposed date/circumstances of the

	recognition experts)COPEN 151 EUROJUST 98 EJNI 56	transfer is requested.
The sentence adaptation	Commission report Feb.2014	Ask for the change in the Member State' s transposition laws.
Subsequent decisions – in relation to conditional release	Commission report Feb.2014	Better communication between the issuing state and the executing state regarding the conditions. The information can be available also on the EuroPris website for ad-hoc check.
Grounds for refusal – made mandatory or adding more	Commission report Feb.2014	Change in the transposition laws – attention to 'may'
No set time limits	Commission report Feb.2014	Ask the countries to amend the transposition laws.
The relationship with the EAW	Commission report Feb.2014	Ask the Member States to amend the transposition law.
Transitional arrangements for after 5 December 2011	Commission report Feb.2014	Ask the member States to amend this possibility.
Material detention conditions Large differences between Member States	EU Framework Decisions related to Detention Issues (...)Strasbourg, France 20-21 June 2013	Increase knowledge of other Member States legal systems 2011 Study on material detention conditions (IRCP, University of Tilburg)
Victims What is their role in the transfer process and when should they be informed?	EU Framework Decisions related to Detention Issues (...)Strasbourg, France 20-21 June 2013	
Definition of "lawful and ordinary residence" there is no set definition and MS may interpret this in different ways. some MS have one while others have lots. Should this be streamlined? Can every MS have one? The	EU Framework Decisions related to Detention Issues (...)Strasbourg, France 20-21 June 2013	

challenge is to know who to contact		
Age of offenders There are differences between MS (e.g. an adult in one country may not be an adult in another country)	EU Framework Decisions related to Detention Issues (...) Strasbourg, France 20-21 June 2013	
Competent authorities (CAs) Most MS have established it – how do the other MS know about it? Via factsheets?	EU Framework Decisions related to Detention Issues (...) Strasbourg, France 20-21 June 2013	EJN website Initiatives like that contribute to solve this problem: COMMISSION STAFF WORKING DOCUMENT Tables "State of play" and "Declarations" <i>Accompanying the document</i> REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the implementation by the Member States of the Framework Decisions 2008/909/JHA, 2008/947/JHA and 2009/829/JHA on the mutual recognition of judicial decisions on custodial sentences or measures involving deprivation of liberty, on probation decisions and alternative sanctions and on supervision measures as an alternative to provisional detention {COM(2014) 57 final}
Pre-sentence reports Containing information on the person or social background	EU Framework Decisions related to Detention Issues (...) Strasbourg, France 20-21 June 2013	
Cost of transfer: Where does the money for this come from and who pays?	EU Framework Decisions related to Detention Issues (...) Strasbourg, France	

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-- Council Framework Decision 2008/909/JHA of 27 November 2008 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, [OJ 2008 L 327 of 2008-12-04, p. 27-46](#)

2.- Bills, preliminary documents

-- Initiative of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden with a view to adopting a Council Framework Decision on the European enforcement order and the transfer of sentenced persons between Member States of the European Union, [OJ 2005 C 150 of 2021-06-20, p. 1-16](#)

-- Council Framework Decision 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, [Council document 15875_1/06 of 2006-11-29](#)

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