



THE EUROPEAN ORGANISATION OF
PRISONS AND CORRECTIONAL SERVICES

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Expert group 2014 on Framework Decision 2008/909/JHA – Transfer of Prisoners

The EuroPris expert group on the Framework Decision 909¹ (FD 909) – Transfer of prisoners met in Brussels on 23rd and 24th September 2014 to discuss matters relating to the effective transfer of prisoners under this FD. The group were hosted by EuroPris at their office in the headquarters of the Belgium Prison Service. This is the third meeting of this group in relation to the FD 909. The workshop was attended by representatives from seven Member States that had either already transposed this Framework Decision or were going through the process to complete its introduction into their law. The meeting was also attended by the policy lead from the European Commission. The aim of the workshop was to discuss the practicalities of using this Framework Decision and transferring prisoners from one jurisdiction to another. Topics under discussion included: the state of play with regards to the implementation of the FD by the Member States present and an update from across the European Union. Experience from delegates on practical issues and concerns such as, consent and legal challenges to this, practicalities for prisoners to challenge, certificates and timings, practical transfer arrangements, sentence adaptation and delivery. The group went on to discuss the live transfers by discussing three case studies provided to the group by Spain and Italy. The following day the group looked at Discussions surrounding the associations between the FD 909 and the European Arrest Warrant. This included how, in practice, is 909 used in conjunction with the EAW. Finally preparations for FD 909 implementation and measuring effectiveness were discussed as were whether countries had done a scoping study as to numbers of FNP's in other Member States. Are countries prepared for a potential influx of prisoners, are numbers of transfers going to be monitored, if so, how and so on.

Although the group recognised that the FD should have been implemented by all Member States, this was not the case. The delay in implementing this FD prevents the transfer of many offenders as the legislative process from some member states still has to be completed and the FD transposed into law fully.

When the meeting was conducted only 19 countries of the possible 28 had transposed the FD within their jurisdictions.

¹ http://eur-lex.europa.eu/legal-content/EN/ALL/;ELX_SESSIONID=IK86JrQWQXIYvTGD6dqCQKqDQqMV3yfH2yFl8kxxIMx0B2TnSR1!-807093999?uri=CELEX:32008F0909





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STATE OF PLAY OF MEMBERS PRESENT

Belgium: FD 909 has been implemented since May 2012. They are still finding out what the practices are of other states, their most important partner is The Netherlands. For prisoners who are detained in BE, the MoJ is the central authority, they produce the certificates for out-going detainees. For incoming detainees it is the public prosecutor in Brussels which deals with this aspect of the FD. In addition they are also responsible for detainees who are being extradited under the EAW.

Germany: has not implemented yet but they have the implementation act which modifies an existing act, they are still waiting for feedback on the implementation act from the lander until 10th October. They will try to implement it before the end of the year.

Estonia: they will be implementing from 1st January 2015. The meeting where they will discuss the procedures of implementing it will be in October 2014. They do not have many European prisoners, their main problems are Russian federation prisoners and prisoners without citizenship.

Romania: FD 909 was transported into law from December 2013. 866 Romanian prisoners have been transferred from other member states under the FD: Italy, Austria, Spain, Hungary and Germany are the main countries where they find most offenders imprisoned. Ministry of Justice and public prosecutor are the responsible authority in Romania.

The Netherlands: most of the detainees are incoming (70%) than outgoing. The delegate from the Netherlands stated that it is difficult to work with some Member States where the authority is not central but local. This causes confusion as the Issuing state would need to know the geographical areas and the courts that they need to deal with. This in-turn leads to more work on the Issuing states to ascertain the Competent Authority that they need to deal with.

Ireland: they are yet to implement it, towards the end of this year (2014).

UK: since 2011 it has been implemented. The UK haven't transferred many prisoners as they have encountered difficulties with some countries. Some countries, especially Eastern European countries breach article 3 of FD 909 - overcrowding. Because the UK courts are reluctant to transfer offenders to these countries when they hear appeals.

EU Commission: 19 Member States have transposed this FD into law, these are: Austria, BE, CZ, CY, DK, FI, FR, HR, HU, IT, LU, Latvia, Malta, NL, PL, RO, SL, SK and UK.



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The group then discussed the difficulties each Member State faces when trying to ascertain who they should be dealing with when arranging the transfer of offenders under the FD. The group recognised that on the whole, they will establish good working relationships with the Competent Authorities from Member States that they work with regularly. However when they need to work with countries that they do not then this may lead to problems and delays.

The EC is working on the E-justice website and they are looking how they can set it up so that each FD has an overview of contacts, competent authorities, certificate in all languages, declarations of member states. They are looking for ideas so any suggestions are welcome. The EC have an annual workshop on the implementation – probably in March 2015 where this could be looked at further.

The EC are starting to work on a handbook explaining the issues of the practical implementation of the FD 909 and asks the group what they would like to see in there. The STEPS 2 Resettlement project which is led by NOMS and EuroPris are developing a handbook as part of their deliverables. The project will make contact with the EC policy lead on this FD to ensure that the proposed handbook is developed well and content reflects that required by Member States engaging with the project. The Commission considers the officials who handle the transfer process, should meet on a regular basis, the more the better. This will ensure that the continued development of this FD and the officials who work on it have a thorough understanding of it, thus, ensuring the FD meets with its principal aims of helping resettle offenders.

RECOMMENDATIONS

The group has made several recommendations in relations to the continued implementation of the Framework Decision 909 and the practical management of the transfer process. The group felt that these actions need to be managed through EuroPris and the projects that they are involved with when dealing with the FD 909.

The group felt that a basic information sheet can be designed for practical information at a basic level. This information will be reader friendly for prisoners and staff within establishments and will inform them of the FD and it's benefit for offenders.

Rec 1,

- To provide a basic information sheet for officials and offenders that work in Prisons.

The group agreed this should be supported by a detailed offender handbook. This handbook will explain the FD and the transfer process in more detail allowing offenders to make informed choices when



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considering the options open to them. The handbook could be housed on the EuroPris website² so Member States can access it and translate it into their own language. The handbook could also inform the offender of difficulties faced during the process.

Rec 2,

- Work with EU funded projects and Commission to develop and establish a Prisoner Handbook.

The group recognised the value in developing detailed factsheets that officials could use when considering and process and the transfer of offenders under the FD. The factsheets would be detailed enough to inform Competent Authorities of all information needed to contact and start the transfer process. The added benefit of having up-to-date information on hand is that this will assist Member States in meeting the timeframe for transferring offenders as well as ensuring correct information is passed onto the offender to keep them informed.

Rec 3,

- Detailed interactive fact-sheets

In addition to this recommendation it was suggested that detailed information is included in the fact sheets of prisons within Member States that the offender may be subject of transfer to. The information may include things such as, resettlement courses available, prisoner population, visits information, the regime. This style of information would help the offender make an informed decision whether they give consent to the transfer. EuroPris website hosts EPIS³ (European Prison Information System). This is a new and fully interactive programme allowing the user to gain valuable information on Member States prison system and prisons within it.

Rec 4,

- Fact-sheets to contain information that can provide detailed information that can be accessed by courts and ministerial officials,
- Information on receiving states prisons systems (like EPIS),
- Information of the release procedures of executing state.
- Sentence adaptation in-line with the framework decision 909
- Sentence alignment to assist the transfer decisions
- Information on through the gate services offered by executing states

² www.europris.org

³ <http://www.europris.org/reports/>





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The value of the Factsheets would be in the informing of not only the outcome of a transfer and its adaptation but also this information could inform a prisoner to help with possible consent decision. Officials would be confident in their decision when inform court officials as they would have up-to-date information about the Executing State.

The fact-sheets and the data collection on transfers are large pieces of work which would need resources provided through an operating grant and support from members. The added benefits of the two largest pieces of work will be to inform more staff on the process of the FD 909. This in-turn could lead to more offenders being informed on the process and the practical transfer process and could include the resettlement options from the executing state. The data collection could inform not only the Commission on transfers successfully taking place but also inform members of trends of transfers that may take place and the most likely states that you will be dealing with.

The group also recognised the value in data retention on existing transfers. The data the group felt would be useful included: the number of successful transfers, transfers that were opposed and stopped or those that still went ahead. The information retention would also assist in giving clear indication on the number of EU-FN prisoners within our borders. It can provide trends which can help with forecasting for Prison officials and the Commission. Can provide information on shifting trends on the movement of offenders. Can help in planning resources for MS to plan future transfers and which MS you will need to establish relationships with.

Rec 5,

- Relevant data retention and reporting
- Highlighting the number of transfers
- Transfers opposed
- Transfers not opposed but successful and not
- Date information on the number of European member state prisoners
- Detailed guidance for MS Competent Authorities
- Flowchart design for MS to follow when facing particular issues that other MS have faced and overcome

Finally the group recognised the benefit of including either in literature or on the EuroPris website a Frequently Asked Questions section. This has added benefits for the reader to guide them through a step by step process when dealing with the FD and new Member States.

Rec 6,

- FAQ's on sentence adaptation, confiscation orders and so on.



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RECOMMENDATIONS ON LIVE TRANSFER.

The group discussed the problems that they faced during their experiences when dealing with and transferring offenders under this FD. The group felt that some MS didn't keep to timeframes as stated in the FD and that there were times when rather than forwarding certificates onto the correct CA within their own state the certificate was returned to the Issuing state. This prolonged the whole process and MS then struggled to meet the timeframe allowed.

- MS to look at the possibility to have one central authority or a central authorities post box.
- MS not to return the certificates but to forward the certificates on to the CA's that is the relevant one. So MS should comply with the FD section 5.5.
- Member States to use transfer certificates that accompany offenders
- Member States to forward all relevant information on transferring offender to ensure the Executing State has all relevant information prior to the arrival of the offender

The group also felt that where a MS can communicate directly with the CA from the Executing State this will help speed up the process of the transfer.

- The use of consultation prior to issuing a certificate.

The expert meeting closed with a commitment to develop the recommendations and work with EuroPris and the EU funded projects that are working on this FD. The projects should report progress on their deliverables throughout the project life and report back to EuroPris. The group mentioned that when they next meet that they should concentrate on one particular issue on the transfer of offenders.



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