



WORKING GROUP REPORT

EuroPris Framework Decision FD 909 Expert Group

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**By Victoria Elliott - EuroPris/HMPPS
Expert Group Coordinator**



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INTRODUCTION

The EuroPris expert group on the transfer of foreign national prisoners was established in 2012 to assist members with the implementation of EC Framework Decision 2008/909/JHA and examine lessons that could be learned through shared exchange of information. Over the years, the expert group has convened in different formations and sought to share the recommendations of best practice amongst other EuroPris members and EU Member States.

Due to the importance of this measure to Member States and its impact on the rehabilitation of prisoners, the European Commission provided additional funding to EuroPris to invite all 28 EU Member States to attend the expert group meetings from 2015.

EuroPris was founded with the purpose to promote professional prison practice across Europe and the expert group meets that objective by discussing practical issues and solutions, to support Member States in using the Framework Decision and transferring prisoners to their countries of nationality or residence.

The invitation to attend the 2017 expert group meeting was extended to experts from 3 EuroPris member countries that are non-EU Member States. The intention was to provide further insight and experience to transferring sentenced prisoners under other instruments including the Council of Europe Convention on the Transfer of Sentenced Persons and bilateral agreements. There are many similarities between the various international prisoner arrangements.

The expanded group were hosted by the Belgian Prison Service for the meeting on 24 & 25 April 2017. Experts were representatives of the authority responsible for the transfer of foreign national prisoners which include national prison services, Ministry of Justice, Judges and Prosecutors. The first day of the meeting engaged all the experts in lively discussion on practicalities of transfer, with the second day focussing on specific issues and developments for EU Member States.

The meeting was jointly chaired by Graham Wilkinson (England & Wales), Katja Đogović (Finland). This report, prepared by Vikki Elliott presents a summary of the discussions.



ATTENDANCE

| | | |
|-----------------------------|--|----------------------|
| Johannes Martetschläger | Austrian Federal Ministry of Justice | Austria |
| Kris Van Opdenbosch | Federal Public Service Justice | Belgium |
| Ana Sever | | Croatia |
| Andreas Kyriakides | Ministry of Justice and Public Order | Cyprus |
| Jitka Formankova | Ministry of Justice of the Czech Republic | Czech Republic |
| Camilla Brinch Rasmussen | | Denmark |
| Helen Tõnise | Ministry of Justice | Estonia |
| Katja Dogovic | Criminal Sanctions Agency | Finland |
| Kari Airaksinen | Criminal Sanctions Agency | Finland |
| Marinos Skandamis | | Greece |
| Dr Fanni Breuer | Ministry of Justice | Hungary |
| Keith Lynn | Irish Prison Service | Ireland |
| Vincenzo Picciotti | Ministry of Justice | Italy |
| Gintarė Janikūnaitė | Ministry of Justice of the Republic of Lithuania | Lithuania |
| Angele Vella | Office of the Attorney General | Malta |
| Jan-Peter Bodegraven | Custodial Institutions Agency | Netherlands |
| Anna Keulers | Custodial Institutions Agency | Netherlands |
| Beata Parashar | Central Board of Prison Service | Poland |
| Lucian Petru Dobrogeanu | Ministry of Justice of Romania | Romania |
| Peter Kriška | General Directorate of Corps of Prison and Court Guard | Slovakia |
| Vesna Pavlič Pivk | Ministry of Justice | Slovenia |
| Máximo José Martínez Bernal | | Spain |
| Per Henrik Hedbrant | Swedish Prison and Probation Service | Sweden |
| Åsa Gustafsson | Swedish Prison and Probation Service | Sweden |
| Graham Wilkinson | Her Majesty's Prison and Probation Service | UK (England & Wales) |
| Greg Riley-Smith | | Albania |
| Marielle Kvalheim | Norwegian Correctional Service | Norway |
| Gunnarsen | | |
| Abdullah Ömeroğlu | Ministry of Justice | Turkey |
| Kirsten Hawlitschek | EuroPris | |
| Vikki Elliott | EuroPris | |
| Jesca Bener | European Commission | |
| Eniko Felföldi | European Commission | |



WORLD CAFÉ DISCUSSION GROUPS

Experts were allocated into discussion groups for 6 rotations. Each of the 7 tables was provided with a suggested topic and discussion points to encourage sharing of knowledge, experiences and best practice. The selected topics were issues that have been discussed at previous EuroPris expert group meetings on Framework Decision 909 and are also issues that have arisen under the Council of Europe Convention for the Transfer of Sentenced Prisoners. Experts spent approximately 20 minutes at each table which allowed for bilateral talks on particular cases and issues as well as more general thematic discussions.

Conversations from the discussion groups are summarised below.

TABLE A: CONSENT

- **How do you determine/obtain consent?**
- **What issues do you have with obtaining consent?**
- **What can help inform consent?**
- **Share experiences of transferring prisoners without consent**

In the discussion groups, experts shared ways they obtain consent from prisoners e.g. if consent has to be given in front of a judge, prison governor or if written consent will suffice. Examples were given by some countries of communicating directly with prisoners to seek their opinion and consent in writing. Whilst this can and has happened effectively, experts discussed instances where there had been a delay in communication or lack of reply, which could be caused by staff or prisoners not understanding the information requested, or because the prisoner has moved. It was therefore suggested that executing states should communicate with prisoners via the relevant Competent Authority rather than directly with prisoners. This ensures that the Authority is able to monitor the request and ensure a response is issued. It was agreed, however, that methods of communication are a matter for individual Member States to decide upon.

The importance of providing prisoners with information about the transfer process, the sentence and prison conditions in the executing state can help prisoners in giving their informed consent. Some countries endeavour to provide this information at the earliest possible stage of imprisonment so the legal possibilities and transfer process can be started and prisoners have the opportunity to raise questions.

Experts were reminded of the information documents available in the EuroPris Resource Manual and via the website that can assist with providing information, including:

- The **Offender Leaflet**, developed by the STEPS 2 Resettlement project provides an overview of the transfer process. Download via: <http://steps2.europris.org/en/documents/>
- The **Offender Handbook**, developed by the STEPS 2 Resettlement project provides more detailed about the transfer process, prisoner rights and a glossary of technical terms used within the Framework Decision.



- The EuroPris expert group has collated [Prisoner Information](#) sheets to enable prisoners, staff and Competent Authorities to access information about prisons in the executing state and support informed consent for transfer. The information sheets are available in the national language and English and provide an overview of topics such as induction procedures, family visiting and early release arrangements.

TABLE B: PRACTICAL TRANSFER

- **Which agency is responsible for transfer?**
- **What issues have you have experienced with physical transfer of prisoners?**
- **Share experiences of steps taken to improve the process**

Agencies responsible for transfer vary between federal police, prison service and Interpol and the arrangements and the communication channels, processes and requirements also vary between agencies. Member States are considering ways to ensure that transfers happen more effectively and efficiently.

Experts had experienced difficulties in transferring prisoners with health conditions and those convicted of terrorist-related offences as well as problems obtaining official documentation for transfer/transit. Another common issue was the availability of staff to accompany the transfer – both in countries where the prison service as the Competent Authority is responsible for transfer, or where the service was contracted to another provider.

Experts discussed the importance of Member States sharing details of the agency responsible for physical transfer during transfer discussions to assist making arrangements within time limitations stipulated.

- The [Prisoner Information Document](#), developed by the EuroPris expert group can be used accompany a prisoner during transfer. Whilst there are data protection limitations as to what can be included on the form, information that is necessary and proportionate for the safety of the prisoner and accompanying staff should be included.

TABLE C: STAFFING

- **What is the staffing structure like within your Competent Authority?**
- **What training do staff undertake prior to processing certificates?**
- **Do you have sufficient staff to deal with the volume of cases?**

There was a consensus of opinion amongst experts that they did not have adequate level of staffing to deal with their current volume of transfer cases. In addition translation staff/resources were perceived to be under strain to deal with the technical legal translation of judgements.

In most countries, staff learn the process on-the-job and with guidance from more experienced colleagues. In countries with devolved Competent Authorities, this can cause issues as judges may infrequently deal with transfer requests under Framework Decision 909 and so not be as familiar with the process and requirements as necessary.



- Experts were directed to the e-learning training on Framework Decision 909 that was developed under the STEPS 2 Resettlement project:

<http://steps2.euopris.org/en/home/e-learning-platform/>

The e-learning (available in English and Spanish) seeks to provide theoretical and practical knowledge on objectives, principles and legalities of Framework Decision 909; the transfer process; completing the certificate; and relevant other information and legislation.

TABLE D: TIME LIMITS

- **Do you record dates when you issue/receive a certificate and the time taken to reach a decision on taking over enforcement of sentence/complete transfer?**
- **What causes delays?**
- **What could help speed up the process?**

Whilst some Member States formally record the dates at which they issue/receive certificates and the time taken to reach a decision on enforcement of sentence and subsequent time for the physical transfer of prisoners, many do not.

There was a consensus of opinion that the time limits as set out under the Framework Decision are not being met. Reasons for delays include lack of available resources (caseworkers), alternative priorities of the courts, and information missing from the certificate in the first instance.

It was also noted that the Framework Decision does not provide time limits for the issuing state to start transfer proceedings. This is due to the fact that there is no right to be transferred and the facts of each case must be considered to ensure it is in the best interests of the individual and issuing state.

TABLE E: TRANSLATION

- **What problems have you experienced with sending/receiving certificates in other languages?**
- **Discuss ways you have overcome translation issues**
- **Do you frequently send/receive supplementary requests for translated information? What information is most commonly not included that you need?**

The volume of translation requests and cost of translated services were the main issues raised by experts. Translation services are often outsourced and can take a long time to complete especially when translating legal judgements. The most frequently asked questions concern early release arrangements and requests for additional information are dealt with through direct communication with the other Member State.

To avoid future requests for information, some Member States have taken to translating the full judgement in the first instance and sending to the executing state with the certificate. This goes beyond the requirements of the Framework Decision and experts discussed that if the certificate is fully completed and stamped by the appropriate authority in the first instance, this would negate the need for additional information or full translation of the judgement for the majority of cases.



To assist with interpreting the sentence, issuing states should send information (in the accepted languages) on the sentence structure, to assist the executing state process the request.

- One Member State explained that courts in their country are more frequently providing translations of the judgement at the point of sentence, to ensure the prisoner is aware of the full details of their case. In such instances, the Competent Authority seeks to access the translated judgement to send as an accompaniment to the certificate which saves additional translation time and cost.

TABLE F: VICTIM ISSUES

- **How do you inform/seek the opinion of victims in your country?**
- **What difficulties have you faced?**
- **Share experiences of good practice**

Some countries do not have a national organisation or structure supporting victims and so felt it was unclear how legal/judicial systems can support or inform the victims. Others take into account the views of victims, where this is appropriate, and kept them informed of the transfer process. The Group noted that victims do not have an official role in the transfer process and do not have a veto over transfer.

TABLE G: INTERPRETING THE SENTENCE

- **How is the length of sentence calculated in your country? E.g. is pre-trial detention accounted for?**
- **What are your early release arrangements?**
- **What difficulties have you faced with interpreting sentences?**

The ways in which sentences are calculated and pre-trial detention is accounted for varies between Member States. In general, issuing states share information on the length (days/months) of the sentence. Early release arrangements vary and this can be a mandatory proportion of the sentence or be decided by the court dependent on the length of the sentence; type of offence; and/or other factors taken into consideration by the court.

Experts agreed that it would be more helpful to include the sentence start date (and anticipated release date where applicable) on the certificate as well as the length of sentence, so that it is clear how long has been served.

Experts cited that issuing states often provide information on early release arrangements as annex to the certificate, but it can be difficult to interpret and apply this information to particular cases. It was suggested that the issuing state could provide the standard procedure is information with a supplementary explanation of how this applies to the particular case.

Additional difficulties have been experienced when the executing state is calculating early release arrangements for person with multiple convictions. It needs to be clearly stated how long the sentence for each conviction is and whether sentences are running consecutively or concurrently and further explanation given where there are multiple or complex cases. This



is especially important where an executing state might not recognise one or more of the offences.

Experts also discussed the difficulties experienced with 'double criminality' where the offence is not punishable in both countries. For example, one country has a specific offence of 're-entry' which is punishable by law and a custodial sentence can be imposed, but they have experienced difficulties in transferring the prisoner due to the fact other countries do not recognise the offence, or because the sentence imposed is for a short term.

In such cases, executing states might transfer under 'partial recognition' although there are differing practices regarding the part of the sentence that has not been recognised. For example, one expert shared experiences of cases where assurances for transfer have been given under the European Arrest Warrant. In this instance, the issuing state agreed to the transfer but for the part of the sentence that is not recognised in the executing state, the prisoner remained 'unlawfully at large' which would mean they could be ordered to serve the remainder of the sentence if he returned to the issuing state. Other Member States shared examples of instances where a prisoner has been sentenced for additional offences whilst in prison e.g. possession of a mobile phone which is not recognised in the executing state. In such instances, the issuing state has deducted that sentence from time already served and then sought to transfer the rest of the sentence.

SUICIDE AND SELF-HARM

Further to the discussion at the 2016 meeting, experts were asked to consider whether there had been increased rates of suicide or self-harm amongst foreign national prisoners who had been identified for compulsory transfer. Experts discussed cases where a prisoner identified for compulsory transfer had threatened or conducted acts of self-harm, the Competent Authority had sought to have increased dialogue with the prison to ensure staff supporting the prisoner had an understanding of the process to enable them to support the prisoner.

TRANSFER OF MENTALLY DISABLED PERSONS

Experts agreed that they had not received requests or executed transfer of many mentally disabled persons under Framework Decision 909. It was felt that whilst the Framework Decision provides the legal capability for transfer, there are many nuances regarding the agencies involved, definitions of medical conditions, consent and sentencing requirements that add complexity to the process. This topic will be discussed in greater depth at the 2018 expert group meeting and EuroPris will seek to obtain information from each Member State about their national process in advance of those discussions.

STATISTICS

EuroPris has been collating data on the number of certificates each Member State has sent and received during a calendar year as well as the number of transfers completed and a breakdown of the foreign national prison population by EU nationality since 2014. The statistics gathered are not (as yet) published or shared beyond EuroPris.



The number of countries returning data has been increasing year on year, however there are a number of Member States who do not collate central records of the number of certificates sent/received or transfers completed due to a devolved Competent Authorities.

Due to the way numbers are gathered e.g. requests sent and transfers executed within a calendar year, the statistics do not follow individual cases, but instead give a general indication of the volume of requests and level of transfer activity taking place. The breakdown of foreign national population by EU Member State seeks to provide context to the transfer activity, to understand the rate at which transfers are happening in proportion to the foreign national population.

Experts agreed that the foreign national prisoner population was however an arbitrary figure as the numbers currently include remand and sentenced prisoners and so not all of the foreign national prisoners would in fact be eligible for transfer. From 2017 onwards, EuroPris will seek data on foreign national remand and sentenced prisoners.

The EuroPris Foreign National Prisoner Expert Group has also expressed an interest in gathering a breakdown of foreign national population for all nationalities, including those from countries outside the EU. It was agreed that this data is generally readily available from prison administrations and so would not be burdensome to include in the request from 2017 onwards. EuroPris have held discussions with the researchers who conduct the Council of Europe Annual Penal Statistics ([Statistiques Pénales Annuelles du Conseil de l'Europe](#) - SPACE) requests. They currently request a total number of foreign national prisoners and total number of EU national prisoners but do not plan to include a more detailed breakdown within their next survey and so EuroPris will undertake this exercise for the foreseeable future.

COUNTRY OVERVIEW: LITHUANIA

Experts received a presentation from Gintarė Janikūnaitė - Legal Expert, Legal Cooperation Division, International Law Department, Ministry of Justice of the Republic of Lithuania. This contained an overview of the process when Lithuania is an executing state, issues experienced and statistics on transfer. Experts had the opportunity to raise questions and engage in discussion during and after the presentation.

Discussion of issues and possible solutions, led by Lithuania

- Ministry of Justice is the Competent Authority receiving certificates but decisions are taken by Courts meaning they are sometimes sent certificates directly. Suggestion this could be clarified on EJM under receiving Authority/Deciding Authority.
- Court requests the issuing authority to serve the court's decision to the prisoner
 - As above (CONSENT), some Member States have experienced difficulties with this information being sent directly to the prisoner as it may bypass the case workers within the Competent Authority.
- Accuracy of the data
 - Copy of ID documentation would be useful to include with the certificate but issues of identity should be resolved so that the issuing and executing states are confident that they know who the prisoner is before the transfer takes place as very difficult to rectify.



- Where a prisoner uses an alias, it may be this name that is included within the judgement and supporting information. Therefore care should be taken to ensure the full name is included as it is difficult to change at a later stage.
- Information on the length of the sentence should be really clear – it can be difficult to calculate the rest of the sentence if pre-trial detention is not included or there is a lack of further information on dates of sentence etc.
- Obligation should be on Member States to inform others where certificate is not being accurately completed as the Competent Authority may otherwise duplicate errors and this might indicate a need for staff training or support to ensure relevant authorities receive all the required information.

PROPOSED MODIFICATIONS TO THE COUNCIL OF EUROPE CONVENTION

Discussion on the modifications which are currently proposed in the context of the work on the Draft Protocol amending the Additional Protocol to the Council of Europe Convention on the Transfer of Sentenced Persons.

Questions for discussion:

- For countries that have implemented Framework Decision 909, how does this compare to the Additional Protocol?
- How these changes impact upon Framework Decision 909, or do they go further than the scope of the Framework Decision?
- How can voluntary transfer be encouraged?

Overview of proposed modifications:

- Extension of the scope of Article 2 to situations where the person, subject to a final sentence, did not flee but was free to move to the country of his or her nationality and made use of this freedom.
 - Definition of ‘flee’ is useful in relation to the Additional Protocol as otherwise it can be too narrow.
- Deletion of ‘consequential link’ and impact between the expulsion or deportation order and the sentence imposed in Article 3, paragraph 1 of the Additional Protocol.
 - Consensus that the intention of the modifications is to delete the wording ‘consequential link’, rather than removing the actual link.
- Extension of the scope of Article 3 para 3a to cases where the person concerned refuses to give an opinion on the transfer.
 - A declaration should be provided to show that the prisoner refused to give an opinion.
- Introduction of a time-limit (90 days) as regards the decision making related to the application of the rule of speciality in the Additional Protocol. (Article 3, para 4a).
 - Agreement that cases of speciality are rare and therefore it was surprising that a time limit would be imposed in such instances where other decisions in the Additional Protocol are not time-limited.



The general consensus was that the amendments were a step forward and were not in conflict with the provision of the Framework Decision.

DATA SHARING AND E-CODEX

Ernst Steigenga presented on the e-CODEX, a European digital infrastructure for fast, reliable and secure communication between competent legal authorities. The concept is to connect 1 national IT solution to another national solution through building a connection mechanism to exchange information.

Further explanation can be viewed at: https://youtu.be/6j1w4swtu_E

The exchange platform does not currently provide translation of documents transferred, but automated translation software is being developed.

The e-CODEX team are looking for project partners to trial use of the platform for digital information exchange under Framework Decision 909. The Dutch Custodial Agency have already committed to be part of the pilot, but additional partners are required. Information on funding streams was provided in the PowerPoint presentation to accompany the session.

EUROPRIIS RESOURCE MANUAL FOR TRANSFER OF SENTENCED PRISONERS

EuroPris has developed a [Resource Manual](#) aimed to assist Competent Authorities to undertake transfer of sentenced foreign national prisoners. The manual brings together practical recommendations, best practice and resources developed to assist with the transfer of sentenced prisoners. Information contained in this resource manual is based on practical recommendations and best practice shared by Member States. Guidelines in this document should be read in conjunction with the European Commission Legal Handbook on Framework Decision 909.

EUROPEAN COMMISSION DRAFT LEGAL HANDBOOK

The European Commission has drafted a legal handbook to accompany Framework Decision 909. The Framework Decision is a very complex instrument and the purpose of the handbook is to provide further assistance to judges and prosecutors dealing with transfer cases, primarily in countries with devolved Competent Authorities where they are not working with the Framework Decision as frequently.

The Draft Handbook has been developed by the European Commission Criminal and Procedural Law Department. Whilst the European Commission is not mandated to interpret the law or take a position on legal issues, it seeks to ensure the instruments are understood by Member States.

In addition to the Handbook on Framework Decision 909, the European Commission has also developed a Handbook on the European Arrest Warrant, which is due to be published in June 2017. The Draft Handbook on Framework Decision 909 that was discussed at this meeting had not yet been aligned to the European Arrest Warrant and so there might be further structural



amendments. The Commission are also working on a Handbook to accompany Framework Decision 2008/947/JHA on Probation and Alternative Sanctions.

The Draft Handbook was circulated for comment in advance of the meeting and for discussion. Experts were divided into 6 groups, of which 3 discussed the section on issuing state and the other 3 discussed the executing state sections. Feedback was provided to the European Commission. In summary, the Handbook was well received and considered useful for practitioners. The EuroPris expert group agreed to provide further feedback or case examples if required.

It is expected that the Handbook will be published in early 2018. It will be translated into all official EU languages.

DECISIONS OF EUROPEAN UNION COURT OF JUSTICE

The following cases that have relevance to Framework Decision 909 were summarised by Jesca Beneder:

- Judgment in **Case C-554/14**
Atanas Ognyanov v Sofiyska gradska prokuratura
- Judgment in **Case C-289/15**
Jozsef Grundza v Krajská prokurátúra Prešov
- Judgment in **Case C-582/15**
Gerrit van Vemde v Openbaar Ministerie

The full texts of the judgments can be found in different languages on the website of the Court of Justice of the European Union: www.curia.europa.eu



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**EuroPris
P.O. Box 13635
2501 The Hague
Netherlands**

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