



THE EUROPEAN ORGANISATION OF PRISON AND CORRECTIONAL SERVICES

EXPERT GROUP ON FRAMEWORK DECISION 909

Working Group Report



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About EuroPris

The European Organisation of Prison and Correctional Services (EuroPris) is a non-political, non-governmental organisation that was initiated in late 2010, founded in 2011 and officially registered in The Netherlands in December 2011. The initiative to establish the organisation was taken during the Swedish Presidency of the EU in 2009 and was taken forward by the European countries of the International Roundtable for Correctional Excellence.

EuroPris speaks for the views of prison practitioners in Europe. Its membership is limited to the national prison authorities of the European Union (including devolved authorities). Affiliation with the organisation is open to all other European jurisdictions.

EuroPris brings together practitioners in the prisons' arena with the specific intention of promoting ethical and rights-based imprisonment, exchanging information and providing expert assistance to support this agenda.

The organisation exists to improve co-operation among European Prison and Correctional Services, with the aim of improving the lives of prisoners and their families, enhancing public safety and security; reducing re-offending; and advancing professionalism in the corrections' field.



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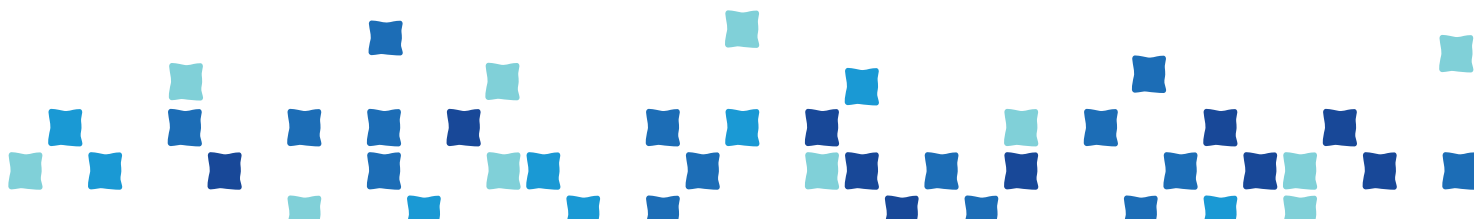
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The opinions expressed by the expert group do not necessarily represent the views of the European Commission.



Foreword

EuroPris was founded in late 2011 as a non political Association to represent the views of prison practitioners in Europe. The organisation aims to act as an expert group on prison matters and to advance the operational capabilities and professionalism of prison and correctional practitioners across Europe. EuroPris wants to support policy makers with advice on prison-related matters. The free movement of citizens across the EU has done much to create a sense of common identity and enhance opportunities for European citizens. An inevitable part of such freedom of movement has not only been an economic migration but also a migration of criminal activity with the consequence that significant numbers of criminals from less affluent parts of Europe have been imprisoned in jurisdictions outside their own. In December 2011, the Framework Decision came into force that made it easier for these persons to be repatriated to serve the remainder of their sentence in their home jurisdiction. EuroPris intends to formally canvas views from their members to explore the impact of such repatriation (on both sending and receiving jurisdictions) and to examine on the basis of an early experience if there are early lessons to be learned that could enhance future transfer. With the increasing flow of exchange prisoners we believe that there is an increasing demand for information exchange, to learn from each other, to develop a more grounded understanding of each other's systems and to advance mutual trust in the prisons' arena.

Therefore, EuroPris decided to convene a group of experts from among its members on the exchange of prisoners and on the Framework Decisions.

The group met on two occasions, 7 August and 26 September 2012, in Brussels and consisted of experts from the national Prison Administrations or Ministries of Justice involved with the implementation and/or execution of the Framework Decisions. These experts were:

Christine Goedl, Austria
Claudiu-Catalin Bejan, Romania
Graham Wilkinson, England and Wales
Katia Panova, Bulgaria
Nereda Thouet, Belgium
Saskia de Reuver, Netherlands
Steffen Dysted-Mattsson, Denmark
Stephanie Bosly, Belgium

Based on the discussions and outcomes of these two meetings Laurens van Puyenbroeck from the University of Gent consolidated the present report.

In 2013 EuroPris intends to continue to work with experts on the Framework Decisions and we hope that this report and our further work on the topic will support the national administrations in their implementation of the Framework Decisions and the inter-jurisdictional transfer of prisoners.

For now it is my pleasure to present you our first expert working group report.

Yours sincerely,



Hans Meurisse
President of EuroPris

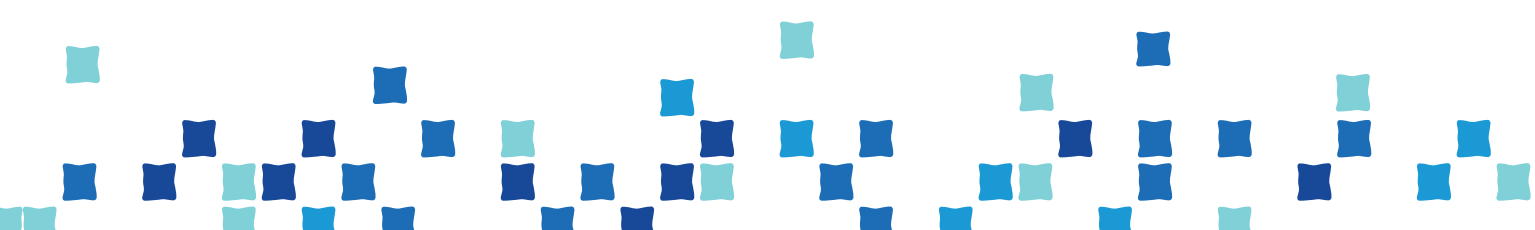
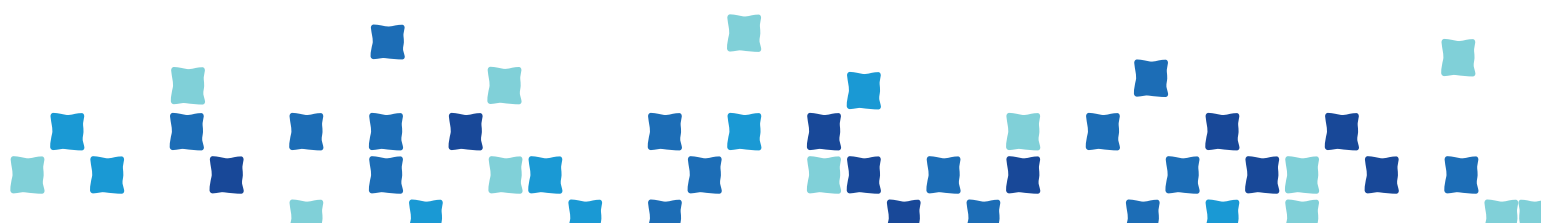


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GENERAL CONTEXT AND BACKGROUND

Background

This report is the result of the work carried out by the EuroPris Expert Group on Framework Decisions in 2012. EuroPris is a non-political NGO founded in late 2011, which represents the views of prison practitioners in Europe. It is a network comprising members of EU countries and the wider European region. It is made up of an international board of a maximum of ten people, with three correctional experts. The organisation aims to act as an expert group on prison matters in Europe and advance the operational capabilities and professionalism of prison and correctional practitioners across Europe. EuroPris wants to support policy makers with advice on prison-related matters.

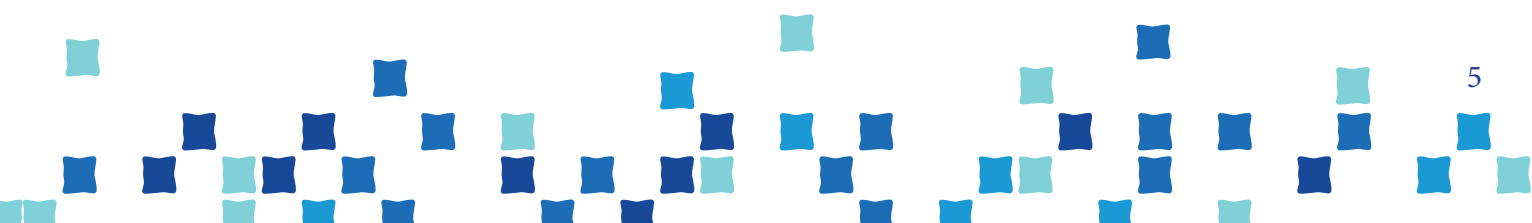
Within the EuroPris remit, an Expert Group on Framework Decisions was established. These experts were convened from the EuroPris membership with the aim of exchanging information, views and legal and operational issues in connection with Framework Decision 909 of 27 November 2008 on cross-border execution of judgments involving deprivation of liberty in the EU (hereinafter Framework Decision), for which the deadline for implementation expired on 5 December 2011. As a consequence of this Framework Decision the transfer of custodial sentences will no longer take place on the basis of the European Convention on the transfer of sentenced persons of 21 March 1983 and the Additional Protocol thereto of 18 December 1997. The Framework Decision intends to simplify and enhance the transfer of those sentences on the basis of trust and mutual recognition between Member States. EuroPris intends to formally canvas views from their members to explore the impact of such repatriation (on both sending and receiving jurisdictions) and to examine on the basis of an early experience if there are early lessons to be learned and legal and operational issues that could enhance future transfer.

The Expert Group on Framework Decisions comprises the following experts from European National Prison Services and/or Ministries of Justice: Graham Wilkinson (UK), Claudiu-Catalin Bejan (RO), Katia Panova (BG), Nereda Thouet (BE), Stephanie Bosly (BE), Steffen Dysted-Mattsson (DK), Christine Goedl (AT) and Saskia de Reuver (NL).

In order to collect the information required, the Expert Group organised two meetings to discuss and present the most pressing issues across the participating countries. The first meeting took place on 7 August 2012, the second on 26 September 2012.

The goal of this report is to identify common issues related to the implementation and application in practice of the Framework Decision.

The report starts with a brief overview of the implementation status in the participating countries. The report continues by describing the general findings on each of the topics that were discussed during the two expert meetings. Finally, a number of conclusions and recommendations are formulated in the final section of the document.



Context

The adoption of mutual recognition as the cornerstone of judicial cooperation in criminal matters within the European Union has resulted in an extension of the EU acquis via a range of legal instruments designed to give effect to the area of freedom, security and justice as envisaged by the Treaty of Amsterdam. One of the instruments is the 2008 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 EU, which was due to be fully implemented by the end of 2011.

The primary objective of the Framework Decision is to enhance detained persons' social rehabilitation prospects. However, some concerns have been raised as to whether the operation of this instrument is compatible with its objective. Prison conditions give rise to significant problems in many EU Member States, with prison overcrowding as one of the most serious aspects. Inhuman or degrading prison conditions have the potential to seriously undermine the new EU rules on prisoner transfer, as it could potentially lead to a violation of the provisions of both the European Convention on Human Rights (ECHR) and the EU Charter on Fundamental Rights.

Besides prison conditions, the substantial variety of Member States' legal systems with regard to sentence execution modalities and variations in Member States' provisions of early/conditional release is another factor to be taken into account. This should be linked to the fundamental shift that the Framework Decision implies from a voluntary to an often obligatory transfer system, where the consent of the detained person is no longer necessary.

Two important facts should be noted with regard to the implementation of the Framework Decision. Firstly, only a number Member States have implemented the Framework Decision. Some Member States have legislation in the pipeline, while other Member States have laws pending before Parliament. Secondly, for the time being practical implementation is limited. As a result, the discussions during the two expert meetings on the practical implementation were mainly theoretical, focusing on potential obstacles and concerns regarding the future application.

The slow implementation is in clear contrast however with the prioritisation of the theme of prisoner transfer at the political level in some Member States.

BRIEF OVERVIEW OF IMPLEMENTATION IN PARTICIPATING COUNTRIES

Denmark

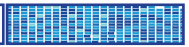
The Framework Decision was implemented within the given timescales. Administrative guidelines for practitioners on how to actually implement the Framework Decision have yet to be issued. There have been a limited number of outgoing requests but incoming requests have yet to be received.

United Kingdom

The Framework Decision was implemented within the given timescales. The implementation process was reasonably straightforward, with only two minor adjustments to the current legislation being necessary. The issue has received significant political and media attention. There have been incoming requests from Denmark.

Austria

The Framework Decision was implemented within the given timescales. There has not yet been any incoming requests, but many outgoing requests have been made, mainly with regards to Slovakia and Italy. Austria has transferred prisoners under the Framework Decision to Slovakia.



Romania

The implementation process is not finished yet. The legislation and applicable regulations are being modified. Many prisoners abroad do not want to go back to Romania due to poor facilities and detention conditions (Romania received CPT (European Committee for the Prevention of Torture) recommendations on their prison facilities). There are about 11,000 Romanian prisoners abroad, mainly in Spain and Italy.

Belgium

The Framework Decision was implemented on 25 May 2012. There have been extensive consultations with the Ministry of Justice regarding the practical implementation. It is difficult to assess the number of prisoners eligible for transfer. There have been some incoming and outgoing requests since the beginning of September.

Bulgaria

The implementation process is in its final stage. One of the main problems facing the Bulgarian penitentiary system is the limited capacity of the prisons and the lack of financial resources to ensure proper conditions for continuing the execution of the penalty within the Bulgarian system, due to the considerable number of Bulgarian nationals sentenced in other EU Member States.

Netherlands

The Framework Decision has been implemented as of 1 November 2012. The implementation of the new law was prepared extensively. An estimated 50-60 prisoners would be eligible for outgoing requests. Many Dutch prisoners are expected to be repatriated (there are approximately 2,500 prisoners abroad, mainly in Germany, UK, France, Italy and Belgium).

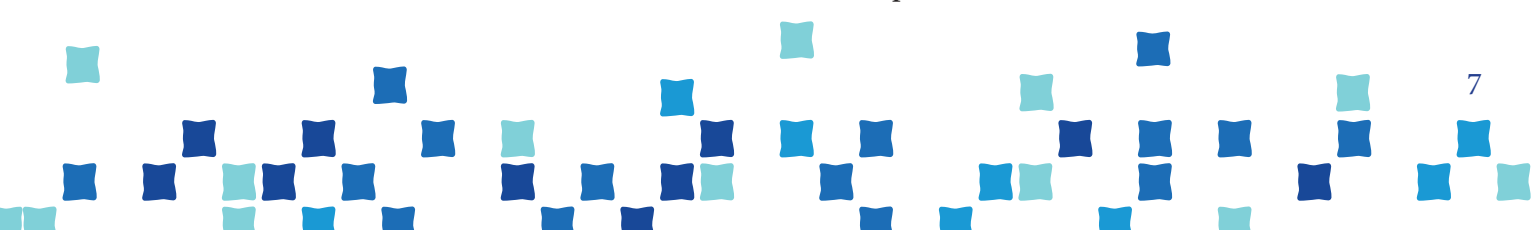
SELECTED TOPICS

Assessment of social reintegration aim of the transfer

The experts from the participating countries acknowledge that the social rehabilitation goal is the underlying objective of the Framework Decision and should be applied accordingly in practice. Nevertheless, the experts agree that there are various practical problems involved in making this assessment.

There is a difference in the amount of effort made by some Member States in assessing whether a transfer (and rehabilitation in another country) would be appropriate. The Netherlands for instance make use of probation officers. These volunteers visit prisoners abroad, provide support and begin the process by assessing the prisoners. Their information is then used to assess whether rehabilitation in the Netherlands or another country is appropriate. The experts also raised the question whether and how the accuracy of the sentenced person's representations should be checked. The experts agree that a decision is especially hard to make if there is no immediate link with the executing Member State apart from the nationality. This raises the question to what extent a sentenced person can lose the right to return to his country of nationality.

The experts agree that the social rehabilitation assessment is particularly important in voluntary transfer cases. In compulsory cases (e.g. following a deportation order) the question regarding social rehabilitation is de facto no longer deemed relevant by some authorities, since the issuing Member State makes the assumption that a transfer is in the persons' best interest. Where transfer is voluntary, the experts conclude that there are no common criteria. This is not regarded as an obstacle, since the decision is made on a case-by-case basis. Nevertheless, the experts feel that a basic level of guidance should be reached and therefore recommended that statistical information be acquired as much as possible. Moreover, it is deemed very useful that Member States would continue to share their experiences.



Some experts see a risk that the Framework Decision will be used as an instrument by which foreign prisoners with EU nationality can be routinely sent back to their country of origin. Although such an interpretation would not automatically imply that rehabilitation would fail, it could lead to a conflict of interest (at the least a differing interpretation) with the Member States who will be required to accept large numbers of prisoners. This could potentially result in a request for clarification of the Framework Decision's requirements being sought before a court or tribunal in a Member State and, ultimately, before the Court of Justice under the Article 267 (b) Treaty on the Functioning of the European Union.

Nevertheless, the experts conclude that it will almost always be in the best interests of a prisoner's social rehabilitation to serve his sentence in the country in which he normally lives and to which he will return on release or the country to which he will otherwise be deported. It will be open to the prisoner through his representations to make the contrary case.

Mentally disordered offenders and transfer of (psychiatric) measures

In light of the condition that a prisoner's transfer should enhance the possibility of his/her social rehabilitation, Article 9 of the Framework Decision inserts two provisions applicable to situations where minors and persons with mental disorders and/or addictions are involved. In essence, the competent authority of the executing state may refuse to recognise the judgment and enforce the sentence if:

- i) the sentence has been imposed on a person who, under the law of the executing state, owing to his/her age, could not have been criminally liable for the acts in respect of which the judgment was issued; or if
- ii) the sentence imposed includes a measure of psychiatric or health care or another measure involving deprivation of liberty, which, notwithstanding the possibility to adapt the sentence, cannot be executed by the executing state in accordance with its legal or health system.

The experts of the participating countries held a thorough discussion on the way in which mentally disordered offenders are treated in their respective criminal justice system and shared their views on how these types of offenders and the measures involved are expected to be dealt with in regard of the Framework Decision.

Some experts doubt that a transfer of measures would in the future be easily undertaken on the basis of the Framework Decision. Among the main reasons named are the fact that the criminal justice system of some Member States does not provide for measures to be ordered, in which case adaptation to a custodial sentence is not possible on the basis of the Framework Decision, or that some Member States cannot provide adequate healthcare to people with mental or addiction problems (the place where mentally disordered offenders are treated varies significantly between Member States). The incompatibility of the various systems in this respect is commonly pointed out by the experts. As a result, it is expected that the grounds for refusal will often be used for this type of transfer. A logical way to deal with this obstacle would be to enhance minimum standards at EU level in this field.

The experts conclude that more attention should be paid to the application of the Framework Decision to this small but problematic group of offenders. More efforts should be made in gathering information on the national laws in this regard. It is recommended that Member States would share their best practices in this field and that an additional study would be carried out with a goal to further tackle this issue. It is also suggested that this issue would be highlighted by EuroPris as a focal point in 2013.



Conditional release (including information on national law of the executing Member State on the execution of the sentence and the need for early consultation)

The experts expressed a great need for clarity of communication and an explanation of the applicable conditional release provisions by the executing Member State when considering to forward a judgment. Solely indicating the applicable legal provisions is not deemed to be sufficient robust. The experts agree that a shared database would be helpful in this respect.

Moreover, the information on and explanation of the applicable conditional release provisions should also be given to the sentenced persons as they need to be aware of the exact consequences of the transfer before having to give their opinion. Therefore, information describing the various systems should be collected and made accessible in a database for practitioners in order to have the possibility to fully inform prisoners about the nature and extent of these consequences.

Informing sentenced persons

In all cases where the sentenced person is still in the issuing state, he/she must be provided with the opportunity to state his/her opinion which will be taken into account when deciding whether or not a sentence transfer will proceed (Article 6.3, Council Framework Decision 2008/909/JHA). Only where the issuing state considers it necessary in view of the sentenced persons' age or his/her physical or mental condition will this opportunity be given to his/her legal representative. Where the person has availed him/herself of this opportunity, the opinion of the sentenced person shall be forwarded to the executing state (Article 6.3).

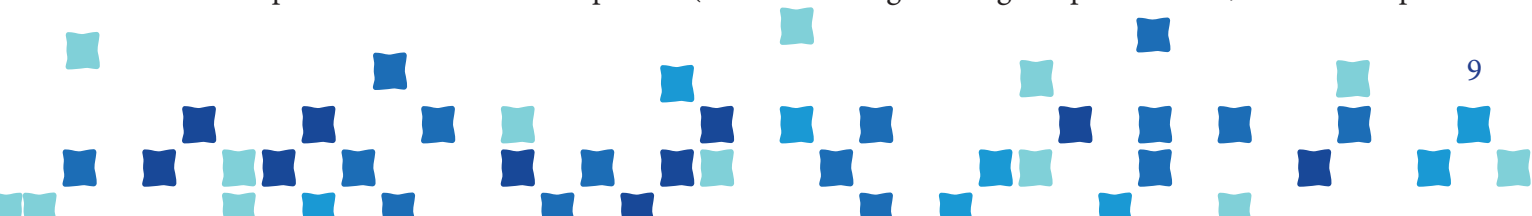
The competent authority in the executing state shall decide as quickly as possible whether or not to recognise the judgment and enforce the sentence and shall inform the issuing state thereof, including any decision to adapt the sentence (Article 12.1). According to Article 12.3, the final decision on the recognition of the judgment and the enforcement of the sentence should be taken within a period of 90 days of receipt of the judgment and the certificate.

Article 12 should be read together with Articles 17.1 and 17.3. Hence, Article 12 should be interpreted so that the competent authority in the executing state should only confirm that they recognise and will enforce the judgment without giving any details on how they will specifically enforce the judgment. According to Article 17.3, the competent authority of the executing state shall, (only) upon request, inform the competent authority of the issuing state of the applicable provisions on possible early or conditional release. The issuing state may then agree to the application of such provisions or it may withdraw the certificate.

Whether or not the executing state's competent authority should give details on how they will specifically adapt the sentence remains unclear from the Framework Decision's wording.

The experts, when having discussed the abovementioned procedure and specifically the way in which the sentenced person is informed, raised questions on the effectiveness of the applicable provisions. The fact that a prisoner is unable to give an informed opinion (since he/she does not know the consequences of the transfer in the executing state) is commonly deemed highly problematic. The fact that essential information (such as on the enforcement mechanism in the executing state) is not readily available (and written in a way the detainee understands) is clearly identified as an obstacle for delivering an informed opinion by the sentenced person. According to the experts, this could lead to a rise of legal challenges.

The experts concluded that the sentenced person's opinion is important in order to assess whether the transfer benefits his/her rehabilitation. His/her social, professional and family situation are also important elements in this regard. Moreover, prisoners often express a need for more information (e.g. on their release date). In this respect, the Framework Decision can give rise to problems. The transfer procedure implies that the opinion of the sentenced person (who has no right to legal representation, save in exceptional



circumstances) precedes decisions by the executing state's competent authority on the specific adaptation and enforcement of his/her sentence. Moreover, it is left open when precisely the executing state should/will declare on how precisely to adapt and enforce the sentence. This implies that it is up to the prisoner to inform him/herself of the relevant provisions in the law of the executing state with regard to sentence adaptation possibilities and enforcement modalities. The prisoner should also inform him/herself of the material detention conditions that apply in the executing state's prisons in order to provide competent authorities with his/her informed opinion.

In order to overcome these obstacles, the experts agree that the creation of a centralised database containing information on the relevant provisions of the Member States' legal system would be useful. Moreover, it is suggested that each Member State draws up a fact sheet with relevant information on the consequences of a transfer, which could then be handed out to prisoners before giving their opinion.

Procedure where the sentenced person does not approve

The shift to a compulsory system of prisoner transfers as established by the Framework Decision is a highly significant departure from the voluntaristic principles which underpin the 1983 CoE Convention. Although it should be noted that Article 3 of the 1997 Additional Protocol to this Convention (which was applicable among the great majority of Member States) had already introduced the possibility of transferring prisoners without their consent if there was a deportation order).

The group noted that the possibility of a judicial review is not provided in all participating countries. Although some experts hold that a judicial review does not offer a guarantee against a transfer if the conditions required under the Framework Decision are met, it is commonly agreed that the right to legal assistance during the prisoner transfer or a judicial hearing if he/she objects to the transfer of their sentence is of great importance in safeguarding prisoners' rights.

Determination of 'living' place of sentenced person

Determining where a person 'lives' is an important aspect of the practical application of the Framework Decision and is directly linked to its compulsory nature. According to Article 6.2 of the Framework Decision, the sentence transfer process can proceed without the consent of a sentenced person when the judgment is forwarded for execution to the Member State of the nationality in which the convicted person lives.

The experts discussed the problem of defining the place of living of a convicted person. The experts agree that, apart from the reference in recital 9 to the 'actual residence'¹ (also see the Kozłowski case of the European Court of Justice) and elements such as family, social or professional ties, the Framework Decision does not offer a clear guidance on how to interpret the living place of a person.

The group did not come to a consensus on which subcriteria should be used (for example whether or not to apply a minimum period of residence).

The experts concluded that at present, the determination of the living place is done in a different way and completely depends on the interpretation of the Member State concerned. The experts recommend that this issue is further researched and that some form of guidelines are issued, in order to prevent the application from being totally arbitrary.

In this respect reference is made to recital 16 of the Framework Decision which states that it should be

¹ Note that the notion of actual residence in the FD differs from that of 'ordinary residence', as applied in the European Convention of 30 November 1964 on the supervision of conditionally sentenced or conditionally released offenders, as well as the European Convention of 28 May 1970 on the international validity of criminal judgments.



applied in accordance with applicable Community legislation including in particular a number of Directives regarding residence status within the territory of Member States. Two of these Directives are of particular relevance and could offer a basis for installing common guidelines on how to determine the place of living.

First, Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, contains two criteria for granting long-term residence status to third-country nationals (Articles 4 and 5): having a legal and continuous residence within its territory for five years immediately prior to the submission of the relevant application, and providing evidence that they have for themselves and for dependent family members: a) stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned; and, b) sickness insurance in respect of all risks normally covered for his/her own nationals in the Member State concerned.

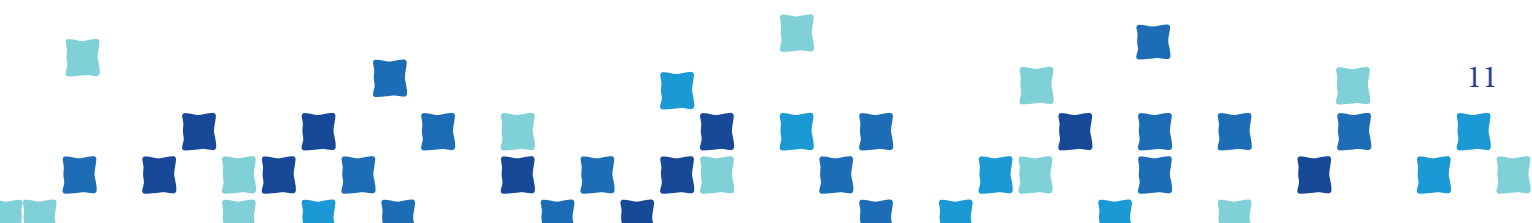
Second, Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States provides in Article 7 that all Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they: a) are workers or self-employed persons in the host Member State; or, b) have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and to have comprehensive sickness insurance cover in the host Member State; or, c) are enrolled at a private or public establishment for the principal purpose of following a course of study, including vocational training and have comprehensive sickness insurance cover in the host Member State and assure the relevant national authority that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence.

Transport of prisoners and travel documents

The experts discussed the general policies of the (issuing) Member States in transferring sentenced persons. One of the proposals in this respect was to set up a EUROPOL division with representatives from each state to take part in organizing the transfer of prisoners. The participating countries did not reach a consensus on this point. The experts agree that the current procedure functions properly, although it involves a substantial amount of communication (e-mail, telephone, writing) with different parties. It is concluded that the further course of events should be awaited until undertaking further initiative in this field.

Some experts mentioned the high transportation costs as a potential obstacle and that some Member States could be reluctant to cooperate if the costs are high. The experts point out the significance of the fact that, as a result of the Framework Decision, the system of burden of the costs has been modified compared to the CoE Convention and Protocol. It is now the issuing state that has to bear the costs of the transfer.

Although not mentioned in the text of the Framework Decision, the issue of travel documents is an important element of a smooth practical application of the Framework Decision. Valid travel documents are regarded by all participating countries as a crucial and necessary precondition for a transfer (as opposed to the current practice where, for example, a lost passport does not pose a problem in all cases). There is no consensus however among the experts as to which state should be responsible for organizing valid travel documents. Austria continues to use the current practice and transfers are effected on a regular basis without valid travel documents without any problem. In the meanwhile prisoners have already been transferred by Austria under the FD and so far no problems have been reported. It could however be useful to know in relation to which States problems in this regard could arise in the future. A swift exchange of information on this issue could be useful.



Pending judgments

With regard to the issue of pending judgments, the discussion among the experts revealed that there are different practices across the various Member States. Only some countries, such as the Netherlands and Belgium take over pending judgments, making use of the practice established on the basis of the European Convention of 30 November 1964 on the supervision of conditionally sentenced or conditionally released offenders and the European Convention of 28 May 1970 on the international validity of criminal judgments. The other participating countries do not expect to receive a great number of pending judgments. The participating countries make it clear that they will only take over a pending judgment when the person concerned is actually found in their own territory.

Translation of judgments

According to Article 23 of the Framework Decision, the certificate shall be translated into the official language or one of the official languages of the executing state (unless a Member State has made a declaration that it will accept a translation in one or more other official languages of the Institutions of the EU). A translation of the judgment shall not be required (unless Member States have made the declaration under Article 23.3).

The discussion of this topic among the participating countries revealed no significant practical problems in this respect. A translated certificate suffices for the members present. Bulgaria does not require a translation of the judgment unless stated otherwise during the consultations between the competent authorities of the two countries.

Combined sentences 909/947

Although they were adopted on the same date and although they both aim at facilitating the social rehabilitation of sentenced persons, the Framework Decision on the transfer of custodial sentences differs in various ways from the Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions. Moreover, Member States are free to determine and implement the grounds of refusal for each instrument separately. The resulting differences in national implementation legislation could pose practical problems when combining the application of both Framework Decisions.

Occasionally, a judgment contains a sentence which is partly custodial and partly suspended (with or without probation). As a result, the situation could arise where a Member State could be asked to execute the sentence both under Framework Decision 909 and Framework Decision 947. Depending on the fact whether the executing state would have made a specific refusal ground mandatory or optional within its national legislation, the combined application of both Framework Decisions could result in a situation where only a part of the sentence could be transferred.

The participating countries discussed this issue and recognise the potential problems arising from a transfer of a combined sentence. All participating experts state that this would be considered on a case-by-case basis. Moreover, it should be noted that most Member States have not yet implemented the Framework Decision 947 in their national legislation.

Statistics

All participating countries recognise the need and usefulness of statistics in following the implementation process in supporting the application of the Framework Decision. A comparison could be made in this respect to the regular Commission reports on the implementation of the European Arrest Warrant. However, gathering and analysing data on the Framework Decision on transfer of sentenced persons can be expected to be more difficult. A mere presentation of the number of transfers will not suffice to make a solid evaluation of the proper functioning of the Framework Decision and the realisation of its underlying



goals. That would also require data on which Member States send and receive prisoners, the nationality of the prisoners and the amount of consent given by the prisoners as well as data on the adaptation of the sentence, etc. A qualitative evaluation of the Framework Decision would thus require detailed and comparable information from various sources. The fact that the Framework Decision does not function along a centralised system (compared for example to the EAW) makes the processing of data even more difficult, due to the variation of the authorities involved or the non-reliability of the data.

Connection with the European Arrest Warrant (EAW)

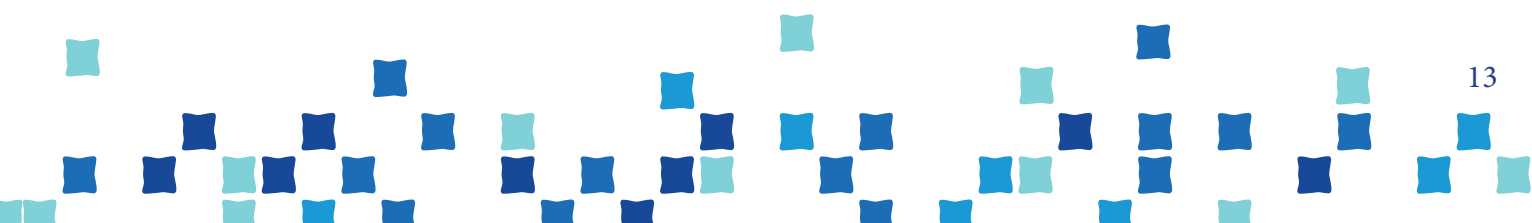
The connection between the Framework Decision and the European Arrest Warrant has an explicit basis in the text of the former. According to Article 25 the provisions of the Framework Decision shall apply, *mutatis mutandis* to the extent they are compatible with provisions under the Framework Decision 2002/584/JHA on the EAW, to the enforcement of sentences in cases where a Member State undertakes to enforce the sentence in cases pursuant to Article 4(6) of that Framework Decision or where, acting under Article 5(2) of that Framework Decision, it has imposed the condition that the person has to be returned to serve the sentence in the Member State concerned, so as to avoid impunity of that individual.

The connection between the EAW and the transfer of a sentence under the Framework Decision can give rise to practical problems. Those problems are more likely to occur, according to the group, with regard to Article 5.2 than Article 4.6. In such cases, the person concerned has to be transferred to the executing Member State, after having been surrendered to the issuing state. It is possible that in those cases, the transfer may become impossible because of certain grounds for refusal that were implemented by the executing state in its national legislation on the basis of the Framework Decision. This could potentially lead to an impossibility to take over the sentence in the executing state. Moreover, several experts raise the question whether the assurance given (under Article 5) is always in the person's best (social rehabilitation) interest (not all offenders want to return to the executing member state). Furthermore, some experts raise the question of what problems could arise when, after having given the guarantee, that the competent Member State would no longer be willing to receive the person.

The participating experts concluded that the link between the EAW and the Framework Decision can give rise to problems, due to the fact that both systems are not fully compatible and that differences in national legislation could hinder the effectiveness of its combined application. The experts point to the importance of involving and informing the prisoner in this regard. It is recommended that further research be done on the way Member States deal with this issue. Improving communication between Member States on this point could be helpful.

National procedures

The participating experts each gave a presentation of the national procedure that is currently applied with regard to the transfer of prisoners. On the basis of these presentations and during the following discussion, it became clear that Member States are in need of more practical information on the national procedure of other states to enhance cooperation. Moreover, there is a widespread variety in some elements of the legal implementation, organisation and practical application; all of which are useful to take into account when analysing the effectiveness of the Framework Decision. These variations include, *inter alia*, the variation in the type of competent authority competent in the whole process (decision on selecting prisoners, decision on forwarding a judgment, decision on execution/adaptation of the sentence), the significant difference on the amount of research carried out in incoming cases in order to determine whether the person really lives in the Member State concerned, the different rules on the possibility for the prisoner to revoke his/her consent and the fact that some Member States have not appointed a central authority (although Bulgaria is currently examining this possibility) so that the the issuing Member State has to identify the proper competent authority (without having the possibility to consult some form of ATLAS).



Improving the knowledge of the Member State's national procedure and overcoming several of the above-mentioned practical obstacles, could be attained by drawing up fact sheets per Member States.

Prison conditions and human rights

This issue was of specific concern to the experts of participating countries where sanctions have already been imposed by the ECHR due to poor detention conditions and fear an increase of sanctions in the case of transfer of sentences. Although the other members indicated that they will nevertheless issue requests aimed at transferring prisoners to those countries, this underlines that there is reason for concern.

CONCLUSIONS AND RECOMMENDATIONS

Main conclusions

- At present, practical information is limited because of the few prisoners transferred and because of the relatively small number of countries that have implemented the Framework Decision. The experts however, agree that there are no fundamental reasons to assume that the Framework Decision would not work in practice.
- There should be more accessible advice via practitioners and to relevant and important information necessary in supporting the transfer decision process.
- The adoption of (binding) detention standards could improve prisoners' fundamental rights under the ECHR and, as a result, have a positive impact on the functioning of the Framework Decision. Issues in relation to prison conditions may be raised by prisoners as to reasons why a transfer should not proceed. Such issues will however, not necessarily undermine transfer under the Framework Decision.
- More information should be provided to prisoners in order to guarantee the right to an informed opinion. In particular information on the enforcement of the sentence in the executing state should be made available.
- Due to differences in national legislation and judicial systems as well as differing standards on the sentencing and treatment of mentally disordered offenders, the practical application of the Framework Decision for this category of offenders could prove problematic and should be given more attention.
- The determination of the 'living place' of a sentenced person varies widely and is dependent on the interpretation of the Member State concerned.
- Differences in national implementation legislation (for example on grounds for refusal) could give rise to problems when combining the Framework Decision with other legal instruments such as the EAW or the Framework Decision 947 on the supervision of probation measures and alternative sanctions.
- There is a need for readily available practical information on the national procedure for the transfer of prisoners in Member States (both for the prisoner concerned and for the practitioners) as well as for detailed and reliable statistical data on the functioning of the Framework Decision.

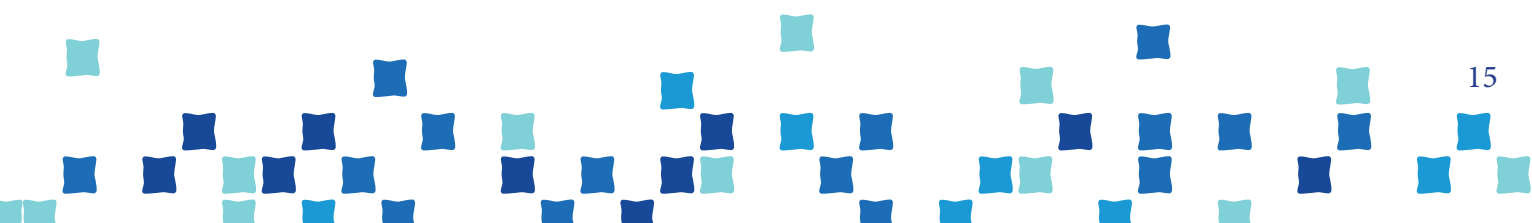
Specific recommendations

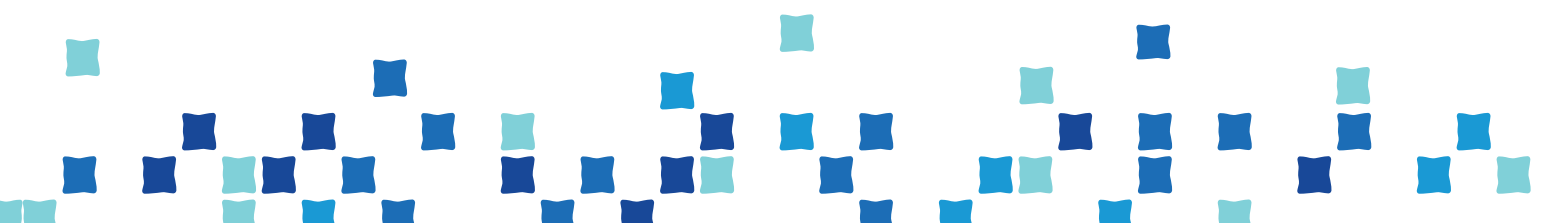
- More attention should be paid to the application of the Framework Decision to mentally disordered offenders and the transfer of psychiatric measures. More efforts should be made in gathering information



on the national laws in this regard. Member States should share their best practices in this field and an additional study should be carried out with the aim to further address this problem. This issue could be highlighted by EuroPris as a focal point in 2013.

- The right to an informed opinion of the prisoner should be ensured.
- An information portal in cooperation with the European Judicial Network and EJustice Portal of the EC could be installed to ensure an early exchange of information about the conditional release provisions for practitioners in the issuing state as well as for the sentenced person. It should be considered by Member States to draw up a fact sheet with relevant information on the consequences of a transfer, which could then be handed out to prisoners before giving their opinion.
- Further research and consultation between the Member States is necessary on determining the 'living place' of a sentenced person. The relevant EU legislation in this respect should be consulted as a basis for common guidelines.
- A European monitoring system should be installed to evaluate the functioning of the Framework Decision. To this end, reliable and comparable statistical data should be made available by Member States.
- The knowledge by practitioners of other Member State's national procedures should be improved by drawing up fact sheets per Member State.
- There should be further research and improved communication between Member States regarding the interaction between the Framework Decision on the transfer of prisoners and other related items such as the EAW and the Framework Decision on the supervision of probation measures and alternative sanctions
- It should be considered in the relevant fora whether binding European minimum prison standards at EU-level would be desirable.





EuroPris: Expert Group on Framework Decision 909

The free movement of citizens across the EU has done much to create a sense of common identity and enhance opportunities for European citizens. An inevitable part of such freedom of movement has not only been an economic migration but also a migration of criminal activity with the consequence that significant numbers of criminals from less affluent parts of Europe have been imprisoned in jurisdictions outside their own. In December 2011, the Framework Decision came into force that made it easier for these persons to be repatriated to serve the remainder of their sentence in their home jurisdiction. EuroPris intends formally to canvas views from their members to explore the impact of such repatriation (on both sending and receiving jurisdictions) and to examine on the basis of an early experience if there are early lessons to be learned that could enhance future transfer. With the increasing flow of exchange prisoners we believe that there is an increasing demand for information exchange, to learn from each other, to develop a more grounded understanding of each other's systems and to advance mutual trust in the prisons' arena.

This report gives its conclusions and recommendations from an expert group comprising members of European jurisdictions with regards to the exchange of prisoners under European Framework Decision 909.

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