



The European Organisation of Prison and Correctional Services  
Expert Group on European Commission Framework Decision  
2008/909/JHA - Transfer of Prisoners

Working Group Report 2015

6 & 7 July 2015, Brussels  
28 & 29 September 2015, The Hague

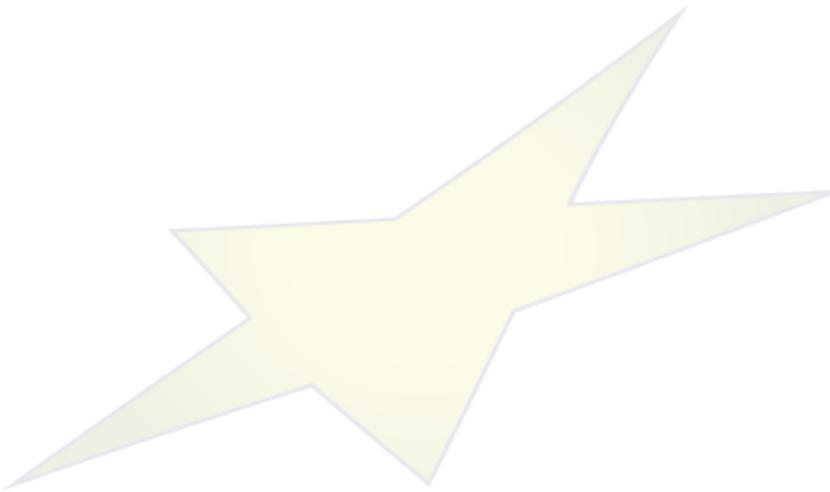




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## About EuroPris

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.

EuroPris speaks for the views of prison practitioners in Europe. Its full membership is limited to the national prison authorities of the European Union (including devolved authorities) and EEA. Affiliate membership with the organisation is open to all jurisdictions from Council of Europe countries.

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.

## About EuroPris FD 909 Expert Group

Freedom of movement across Europe has greatly advanced the opportunities for citizens and contributed to a common sense of identity between countries. Whilst free movement has brought a number of benefits, there have been consequences in terms of criminal activity and migration. Across Europe, there are a number of people imprisoned from other jurisdictions which places strains on the national prison service in terms of capacity, resources and resettlement options.

In December 2011, Framework Decision 909 came into force that sought to make it easier for foreign national offenders to be repatriated to serve the remainder of their sentence in their home jurisdiction. EuroPris established an Expert Group in 2012 to assist members with the implementation of this Framework Decision and examine lessons that could be learned through shared exchange of information.

Since then, the Expert Group has convened in different formations and shared the Recommendations of the group amongst EuroPris members. The transfer of foreign national offenders remains of high Ministerial interest within many countries and it is also a priority area of work for the European Commission.

This report gives the discussions, actions and recommendations from an expert group comprising members of 24 European jurisdictions with regards to the exchange of prisoners under European Framework Decision 909.

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# 1 Foreword

**EuroPris** was founded in 2011 as a non-political organisation to represent prison practitioners within Europe. Our membership has steadily increased and at the end of 2015, comprised of 26 national prison agencies [EU member countries and EEA countries can be Full Members of the organisation, whereas countries from the Council of Europe region can join **EuroPris** as Affiliate Members].

**EuroPris** wants to support policy makers with advice on prison related matters to improve public safety and security. And one of the key ways we do this is through convening Expert Groups on subject matters that are of common interest and importance to our Members.

Freedom of movement across Europe has greatly advanced the opportunities for citizens and contributed to a common sense of identity between countries. Whilst free movement has brought a number of benefits, there have been consequences in terms of criminal activity and migration. Across Europe, there are a number of people imprisoned from other jurisdictions which places strains on the national prison service in terms of capacity, resources and resettlement options.

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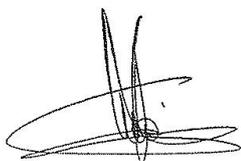
Since then, the Expert Group has convened in different formations and shared *recommendations* of the group amongst **EuroPris** members. The transfer of foreign national offenders remains of high Ministerial interest within many countries and it is also a priority area of work for the European Commission. We recognise the role of **EuroPris** within this work, utilising our established networks and experience of facilitating exchanges that are of common interest to our members.

We extended the invitation to be part of the 2015 Expert Group to non-**EuroPris** members and had representatives from 24 countries attend one of the two meetings which took place. Through this wider network, we hoped to develop a deeper understanding of each other's systems and to advance the numbers of prisoner transfers taking place.

It is my pleasure to present this report which consolidates the discussions, actions and recommendations agreed at the two meetings and has been prepared by Vikki Elliott (who coordinates the Expert Group) and Nick Hammond.

We will host future expert groups on this subject matter and I look forward to strengthening the ties and providing assistance to the national administrations on the transfer of foreign national prisoners.

Yours sincerely,



Hans Meurisse,

President of **EuroPris**

## 2 Context

In a globalised world, the transfer of convicted prisoners to complete their sentences in their home countries, is becoming increasingly common. The transfer contributes to the social rehabilitation of the sentenced person in their home country and assists in public protection.

Within the European Union since 1999, mutual recognition has become the cornerstone of judicial cooperation in criminal matters and has resulted in a range of legal instruments to put this into effect. One of these instruments is the Council Framework Decision 2008/909/JHA on the application of the principle of mutual recognition of judgements in criminal matters through the cross-border execution of judgements which involve the deprivation of liberty. This Framework Decision was adopted on the 27th November 2008 with a deadline for implementation of 5 December 2011.

The Framework Decision was intended to replace other international legal instruments facilitating the transfer of prisoners between EU Member States. It replaces the European Convention on the transfer of sentenced persons of 21 March 1983 and the Additional Protocol thereto of 18 December 1997; the European Convention on the International Validity of Criminal Judgements of 28 May 1970; Title III, Chapter 5, of the Convention of 19 June 1990 implementing the Schengen Convention of 14 June 1985 on the gradual abolition of checks at common borders; and the Convention between the Member States of the European Communities on the Enforcement of Foreign Criminal Sentences of 13 November 1991. It is intended the Framework Decision will lead to an increase in the number of persons transferred as well as making the process faster and more straightforward administratively.

The purpose of the Framework Decision is 'to establish the rules under which a Member State, with a view to facilitating the social rehabilitation of the sentenced person, to recognise a judgement and enforce the sentence' (Article 3.1).

## 3 Background

EuroPris first held a meeting of Experts from EuroPris member countries in 2012. The Expert Group meeting sought to identify common issues related to the implementation and application of Framework Decision 909 (FD 909). The report produced after the meetings commented on specific topics of interest and made suggestions to improve the operation of the Framework Decision.

The Expert Group meeting in 2013 further developed the *Recommendations* to improve implementation, which subsequently informed the application for EU Project funding, led by NOMS (England & Wales). Approval was received and the project - Support for Transfer of European Prison Sentences towards Resettlement (STEPS 2), was initiated in March 2014.

STEPS 2 aims to support the effective delivery of FD 909 by investigating and analysing the legal and practical obstacles that may hinder its implementation and execution in all Member States and assist the goal of common European standards for working effectively with offenders.

This builds upon previous research and projects Implementation Support for the Transfer of European Probation Sentences (ISTEP) and Developing the Use of Technical Tools for Cross-Border Resettlement (DUTT), in continuing to identify challenges that countries must meet to put Framework Decisions relating to transfer of foreign national offenders into effect.

STEPS 2 has four elements, dealt with in four workstreams:

- Workstream 1 is being led by the University of Bucharest and is investigating the problems, obstacles and solutions for enhanced mutual trust between member states when negotiating transfers.
- Workstream 2 is led by NOMS (England and Wales), Ministry of Security of Justice (The Netherlands) and Research Institute for Social Development and Innovation - ICED (Romania) and looks to provide guidance and training for staff and sentenced persons and guidance on the issues for victims. An e-learning package is being produced to help train practitioners and a Prisoner Handbook along with country specific information will be made available via the EuroPris website for all countries to download along with a set of *Recommendations* for countries to consider on victims issues.
- Workstream 3 is led by De Montfort University and is investigating resettlement and aftercare practices for sentenced persons in all Member States. This will produce a report on social rehabilitation research and guidance on resettlement practices in use.
- Workstream 4 is led by Ghent University and is investigating the information management and transfer of sentenced persons. This will produce research based guidance on information management systems in place, what is important for each country and feed into the e-CODEX IT structure for transferring legal documents.

EuroPris convened the Expert Group in September 2014 with representatives from 7 EuroPris countries. Despite the implementation date having passed, only 19 Member States had incorporated the Framework Decision within their jurisdictions. The Experts made several *Recommendations* in relation to the continued implementation, building on the *Recommendations* of the meetings in 2012 and 2013.

These are available at <http://www.EuroPris.org/expert-groups/framework-decision-2008909jha-transfer-of-prisoners>.

With support from the European Commission, EuroPris invited all EU Member States to join the 2015 Expert Group meetings, regardless of their membership of EuroPris. Given the potential large size of such a meeting and to best facilitate detailed discussion, it was decided to host two separate meetings. Representatives from Member States were therefore invited to attend either Brussels in June or The Hague in September 2015. In total, Experts from 24 Member States attended, with Spain, Luxembourg, Italy and Portugal not represented at either meeting.

This report is a record of the discussions from both 2015 meetings. Whilst several of the common issues had been raised at earlier meetings, now that more Member States have greater experience of using the Framework Decision this report identifies some *Best practice* as well as *Actions* and *Recommendations* that were proposed at the meetings.

# 4 Update on implementation of Framework Decision 909

At the end of September 2015, 25 Member States had implemented Framework Decision 909, with implementation remaining on-going for the further three Member States. The below update by country includes feedback received from Member States at the meetings.

Austria	Implemented 1st January 2012. Main experience as issuing state (issued over 300 certificates in total although 100 were later withdrawn). 80 transfers com
Belgium	Implemented 18th June 2012. Completed approximately 50 transfers as issuing state, with 70 certificates pending. The Brussels Prosecutor is now involved in the incoming transfer process.
Bulgaria	Anticipated the Framework Decision will soon be implemented, delays have been caused by budgetary and prison resource issues.
Croatia	Implemented 1st July 2013.
Cyprus	Implemented 23rd May 2014. Early days since implementation so have only issued two certificates and received two to date.
Czech Republic	Implemented 1st January 2014.
Denmark	Implemented 5th December 2011. The number of certificates issued and received, has been increasing steadily to approximately 30 during past 12 months.
Estonia	Implemented 1st January 2015 with four certificates issued and none received as yet.
Finland	Implemented 5th December 2011, two certificates received and 15 to 20 sent to date.
France	Implemented 7th August 2013.
Germany	Implemented 21st May 2015, and so no certificates had yet been issued although a number pending. Under Council of Europe convention, process 200 to 300 transfers annually so expect numbers to rise substantially. Training for judges on the Framework Decision was underway.
Greece	Implemented 15th November 2014. Small number of cases in total, seven certificates sent and three received to date.

Hungary	Implemented 1st January 2013 with 95 certificates received and 27 issued. Competent authority in Ministry of Justice makes decisions whether to issue or accept certificates.
Ireland	Not yet implemented due to legislative timetabling delay.
Latvia	Implemented 1st July 2012. Certificates received in Latvian have been processed more quickly.
Lithuania	Implemented 1st April 2015. 13 certificates received so far of which five have been accepted, three refused and the remainder pending.
Malta	Implemented 1st January 2012. High expectations for the Framework Decision to reduce the foreign national prison population, which accounts for 40% of all prisoners.
The Netherlands	Implemented 1st November 2012. 107 certificates received to date of which 65 completed. Issued approximately 15 certificates, of which 7 have been completed.
Poland	Implemented 1st January 2012. It has a derogation until 5th December 2016 on transfers without the consent of the prisoner. It currently accepts only voluntary transfers under the Framework Decision.
Romania	Implemented 5th December 2013. Received a high number of certificates, 95% of which are from Italy.
Slovakia	Implemented 1st February 2012. Principally in receipt of certificates from Austria and the Czech Republic.
Slovenia	Implemented 20th September 2013. Seven certificates issued and ten received to date.
Sweden	Implemented 1st April 2015. 67 certificates issued to date and 16 received.
United Kingdom	Implemented 5th December 2011. Approximately 100 certificates issued and 58 prisoners transferred. Approximately 25 British prisoners returned. There have been no transfers out from Northern Ireland and three prisoners returned to Scotland.

#### Non-attendance:

Italy	Implemented 5th December 2011
Luxembourg	Implemented 1st March 2011
Portugal	Not implemented as yet
Spain	Implemented 11th December 2014

# 5 Selected Topics

The topics selected for comment are those which were agenda items from the meetings in June and September 2015, with *Best practice*, *Recommendations* and *Actions* discussed at the meetings included within the subheadings.

## a) Consent - how the prisoner is informed and consent obtained

The process by which Member States obtain the consent and/or opinion of a sentenced prisoner being considered for transfer under the Framework Decision varies, for example some countries require written consent from the prisoner, whilst others require the prisoner to appear before a judge.

The lack of information for prisoners about the transfer process and the administration of the sentence and prison regime following transfer prevents prisoners from giving either informed consent or where necessary giving an informed opinion as to why they should not be transferred. Access to relevant information was therefore considered to be essential if the process is to be considered fair to prisoners. Informed consent is further discussed below - 'Information provision to prisoners' in relation to STEPS 2.

Although the Framework Decision normally requires prisoners to consent to transfer, Article 6 of the Framework Decision, sets out the circumstances when the consent of the prisoner is not required. This is when:

- the person is a national of the country of the executing state and also lives there;
- the person would be deported to the executing state on completion of their sentence; or
- the person has fled or otherwise returned there in response to the criminal proceedings.

Where the consent of a sentenced prisoner is not required, the opinion of that prisoner should still be sought and taken into account prior to the issuing of a certificate. This opinion should be included with the certificate sent to the executing state, with due consideration given to translation of this opinion. In order to give informed consent the prisoner will require information about the process and consequences of transfer. This is not yet available in all Member States and therefore it could be considered as detrimental to prisoners.

***Best practice:*** In Denmark, a sentenced prisoner is informed as soon as it is feasible that they are being considered for transfer as a serving prisoner, receive information in Danish or English of the transfer process and asked for their signed consent.

***Best practice:*** Estonia has developed and translated into various EU languages, a consent to transfer declaration for a prisoner to sign which is regulated by the Competent Authority.

***Best practice:*** In another Member State, if a prisoner who is subject to deportation/removal seeks a voluntary transfer, the issuing state informs the prisoner they will also seek a compulsory transfer to avoid the situation of a prisoner changing their mind later in the process. This is based on the assumption that the prisoner's country of nationality will be best placed to prepare the prisoner for reintegration back into the community.

***Recommendation:*** Prisoners in scope of transfer should be provided with basic information when they are being considered for transfer as soon as possible following sentencing. This should include – amongst other information, detail on consent and how they can be transferred without consent.

## b) Legal challenges and appeal process

The Framework Decision does not require Member States to provide prisoners with a right to challenge a decision to transfer them and the availability of such a process varies between Member States, with not all countries providing for the possibility of challenge. The availability of legal aid to fund challenges to prison transfer differs as it is not a right in some countries and the availability of funding also differs between Member States.

***Recommendation:*** Detail on the procedure for challenging a transfer decision and availability (if any) of legal aid, should be included within information provided to prisoners so that they are aware of their options.

## c) Provision of information to prisoners

The availability of information relating to the transfer process under the Framework Decision, varies vastly amongst Member States, and at times within each country dependent on the languages spoken by the prisoner. The Experts recognise the benefit of providing information to prisoners which can encourage a prisoner's cooperation, increase understanding of the consequences of transfer, increase the number of transfers and speed up the process.

Through workstream 2 of the STEPS 2 project, a Prisoner Handbook is being developed. The Handbook contains the aims and process of the Framework Decision in language that will be easier for prisoners to understand. It seeks to explain some of the key points of the transfer process, in particular relating to consent, time frames and the certificate. Experts provided feedback on an early version of this document and proposed topics that they felt needed should be covered. STEPS 2 will launch the Handbook at their final conference. The Handbook has been developed in English but there is insufficient budget for translation and so countries should consider translation or, ask the EC for support. The Handbook(s) will be available on the **EuroPris** website for prison staff and families to access in the appropriate language and pass on to prisoners. The Handbook is, however, generic and Member States may want to supplement the information it provides.

Member States are also being asked to develop their own country-specific information on their prison system which prisoners can access prior to transfer. A template for this has been developed by NOMS (England & Wales) and will also be launched at the STEPS 2 final conference. The prisoner information documents will also be held on the **EuroPris** website. The Experts recognised the importance of having this information available both for the benefit of officials considering whether to issue a Certificate and for prisoners facing the possibility of transfer.

**Best practice:** The Netherlands run a telephone information line providing information on the transfer process which is heavily used by both prisoners and their families. This is supplemented by a factsheet detailing the stages of the transfer process.

**Recommendation:** To ensure that a prisoner is able to properly consider the consequences of transfer, basic information should be provided by issuing states to prisoners being considered for transfer, including:

- ↳ the logistics of the transfer process
- ↳ prison regimes
- ↳ licence and early release arrangements

Some of this information, such as prison regimes and release arrangements will have to be made available by executing State through country specific information sheets.

### Actions:

- ↳ Ask the European Commission whether they would consider covering the costs of translation of the Prisoner Handbook into EU languages to ensure prisoners can access the information, regardless of the languages they speak or the country they are imprisoned in.
- ↳ Member States should ensure the Offender Handbook developed by STEPS 2, is available in relevant languages and disseminate widely within their prison system – after February 2016.
- ↳ Member States should produce their own country-specific information, covering topics such as early release, in accordance with the template produced by STEPS 2.
- ↳ **EuroPris** will monitor which countries have produced information sheets and seek to share **Best practice** examples through future meetings of the Expert Group.

## d) Certificate and timings

Experts felt the certificate provided by Annex 1 of the Framework Decision, covered all pertinent points required by the executing state but raised concerns regarding the completion of the certificate by issuing states. If sections of the certificate are not completed or lack detail, the resultant effect is that executing states do not feel they have sufficient information to make a decision on transfer and so ask subsequent questions of the issuing state, causing a delay to the process.

In their incorporating legalisation, Competent Authorities set out which languages they will accept certificates to be sent to them in (the list of which can be access via the European Justice Network - [http://www.ejn-crimjust.europa.eu/ejn/ejn\\_home.aspx](http://www.ejn-crimjust.europa.eu/ejn/ejn_home.aspx)).

Many Experts cited that translation was often costly and timely to procure and so was causing delays in issuing certificates. Translation was discussed in greater detail in relation to the judgement. Whilst most Experts agreed that a summary of the judgement in the certificate suffices for most transfer requests, it would need to include a description of the main facts of the offence. Following this protocol could avoid high costs and delays associated with translation. However, where cases were of particularly high risk, or there were distinct differences in sentencing policy or where the case was particularly complex, it was recognised the executing state may still request a translation of the full judgement.

Feedback at the meetings suggested that the timescales set out within the Framework Decision - such as the 90 day period for the executing state to respond to the certificate sent by issuing state - are not being met, although there is no statistical data to report how widespread the delays might be, or whether some of the delays could be attributed to requests for further information.

Experts did not feel it was yet possible to state whether the Framework Decision had enabled faster transfers than those which took place under previous joint agreements. However, it was hoped the process should become faster as Member States become more accustomed to dealing with the Competent Authorities of different countries.

**Best practice:** Two Member States explained that as they have a high number of transfers between their countries, their Competent Authorities have built up good working relationships with each other. This has enabled them to have a conversation with that Competent Authority prior to issuing a certificate, thus avoiding the need for further information requests and delays to the transfer.

**Best practice:** Knowledge on how to complete certificates could be enhanced by staff within competent authorities using the e-learning developed by STEPS 2 (see later point on 'Information for practitioners').

**Best practice:** Several Experts explained they only seek to undertake the transfer process when the prisoner has longer than the required 6 months left to serve, given the administrative and practical delays experienced. Whilst this does not meet the long-term social rehabilitation aims of the Framework Decision or seek to increase transfer numbers, applying this practice could help focus on the cases which are more likely to be completed in the first instance – until Member States are more adept at utilising the Framework Decision.

#### **Recommendations:**

- ↳ Issuing states liaise with executing states prior to issuing a certificate as this process can deal with the majority of issues which subsequently arise and which could have been avoided.
- ↳ Member States should use the e-learning tools devised through the STEPS 2 Project to educate staff on how to complete the certificate.
- ↳ Competent authorities keep records of dates when certificates were issued/received to enable them to monitor compliance of the time frames specified. This would help monitor the situations where a backlog could be occurring and identify where further communication with another Member State might be required.
- ↳ If there are concerns or queries, Member States should utilise EuroPris contacts and speak to the executing Member State before issuing the certificate.

#### **Actions:**

- ↳ The EC will follow up with the individual Member State whose implementing legislation requires the full judgement to be translated and sent by issuing states.
- ↳ Member States who have not yet implemented the Framework Decision were urged not to request fully translated judgements in incorporating legislation.
- ↳ Member States should ensure the contact details of Competent Authorities and languages they will accept a certificate in are correct on the database maintained by the European Justice Network [http://www.ejn-crimjust.europa.eu/ejn/EJN\\_Home.aspx](http://www.ejn-crimjust.europa.eu/ejn/EJN_Home.aspx)
- ↳ EuroPris will seek to enable further networking opportunities between Member States by sharing delegate details from the Expert Group meetings and facilitating discussions through future meetings.

## **e) Sentence adaptation and delivery**

The Framework Decision is explicit in limitations on sentence adaptation and does not provide scope for sentence conversion nor re-sentencing. A different sentence may only be imposed ('adapted'), when the sentence in the issuing state exceeds that of the executing state. In this case a sentence can only be adapted to that maximum sentence and no lower. In some cases, the executing state may be able to recognise (a) part but not all of the sentence. In these circumstances Chapter II, Article 10, provides for 'partial recognition and enforcement'. The possibility of partial

enforcement should be considered before refusing a request in these circumstances. Discussion between the Competent Authorities is essential in these cases.

Conditional release arrangements vary between Member States. As it is the release arrangements of the executing state which apply following transfer, this can have a significant impact on the administration of sentence. In some cases prisoners may be released early than would be the case had they not transferred, but in other cases prisoners may serve longer in custody. The Experts recognised that it is often a challenge for the Competent Authority, to determine the applicable release arrangements especial where it is required to interpret the legislation of another Member State.

Experts also discussed difficulties in Member States that have devolved jurisdictions meaning the issuing state is required to deal with multiple Competent Authorities. For example, one Member State as the issuing state, attempted the transfer of two co-defendants to two different jurisdictions within another Member State. Although the prisoners had received the same sentence of life imprisonment and the identical minimum terms, the two Competent Authorities offered two different minimum terms. In the absence of a single Competent Authority the issuing Member State was not able to resolve the differences' and only one of the two prisoners was subsequently transferred.

Experts also expressed concern about the difficulty identifying the relevant Competent Authority when responsibility has been devolved to individual courts. The Experts recommended that consideration should be given to establishing a central Competent Authority which could act as a "post box" for other Member States.

Experts entered into substantial discussion of specific types of sentences such as those for sex offenders with fixed terms for the custodial and community elements, indeterminate sentences and life sentenced prisoners and how they might be adapted into determinate sentences with minimum tariffs. With regards to life sentences and the adaption to a determinate sentence, it was agreed the minimum period the prisoner was expected to serve in the issuing state should as far as possible be respected.

The transfer of prisoners with mental health issues had also been problematic and challenging to Member States. Such cases were the most complex where there were different legislative processes between the issuing/executing state for the certification and categorisation of prisoners with mental health conditions.

***Best practice:*** in a case concerning the transfers of prisoners with mental health conditions, the executing state passed the documents received to a psychiatrist for an assessment of the mental health condition under their national law. This ***Recommendation*** was submitted to the Court to order any adaptation. Correspondence was then forwarded to the issuing state and for the prisoner to consent or repeal the request.

#### ***Recommendations:***

- ↳ Member States should provide a basic summary of conditional release arrangements as a standard accompanying note attached to the Certificate.
- ↳ If sentenced to a life sentence, the executing state should as far as is possible respect the minimum period the prisoner was expected to serve in the issuing state.
- ↳ In Member States where the responsibility of Competent Authority has been devolved to individual courts, consideration should be given to establishing a central Competent Authority which could act as a "post box" for other Member States.

## **f) Prison conditions**

Whilst it was acknowledged that under European Prison Rules, standards should be benchmarked across Member States, it was accepted that some countries were experiencing levels of overcrowding, and anecdotal references cited courts refusing extradition under ECHR Articles 3 & 8 rights based on prison conditions in the executing state.

Experts discussed that bodies such as the European Committee for the Prevention of Torture (CPT) and the US State Department provided accessible reports on prison conditions across Europe and elsewhere. These reports are available on the internet and are being cited by prisoners as reasons for not wanting to transfer. It was also noted that those Member States which have overcrowded prison estates are working to address these and that consultation between Member States was necessary where issues regarding prison conditions had been cited.

There was also a question of the definition of "prison conditions" and whether it was to be taken in the narrow sense of physical conditions, or whether a wider interpretation to include regime, work and attitudes might be considered.

**Best practice:** As issuing state, when concerns regarding conditions have been raised by a report, one Member State described how they would contact the executing state to ascertain how the situation has changed or improved. Latter CPT reports have been used by issuing states as a basis for demonstrating improving conditions within prisons, which had been accepted by courts.

**Recommendation:** Competent Authorities should have an up to date knowledge of CPT country reports and other information on prison conditions in other Member States.

## g) Information for practitioners

Since 2012, EuroPris Expert Groups have highlighted the need for officials and practitioners to have access to information, briefings and training so to consistently implement the Framework Decision across Member States. The consequences of certificates not being correctly completed is discussed in the earlier point 'Certificates and timings'.

Under STEPS 2, an e-learning module to inform and train relevant staff about the transfer process has been developed. It was demonstrated and tested by Experts at both meetings in 2015, as well as with other potential users in different settings. The consensus from those who participated was extremely positive and it was felt that it would be of considerable benefit to the successful implementation of the Framework Decision.

Experts considered that the e-learning should be available in a range of languages so to ensure it is used in a consistent way across Europe. The e-learning has been designed in English, but there is only funding in the STEPS 2 budget to translate the e-learning into one other language. The costs of translation would be high as there would need to be a detailed and legally correct translation of the text, as well as the images and other interactive elements developed as part of the e-learning.

### **Recommendations:**

- EC to consider whether it would fund the translation of the e-learning package into other EU languages so that staff across Europe may have consistent training and approaches to implementing the Framework Decision.
- The EC Manual being produced for the Judiciary on the Framework Decision, should reference the e-learning training.
- Dissemination of the e-learning to include: EuroPris website, EuroPris Expert Group contacts, European Justice Network (EJN), Prison service training institutions, Prosecutor training, and the EU Justice Portal.

**Action:** EuroPris will host the e-learning developed by STEPS 2 – February 2016.

## h) Practical transfer arrangements

Regarding the 30-day period specified for transfer to be completed following agreement between the Competent Authorities, it was stated that that lack of prison escorting staff frequently impacted on the ability to meet this timeline. Member States have also encountered other practical problems in transferring prisoners across Europe, including difficulties with airlines and transiting through other countries. Some of these issues were being addressed by individual Member States as they developed their procedures and relationships with other parties involved in the transfer such as the police and airlines.

However, a collective understanding of the need for increased numbers of escorting staff should the numbers of prisoners transferred under the Framework Decision rise significantly, was raised. This is of particular relevance with regards to the potential increase of prisoners who have not consented nor wish to return where safety and security protocols may require revision.

EuroPris has developed a 'Prisoner Information Document' to accompany transferred prisoners which is currently available on the EuroPris website. Whilst the Experts felt the document is a useful template for the issuing state to understand what information they need to provide to the executing state to enable a transfer, there are some notable limitations. Firstly, there is some information that would be required by the executing state prior to transfer e.g. prisoner's physical disabilities as different transportation and cell requirements would need to be made. Secondly, the form is not a suitable mechanism through which to share some personal and medical information due to data protection – see later point on 'Data transfer arrangements'.

**Best practice:** Several Member States explained that they seek to include any information that would be vital to the practical transfer arrangements or early days in custody, such as physical needs of the prisoner within section L of the certificate.

**Best practice:** Experts explained that they seek to include any information that would be vital to the practical transfer arrangements or early days in custody, such as physical needs of the prisoner within section L of the certificate.

**Recommendations:**

- ↳ Member States should continue to feedback to the Expert Group on common problems identified during the practical transfer of prisoners so collective Action and **Best practice** can be discussed.
- ↳ It is the responsibility of the executing state to inform the issuing state of the contact details for those supervising the transfer.
- ↳ Where Member States have entered into contractual arrangements with private companies for the transfer or prisoners, information on these arrangements should be shared with the issuing state.
- ↳ Any information relating to a prisoner's practical or immediate needs for transfer, should be brought to the attention of the executing state through use of the Section L 'any other information' of the certificate.
- ↳ Member States should follow the research based guidance relating to information transfer produced by STEPS 2, when available.

**Action:** EuroPris welcomes suggestions for continuous improvement of the Prisoner Information Document.

## i) Data transfer arrangements

The issue of transferring data between Member States is a complex one, subject to both European and national data protection legislation. The Framework Decision promotes 'social rehabilitation' as the purpose for transfer which requires the executing state to receive relevant information to ensure that purpose is met. This would include information relating to the offence for which the prisoner was sentenced, as well as risk management information and detail on programmes already undertaken by the prisoner to enable effective sentence planning.

The sharing of data between Member States is being considered in greater detail under STEPS 2, workstream 4 and through the e-CODEX project which designed to facilitate the digital exchange of legal information between EU countries. At the time of writing, the technology for e-CODEX was still being trialled and is due to be launched in 2016.

Through STEPS 2, the University of Ghent has sought to ascertain what data Member States currently obtain and what they would wish to have. The information has been categorised as either minimum required for transfer and additional information that it would be useful, although not essential to have, within the headings 'security' and 'social rehabilitation'.

**Best practice:** Experts acknowledged that obtaining information following the transfer was seldom feasible, and that the concept of reciprocity in information exchange could be established through practice.

**Recommendations:**

- ↳ Member States adopt a "necessary and proportionate" test to identify whether information should be included. For example, a contagious disease, or need for mobility aids would be necessary and proportionate information to share as this would become known upon receiving prisoner.
- ↳ The EuroPris 'Prisoner Information document' should not be used for sensitive and personal data.

**Action:** The Experts requested additional information from the legal experts STEPS 2 consulted concerning the ramifications under data protection legislation for the transfer of information between Member States.

## j) Victims issues

There is increasing awareness across Member States of the opinions of victims in the management of offenders, including international prison transfers. This is in part attributed to media interest around high profile cases. The Experts noted that victims can be present in the executing, as well as issuing State.

Under the Council of Europe Convention, a releasing state is obliged to notify the relevant state when a prisoner has been released, although implementation of this practice was not comprehensive.

Many Member States have adopted a procedure whereby victims have the opportunity to be consulted regarding transfer and have their opinion taken into account. This does not establish a power of veto for victims.

The EU Victims Directive (2012/29) provides for victims to be notified and there is an obligation on executing states to notify issuing states of a release. The deadline for implementation of this Directive was 16 November 2015.

Research considering how victims of crime might be affected by Framework Decision 909 has been undertaken by STEPS 2 and will be disseminated through the final report and conference.

**Best practice:** Several Member States have victim-focused organisations. Where the victim is known and in contact with either prison/probation/victim service, they are contacted to see if they would like to make a representation regarding the prisoner transfer. Where there is not a specific victim liaison officer, issuing states have ordered social enquiries to be undertaken to establish the view of the victim.

**Best practice:** Some Member States provide a service where victims are informed when prisoners are released, transferred under prison transfer arrangements or deported.

**Recommendation:** Where there are known victims' issues, the issuing state should share this information with the executing state.

**Action:** Member States will need to consider whether their incorporating legislation might need to be amended with reference to the EU Victims Directive.

## k) Association between Framework Decision 909 and the European Arrest Warrant

Framework Decision 909 provides that it shall apply to the extent that they are compatible with provisions under Framework Decision 2002/584/JHA on the European Arrest Warrant. There may be specific instances where the Framework Decision is preferable to the European Arrest Warrant, but whilst the two pieces of Framework Decisions are separate, they should work alongside each other.

Experts cited differences in the application and interpretation between 'nationals' under Framework Decision 909 and the European Arrest Warrant between Member States.

Experts noted that where a person was present in the executing state and was wanted in the issuing State to serve a sentence of imprisonment consideration should be given to transferring the enforcement of the sentence to the executing State rather than issue a request under the European Arrest Warrant.

Member States noted they have seen an increase in European Arrest Warrants and speculated this could be due to the fact that prosecutors in some Member States are unaware of the Framework Decision for the transfer of prisoners.

### **Recommendations:**

- ↳ Prosecuting authorities should be aware of the provisions of the Framework Decision as opposed to issuing a European Arrest Warrant.
- ↳ In instances where there could be differences in the qualification of an offence between Member States, upon receiving facts of case the executing state should look to what the offence would be under their national law and inform the issuing state if there are differences (that would result in different sentences).
- ↳ Urged caution to Member States who did not respect the guarantees they offered under European Arrest Warrants as that would only make other Member States less likely to extradite in future.

## I) Monitoring the use of Framework Decision 909

There was a consensus amongst the Expert Group that they would prefer not to provide statistical data to the EU on the use of the Framework Decision, although there was an understanding of the need for consistent and comparable statistics.

The discussion on monitoring the use of the Framework Decision was combined with a discussion on statistics of foreign national prisoner populations across Member States and it was agreed that EuroPris would compile data on:

- ↳ the number of certificates issued, by Member State under the Framework Decision as at 31.12.2014
- ↳ the number of certificates received, by Member State under the Framework Decision as at 31.12.2014
- ↳ the number of outgoing transfers completed, by Member State under the Framework Decision as at 31.12.2014
- ↳ the number of incoming transfers completed, by Member State under the Framework Decision as at 31.12.2014
- ↳ the number of EU national prisoners within each Member State as at 31.12.2014

The aim of the data collection exercise is to understand and monitor the extent to which the Framework Decision is being used to transfer prisoners and the countries with whom others might need to establish better working relationships based on their prisoner populations.

EuroPris are interested in identifying countries that have completed a number of transfers to identify *Best practice* they have adopted and share this learning through the Expert Group. Conversely, it will be useful to identify Member States who have a high foreign national prisoner population, but are yet to issue certificates/complete transfers, to facilitate more consistent use of the Framework Decision.

Following the meetings, EuroPris issued the data request in October 2015 and at the time of writing this report had received responses from some, but not all Member States.

### Actions:

- ↳ EuroPris will publish this data on the website when the data collection is complete
- ↳ Findings from the data collection exercise will be used to plan for future EuroPris Expert Group meetings

## 6 Conclusion

As the majority of Member States have now implemented the Framework Decision, the 2015 Expert Group meetings enabled the conversations to progress to more practical (as opposed to theoretical) matters. The *Best practice* examples that Member States brought to the meeting should be considered by others so to meet the original purpose of the Framework Decision and increase the number of prisoners transferred.

The decision to invite all Member States to the meeting meant that the discussions at both meetings were based on wider experience and practice of using the Framework Decision than had previously been discussed between EuroPris members. This has enabled EuroPris to gain a more detailed overview of the extent to which the Framework Decision is being used and the sorts of problems that are being encountered.

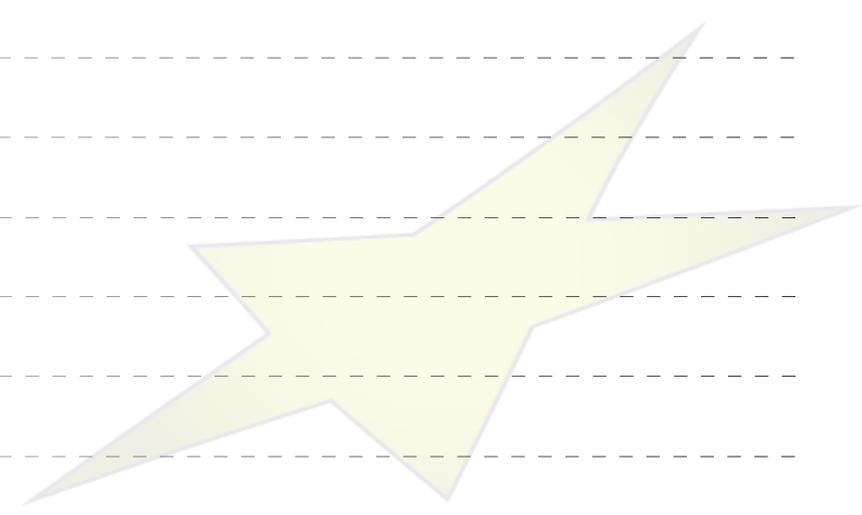
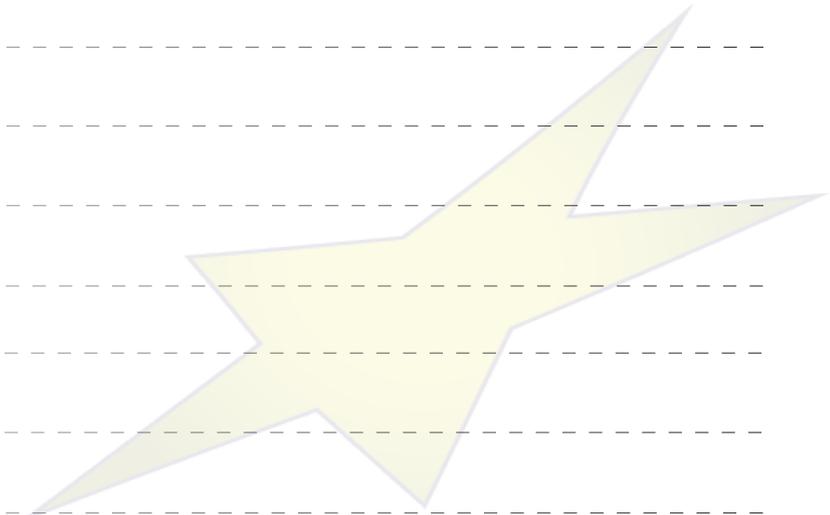
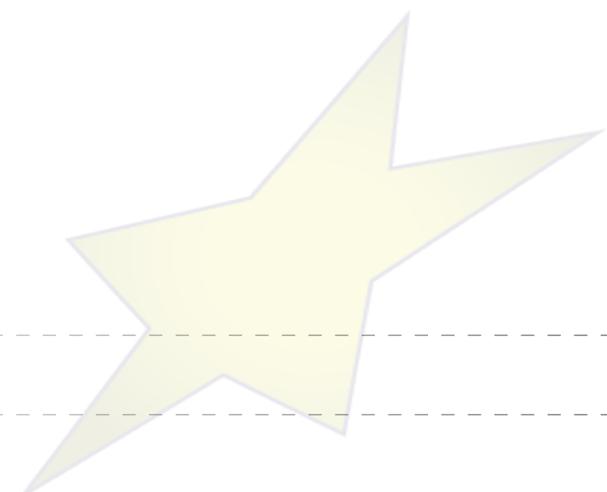
Whilst the Chairpersons and Experts appreciated that having one large meeting would have meant that detailed conversation on specific subject areas may have been curtailed, there was acknowledgement of the fact that hosting two separate meetings meant some networking opportunities were lost. Based on this feedback, and with the knowledge that nearly all Member States have now had at least some experience of using the Framework Decision, a different format for the 2016 Expert Group meeting will be planned.

EuroPris acknowledges the difficulties that Member States (and especially those with devolved jurisdictions) have in compiling statistical information. However, in order to best support Member States in using the Framework Decision and in providing information to the European Commission on the progress of this, it is imperative to provide some data which supports the anecdotal references. EuroPris will therefore continue with the data collection exercises for the number of certificates issued/received, transfers completed and foreign national prisoner population.

The contributions to both meetings from practitioners involved with the STEPS 2 Resettlement project has been invaluable. The opportunity for Experts to provide input to specific workstreams, such as the Prisoner Handbook and e-learning was of particular benefit given that the Experts will ultimately be the main users of many of these products.

The STEPS 2 final conference will be held in Bucharest, Romania in February 2016. Full details can be accessed at: <http://steps2.EuroPris.org/>. Whilst EuroPris will be a central point for the storage of documents produced by STEPS 2 such as the e-learning, Prisoner Handbook and country-specific Information Sheets, Member States have the ultimate responsibility for contributing to and maintaining the accuracy of the information included.

Notes









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