



Framework Decision 909 and its Impact on the Transfer of Prisoners

Online Seminar
7-9 July 2021 (mornings)

**UP
GRADE**
YOUR LEGAL
EXPERTISE
**Criminal
Law**



Speakers

- Fraser Bryans**, European Prison Information System (EPIS) Coordinator, EuroPris, The Hague
- Gisella Conrad**, Regional Coordinator, International Office, Dutch Probation Service, Utrecht
- Daniel Danglades**, Policy Officer, Probation Service, Ministry of Justice, Paris
- Dr Ioan Durnescu**, Professor, Faculty of Sociology and Social Work, University of Bucharest; Confederation of European Probation (CEP) Member
- Ramin Farinpour**, Senior Lawyer, European Criminal Law Section, ERA, Trier
- Dr Carolina Fons Rodríguez**, Senior Judge, Head of Institutional Relations Department, Judicial School, Judicial School of the General Council of the Judiciary, Barcelona
- Nick Hammond**, Foreign Nationals Expert Group Coordinator, EuroPris, The Hague
- Nalini Hussain**, FD 909 Coordinator, EuroPris, The Hague
- Catherine Kenny**, Policy Officer, Irish Council of Prisoners Overseas, Dublin
- Jaime Moreno Verdejo**, Prosecutor of the Supreme Court, Chief Prosecutor of Prison Surveillance, Madrid
- Delia Motiņgā**, Legal Advisor, Directorate for International Law and Judicial Cooperation, Ministry of Justice, Bucharest
- Dr Róisín Mulgrew**, Lecturer Above the Bar in Law, National University of Ireland (NUI), Galway
- Luisa Ravagnani**, Researcher in Criminology, University of Brescia; Founder, Italian Prisoners Abroad (IPA)
- Dr Florentino-Gregorio Ruiz Yamuza**, Senior Judge, Appeal Court of Huelva; Member of the Spanish Judicial Network for International Cooperation in Criminal Matters
- Jan-Peter van Bodegraven**, Senior Legal Advisor, International Transfer of Sentenced Persons, Custodial Institutions Agency, Ministry of Justice and Security, The Hague
- Michiel van Herpen**, International Trainer, Dutch Probation Service, Utrecht
- Kris Van Opdenbosch**, Case Worker, EJM Contact Point, Central Authority for International Co-operation in Criminal Matters, Federal Department of Justice, Brussels

Key topics

- Framework Decision 909: its purpose, actual and practical use
- Best practice and mutual trust and recognition of judicial decisions
- The interaction of Framework Decision 909 with other mutual legal assistance instruments, in particular the EAW and probationary measures
- Foreign national prisoners
- Workshops on Framework Decision 909, foreign national prisoners and the EAW

Languages
English, Spanish

Event number
321DT29e

Organisers
ERA (Ramin Farinpour) in cooperation with the Judicial School of the General Council of the Judiciary, European Organisation of Prison and Correctional Services (EuroPris) and the Confederation of European Probation (CEP)



Framework Decision 909 and its Impact on the Transfer of Prisoners

Wednesday, 7 July 2021

08:30 Connection time

09:00 **Welcome, introduction and ice-breaker**
Ramin Farinpour, Carolina Fons Rodriguez

I. FRAMEWORK DECISION 909 AND ITS IMPACT

Chair: Ramin Farinpour

09:15 **An introduction to Framework Decision 909**

- Legal provisions and handbook to assist with its proper implementation and use
 - Challenges faced in practice with its use
- Luisa Ravagnani*

10:00 Discussion

10:15 **The EAW and how Framework Decision 909 interacts with it**

- Effect of latest CJEU and ECtHR decisions on mutual recognition
- Florentino-Gregorio Ruiz Yamuza*

11:00 Discussion

11:15 Break

11:45 **Update on issues, processes and practices in relation to FD 909's use**
Kris Van Opdenbosch

12:30 Discussion

12:45 **The judicial application of FD 909 in practice: lessons learned from enforcing sentences and dealing with transfer requests**
Jaime Moreno Verdejo

13:30 Discussion

13:45 End of first day

Thursday, 8 July 2021

09:00 **Tools to assist with the application and processing of FD 909 transfers**

- Resources book on transferring sentenced prisoners
 - European Prison Information (EPIS) database on prison sentence execution
- Nalini Hussain, Fraser Bryans*

10:00 Discussion

10:15 **STEPS 2 Resettlement Programme and its support for the effective delivery of FD 909**

- Offenders handbook
 - Victims' liaison
 - Data transfer
 - FD 947 in combination with FD 909
 - Case study of transfer between Spain and Romania
- Ioan Dumescu*

11:00 Discussion

11:15 Break

Objective

This online seminar, which forms part of a series of five co-funded by the European Commission on enhancing cross-border mutual legal assistance and recognition of decisions within the context of detention, will focus on the purpose and actual and practical use of Framework Decision 909 on the imposition of custodial sentences and their enforcement in relation to prisoner transfers and probation. Issues with its proper use and how it interacts with the European Arrest Warrant (EAW) will also be examined, as will the situation of foreign national prisoners.

Who should attend?

Judges, prosecutors and lawyers from eligible EU Member States (Denmark does not participate in the Justice Programme 2014-2020) and eligible Candidate Countries (Albania and Montenegro).

Participation fee

Participation fee: No fee for judges, prosecutors, prison and probation officers, €70 for lawyers.

Interactive online seminar

The seminar will be hosted on the Zoom videoconferencing platform. The highest security settings will be applied to ensure that you can participate actively in the best-quality videoconferencing environment available. You will be able to interact immediately and directly with our top-quality speakers and other participants. We will make the most of the technical tools available to deliver an intensive, interactive training experience.

Your contact person



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Assistant
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II. FOREIGN NATIONAL PRISONERS

Chair: *Ramin Farinpour*

- 11:45 **The Council of Europe's 2012 Recommendation concerning foreign prisoners: the need for specialised standards and challenges in implementation**
- The situation of foreign national offenders in the prison and probation setting in Europe
Roisin Mulgrew
- 12:30 Discussion
- 12:45 End of second day

Friday, 9 July 2021

- 09:00 **Perspectives in dealing with foreign nationals in prison and probation**
Daniel Danglades
- 09:45 Discussion
- 10:00 **Overview of good practice with foreign prisoners and the EuroPris good practice manual for working with foreign nationals**
Nick Hammond
- 10:30 Discussion
- 10:45 Break

III. SIMULTANEOUS WORKSHOPS

Chair: *Ramin Farinpour*

- 11:15
- **Correct use and application of FD 909** (*Delia MotiŃgă, Jan-Peter van Bodegraven, Kris Van Opdenbosch*)
 - **Correctly applying the EAW and its interaction with FD 909** (*Florentino-Gregorio Ruiz Yamuza*)
 - **The role of prisoner abroad groups and preparing prisoners for prison transfer and resettlement** (*Gisella Conrad, Catherine Kenny, Luisa Ravagnani, Michiel van Herpen*)
- 12:45 Workshop reports and participant discussion
- 13:00 End of the online seminar

For programme updates: www.era.int
Programme may be subject to amendment.

Times indicated are CEST (Central European Summer Time)



CPD

ERA's programmes meet the standard requirements for recognition as Continuing Professional Development (CPD). This event corresponds to **11 CPD hours**.



Co-funded by the Justice Programme (2014-2020) of the European Union

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Apply online for this seminar:
www.era.int/?130504&en

Online seminar

Framework Decision 909 and its Impact on the Transfer of Prisoners
7-9 July 2021 / Event Number: 321DT29e



Europäische Rechtsakademie
Academy of European Law
Académie de Droit Européen
Accademia di Diritto Europeo

Terms and conditions of participation

Selection

1. Participation is open to judges, prosecutors and lawyers in private practice from eligible EU Member States (Denmark does not participate in the Justice Programme 2014-2020) and EU Candidate Countries (Albania and Montenegro).
2. The number of places available is limited (40 places). Participation will be subject to a selection procedure.
3. Applications should be submitted by **5 July 2021**.
4. A response will be sent to every applicant after the deadline. Participation is subject to a selection procedure.

Registration fee

5. There is no registration fee for judges and prosecutors. Documentation provided for.
6. €70 for lawyers, including documentation.

Participation

7. Participation in the whole online seminar is required and your presence will be recorded.
8. A list of participants including each participant's address will be made available to all participants unless ERA receives written objection from the participant no later than one week prior to the beginning of the event.
9. The participant's address and other relevant information will be stored in ERA's database in order to provide information about future ERA events, publications and/or other developments in the participant's area of interest unless the participant indicates that he or she does not wish ERA to do so.
10. A certificate of attendance will be distributed after the seminar.

Apply online for
"Framework Decision 909
and its Impact on the
Transfer of Prisoners":

www.era.int/?130504&en

Languages

English, Spanish

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**Promoting
Professional
Prison
Practice**



**European
Prison
Information
System**

**FRASER BRYANS
EPIS Manager**

**European Organisation of Prison
and Correctional Services**

Supported by the Justice Programme
of the European Union 

1

- What is EPIS and how it works**
- Various features of the system**
- Live Walkthrough**
- Challenges for the Future**

2



What is EPIS?

To be the **central repository** for information relating to prisons across Europe for the purpose of **increased transparency** and to **aid information sharing** and learning for the **improvement of practices**.

3

How it Works



- Access
- Domain-based permissions
- Points of Contact and administrators
- Refresh cycle

4

System Features



#1 Search and Compare Agencies

#2 Search and Compare Establishments

#3 Knowledge Management System

#4 Statistical Information

EUROPEAN PRISON INFORMATION SYSTEM

www.europris.org

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#1 Search and Compare Agencies

- Map
- Agency Profile
- Quick Stats
- 10 Sections
- 50 Questions

AGENCIES

MAP KMS AGENCIES ESTABLISHMENTS STATISTICS

Scottish Prison Service (UK)

Scotland

Prison Service
National Population: 5 438 000
EuroPris Member: Yes
Custodial Establishments: 15

Quick Stats

Imprisonment Rate per 100,000: 143
Avg. Prisoner Population: 7 460
Total available prisoner places: 7 887
Official design capacity: 7 725

HEAD OFFICE
Address: SPS Headquarters, Calton House, Redhughs Rigg, EH12 9HW Edinburgh
Telephone: 44 131 330 3500
Website: <http://www.sps.gov.uk>
Email: gaolinfo@sps.prim.gov.uk

HEAD OF SERVICE
Mrs Teresa Medhurst
Position: Chief Executive
Appointed since: 01/03/2020

Section 1: General Information ● Public
Section 2: Population ● Public
Section 3: Sentencing ● Public
Section 4: Healthcare ● Public
Section 5: Staffing ● Public
Section 6: Post-prisonisation ● Public

EUROPEAN PRISON INFORMATION SYSTEM

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#2 Search and Compare Establishments

- Establishment Profile
- Basic Information
- Details on capacity, classification, provisions and welfare

ESTABLISHMENTS

MAP KMS AGENCIES ESTABLISHMENTS STATISTICS

Agder Prison – Evje Unit

General Information

Organisation: Directorate of Norwegian Correctional Services (NO)
 Address: All establishments for this agency
 Sanitetsstien 7, 4375, Evje, Norway
 Telephone: +47 37 93 17 70
 Year Constructed: 2012
 Status of Establishment: Custodial
 Additional information:

Head of Establishment

Establishment Information

Where is the prison located: Suburban
 Official design capacity of this prison: 30
 Classification of this prison: Open Prison, Closed prison
 Classification of prisoners: Female Prisoners
 This is a facility for: Pre-trial offenders, Sentenced offenders
 Public or private facility: Public Sector Prison
 Cell types: Single Cell Design

Welfare

7

#3 Knowledge Management System

- Prevents siloed information and maximizes sharing
- Provides detailed responses on practices

EUROPEAN PRISON INFORMATION SYSTEM

MAP KMS AGENCIES ESTABLISHMENTS STATISTICS

Welcome to the EuroPris Knowledge Management System. The table below shows questions and responses from European National Agencies. Select a question for more information or use the filters on the left to narrow down questions based on Agency or Category.

Want to ask a question? Please read our guidance information found here: [Submitting a KMS Question](#)

[Back](#) [Search KMS](#)

170321: Health Care in Prisons

THIS QUESTION WAS SUBMITTED BY PRISON SERVICE OF THE CZECH REPUBLIC, 67 ON 17/03/2021

[Download Report](#)

RESPONSES BY AGENCY:

- National Administration of Penitentiaries (MD) (Republic of Moldova)
- General Directorate of Prison Administration (ES) (Spain)
- Northern Ireland Prison Service (UK) (Northern Ireland)
- Belgian Prison Service (BE) (Belgium)
- Dutch Custodial Institutions Agency (NL) (The Netherlands)
- Ministry of Justice: Prison Department (LT) (Lithuania)
- Prison Administration of the Republic of Slovenia (SI) (Slovenia)
- Federal Ministry of Justice (AT) (Austria)
- National Administration of Penitentiaries (MD) (Republic of Moldova)
- Department of Prisons and Probation (DK) (Denmark)

SEARCH KMS

BY SECTION

- Section 1: General Information (50)
- Section 2: Population (10)
- Section 3: Sentencing (18)
- Section 4: Healthcare (26)
- Section 5: Staffing (26)
- Section 7: Technology (44)
- Section 8: Finance (4)
- Section 9: Regime & Activities (39)
- Section 10: Order (31)
- Section 11: Welfare (2)
- Section 12: Throughcare (2)
- Section 14: Other (3)

BY ORGANISATION

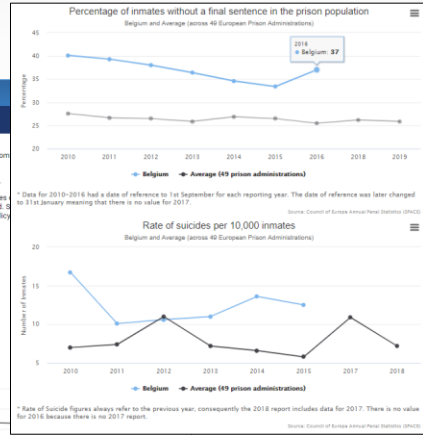
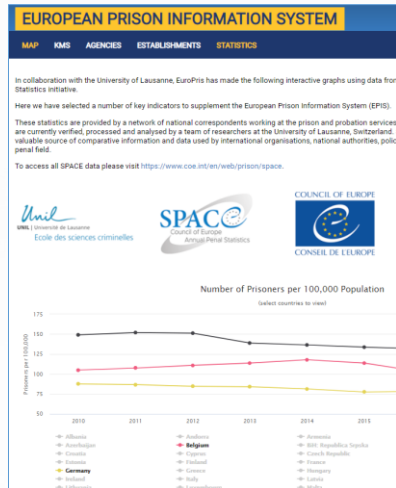
- Administration of the Execution of Penitentiary Sanctions (RS) (2)
- Belgian Prison Service (BE) (109)
- Central Board of Prison Service (PL) (12)
- Correctional Services Agency (MT) (32)
- Criminal Enforcement Administration (ME) (5)
- Criminal Sanctions Agency (FI) (150)

Section To: 07/04/2021 2 6
 Order: 31/03/2021 9 4
 General Information

8

#4 Statistical Information

- Data provided by SPACE
- Seven key indicators
- Interactive graphs for all of Europe and individualized by Agency



Let's take a look...
www.europris.org

Challenges for the Future

Ensuring recent and comparable data (data health)

Maintaining a useful and relevant system – 2021 Review

Data definitions – achieving a common reporting standard

Gathering and disseminating information without burdening prison agencies – self service

Achieving a comprehensive dataset

Our progress to date

Achieving a comprehensive dataset

Today we have...

- 32 agencies complete
- 1036 prison establishments added

Knowledge Management System

- 272 topics
- 1228 questions
- Over 3360 responses



Framework Decision 909 and its Impact on the Transfer of Prisoners ERA Online seminar 7-9 July 2021

French perspectives in dealing with foreign nationals in prison and probation

Daniel Danglades, CEP / Europris Foreign nationals in Prison & Probation Expert Group

Co-funded by the Justice Programme (2014-2020)
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07/09/2021

1



**A French overview of
FNOs from the
statistics**



**Managing foreign
national offenders**



**Transfers of Foreign
National
Prisoners Probationers**



A French overview of
FNOs from the
statistics



Managing foreign
nationals offenders



Transfers of Foreign
National
Prisoners Probationers

3

Who am I ?

My goal today



What's going on in France?

French perspectives in dealing with foreign national in prison and probation

**An overview of foreign national
offender in prison and probation in France**

What are the statistics telling us?

07/09/2021

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What are the statistics telling us? **State of play**

An European concern

A vulnerable group

A societal fantasy ?

07/09/2021

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What are the statistics telling us? Trends

(Source : Ministère de la Justice - DAP)



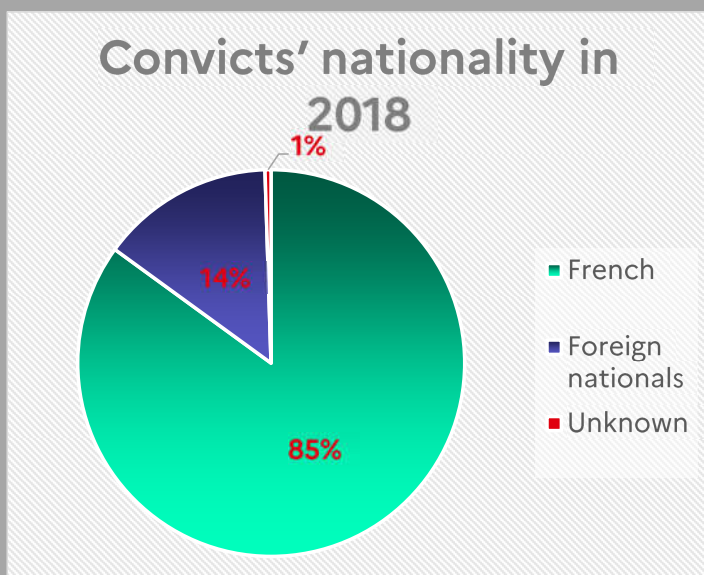
Between 2000 and 2020, the number of foreigners held in prison has increased about 1.5 times. Over the first ten years of this period, this number was fairly constant.

Looking at the %, it's a different story

What are the statistics telling us? Trends

(Source : Ministère de la Justice - DAP)

Nationality: a factor in sentencing?



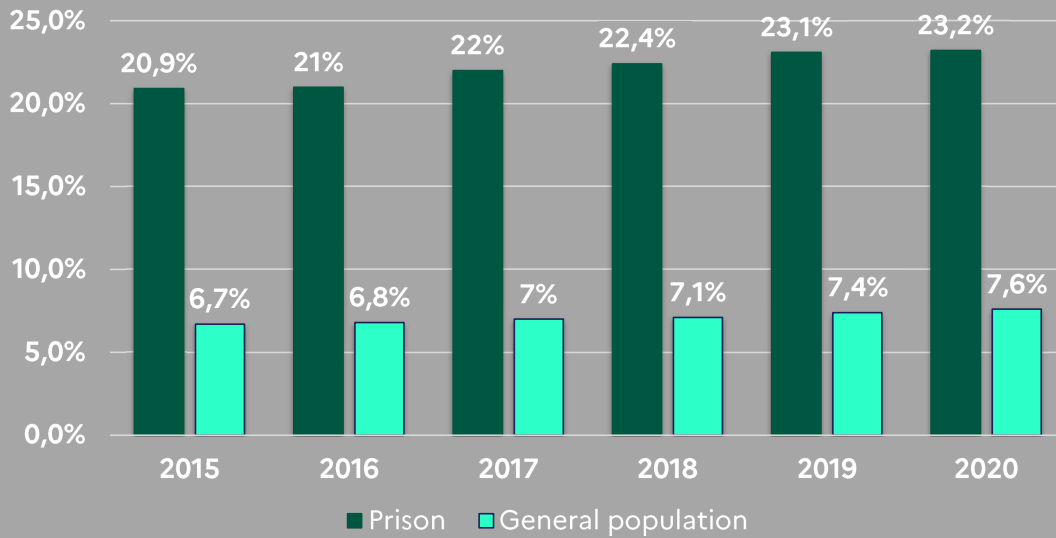
x2
Proportionally more convicted foreign nationals than foreign nationals in general population

1. What are the statistics telling us?

Trends

(Source : Ministère de la Justice – DAP & INSEE National Institute for Statistics and Economic Studies)

% of foreigners in general population VS % of foreigners held in prison



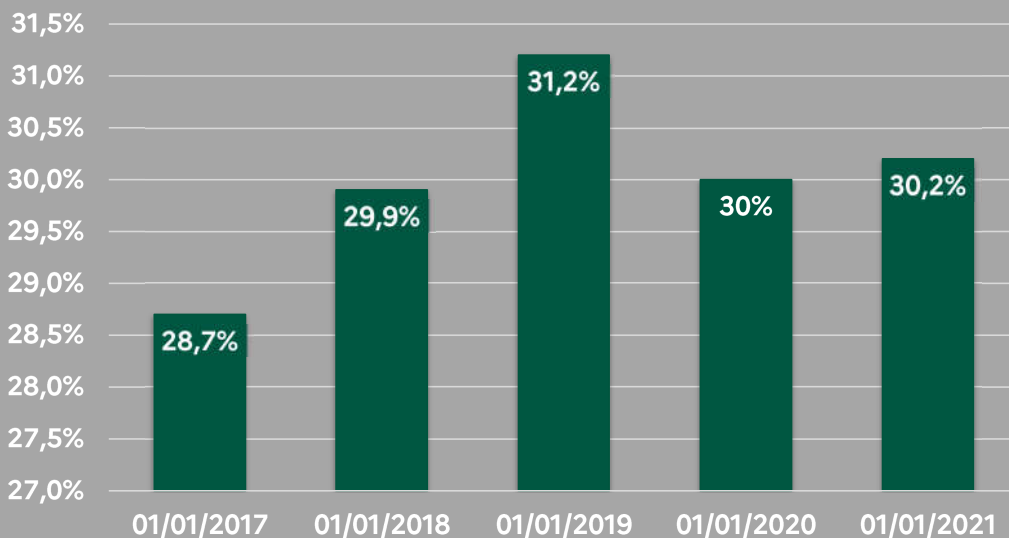
x3.11
 Proportionally
 more foreign
 people in
 prisons than in
 general
 population

What are the statistics telling us?

Trends

(Source : Ministère de la Justice - DAP)

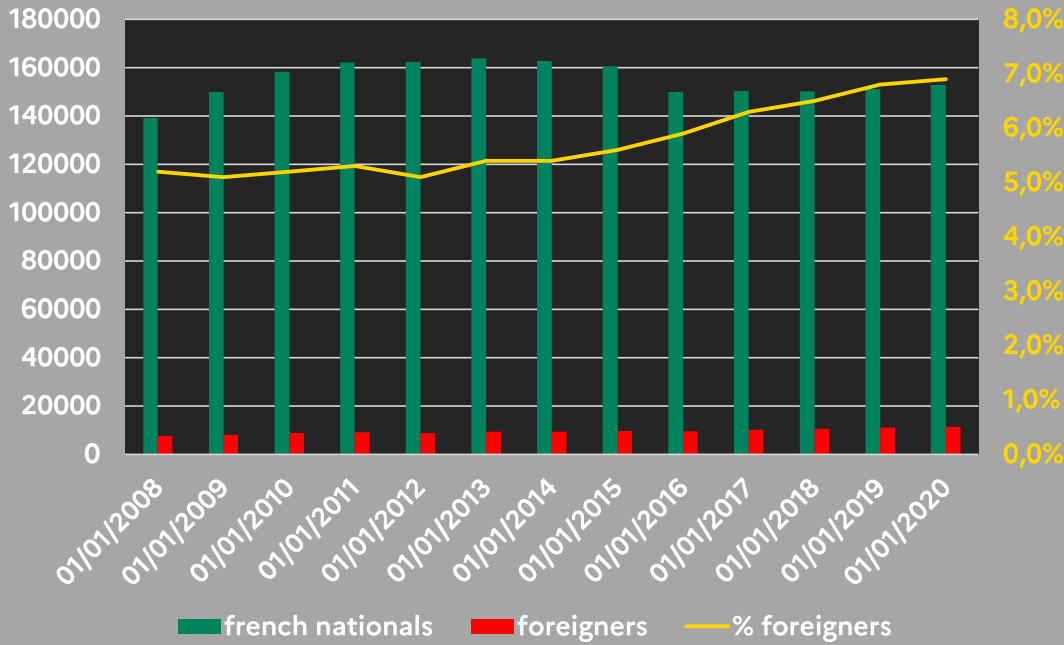
% foreigners among pre-trial detainees



Risk of absconding

What are the statistics telling us? Alternatives to imprisonment

(Source : Ministère de la Justice - DAP)

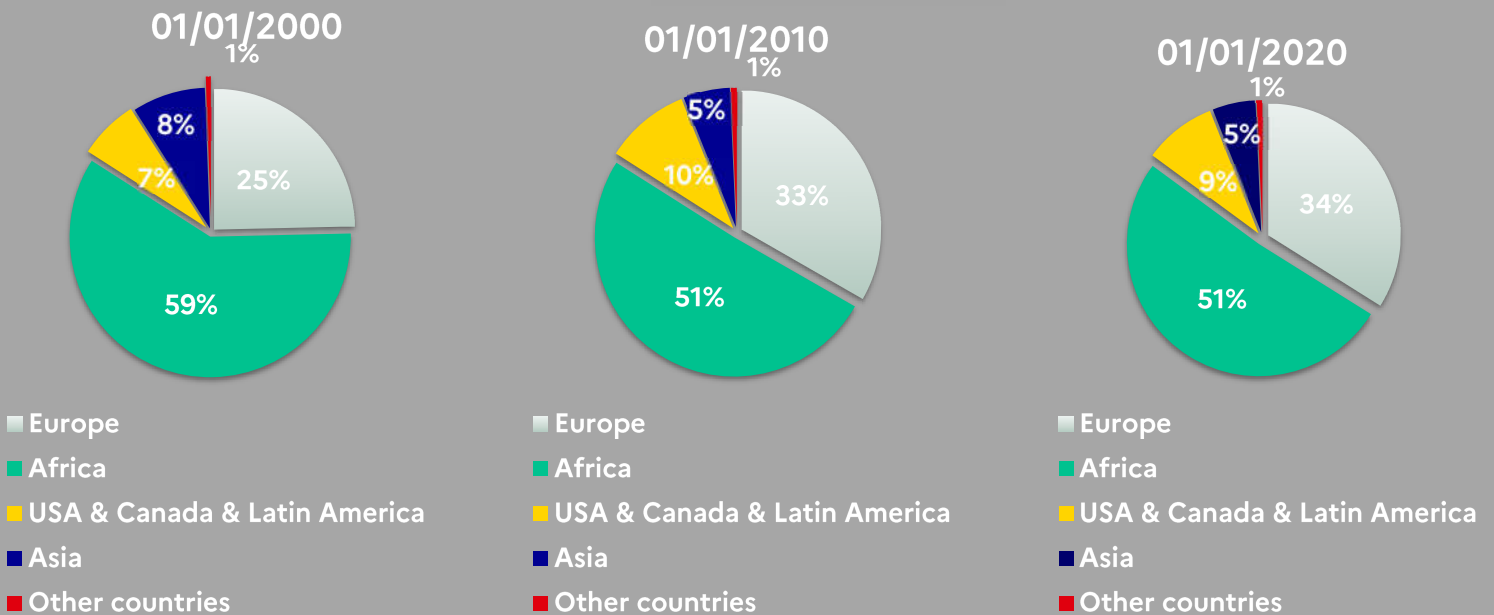


Foreign nationals are underrepresented in community sanctions and measures

What are the statistics telling us? Breakdown of foreign national inmates

(Source : Ministère de la Justice - DAP)

A- GEOGRAPHICAL

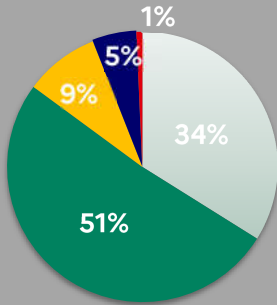


What are the statistics telling us? Breakdown of foreign national inmates

(Source : Ministère de la Justice - DAP)

B- EU foreign nationals inmates

01/01/2020



Where from Europe?

Europe	33.9%	5931
EU	20.4%	3562
Outside EU	13.5%	2369

- Europe
- Africa
- USA & Canada & Latin America
- Asia
- Other countries

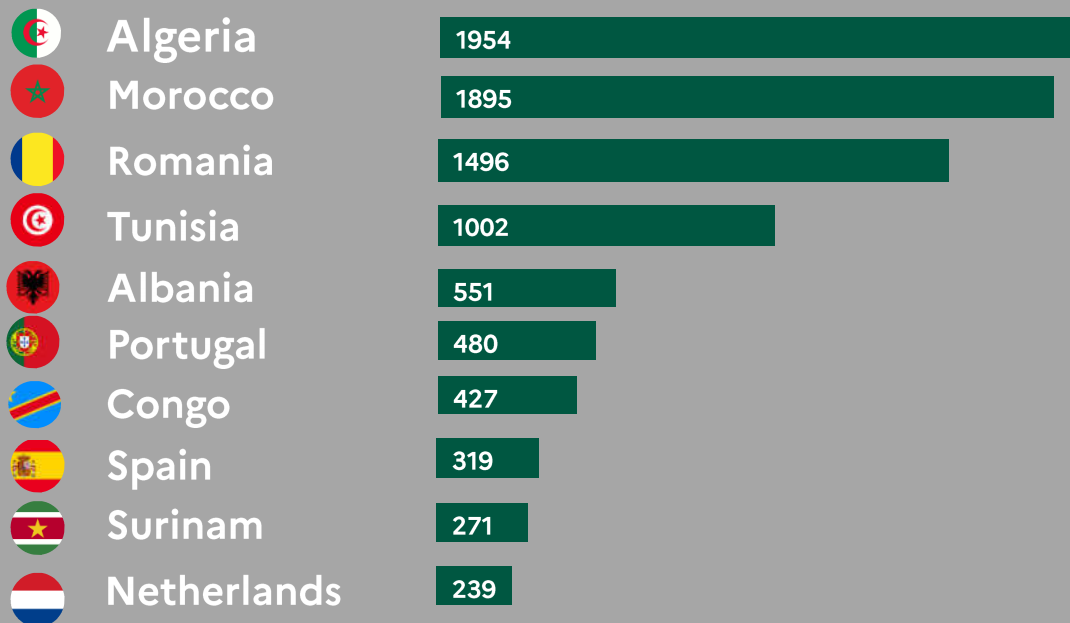
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What are the statistics telling us? Breakdown of foreign national inmates

(Source : Ministère de la Justice - DAP)

C- Top 10 nationalities of foreign national offenders in French prisons – Feb 2018



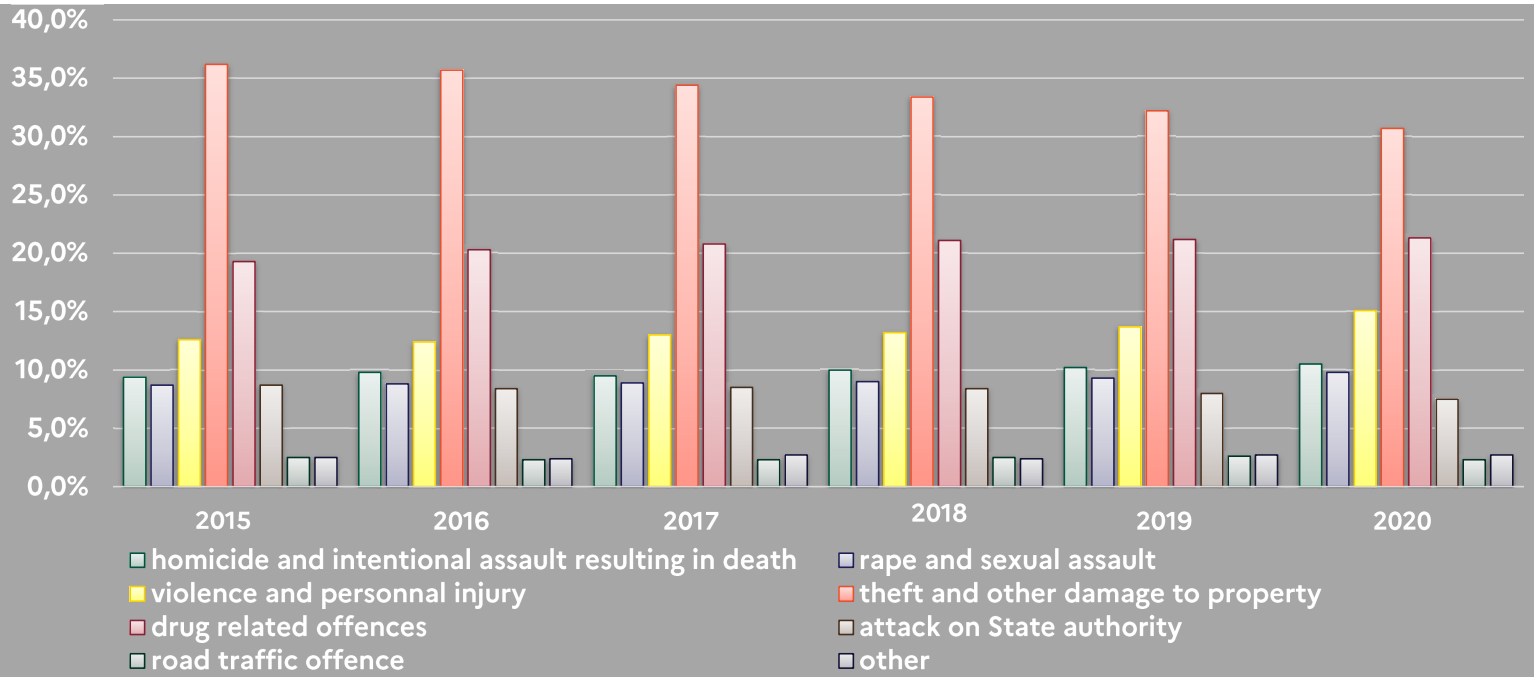
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What are the statistics telling us?

Breakdown of foreign nationals according to the nature of offence

(Source : Ministère de la Justice - DAP)



What have we learned so far?

Findings



Data on Foreign national offenders say a lot about how the criminal justice system works

07/09/2021

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A French overview of
FNOs from the
statistics

07/09/2021



Managing Foreign
National offenders



Transfers of Foreign
National
Prisoners Probationers

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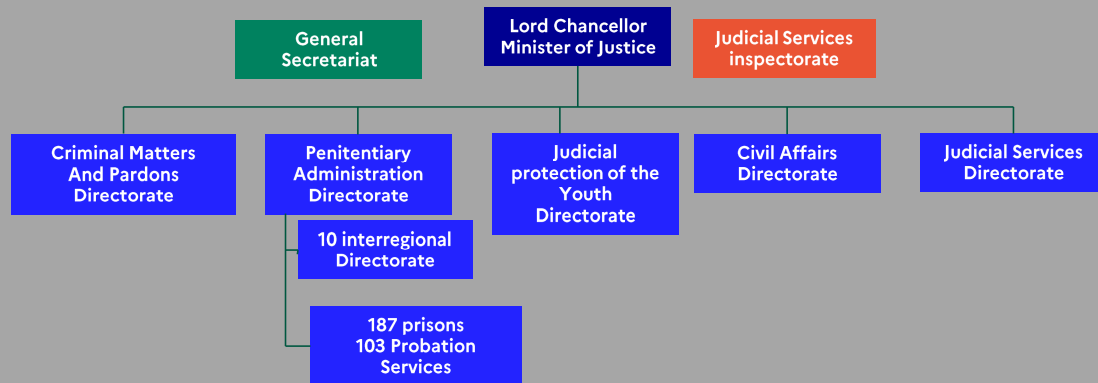
Managing Foreign National offenders

2. Managing foreign nationals offenders

Setting the scene

2. Managing foreign national offenders

SIMPLIFIED MINISTRY OF JUSTICE ORGANISATION



2. Managing foreign national offenders

Main characteristics

- DAP = prisons + probation services -> a strong unity of purpose
- No french prison for only foreign national offenders
- Overcrowded prisons

2. Managing foreign national offenders

Principles

Prison and probation services ensure the sentences of the courts are properly carried out and work with offenders to tackle the causes of their offending behavior.

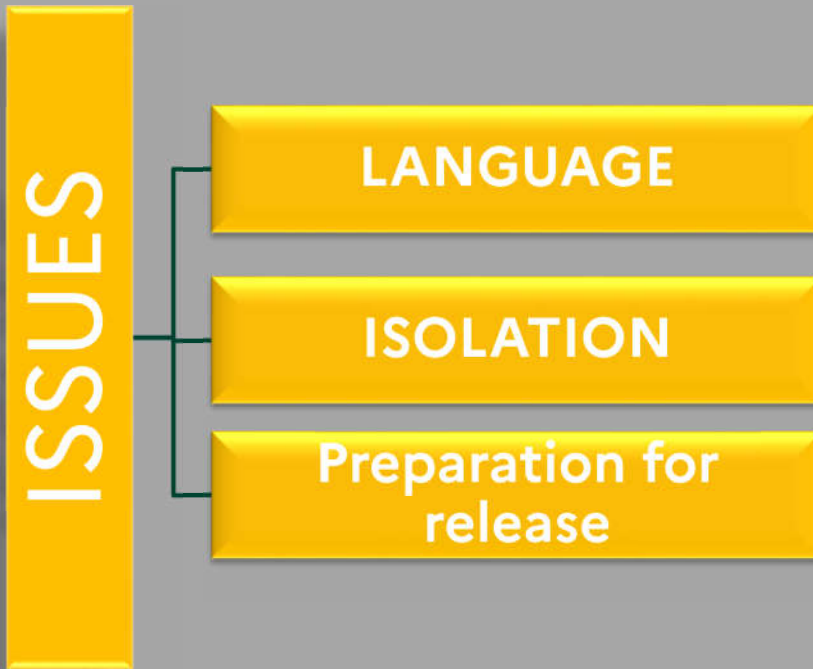
To prevent re-offending

To rehabilitate

2. Managing foreign national offenders

Putting our principles into practice with
foreign nationals offenders

2. Managing foreign national offenders



2. Managing foreign national offenders

ADMISSION

- Identifying & Recording of nationality
Nationality self-declared
- Identification of Immigration Status
All foreign national prisoners referred to the Home Office
- Contact with consular authority
Prisoners are given facilities to contact their consular authorities
- Provision of information in different languages (booklet)

2. Managing foreign national offenders

ALLOCATION

- ❑ Foreign National Offenders are first and foremost prisoners

- ❑ Allocated according to the length of their sentence

- ❑ All prisoners are categorised. They are assigned the lowest security category consistent with managing their needs in terms of security and control at all stages of the sentence.

2. Challenges

Different groups

- Foreign nationals to be expelled after sentence

- Transferred during sentence

- Non-returnable

- Foreign nationals with residence permit

2. Managing foreign national offenders

Probation and foreign national offenders



FNOs are not singled out, however:

- Impact of immigration uncertainties
- Co-ordinated approach needed
- no contact with relevant authorities in the home countries

2. Managing foreign national offenders

ROADMAP

- Issuance of residence permits for FNOs whose residence permits expired during imprisonment
- Relations of foreign detained persons with their consular authority
- The removal of foreign detained persons in an irregular situation following the completion of the sentence (co-ordinated approach)



A French overview of FNOs from the statistics

07/09/2021



Managing foreign national offenders



Transfers of Foreign National Prisoners/Probationers

French perspectives in dealing with foreign national in prison and probation

Prison Transfer

3. Prison transfer

Several international tools :

- CoE Convention n°112 of March 21st, 1983
+ its additional protocol 167 of December 18th, 1997
+ ongoing reflection to sign the amendment protocol of November 2017
- Convention implementing the Schengen Agreements of June 19th, 1990
- 26 bilateral treaties
- Inside EU: FD 2008/909/JHA FD 2008/947/JHA FD 2009/829/JHA

3. Prison transfer

FD 909 in 2019

As executing state
Total: 96

-  Portugal 31
-  Spain 15
-  Italy 12
-  Belgium 6
-  Germany 8



As issuing state
Total : 48

-  Italy 10
-  Portugal 6
-  Spain 6
-  Belgium 6
-  Netherlands 13

Please note, these figures are an estimate and come from a manual count made by colleagues in the jurisdiction

3. Prison transfer

FD 829 in 2019

As executing state
Total: 48

As issuing state
Total : 1



 Spain 14

 Portugal 9

 Belgium 7

 Poland 4

 Czech Rep. 4

 Italy 1

Please note, these figures are an estimate and come from a manual count made by colleagues in the jurisdiction

3. Prison transfer

FD 947 in 2019

As executing state
Total: 65

As issuing state
Total : 9



 Portugal 23

 Spain 36

 Italy 1

 UK 2

 Germany 1

 Romania 1

 Albania 1

 Spain 4

 Belgium 2

 UK 1

Please note, these figures are an estimate and come from a manual count made by colleagues in the jurisdiction

Good practice of FD 909

Example : French Guyana -> Netherlands

BREAKING NEWS

Constitutional Council
7 may 2021 ruling

<https://www.conseil-constitutionnel.fr/decision/2021/2021905QPC.htm>

3. Prison transfer

- Prison staff and probation officers training
- Develop local protocols between the judicial authorities and the registry offices
- Improve information for detainees on their rights

French perspectives in dealing with foreign nationals in prison and probation

Closing remarks

Thank you very much for your attention

daniel.danglades@justice.gouv.fr

07/09/2021

A word cloud graphic on a dark grey background. The words are in various colors (red, blue, yellow, green, purple) and sizes. The words include: WHERE?, HOW?, WHAT?, WHY?, WHEN?, WHO?, and Q&A. The Q&A is the largest and most prominent word in the center. Other words are scattered around it, some appearing multiple times in different orientations.

07/09/2021

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Co-funded by the Justice Programme of the European Union 2014-2020

**STEP2 RESETTLEMENT PROGRAJECT
ON THE IMPLEM,ENTATION OF FD 909
AND SOME REALITY CHECK**

PROF. IOAN DURNESCU

1

AIM OF THE PRESENTATION

- To remind you about the STEPS2 Project
- To run a reality check on the implementation of FD 909 after 10 years

2

STEPS2 PROJECT

- STEPS 2 Resettlement – stands for Support for Transfer of European Sentences towards Resettlement.
- Aimed at supporting the delivery of Framework Decision 909 on prisoner's transfer by investigating and analyzing the legal and practical obstacles
- Project partners:
 - NOMS – UK – coordinator
 - Dutch Custodial Institutions – NL
 - Belgian Prison Service - BE
 - CEP
 - De Montfort University - UK
 - EuroPris
 - Ghent University - BE
 - National Administration of Penitentiary – RO
 - University of Bucharest - RO
 - University of Huelva - ES

3

RESULTS

- **Offender Handbook** – where good practices are identified and suggestions are put forward for social rehabilitation and resettlement
- <https://www.europris.org/wp-content/uploads/2021/01/Annex-4.12.-Workstream-3-Social-Rehabilitation-Through-the-Prison-Gate.pdf>
- Online instructions – small video
- Prisoner Brochure – for Romanian prisoners in Italy and Spain.
- Rapid literature review on obstacles and solutions - 2016

4

RAPID LITERATURE REVIEW OBSTACLES AND SOLUTIONS

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

5

RAPID LITERATURE REVIEW OBSTACLES AND SOLUTIONS

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

6

RAPID LITERATURE REVIEW OBSTACLES AND SOLUTIONS

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

7

REALITY TEST

- To see how the FD works in the real life
- Interviewed 6 inmates recently transferred to Romania from EU Member States to capture their experience

8

CONCLUSIONS

- 'every state wants to get rid of us' – the aim of the FD is clear in the inmate's mind and it is not REHABILITATION
 - The conditional release rules create huge shocks – EA sentenced in Belgium for 25 years – executed 6 years in Belgium (to be conditionally released in 2021) – transferred with no consent to Romania (to be conditionally released in 2030).
 - In case of no consent – no information, no judge, no interpretation, no appeal
 - No information about their progress in the Issuing State – they start from 0 with close regime as if they were just sentenced in the Executing State.
 - They had no information about the Romanian system – no brochure
 - Prison staff no information about the procedure – lots of misinformation – BMS sentenced in Italy and transferred to Romanian although his family is in Spain.

9

CONCLUSIONS

- Sighs of good practices:
 - Ciprus – all foreigners receive a paper with information about the possibility of transfer
 - Some inmates request to be transferred – mostly for family reasons or for better conditional release conditions.

10

CONCLUSIONS

- The experience I captured is mostly negative – ‘I feel betrayed. I have only hatred inside me’, ‘Nobody thought about my rights’, ‘it is burning inside me’, ‘I was mistreated’.
- The procedure seems to be perceived as illegitimate and unfair and creates a lot of frustration – we should pay attention to the risk of radicalization or anti-European feelings.
- Suggestion – conduct a European wide study taking into account the voice of those involved and review the procedure.

11

Thank you !!

Ioan Durnescu
idurnescu@gmail.com

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Promoting Professional Prison Practice



European Organization of Prison
and Correctional Services

ERA Online Seminar

'Framework Decision 909 and its Impact on
the Transfer of Prisoners'

7 - 9 July 2021

Supported by the Justice Programme
of the European Union



**'Overview of good practice with
foreign prisoners - the EuroPris
'Good Practise Manual' & FNP
e-learning training module'**

Nick Hammond Coordinator
EuroPris & CEP Foreign Nationals in Prison &
Probation Expert Group

1

Structure

- the EuroPris/CEP Foreign Nationals in Prison & Probation Expert Group which is contributing to this seminar
- present our group's promotion of Council of Europe's Recommendations on Foreign Prisoners 2012(12)
- see Foreign Prisoners e-learning module created with the CoE and linked Manual of Good Practice from European prison services
- Questions

European Organisation of Prison and Correctional Service

www.europris.org

2

EuroPris & CEP's Foreign Nationals in Prison & Probation Expert Group

- 17 members - 12 countries < prison/probation managers, NGOs, academics
- aims include, promotion of best practice & CoE Recs on Foreign Prisoners 2012(12)
- activities include; FNP Workshops 2014 London, 2016 Bruges, 2018 The Hague, (2020) Special Edition FNP Newsletters Nov. 2020, Webinar May 2021
- and to improve treatment of FNPs, in collaboration with Council of Europe, devising online e-learning module plus 'Good Practise Manual'

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3

Membership of EuroPris & CEP's Foreign Nationals in Prison & Probation Expert Group

** ERA seminar presenters

Founder group members

**Dutch Probation International Office NL

**ICPO Ireland

**Italian Prisoners Abroad

Prisoners Abroad, UK

EuroPris members

The Netherlands

Austria

Catalonia, Spain

Cyprus

Lithuania

CEP members

England & Wales, UK

Baden-Wurttemberg, Germany

Belgium

Luxemburg

**France

University

**Dr Roisin Mulgrew Ireland

Standing members

EuroPris Executive Director

CEP Secretary General

**FNPP Co-ordinator

European Organisation of Prison and Correctional Service

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4

collaborative work producing FNP E-Learning Module

- part of CoE HELP Programme
- Dr Roisin Mulgrew University of Nottingham
- Isabelle Storme Belgium Prison Service
- Nick Hammond EuroPris



CoE Strasbourg – March 2019

European Organisation of Prison and Correctional Service

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5

Introductory page of e-learning module

Home Courses

Home / My Courses / HELP Online Courses / Foreign National Prisoners

Managing Foreign National Prisoners (EuroPris) (3 Hours)

Change cover image

CONTENTS	
Introduction Progress: 0 / 1	3. European Groups working with their nationals imprisoned abroad Progress: 0 / 1
1. Good Practice examples for Working with Foreign National Prisoners Progress: 0 / 1	4. Obtain Module Slides Progress: 0 / 1
2. European Organisations Supporting Foreign Nationals in Prison and on Probation Progress: 0 / 1	5. When 'Resources for Working with Foreign National Prisoners in Europe' links are found in the E-Learning Module Progress: 0 / 1
	6. FNP (French) Progress: 0 / 1
	7. FNP (Spanish) Progress: 0 / 1
	8. FNP (Italian) Progress: 0 / 1
	9. FNP (German) Progress: 0 / 1
	10. FNP (Greek) Progress: 0 / 1
	11. STATEMENT OF ACCOMPLISHMENT

Create a new section Course Dashboard

6

'Managing Foreign National Prisoners' E-Learning Module

- for all those responsible for foreign national prisoners, new & current prison staff, prison managers, staff trainers, policy makers, voluntary group workers
- comprises 7 chapters & supporting resources including 'Good Practice Manual' [EuroPris: Promoting Professional Prison Practice](#) | » [Table of CoE Foreign Prisoners Recommendations with Good Practice Examples](#)
- available in English, Spanish, French, German, Greek, Italian
- independent/self-learning or 'tutored' as part of a training programme
- interactive & engaging, using quiz's, videos, animations, voice-overs
- access through registering on CoE HELP <http://help.elearning.ext.coe.int/> & [EuroPris: Promoting Professional Prison Practice](#) | » [Resources for Working with FNPP in Europe](#)

7

Prisoner Transfer in Council of Europe 2012(12) Concerning Foreign Prisoners

II. Basic Principles - Rule 10 Decisions to transfer foreign prisoners to a State with which they have links shall be taken with respect for human rights, in the interests of justice and with regard to the need to socially reintegrate such prisoners

VI. Release; *Preparation for release* - Rule 35

35.4. Where foreign prisoners are to be expelled from the State in which they are being held, efforts shall be made, if the prisoners consent, to contact the authorities in the State to which they are to be sent with a view to ensuring support both immediately upon their return and to facilitate their reintegration into society.

35.5. In order to facilitate continuity of treatment and care where foreign prisoners are to be transferred to another State to serve the remainder of their sentence, the competent authorities shall, if the prisoner consents, provide the following information to the State to which the prisoners shall be sent:

- | | |
|---|---|
| a. the treatment the prisoners have received; | b. the programmes and activities in which they have participated |
| c. medical records | d. any other information that will facilitate continuity of treatment and care. |

35.6. Where foreign prisoners may be transferred to another State, they shall be assisted in seeking independent advice about the consequences of such a transfer.

35.7. Where foreign prisoners are to be transferred to another State to serve the remainder of their sentence, the authorities of the receiving State shall provide the prisoners with information on conditions of imprisonment, prison regimes and possibilities for release.

8

Impact of pandemic on FNPs & 'Good Practice Manual'

- Covid-19 placing extraordinary pressures on prison services [EuroPris: Promoting Professional Prison Practice | » COVID-19](#)
- impact on all prisoners in particularly FNPs regarding visits & communications
- accelerated changes in use of digital & video technology
- will changes adopted during pandemic remain – what will be the 'new normal'?
- impact on examples of good practice due to covid i.e. need for revision and examples of current new practices...

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9



PROMOTING PROFESSIONAL PRISON PRACTICE.

Search 

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ABOUT TOPICS EVENTS EXPERT GROUPS EPIS/KMS PROJECTS PARTNERSHIPS RESOURCES

TABLE OF COE FOREIGN PRISONERS RECOMMENDATIONS WITH GOOD PRACTICE EXAMPLES

In the Table of Recommendations and Practices below, each Article of the Council of Europe Recommendation 2012 (12) on Foreign Prisoners is included. For each of these Articles, information is collected from European Prison Services giving inspiration to its members and providing practices that support the implementation of the Recommendation. The table also contains references to the practice being a national, local or regional initiative, the legal basis and budget sources.

The table can be searched by country and by Article of the Recommendation.

Countries that are not yet included are invited to submit their data and send them to secretariat@europris.org.

▶ 0. 1 - Alleviate any possible isolation
▶ 0. 2 - Facilitate treatment with a view to their social reintegration
▶ 0. 3 - Treatment should take into account the special needs of FPs
▶ 0. 4 - Provide with opportunities equal to those of other prisoners.
▶ II. 3 - Foreign prisoners shall be treated with respect for their human rights and with due regard for their particular situation and individual needs.
▶ II. 4 - Foreign suspects and offenders shall be entitled to be considered for the same range of non-custodial sanctions and measures as other suspects and offenders; they shall not be excluded from consideration on the grounds of their status.
▶ II. 5 - Foreign suspects and offenders shall not be remanded in custody or sentenced to custodial sanctions on the grounds of their status, but, as for other suspects and offenders, only when strictly necessary and as a measure of last resort.

FILTER RECOMMENDATIONS

COUNTRIES

EU02 Belgium ▼

TOPICS

- 0. Preamble
- II. Basic Principles
- III. Use of Remand in Custody
- IV. Sentencing
- V. Conditions of Imprisonment
 - Admission
 - Allocation
 - Clothing
 - Contact with consular representatives
 - Contact with outside world
 - Education & training
 - Exercise & recreation
 - Freedom of religion or belief

10

PROMOTING PROFESSIONAL PRISON PRACTICE

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Promoting Professional Prison Practice



**European Organisation of Prison
and Correctional Services**

**Tools to assist with the application
and processing of FD 909 transfers**

Thursday 8 July 2021

**Nalini Hussain
FD909 Expert Group Coordinator**

Supported by the Justice Programme
of the European Union 

1

Who is EuroPris?

- **The European Organisation of Prison and Correctional Services (EuroPris) was founded in 2011**
- **Aim is to promote ethical and rights-based imprisonment, exchange information and provide expert assistance to support this agenda**
- **Has several expert groups including Foreign Nationals in Prison and Probation, Domestic Violence and the European Framework Decision 2008/909/JHA**

European Organisation of Prison and Correctional Service

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2

European Framework Decision 2008/909/JHA Expert Group

- Established in 2012 to assist members with the implementation of European Council Framework Decision 2008/909/JHA
- Current expert group comprises of 31 representatives from 25 Member States
- Representatives are from the authority responsible for the transfer of foreign national prisoners which include national prison services, Ministry of Justice, Judges and Prosecutors
- The expert group discusses practical issues and solutions, to support Member States in using FD909 and transferring prisoners to their countries of nationality or residence

3

Tools to assist in the application and processing of FD909

- The EuroPris resource book is designed to assist Competent Authorities in processing transfers of sentenced prisoners
- Information is based on practical recommendations and best practice shared by Member States
- Guidelines in the resource book should be read in conjunction with the European Commission Legal Handbook on Framework Decision 909
- EuroPris FD909 web pages provides other useful information such as country factsheets on prison sentence execution, expert group meeting annual reports and links to projects/reports from MS and other partners such as EJM in relation to FD909

4

Useful information

- For more info on EuroPris: www.europris.org/about
- FD909 resources: www.europris.org/expert_groups/framework-decision-2008909jha-transfer-of-prisoners/
- FD909 related resources: www.europris.org/topics/framework-decision-909/
- FD909 Resource Book: www.europris.org/wp-content/uploads/2020/02/Resource-Book-Transfer-of-Prisoners-February-2020.pdf
- European Commission Legal Handbook on FD909: www.ejn-crimjust.europa.eu/ejnupload/News/HANDBOOK-909-EN_TXT.pdf

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5

PROMOTING PROFESSIONAL PRISON PRACTICE

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www.europris.org



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6



Co-funded by the Justice Programme of the European Union 2014-2020

Transfer of prisoners to serve their sentences in another State

Judicial enforcement of the 909 DM in practice



Jaime Moreno Verdejo
Prosecutor of the Supreme Court

1

LEGAL INSTRUMENTS

- **Strasbourg Convention**
- **Bilateral Conventions**
- **Council Framework Decision 909/2008/JAI, of 27 November 2008**
- **Law 23/2014, on Mutual Recognition of Criminal Decisions in the UE**



STATISTICAL DATA

(Sources: General Secretariat of Penitentiary Institutions website and FGE Annual Report)

2

EVOLUTION OF PRISON POPULATION

2011	70.472
2012	68.597
2013	66.765
2014	65.017
2015	61.614
2016	59.589
2017	58.814
2018	58.883
2019	58.517
2020	58.369

Statistical Data (Sources: FGE Annual Report; General Secretariat of Penitentiary Institutions and y General Directorate for Consular Affairs)

3

NUMBER OF FOREIGN INMATES IN SPAIN

	Total population	No. of foreigners	%
2011	70.472	24.502	34,78 %
2012	68.597	22.893	33,37 %
2013	66.765	21.116	31,62 %
2014	65.017	19.697	30,29 %
2015	61.614	17.870	29,00 %
2016	59.589	17.130	28,75 %
2017	58.814	16.549	28,14 %
2018	58.883	17.130	29,09%
2019	58.517	16.470	28,14%
2020	58.369	16.417	28,13%



Downward trend, accentuated in 2010, continues.

4

Foreigners in Spanish prisons: 28%

- Of this 28% : **23 %** from EU countries
93% men and 7% women
- Morocco: 3.215
- Romania : 1.594
- Colombia: 1.471
- Ecuador: 585
- Dominican Republic: 529
- Algeria: 427
- Nigeria: 364
- Portugal: 343
- Bolivia: 313
- China: 280



5

Spaniards in foreign prisons

Attended by the consular staff of the Spanish Embassies and Consulates. Even financial assistance: the Embassy or Consulate can provide assistance to the person who is serving a sentence, which, as a maximum, can reach 120€ per month. Provided only if his/her family or relatives are unable to provide assistance.

Progressive decline in number: 2.022 in 2.013 --- 1.726 in 2.015 --- **818 in May 2021 (722 men and 96 women)**

Countries (with 10 or more): Germany 114; Argentina 13; Australia 11; Belgium 36; Bolivia 15; Brazil 10; Chile 11; Colombia 18; Denmark 10; Ecuador 16; USA 31; France 144; Italy 34; Morocco 78; Mexico 11; Peru 42; Portugal 44; UK 30; Dominican Rep. 12; Switzerland 16; Venezuela 12

Type of offences: 466 for **drug trafficking: 51%**.

(Source: General Directorate for Consular Affairs, Home Department).

6

Number of transfers

SPAIN TO ABROAD

Transferred by Law 23/14 from Spain to their EU country:

2018 – 80
2019 – 73
2020 – 41
2021 – 41 (until April) (the largest number to Romania, Netherlands and France)

Transfers abroad to comply with Strasbourg Convention:

2018 – 11
2019 – 9
2020 – 4
2021 – 6 (until April)

Expulsions (art. 89 CP):

2018 – 642
2019 – 668
2020 – 357
2021 – 228 (until April)

Transfer abroad 197 RP Parole:

2018 – 96
2019 – 58
2020 – 41
2021 – 56 (until April)

ABROAD TO SPAIN

In 2015: applications 348; authorised 81; refusals 112; effective transfers 24

In 2020: applications 99, authorisations in Council of Ministers: 75 and effective transfers: 26.

(Sources: General Secretariat of Penitentiary Institutions / General Directorate for Consular Affairs. Home Department).

7

PHILOSOPHY

- **Spain as Executing State**, does tend to welcome its nationals.
- **Spain as an Issuing State**, is more reluctant to “release” its foreign prisoners.
 - art. 66 y 67, transfer is Spanish Judicial Authority power.
 - Causes of refusal:
 - Lack of connection with the state of execution
 - Pending cases
 - No proof of identity
 - Enforcement time pending
 - Seriousness of the offence
 - Resignation
 - Failure to pay civil liability

8

DIFFERENT LEGAL INSTRUMENTS FOR THE TRANSFER OF SENTENCED PERSONS

1.- Strasbourg Convention on the transfer of sentenced persons of 21 March 1983

2.- Bilateral Conventions

3.- Council Framework Decision 909/2008/JAI, of 27 November 2008, on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or other measures, involving deprivation of liberty for the purpose of their enforcement in the EU

4.- Law 23/2014, of 20 November, on the mutual recognition of decisions in criminal matters in the EU – Title III and Title IV

9

1. Convention on the transfer of sentenced persons signed in Strasbourg 21/3/1983

Signed by: 46 member states of the Council of Europe + 22 non-member states

Updated list of signatories. Council of Europe website:

http://www.coe.int/en/web/conventions/full-list//conventions/treaty/112/signatures?p_auth=M6qBqWij

Some of the non-Council of Europe signatories: Australia, Brazil, Canada, Israel, India, Japan, Mexico, Ecuador, Bolivia, USA, Venezuela, the Vatican and Ghana.

The Strasbourg Convention continues to apply for all non-EU signatory countries (for these DM 909)

10

Strasbourg Convention characteristics

- Only applies to **nationals** (not mere residents)
- From **final judgement**
- Must have, at least, **six months of outstanding time remaining** from receipt of application
- **Triple consent:** offender + the 2 States involved (serving and convicting)
- **Double criminality or double incrimination control**
- **No formal rigour** – No standardized certificate - No standardized procedure (in practice, the same as for bilateral conventions) - No deadlines – Requests and communications are made through Ministries of Justice
- **Voluntary system** – No transfer obligation
- **System:** possibility of **continuation (art. 10) or conversion (art. 11)** – The State of performance can choose between one or other system (art. 9)
- **Costs** to be borne by the State of compliance

11

Characteristics of the ratification and implementation of the Convention by Spain (BOE no. 138, June 10, 1985)

Spain ratified the convention with some declarations, including a **RESERVATION OF EXCLUSION** from art. 9.1.b procedure



The aim is that the foreigner sent back to his country should serve the sentence imposed by Spain.

Likewise, the Spaniard who comes to serve his/her sentence **does so according to the sentence imposed abroad.**

PROSECUTION criteria with,

EXCEPTION: ADAPTATION of the foreign sentence: if the **nature or duration of the sanction is incompatible with the Spanish legislation.**

JURISPRUDENCE ADAPTATION CASES: STS 820/2013, October 17th; STS 47/2018, January 29th; STS 315/2015, May 28th; STS 365/2016, April 28th

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2. Bilateral transfer agreements signed by Spain

- A **BASIC TEXT** with different **SPECIALISATIONS**
- Ministry of Justice website:
<https://www.mjusticia.gob.es/cs/Satellite/Portal/es/areainternacional/tramites-internacionales/traslado-personas-condenadas>
- www.prontuario.org (Penal)

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Common features to most bilateral agreements

- Normally for **prison sentences involving service** (although some extend to suspended sentences, parole or probation)
- At least **6 months or 1 year** – depending on the agreement – to be served
- **Final judgement**
- **Nationality** criterion
- **Dual criminality**
- **Consent** of the offender
- In most cases, **the prosecution approach** is chosen
- **Costs** – diverse solutions, but most commonly, costs are borne by the State of enforcement or receiving one.

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With which states? With 33 countries

Saudi Arabia	Egypt	Panama
Argentina	El Salvador	Paraguay
Bolivia	United Arab Emirates	Peru
Brazil	Philippines	Dominican Republic
Cape Verde	Guatemala	Russia
Colombia	Honduras	Senegal
Costa Rica	Hong Kong	Thailand
Cuba	Kazajstán	Vietnam
China	Morocco	India
Ecuador	Mauritania	
Venezuela	Mexico	
Yemen	Nicaragua	



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3.- Council Framework Decision 909/2008, November 27, 2008 Transfers within the EU framework

Trasposed into Spanish law by:

Law 23/2014, November 20th, on the mutual recognition of criminal decisions in the EU.



Radical change - respect to the system of the Strasbourg Convention and bilateral conventions

Strasbourg Convention	Decision 909/2008
Communication between Ministries of Justice or central authorities	Direct communication between judges
Transfer of nationals	Transfer of nationals and possibility of transfer of residents

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Strasbourg Convention	Decision 909/2008
Multiple documents provided by the sentencing State and by the State of enforcement (art. 6 of the Convention)	Standardised certificate translated into the language of the executing State + Sentence
Triple consent	The consent of the convicted person is not always required , but his/her opinion is (art. 6 DM)
Dual criminality control through the exchange of legislation criminalising the offence committed	The double criminality check is abolished for 32 offences (art. 7.1 DM) provided that they are punishable in the issuing state by a penalty which maximum is not less than three years – Unless otherwise stated (art. 7.4 DM)
No time limit or regulated procedure	Regulated procedure – in Spain this is regulated in Law 23/2014 + Maximum time limit of 90 days for the decision and 30 days for the transfer (art. 12 and 15 DM)

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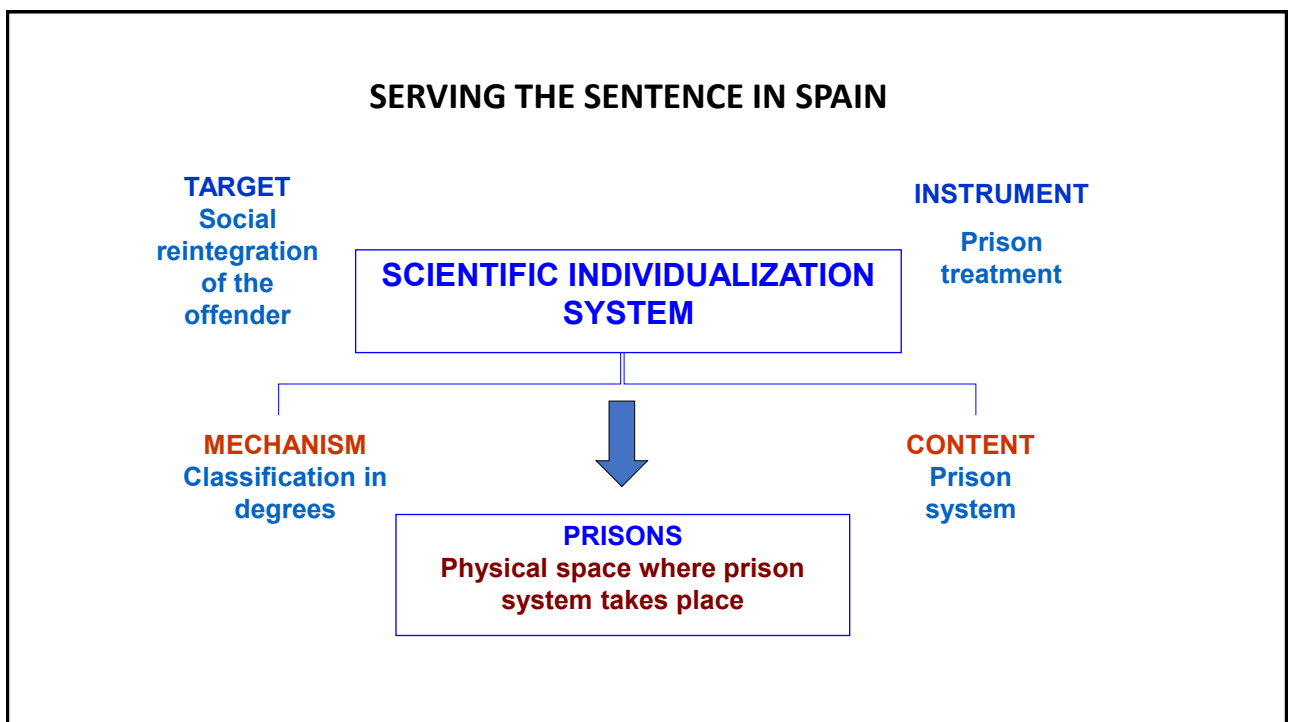
Strasbourg Convention	Decision 909/2008
Voluntary system – Relocation as an act of sovereignty	Limited discretion for the executing State – Specified grounds for refusal of recognition and enforcement (art. 9 DM)
Criteria for implementation in compliance status: Continuation (with the possibility of adaptation) and conversion	Criteria for implementation in compliance status: Continuation (never conversion) with the possibility of adaptation due to the length or nature of the sentence (art. 8.2 and 3 DM)
Costs to be borne by the State of compliance	Costs to be borne by the issuing State

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Basic features

- **Reintegration and rehabilitation of inmates is the purpose of the transfer**
- **Finality** of the sentence
- **There must be no pending cases** – However, the literal wording of art. 66.3 Law 23/2014 requires that there is *“no conviction pending to become final”*
- Requirement of a **period of time to be observed (six months)** – Art. 9.1 h) DM
- **Consent of both States** involved
- The **ENFORCEMENT** of the sentence is governed by the law of the state of the enforcement

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20

SEVERAL CRIMES

1.-Material acumulation. (arts 73 y 75 CP)

2.- Legal acumulation (art.76 CP) **2.1.- Relative limit:** Triple of the most serious

2.2.- Absolut limit:

2.2.1.-Ordinary: 20 years

2.2.2.- Extraordinary

25 years

30 years

40 years

3.- Penalty acumulation (988 LECrim)

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AUTHORITIES

- **For transmission:** Judge of Surveillance Penitentiary.
- **To recognize and agree the execution:** the Central Criminal Judge.
- **To carry out the execution in Spain,** the Central Judge of Surveillance Penitentiary.

22

PROCEDURE WHEN SPAIN IS THE EMISSION STATE

Forms of initiation

- Ex officio.
- At request of the executing State.
- **At request of the convicted person** (who may submit a request to the Spanish issuing authority or to foreign execution).

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PROCEDURE WHEN SPAIN IS THE EMISSION STATE

STATES TO WHICH SPAIN CAN SEND THE EXECUTION OF THE SENTENCE (only one)

- a) The State of which the offender is national and in which he has his habitual residence.
- b) To his National State and which, according to the judgment or an administrative decision he will be expelled once released.
- c) Any other State Member whose competent authority agrees in receiving the resolution.

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PROCEDURE WHEN SPAIN IS THE EMISSION STATE

DURATION OF THE PROCEDURE

- The procedure shall be resolved within 90 days
- The transfer must be made within 30 days of acceptance of the executing State
- If circumstances prevent it, he must be transferred within 10 days of the new date agreed, after the disappearance of the circumstance that prevents take place

25

PROCEDURE WHEN SPAIN IS THE EMISSION STATE

JUDICIAL RESOLUTION

- The court order will be notified personally to the prisoners and also to the judge or court which handed out the conviction.
- The common model is the CERTIFICATE.

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DISMISSING

REASONS

- Lack of linkage with the requesting country
- For having another pending case
- For not proving identity
- By time pending sentence
- The seriousness of the crime
- Resignation
- Having already under probation

27

THANK YOU

28

The COE 2012 Recommendation concerning foreign prisoners: the need for specialised standards and challenges in implementation

Co-funded by the Justice Programme of the European Union 2014-2020

Dr. Róisín Mulgrew
National University of Ireland, Galway



1

Structure

1. Foreign Prisoners in Europe – Numbers and Issues (SPACE I and Trends)
2. The 2012 Committee of Ministers' Recommendation
3. Implementation?

2

1. Foreign Prisoners in Europe

Numbers and Issues

3

SPACE I 2020

Median 15.4%

Average 24% (22.3 Male/ 23.5 female)

The percentage of foreign prisoners varies significantly from State to State and region to region (0-100%)

- 30.6% from EU MS (average)
- 26.9% Legally Resident (less data)



4

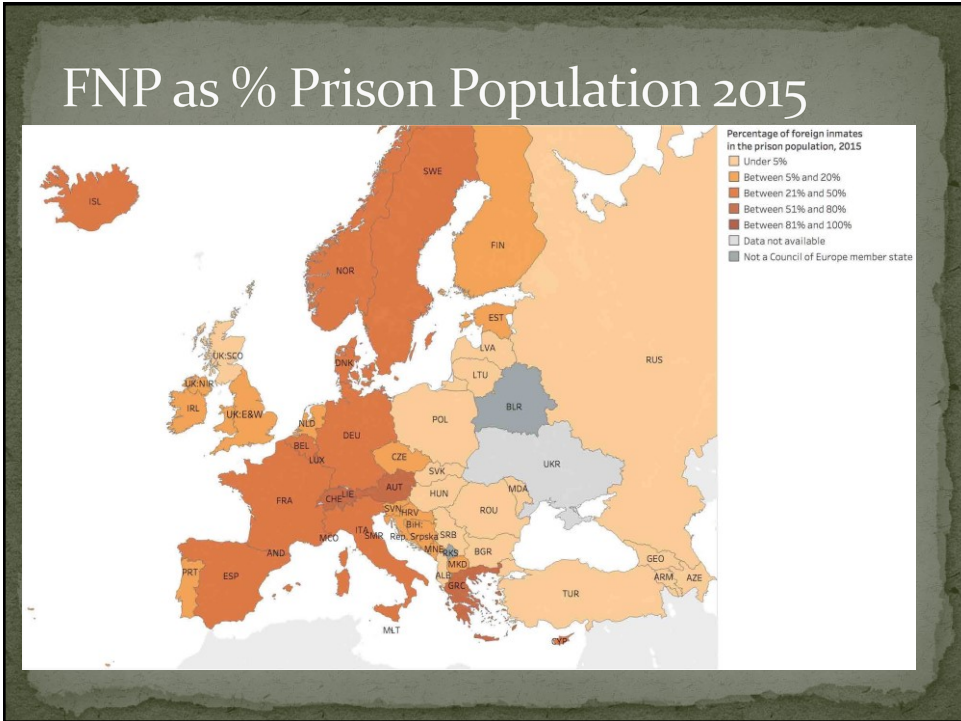
Trends Report

2005: Central and Eastern Europe < 5% FNP while in Western Europe – FNP are overrepresented.

2015: Central and Eastern Europe – still less than 5% while % remained high (and had become higher) in Western Europe

Probation: number of foreigners under supervision of probation agencies far lower than number of foreign inmates placed in penal institutions.

5



6

Trends

- Eastern Europe (<5%), Central Europe (5-72%)
Western Europe (up to 100%)
 - Geographical location
 - Economic development
 - Immigration policies
- Diversity – UK (150 nations)

7

Reasons for over-representation

- Mobility/ crime trips
- Criminalisation of immigration (associated) offences
- Disadvantages during the criminal justice process

8

Problems

- More likely to be placed and kept in custody
- Isolation
 - Language
 - Social support
- Reduced access to programmes
- Reintegration

De jure equality of rights is resulting in de facto discrimination

9

2. The 2012 Recommendation

10

Terms of Reference

Revise or replace 1984 Recommendation

Focus on

- Numbers in detention
- Treatment
- Release and reintegration
- Training of staff
- Social, legal and consulate support

'Humane and tangible long-term solutions based on European best practice'

11

Scope

- Non-national, non-residents
- Prisoners
- Adults

12

Legal context

The preamble refers to

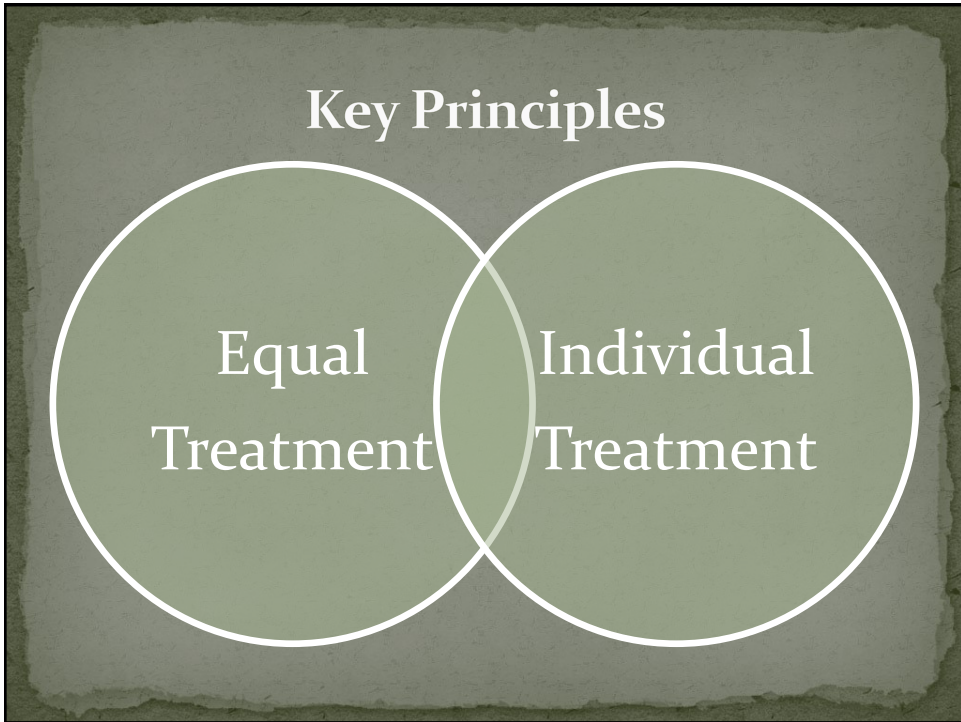
- Council of Europe treaty law on human rights and the transfer of sentenced persons
- 11 Committee of Ministers' recommendations on penological matters including the 2006 European Prison Rules
- UN Model Agreement on Transfer and the Bangkok Rules
- EU Framework Decisions 909, 947 and 829

13

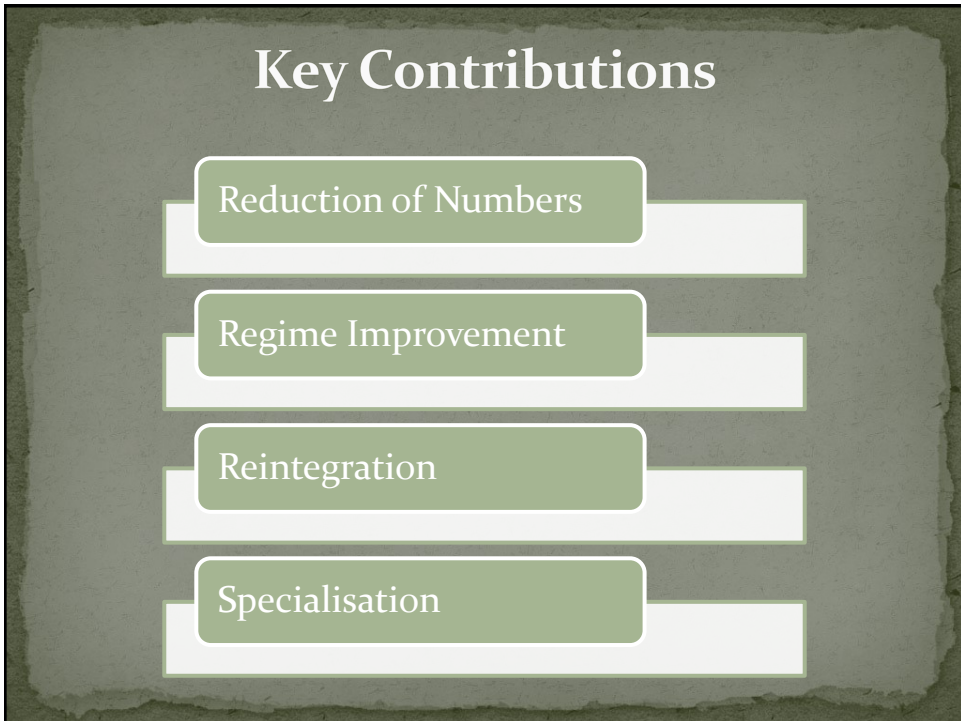
Basic Principles (Rules 3-12)

- Respect for rights, situation and needs
- Consideration for non-custodial sanctions and measures, and early release
- Positive action to avoid discrimination
- Access to interpretation and translation
- Regime to accommodate special needs and prepare for release and reintegration
- Allocation of resources
- Training of persons working with FNP

14



15



16

Reducing Numbers

Front Door – alternatives to remand in custody and imprisonment

Back Door – Release

Mid Door – Transfer

Not automatic but equal consideration

17

Conditions of Imprisonment

- Admission
- Allocation
- Accommodation
- Hygiene
- Clothing
- Nutrition
- Legal advice and assistance
- Contact with outside world
- Contact with consular representatives
- Prison regime
- Work
- Exercise and recreation
- Education and training
- Freedom of religion or belief
- Health
- Good order, safety and security
- Women
- Infants

18

Regime Improvement

- Specific Needs and Positive Discrimination
- Language barriers
- Alleviating Isolation

19

Specific Needs and Positive Discrimination

Culturally sensitive application of rules and procedures in relation to

- Hygiene
- Clothing
- Nutrition
- Recreation
- Freedom and exercise of belief
- Healthcare

Equal not preferential treatment

20

Language Barriers

- Admission
- Common Language
- Literature and media in mother tongue
- Medical care

Fundamental underlying principle that informs all interactions

21

Alleviating Isolation

- Allocation decisions
- Contact with Family and Friends
- Other support structures

22

Preparing foreign prisoners for release

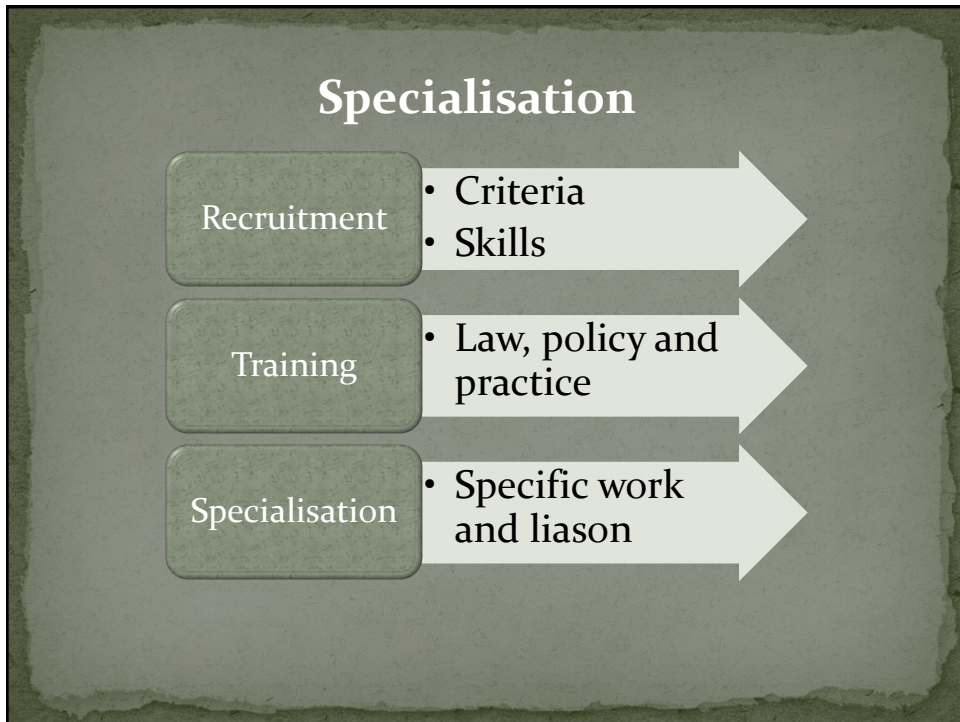
- Released in detaining State?
- Transferred to another State to serve sanction or sentence?
- Deported to another State at the end of the sentence?

23

Preparation for Release

- Access to activities
- Work
- Education
- Training
- Leave

24



25

4. Implementation?

26

Foreign Prisoner Only Facilities

Kongsvinger Prison

Ter Apel Prison



27

Foreign Prisoner Only Facilities

Kongsvinger Prison Norway

Ter Apel Prison The Netherlands

- | | |
|---|--|
| <ul style="list-style-type: none"> • Ministerial Decision 2012 • Capacity – 97 • Target Group: Sentenced persons, Likely to be returnable, Under one / two year to serve • 57 Nationalities | <ul style="list-style-type: none"> • Ministerial Decision 2013 • Capacity 434 • Target Group: Convicted of a criminal offence, No right to remain, Will be deported • 60 nationalities |
|---|--|

28

Regime

Challenges

FNP usually not eligible for

- temporary leave and other progression measures
- work outside the prison
- social outings

Prisons have reduced recreation programmes, visiting hours, education and training opportunities

Good practice

- Flexible approach to visits
- Open door policy in relation to fresh air
- More responsibility (access card for work)
- Facilities to cook own food and socialise together

29

Contact with the outside world

Challenges

- Location
- Inconsistent application of policies
- Costs of calls (v wages)
- Skype (technical issues and privacy)

Good Practice

- Flexible approach to visits
- Father and kids day
- Emailprisoner.nl
- Skype
- TV Channels and papers in own language

30

Language Barriers

Challenges

Paperwork in national language

Isolation of minority linguistic groups

Reduces ability re mentoring and dynamic security

Increased likelihood of disciplinary action and escalation of tensions

Good Practice

Access to phone/VC interpreter service

Pointing books

TV Screen Displays of Information in main languages

Staff learning a few phrases in each language and greet every individual

31

2012 Recommendation

Rule 39.4

Persons who deal with foreign suspects and offenders shall be kept informed of current national law and practices and international and regional human rights law and standards relating to their treatment, *including this recommendation*

- Complete lack of awareness of the Recommendation
- Institutions struggling to apply domestic law and policy written for residents
- No centrally devised rules or regulations to deal with this particular population

32



Co-funded by the Justice Programme of the European Union 2014-2020

An introduction to Framework Decision 909

LUISA RAVAGNANI – UNIVERSITY OF BRESCIA - ITALY

1

5 December 2011 – 7 July 2021. Ten years of
application of FD 909: what we know today?

- ▶ The FD 909 is still not well known by practitioners and prisoners
- ▶ Data about the application of FD 909 are difficult to collect at national and international level
- ▶ Lack of follow up data after the transfer

2

Important tools that support stakeholders in the implementation of the FD 909

Among others at national level,

- ▶ **Handbook on the transfer of sentenced persons and custodial sentences in the European Union (2019/C 403/02)**
- ▶ **EuroPris Resource Book on the Transfer of Sentenced Prisoners under EU Framework Decision 909**

3

FD 909: principal elements (1)

Underpinned principle:
mutual confidence in Member States legal systems



enables recognition by the executing State of decisions taken by the issuing State's authorities with only limited possibilities to oppose such recognition.

4

Principal elements (2): Stackeholders

Which prisoners can be subject to transfer under FD 909?

The Framework Decision applies to all EU citizens and third country nationals located in an EU Member State.

5

Principal elements (3) Obligation to accept for the executing State/ Non obligation to forward for the issuing State

— The Framework Decision imposes in principle an obligation to accept requests for transfer in two situations. There is, however, no obligation for the issuing State to forward a judgment for the purposes of its recognition and enforcement in another Member State.

— Transfers can only be refused on the basis of a limited number of grounds of non-recognition or non-enforcement.

— **The Framework Decision limits the situations where consent of the sentenced person is required.** Already under the 1997 CoE Additional Protocol this consent was no longer necessary when transfer was sought to a State to which the person had fled, or when the sentenced person was subject to an expulsion or deportation order to the requested State.

In addition to these two exemptions, a third exemption is provided in the Framework Decision where the transfer is sought to the Member State of nationality in which the sentenced person lives.

6

Other relevant elements

- ▶ The traditional verification of the requirement of **double criminality** is abolished for a list of 32 offences (subject, however, to the possibility for Member States to maintain it).
- ▶ The instrument prescribes a **clear timeframe** for the procedure.
- ▶ The Framework Decision provides for a continued enforcement of sentences as imposed by the issuing State, with limited possibilities for the executing State to adapt the sentence under strict conditions. The issuing State has the final say regarding the transfer, if it is satisfied with the adaptation of the sentence and the modalities for execution of the sentence.

7

Competent authorities

- ▶ the Framework Decision does not limit the definition of 'competent authority' to a judicial authority, allowing Member States the discretion to select the competent authority
- ▶ Member States have appointed:
 - the Ministry of Justice
 - the judicial or quasi-judicial bodies
 - a central authority dealing with incoming requests
 - a system of devolved jurisdictions, meaning that all courts have been appointed as competent authorities

All Member States have to inform the General Secretariat of the Council of the European Union in order to make this information generally available. This variety of competent authorities may lead to complications in identifying the relevant one.

8

Consent (1): prisoner's perspective

New Approach of the FD909

One of the major changes of the Framework Decision compared to the 1983 CoE Convention, is the shift to a compulsory system of prisoner transfers for certain situations, while at the same time enabling much broader possibilities for transfer than before



The consent of the sentenced person is not required (Article 6(2)) when:

- the person is a national of the executing State and also lives there,
- the person will be deported to the executing State once he or she is released from the enforcement of the sentence on the basis of an expulsion or deportation order included in the judgment or in a judicial or administrative decision or any other measure consequential to the judgement,
- the person has fled or otherwise returned to the executing State in view of pending criminal proceedings against him or her in the issuing State or following the conviction in that issuing State.

9

Consent (2) The executing State's perspective

Each Member State can make a declaration indicating that its prior consent is not required for the forwarding of the judgment and the certificate if the sentenced person:

- (a) lives in and has been legally residing continuously for at least five years in the executing State and will retain a permanent right of residence in that State;
- (b) is a national of the executing State in cases other than those provided for in Article 4(1)(a) and (b).

10

Social rehabilitation: role and perspectives

Social rehabilitation is a key aspect of the Framework Decision.

The competent authority of the issuing State shall be satisfied that the enforcement of the sentence by the executing State would serve the purpose of facilitating the social rehabilitation of the sentenced person.

Social rehabilitation must take care not only of a geographical connection but needs to be based on a thorough, case-by-case evaluation.

↓
Consultation procedure between the issuing State and the executing State.

It is important to note that a negative opinion in itself does not constitute a ground for refusal based on social rehabilitation


When the issuing State is confronted with the opinion of either the sentenced person or the executing State that the enforcement of the sentence would fail to achieve to facilitate the social rehabilitation of the sentenced person, the competent authority of the issuing State will have to consider this opinion and, should it wish to continue the proceedings, satisfy itself that, notwithstanding the arguments included in the opinion concerned, rehabilitation will be facilitated or enhanced after all (recital 10)

11

Social Rehabilitation is still the main purpose of the FD909?

12

Rehabilitation: which possibility in the executing state?



13

Vulnerable categories of prisoners



The FD asks for a specific attention before the transfer of vulnerable categories

- ▶ Minors
- ▶ Prisoners with mental health problems

For such categories the requirement of rehabilitation must be interpreted taking care of the effective possibility to receive proper treatments in the executing States.

14

Some relevant elements of the transfer procedure (1)

- ▶ **Right to initiate the procedure:** Issuing State, executing State, sentenced person

But the issuing State retains the discretionary margin to assess the requests of either or both the executing State and the sentenced person.

There is no 'right' to a transfer for the sentenced person

Victims: it not establish a right for victims to oppose a transfer.

Opinion of the sentenced person: should always be asked even if no consent is required.

15

Some relevant elements of the transfer procedure (2)

The competent authority of the issuing State shall inform the sentenced person, in a language which he or she understands, that it has decided to forward the judgment together with the certificate by using the standard form of the notification set out in Annex II

- ▶ Forwarding of the certificate: To expedite the process, the judgment is accompanied by a standard certificate, which includes the information necessary for the transfer. The competent authority of the issuing State has to forward together with the certificate the judgment or a certified copy of it.
- ▶ Additional useful info: prisoner history sheet, prisoner record of imprisonment, prisoner security information reports (see the EuroPris 'Resource Book on the Transfer of Sentenced Persons')

16

The forwarding of the certificate

- ▶ The competent authority of the issuing State will need to forward the judgment or a certified copy of it, together with the certificate, directly to the competent authority of the executing State
- ▶ Withdrawal of the certificate: The issuing State may withdraw the certificate, giving reasons for doing so, as long as the enforcement of the sentence in the executing State has not yet begun

17

Time frame of the application of FD 909

- ▶ The whole procedure has been outlined to grant a clear and fast application of the transfer itself.
- ▶ Each phase must be completed in a reasonably short lapse of time
- ▶ 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

BUT

It can take an indefinite lapse of time from the moment the prisoner ask for the transfer and the one in which his/her request reaches the competent authority. Then the request may remain in a limbo for another indefinite period of time before being forwarded to the executing State

18

Time frame: Which sentences can be transferred?

- ▶ At the time the judgment is received by the competent authority of the executing State, less than six months of the sentence must remain to be served.
- ▶ Given the maximum time limits of 120 days (90 days for taking the final decision on the recognition of the judgment + 30 days for the transfer of the sentenced person provided for in the Framework Decision), a transfer may not be considered appropriate by the executing State if the remainder of the sentence to be served is less than 6 months. The moment at which the judgment is received by the executing State is relevant in that respect.

19

Main problems of the transfer (from prisoners' point of view)

Asked by the prisoner

- ▶ Uncertainty about the real length of the procedure.
- ▶ Exclusion from rehabilitation program while waiting for the transfer
- ▶ Uncertainty about the conditions of the enforcement of the sentence in the executing State

Imposed by the State

- ▶ Possible negative consequences in terms of dangerous reactions of prisoners that don't want to be transferred
- ▶ Fighting the decision in the Court, looking for delay the process
- ▶ Zero compliance (or instrumental compliance) with the sentence

20

Main Problems of the transfer (in relation with the aim of the FD)

- ▶ Lack of direct collaboration among prisons: there is the serious risk that the rehabilitation path started in the issuing State is interrupted by the transfer and the prisoner must follow a new one from the beginning, losing the benefits acquired in the issuing Country.
- ▶ Effective rehabilitation resources does not depend only from the existence of social and economical links with the executing State but also with the probation and aftercare programs existing in that Country.

21

Psychological effects of the transfer

Transfer requested by the prisoner

- Effective length of the procedure
- Lack of clear information about the procedure
- Different model of alternative sanctions in EU



- Deprivation of certitude

Transfer imposed without the consent

- Feeling of helplessness and inevitability
- Feeling to be victim of additional pains because foreigner



- Feeling of discrimination

Transfer as anticipation of expulsion

- Does it gives additional time to prepare a fruitful release in the executing State?
- Can it be an useful instrument to negotiate a better rehabilitation path with the involved prisoner?



- Many subjective elements must be considered before evaluating the tool.

22

Push and pull factors to ask for the transfer

The interviews developed in ITALY and SPAIN for the STEPSII projects made it clear that prisoners:

- Know about the possibility to be transferred but they don't have a clear idea of how the procedure works
- They are interested to move back to their Country only if prison conditions in the issuing State are discriminatory, or they have a long sentence to serve, they are in the very beginning of the enforcement and their family is still in the executing State
- They are interested to serve the sentence in the Country that grants the shorter enforcement (due to specific provisions of the law):

Italy offer the possibility to shorten the sentence of 45 days every 6 months of effective detention.

23

24

The Framework Decision on the European Arrest Warrant and Surrender Procedures and its interaction with the Framework Decision on the Transfer of Sentenced Persons. Case law of the CJEU and the ECHR

Florentino-Gregorio Ruiz Yamuza, Senior Judge,
J.D., Spain

ERA, Academy of European Law
Webinar, 7–9 July 2021

Jointly funded by the European Commission's
Justice Programme 2014–2020



1

1 EU extradition hemispheres

FD EAW

FD 909

- AFSJ scope
- Characteristics → Mutual recognition
- Purpose → Surrender of subjects for proceedings prosecution or to serve a sentence
- Aim → Free movement of judgements
Social reintegration

2

2 Areas of intersection between FD EAW and FD 909



Overview of both Framework Decisions. Scope and procedural aspects

- Arts. 4.6 FD EAW (Art. 48.2 LMR)
- 5.3 FD EAW (Art. 55.2 LMR)
- Art. 25 FD 909 (Art. 91 LMR)

Preservation of Fundamental Rights

- Preamble
- Art. 1.3 FD EAW and Art. 3.4 FD 909

Case law of the CJEU and the ECHR

Report to European
Parliament, implementation
FD EAW, December 2020



3

3 Case law map



CJEU. Overview of FD EAW/FD 909

- Concept of residence. *YX and X.Y. (Kozłowski, Lopes da Silva Jorge, Wolzenburg)*
- Concept of final judgement. Transitional right. Art. 28 FD 909. *Van Vemde.*
- Recognition of a judgement from a non-EU State. Extraterritoriality. *JR*

- Double criminality. *Grundza*

- Consolidation of convictions. Inclusion of judgements from other MS. Art. 8 FD 909. *AV*
- Art. 8 FD 909. Sentence reduction through work and Consistent interpretation. *Ognyanov*

- Obligation to enforce *ex Art. 4.6 FD EAW Popławski I and II*
- Application Art. 5.3 EAW. Sentence adaptation and moment of return. *SF*
- Art. 25 FD 909. Art. 4.6 FD EAW: Adapting sentences of a different nature. *Sut*



CJEU. Preserving FR

NS, Lanigan, Melloni, Aranyosi-Caldararu, ML, LM, Dorobantu

ECHR Case Law

4

4 Concept of residence. YX and X.Y.



Kozłowski.

Sentenced in Poland, surrender to Germany requested, where sentence is served.
No legal or continuous residence, commission of criminal acts and in prison

Interpretation

Art. 4.6 FD EAW. Refusal to surrender person who is a national, resident or "staying" in the ES
No discrimination, Art. 6 TEU in interpreting Art. 4.6

Judgement (17.07.08)

"Resident" → actual residence
"Staying" not a mere temporary stay; existing links, which must be evaluated overall
Autonomous and uniform interpretation of both terms



Lopes da Silva Jorge.

Sentenced in Portugal, surrender to France requested.

Interpretation

Art. 4.6 and 5.3 FD EAW.
No discrimination on grounds of nationality Art. 18 TFEU.

Judgement (05.09.12)

Arts. 17.1 and 25 FD 909
Nationals of other MS cannot be automatically excluded. Existing links must be evaluated
Domestic law must be interpreted in line with the letter, spirit and purpose of FD EAW



Wolzenburg

Sentenced in Germany, surrender to Netherlands requested.

Interpretation

Art. 4.6 and 5.3 FD EAW.
No discrimination on grounds of nationality Arts. 12 EC and 18 TFEU. Directive 2004/38/EC free movement

Judgement (06.10.09)

Arts. 3.1, 4.7 c) (no consent if 5 years residence in ES) and 25 FD 909
Art. 12 can be invoked against national law
No additional requirements for residence time condition



5

5 Concept of final judgement. Transitional right. Art. 28. FD 909. Van Vemde



WETS transposes FD 909 and carries out statement Art. 28. Does not apply to final resolutions prior to 05.12.11. Jurisdiction Ministry of Justice → Prosecutor's Office Court of Appeal → Court of Appeal. Prior requests as per conventions

Interpretation

FD 909 Arts.1, definition of judgement as a final ruling
3.3, Scope
28, Transitional right. Only applicable to judgements prior to 05.12.11, regardless of its final date?

CJEU Judgement (11.03.20)

Art. 28 applicable to judgements that became final prior to the date specified by the respective MS



FD 909 Art. 25,
mutatis mutandis
application in the
cases of Arts. 4.6
and 5.3 FD EAW

6

6 Recognition of a judgement from a non-EU State. Extraterritoriality. *JR*



JR (Lithuanian), sentenced to 4 years and 6 months of prison in Norway for cocaine trafficking in 2014. In 2015, Lithuania recognises the sentence via a bilateral agreement and *JR* is surrendered to Lithuania in 2016, released on parole with monitoring. *JR* flees and is detained and sentenced in Ireland in 2019 for drug trafficking. *JR* challenges extradition requested by Lithuania because only Norway can request it and due to the extraterritoriality of the crime committed.

Interpretation

FD EAW. Arts. 1, definition and obligation to enforce EAW

1.3, respect of Fundamental Rights

2.2 and 2.4 double criminality

4.1 acts not constituting an offence in ES, 4.5, person judged in a third State, 4.7 territoriality

FD 909 Art. 3.1

Art. 17 Enforcement as per ES law

CJEU Judgement (17.03.21)

FD EAW only applies between EU MS

FD EAW applies in this case, if convention between the EU MS and the third State, if sentence respects FR.

Judicial ruling of recognition (*Bob Dogi*)

Art. 4.7 FD EAW "outside of issuing State" should be interpreted as regards Norway, not Lithuania

Interpretation to the contrary would impair the functioning of FD 909 (Art. 9 I) which seeks SR

7

7 Double criminality. *Grundza*



Violent robbery and disobedience (driving with a suspended license)
Slovak legislation, refusal to enforce if no double criminality

FD 909 Interpretation:

Art. 7.1 Offences not verified for double criminality

7.3 Verifying double criminality

Art. 9.1 d) Reason for non-recognition due to lack of double criminality

CJEU Judgement(14.04.21)

Restrictive interpretation reasons for refusal

Contextual interpretation (*Ognyanov, Lanigan*)

in concreto/in abstracto interpretation




No exact correspondence, similar interest

Situational interpretation

Interpretation Arts.
2.2, 2.4 and 4.1
FD EAW
(*Piotrowski*)

8

8 Consolidation of convictions. Inclusion of judgements from other MS. Art. 8 FD

Possibility of ES consolidation of other sentences imposed in other MS and forwarded as per FD 909.
Polish law prohibits including sentences from other MS for consolidation




FD 909 Interpretation:
Art. 3.1 and 3. Recognition and enforcement of sentence and SR
Art. 8 Sentence adaptation and limits
Art. 17 Enforcement follows ES law (time served is deducted)

CJEU Judgement(14.04.21)
Judgements from other MS can be included, within the limits of Art. 8
The amount time served should be deducted from the consolidated sentence
Interpretation to the contrary would impair equality and proportionality

FD 909 Art. 25,
mutatis mutandis
application in the
cases of Arts. 4.6
and 5.3 FD EAW

9

9 Consistent interpretation. Art. 8 FD 909. Sentence reduction through work. Ognny

Sentence reduction through work in Bulgarian legislation/Danish legislation
Bulgarian constitutional court binding interpretive judgement on foreign sentences

FD 909 Interpretation:
Art. 3 Recognition and enforcement of sentence and SR
Art. 8 Sentence adaptation and limits (length, maximum)*
Art. 10 Partial recognition and enforcement
Art. 17 Enforcement as per ES law
Deduction of time served
Information on early and conditional release
Taking into account IS law

CJEU Judgement (08.11.16)
FD 909 not transposed. *Pupino* doctrine. Framework decision does not have a direct effect but consistent interpretation from the transposition deadline.
Art. 17.1 and 2 oppose domestic rules that authorise sentence reduction in this case.
Consistent interpretation enables non-application of domestic case law if contrary to EU Law.

FD 909 Art. 25,
mutatis mutandis
application in the
cases of Arts. 4.6
and 5.3 FD EAW

10

10 Obligation to enforce ex Art. 4.6 FD EAW. *Popławski I*



Popławski, a Polish national, resident of the Netherlands, was sentenced to 1 year in prison in Poland in 2007. Conditional suspension is revoked in 2010, surrender to serve sentence requested in 2013.

Art. 6 OWL 1. Dutch surrender for prosecution with guarantee of return to serve sentence.

2 NO Dutch surrender to serve sentence imposed in another MS

3 If refusal ex Art. 6.2 → Prosecution Authority will express willingness to enforce the Strasbourg Convention (March 1983) or other convention.

4 Applicability to foreigners with a permanent residency permit.

Interpretation

FD EAW

Art. 1.2 and 4.6

FD 909:

Art. 25 *mutatis mutandis* application

Art. 28 Transitional right

CJEU Judgement (29.06.17)

Absence of direct effect of Framework Decision. Consistent interpretation (*Ognyanov, Pupino*).

FD EAW equivalence to convention for the purposes of Art. 6.3 OWL

Margin of refusal and SR purpose (*Lopes da Silva Jorge*)

Application of Art. 4.6 FD EAW requires commitment to enforce, not only willingness to enforce

11

11 Obligation to enforce ex Art. 4.6 FD EAW. *Popławski II*



Preceding: subject *Popławski I*. OWL changed by WETS which transposes FD 909, new Art. 6.3 not governed by convention and declaration made as per Art. 28.2 FD 909.

Could the declaration be unapplied and WETS applied?

Interpretation

FD EAW

Art. 1.2 and 4.6

FD 909:

Art. 3.1 Recognition and enforcement of sentence, SR

Art. 4.5 ESA could request that the judgement be forwarded, as well as the sentenced person in the IS or ES

Art. 4.7 MS could notify that, in reciprocity, they will waive prior consent for the transfer par. 1 c)

- when the sentenced person lives or has legally resided for 5 years and will maintain right of residence

- when the sentenced person has ES nationality in cases not covered by par. 1 a) and b)

Art. 7.4 MS can notify that they will not apply para. 1

Art. 25 the FD will apply *mutatis mutandis* in the cases of Art. 4.6 and 5.3 FD EAW, to the extent this is compatible

Art. 26.1 Since 05.12.11 FD replaces 1983 European Convention CPT; 1970 European Convention on the International Validity of Criminal Judgments; Convention implementing the Schengen Agreement, Title III, ch. 5; 1991 Convention on the Enforcement of Foreign Criminal Sentences.

Art. 28.1 Requests received prior to 05.12.11 will be governed by prior instruments

Art. 28.2 Transitional right (received prior to 05.12.11 and judgement date)

CJEU Judgement (24.04.19)

Declaration 28.2 FD 909 untimely and ineffective.

Lack of direct effect of FD 909, Consistent interpretation.

12

12 Application Art. 5.3 FD EAW. Sentence adaptation. Moment of return. *SF*



United Kingdom requests surrender of *SF* (Dutch) from Netherlands, offering guarantee, Art. 5.3 FD EAW. Return after all procedures related to crime (cocaine trafficking) had been completed, e.g. forfeiture, enforcement of pecuniary punishment, appeal. Upholds that Art. 4-6 FD EAW does not allow sentence adaptation.

Interpretation

FD EAW. Arts.1, definition and obligation to enforce EAW
 1.3, respect of Fundamental Rights
 5.3, moment of return

FD 909 Arts.3.3, scope
 8, sentence adaptation
 25, enforcement of sentence in applying Art. 5.3 FD

CJEU Judgement (11.03.20)

Art. 5.3 aimed at SR (*Wolzenburg, I.B.*)

Van Vemde, return Art. 5.3 FD, following final judgement, as soon as possible, except for exceptional reasons weighing on the case

Adaptation in case of Art. 5.3 FD EAW → Art. 25 FD 909, within limits of Art. 8 FD 909

13

13 Art. 25 FD 909. Art. 4–6 FD EAW. Adapting sentences of a different nature. *Sut*



2003 Belgian law transposes FD EAW, Art. 4.6 commitment to enforce. Ley 2012 transposes FD 909 and regulates adaptation as per Art. 8 FD 909.

Sut, who resides with his wife in Belgium where he runs a business, was sentenced to prison in Romania for a traffic offence that in Belgium is only punished with a fine.

Belgian Constitutional Court (2014 judgement) fine is not comparable in nature to prison.

Interpretation

FD EAW. Arts.1, definition and obligation to enforce EAW
 1.3, respect of Fundamental Rights
 4.6 and 5.3, no surrender of nationals or guarantees of return

FD 909 Preamble, par. 12
 Art. 25, enforcement of sentence applying Arts. 4.6 and 5.3 FD

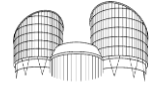
CJEU Judgement (13.12.18)

Art. 4.6 FD EAW applies (*Kozłowski, Lopes da Silva Jorge*). Obligation to enforce (*Popławski*). Transposition Art. 4.6 FD EAW may limit reason for rejection operability (*Wolzenburg*)

Art. 4.6 FD EAW, Art. 25 FD 909 is not incompatible with enforcement of prison sentence although ES only establishes a fine for the same crime, confirmed by ESA.

14

14 FD 909 and preserving Fundamental Rights



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FD 909 connection with FR (Preamble and Art. 3.4), connection with Directives on family reunification, principle of free movement and others)

Absence of remedy in FD 909 such as Art. 23.4 FD EAW postponement for humanitarian reasons.

Importance of ECHR case law as interpretive reference in this matter
Multilevel protection of FR Equivalent protection Arts. 52 and 53 CFR
(ECHR *Romeo Castaño v. Belgium*)

FD 909 (FD EAW) and FR
NS, Lanigan, Melloni, Aranyosi, ML, LM, Dorobantu

15

15 Transfer, Social Reintegration and Fundamental Rights



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SR as a priority FD 909 (and also as an aim 4.6 and 5.3 FD EAW)

Study of practice: - Administration: SR/Reduction in prison population/Cost savings
- SR of sentenced persons/Reduced punishment.

According to CJEU, SR is not an autonomous concept of EU Law

SR covers or may converge with other rights: life, family, prohibition on degrading treatment

ECHR - Importance of preserving external and familial contact (*Dickson v. RU*)

- There is no Fundamental Right to transfer or opposition thereto. This may violate the ECHR in what occurs during transfer or after transfer (*Dickson v. RU*)

- Purpose of SR inherent in sentence, also responsibility of sentenced person (*Murray v. Netherlands*)

- The purpose of SR and Art. 3 ECHR are incompatible with permanent imprisonment without parole (*László Magyar v. Hungary, Marcello Viola v. Italia, Vinter and others v. United Kingdom*)

Prison conditions and FR (CJEU subject *Dorobantu*, ECHR *Muršić v. Croatia*)

16

16 Consent/opinion of sentenced person and transfer



Art. 6 FD 909

Appeal against transfer decision (Art. 13 LMR). Does not exist in Italy, Netherlands, or France

Indicating transfer and inmate's desire

-Negative indication/positive desire

-Positive indication/negative desire

ECHR (*Khoroshenko v. Russia, Harakchiev and Tolumov v. Bulgaria, Polyakova and others v. Russia*)

Factors to consider in determining whether to indicate transfer. Social and familial links, possibility of work, prison services and benefits, FR in prison, length of sentence, possibilities for social reintegration, impact on convict's other FR, opinion of sentenced person

Promotion of SR occurs, besides having contact with the outside world and family, with access to work, programmes and services aimed at rehabilitating the sentenced person

FD 909 does not include such criteria. Presumption of greater SR in MS of nationality of where links exist

Relationship: - Social and familial links → improved SR

- In-prison and post-prison services → reduced recidivism

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17 Index of CJEU subjects



AV, C-221/19. Judgement 15.04.21. ECLI:EU:C:2021:278

Dorobantu, C- 128/18. Judgement 15.10.19. EU:C:2019:857

Grundza, C-289/15. Judgement 11.01.17. EU:C:2017:4

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Kozłowski, C-66/08. Judgement 11.07.08. EU:C:2008:437

Lopes da Silva Jorge, C-42/11. Judgement 05.09.12. EU:C:2012:517

Ognyanov, C-554/14. Judgement 08.11.16. EU:C:2016:835

Popławski I, C-579/15. Judgement 29.06.17. EU:C:2017:503

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SF, C-314/18. Judgement 11.03.20. EU:C:2020:191

Sut, C-514/17. Judgement 13.12.18. EU:C:2018:1016

Van Vemde, C-582/14. Judgement on 25.01.17. EU:C:2017:37

Wolzenburg, C-123/08. Judgement 06.10.09. EU:C:2009:616

X. Y., C-919/19. Advocate General Conclusions 03.06.21. EU:C:2021:454

YX, C-495/18. Auto 01.10.19. EU:C:2019:808

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18 Index of ECHR subjects



Dickson v. United Kingdom. Judgement 04.12.07. ECLI:EC:ECHR:2007:1204JUD004436204.
Harakchiev and Tolumov v. Bulgaria. Judgement 08.07.14. EC:ECHR:2014:0708JUD001501811
Khoroshenko v. Russia, Judgement 30.06.15. EC:ECHR:2015:0630JUD004141804
László Magyar v. Hungary. Judgement 20.05.14. EC:ECHR:2014:0520JUD007359310
Marcello Viola v. Italy. Judgement 13.06.19. EC:ECHR:2019:0613JUD007763316
Murray v. Netherlands, Judgement 26.04.16. EC:ECHR:2016:0426JUD001051110.
Muršić v. Croatia. Judgement 20.10.16. EC:ECHR:2016:1020JUD000733413
Polyakova and others v. Russia. Judgement 07.03.17. 1) EC:ECHR:2017:0307JUD003509009
Romeo Castaño v. Belgium. Judgement 09.07.19. EC:ECHR:2019:0709JUD000835117
Torregiani and others v. Italy. Judgement 08.01.13. EC:ECHR:2013:0108JUD004351709
Vinter and others v. United Kingdom. Judgement 09.07.13. EC:ECHR:2013:0709JUD006606909

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19 References



SLIDE 3

European Parliament report on the implementation of the European Arrest Warrant and the surrender procedures between Member States, 08.12.20.

https://www.europarl.europa.eu/doceo/document/A-9-2020-0248_EN.pdf

SLIDE 14

Guide on the case law of the European Convention on Human Rights

https://www.echr.coe.int/Documents/Guide_Prisoners_rights_ENG.pdf

LMR

Spanish Act on Mutual Recognition of Judicial Decisions in Criminal Matters in the EU.

<https://www.ejn-crimjust.europa.eu/ejnupload/InfoAbout/English%20version%20LAW%2023%20of%202014.pdf>

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Framework Decision 909 and its Impact on the Transfer of Prisoners

Update on issues, processes and practices in relation to FD 909's use

1

LEGAL FRAMEWORK

- [Council Framework Decision 2008/909/JHA of 27 November 2008](#) on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union
- Implemented in BE → [the law of 15 May 2012](#)

2

WHEN BELGIUM IS THE ISSUING STATE

➤ Sentenced person detained on Belgian territory:

the Minister of Justice cfr. Central Authority for International Cooperation in Criminal Matters (voluntary and compulsory transfers)

➤ Sentenced person not detained on Belgian territory:

the Public Prosecutor of the district where the judgement was pronounced.

3

Information system for sentenced persons in custody about the procedure

- Through **information brochure** in Dutch or French (recommendations EU) on the possibility of enforcement of the sentence in another Member State received by the sentenced person as soon as the sentence pronounced by a Belgian court is final (an acknowledgment of receipt is signed and kept in the prison file).
- The Central Authority can start the procedure for a **compulsory transfer** for sentenced persons not having a permit stay in Belgium (deportation order)

4

- Speciality rule

- if the consent of the sentenced person is required, he is heard by the public prosecutor within the jurisdiction of the place of detention **who informs the sentenced person** about forwarding the judgement to the other Member State for the purpose of recognition and enforcement of the sentence **and on the consequences on the rule of speciality.**
- In the Dutch speaking region, this information is usually given in written form by the director of the prison.

5

Practical information on the certificate

- translation of the complete certificate
- 1 certificate in cases of multiple sentences

6

- **Practical arrangements for the transfer**
- **Transit requests**
- **Covid-19 restrictions and issues**

7

WHEN BELGIUM IS THE EXECUTING STATE

Competent receiving authority

- The Public Prosecutor of the district of Brussels

(if prior consent is required, the competent Belgian authority to give consent is the Central Authority for International Co-operation in Criminal matters of the Federal Public Service Justice)

8

Translation of the conviction decision and certificate

- Certificate

- Judgement and legal provisions

9

Translation of the conviction decision and certificate

- Certificate
 - French, Dutch, German or English

 - Also to the language of the proceedings
 - in the Flemish part of the country - Dutch
 - in the French speaking part - French
 - in the German speaking part - German
 - In Brussels, both Dutch and French are accepted.

10

Sentence adjustment procedure

- The possibility of the adaptation :
 - if the sentence pronounced in the issuing Member State exceeds the sentence for the offences of the same nature under Belgian law
 - OR if the nature of the sentence pronounced in the issuing Member State is incompatible with the sentence for the same offence under Belgian law.
- Generates many difficulties

11

Criteria relating to the sentenced person

- 1) If the sentenced person is not Belgian national
 - a brief information report or a social inquiry from the competent services in matters of community probation may be requested by the Minister of Justice
- 2) Age of the sentenced person
 - Mandatory ground for refusal for minors

12

Existence of sentence management mechanisms

Two mechanisms for early release depending on the duration of the sentence :

- 1) Provisional release in light of expulsion (for foreign detainees, after 1/3rd of the sentence and after 2/3rd if repeated offender)
- 2) Conditional release (for Belgian detainees and residents, after 1/3rd of the sentence and after 2/3rd if repeated offender)

Automatically granted for sentences < 1 year

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TO	2013	2014	2015	2016	2017	2018	2019	2020	2021
AT (Austria)									
BG (Bulgaria)	2		1	2	3	5	2	1	
CZ (Czech Rep.)							1		
CY (Cyprus)									
DE (Germany)						1			
DK (Denmark)									
EE (Estonia)									
EL (Greece)									
ES (Spain)			1	2		2	1	1	
FI (Finland)									
FR (France)	6	5	10	7	16	13	20	13	3
HR (Croatia)									
HU (Hungary)			1						
IE (Ireland)									
IT (Italy)	2		1	4	3	2			
LT (Lithuania)				2		1	1		
LU (Luxembourg)									
LV (Latvia)									
MT (Malta)									
NL (Netherlands)	10	13	18	24	19	27	21	11	8
PL (Poland)						3	5	1	1
PT (Portugal)									
RO (Romania)	4	12	10	4	10	12	35	2	
SE (Sweden)									
SI (Slovenia)									
SK (Slovakia)		1	1	1					
UK (U. Kingdom)	3							2	
Turkey	2			1				1	
Morocco	15				3				
Georgia			1						
Romania						2			
Albania						1			
North-Macedonia								1	
Maldives								1	
Total year	44	31	44	47	54	69	86	34	12
Total									421

Source : Federal Public Service Justice – Central Authority for International Co-operation in Criminal Matters

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Thank you for your attention!

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