



Funded by the Criminal Justice Programme of the European Union

# Prisoner transfers within Europe

## Information Booklet for Prisoners





## **This booklet will give you more information on how a prisoner transfer works.**

The EU Prisoner Transfer Agreement makes it simpler for prisoners to move between most EU countries.

There is a glossary at the back of this booklet to help you understand the complicated language you might hear when applying for a transfer.

If you have any extra questions, you should ask within your prison, or speak to your legal team.

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## **Which countries agree to transfers?**

All EU Member States agreed to make country-to-country transfer simpler or will have by the end of 2017. These countries include\*:

|                |         |             |                |
|----------------|---------|-------------|----------------|
| Austria        | Estonia | Italy       | Portugal       |
| Belgium        | Finland | Latvia      | Romania        |
| Bulgaria       | France  | Lithuania   | Slovakia       |
| Croatia        | Germany | Luxembourg  | Slovenia       |
| Cyprus         | Greece  | Malta       | Spain          |
| Czech Republic | Hungary | Netherlands | Sweden         |
| Denmark        | Ireland | Poland      | United Kingdom |

\*As of December 2015

## **What is the transfer agreement? What does it do?**

It is an agreement between all EU Member States about the mutual transfer of a sentence from one country to another. The transfer agreement is also known as Framework Decision 909.

The agreement makes it easier for countries to transfer prisoners whose nationality or permanent residence is not the country where they are currently in prison. Transfer can be either voluntary or without consent depending on which country you are in.

## **How does it work?**

The Framework Decision 909 allows for all EU Member States to recognise the transfer of a sentenced person to their country of nationality or country of permanent residence. This is done by the mutual agreement between the issuing state (current country of imprisonment) and the executing state (the country you would be transferred to). Your sentence is reviewed by the court or judge in the executing state to determine if the sentence could be carried out in the executing state.

To incorporate the agreement into national law, each Member State has a separate piece of legislation which specifies the authorities responsible and the process for the transfer of prisoners under the Framework Decision. There are therefore some differences in the operation of the process between each Member State.

## **What is my country of nationality or permanent residence?**

Your country of nationality is the country on your official paperwork such as passport or ID card.

Your permanent residence is the country in which you have leave to remain indefinitely and have proof of permanent residence. For example, where you have a property registered as your official address.

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## Compulsory Transfer

### What is compulsory transfer?

If you must be deported at the end of your sentence, the country where you are in prison might decide to start the transfer process early without your agreement. This is known as a compulsory transfer.

You would not have a choice in this transfer but you may be able to appeal against the decision.

### Why transfer?

If you are subject to deportation at the end of your sentence you will be sent back to your country of nationality or permanent residence without your agreement so it might be better to apply for voluntary transfer. Transferring back early might help you to be closer to family and friends and to start planning for things like finding a job on release.

### Can I be made to go back if I don't want to?

Yes, this is possible. You should speak to the prison and your legal team so you can be sure of what will happen.

You might be asked to tell a judge or court why you don't want to be transferred. This can be in writing or in person and is called "making a representation". The judge or court will take this into consideration when

making a decision on whether or not you have to be transferred before the end of your sentence.

**If you think you might benefit from a voluntary transfer please read the Voluntary Transfer section of this booklet.**

## Can I back out of the process?

Withdrawing your consent to the process may have different implications, dependent on the country you are in.

As compulsory transfers do not need your consent, you may still be transferred even if you revoke consent to a voluntary transfer.

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# Voluntary Transfer

## What is a voluntary transfer?

A voluntary transfer is where you ask to be transferred to your country of nationality or country of permanent residence before the end of your sentence. You must agree to the transfer, both countries must agree to the transfer and you must meet the minimum requirements. These include:

- Your sentence must be final (this means you cannot be going through any appeal process against your conviction or sentence in the country where you are currently in prison). You can, however, still apply, if you are waiting for the result of an appeal at the European Court of Human Rights
- You must have a minimum time left to serve when you place your application (usually six months or more)
- The executing state must have space for you to transfer

## Reasons to transfer

Serving a prison sentence can be difficult in any country, but it can be harder if you are a long way from home. Some of the reasons prisoners wish to transfer back to their home country include:

- Be closer to family and friends for visits
- Get help from the prison and others in your own language
- Prepare for release by using prison services such as education and probation support

## How do I apply for a transfer?

- Speak to prison staff first as they can let you know more about the process specific to the country you are in. They will contact the relevant person to start the paperwork.

### **Administration will:**

- Contact the right people in the country you want to transfer to
- Get information for you about what prison is like in the country you want to transfer to
- Fill out the “certificate” (this is the application for transfer)

## Do I have to go back to the country I was born in?

No, but you will not be allowed to transfer unless you have nationality of the country you wish to transfer to, or have close links with that country (normally through permanent residence).

## **Can I back out of the process if I had initially agreed?**

This depends on how far the process has gone, you can withdraw as long as the transfer has not yet been agreed between both countries.

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# **The Transfer**

## **How does the transfer work?**

The country you transfer to will take over the management of your sentence. You will have to follow the prison rules and laws within that country from the time you are transferred.

## **What is the process for transfers?**

1. Application (certificate) – completed by issuing state
2. Certificate reviewed by executing state
3. Certificate approved or denied by executing state (if denied the certificate may need more information or is denied under one of the grounds for refusal)
4. If you have not agreed to transfer now is when you could put forward reasons why you shouldn't be transferred
5. If approved then the sentence is reviewed by the executing state
6. Sentence is agreed between executing state and issuing state
7. Transfer date is agreed
8. Travel to executing state
9. Sentence is served in executing state until release

## Will the transfer be automatic?

No, the country where you have been convicted and the country you are going to return to, must agree on the terms for your transfer. The transfer might not happen for many reasons, some of which include:

- Your offence is not recognised as a crime
- The sentence lengths for your offence are very different in the two countries who need to agree to your transfer. This might concern the authorities and victims of your crime
- You owe a fine to the country you were convicted in – which would be difficult for that country to collect after you are transferred

## How long does it take?

The time it takes to apply is different for each country.

Once the other country has the “certificate” they should reply within 90 days. However, this can sometimes take a bit longer. Some reasons for the delay might be:

- Translation into another language
- Asking more questions
- Working out the sentence length

## What information is sent?

A certificate is sent from the country where you are in prison to the country that you could transfer to. It will include the following details:

- Personal information e.g. name, date of birth, nationality, passport/identity card number, languages spoken etc

- Relevant information about family/work to the country you are being transferred to
- Information about your offences and the sentence received
- Whether you would be eligible for early release in the country where you were sentenced
- Whether you are consenting to the transfer
- You will be given a copy of the agreed certificate.

## How does the actual transfer happen?

The Issuing State (current country you are in) will escort you to the Executing state (country you are transferring too) and will then hand you over to the authorities in the executing state. From this point you will be subject to the laws, rights and policies of the executing state (including rights and privileges) and have no further contact or association with the Issuing state.

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## Sentence Details

### Will I have to serve the same time in prison?

Each country has different laws and sentencing lengths for offences and so your sentence length might be changed to be similar to other prisoners serving time for the same offence.

Countries will also have different rules for early or conditional release. For example, some countries automatically release prisoners from prison halfway through their sentence, while other countries release prisoners two-thirds of the way through their sentence.

Prison staff will be able to help you find out what the early release scheme is in the country you are transferring to. [www.europris.org](http://www.europris.org)

## **Are prison conditions different in my home country?**

Prison conditions can vary across countries and regions so it is best to read the country factsheet to find out. If you have internet access you should visit the EuroPris website [www.europris.org](http://www.europris.org). If you do not have access to the internet please ask a member of staff to find this information for you.

## **Can I return to the issuing state after transfer and being released?**

Yes if you weren't subject to deportation.

If you have been subject to deportation you would have to wait until your deportation order expired.

## **Is the Prisoner Transfer Agreement the only way I can be sent home?**

No. You may be deported if you are not allowed to remain in the sentencing country.

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## **What to consider before you apply**

- Am I a voluntary or compulsory transfer?
- Where will my family be at the end of my sentence?

- What are the prison conditions like in my country of nationality (think about education, visits, work, and housing)?
- Have I got long enough time left on my sentence to be eligible? (the transfer process can take over 90 days from application)
- Am I prepared to accept a longer sentence if I apply?
- Do I fully understand my rights in the transfer process?

Once you have the answers to all these questions it can help you make an informed decision on whether to transfer or not. If it is a compulsory transfer you can make preparations to make it easier.

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## Glossary

There are some words and phrases that you might hear prison officers and lawyers use during the process. You don't need to know all of them, but it might be helpful to understand some that are used often.

|                                      |   |
|--------------------------------------|---|
| <b>Certificate:</b>                  | The application for transfer sent to the country you might transfer to. It includes information the other country will need to know about you |
| <b>Competent Authority:</b>          | The court or public body that will process your transfer, e.g. Ministry of Justice  |
| <b>Council of Europe Convention:</b> | This has been replaced by FD909. It used to be the authority for the transfer of prisoners within EU countries                                |
| <b>Executing State:</b>              | This is another name for the country where you could be transferred to and would carry out your sentence                                      |

- Framework Decision:** Used within the European Union for countries to work together in criminal justice matters.
- Framework Decision 909 (FD909):** This is the official name for the transfer of sentence from one EU Member State to another
- Implemented:** This refers to whether a country has adopted a Framework Decision into their national law
- Issuing State:** The country where you are currently in prison, that is requesting the transfer
- Member State:** One of the 28 countries that make up the European Union
- Social Rehabilitation:** This is a phrase that is used in the Framework Decision. There is no universal definition and each country has a slightly different interpretation of what “social rehabilitation” can mean. Although, it is accepted that it includes factors which can aid a reduction in the risk of reoffending, such as access to work, education, healthcare and family contact.