



Funded by the Criminal
Justice Programme of the
European Union



Social Rehabilitation Through the Prison Gate

STEPS 2 Resettlement: Support for Transfer of European Prison Sentences towards Resettlement (JUST/2011/JPEN/AG/4605)

Completion date: 17/12/2015

De Montfort University, Leicester, UK

*This publication has been produced with financial support of the Criminal Justice Programme of the European Union.
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This report presents the work of Work package 3 as part of the STEPS2 Resettlement project funded by the European Commission Criminal Justice Programme.

All phases have been conducted under the supervision of the National Offender Management Service as lead partner of the project.

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Many people in several different countries have given us invaluable support and assistance in the preparation of this report. We have benefited considerably from the help and advice of colleagues leading other Workstreams in STEPS 2, and of the staff in a number of prisons to which we have been enabled to have access. We hope these colleagues will excuse us for not naming them individually. We would especially like to thank Virva Ojanpera, Senior Specialist (International Affairs) and Tiina Vogt-Airaksinen from Finland; Liisu Anger from Estonia; Bernardica Franjić-Nađ, psychologist, Head of Service of General Treatment Programs for Prisoners and Juveniles in Croatia; and Nick Hammond (EuroPris).

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Report published: February 2016

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1. INTRODUCTION AND BACKGROUND

STEPS 2 Resettlement is a two-year project, funded by the EU (JUST/2011/JPEN/AG/4605). The project has been investigating the implementation of EU Framework Decision FD2008/909/JHA, which is concerned with the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences. This is one of three related Framework Decisions (FD) that have been adopted by the EU and STEPS 2 Resettlement follows an earlier project (ISTEP - JLS/2010/JPEN/AG) which investigated the implementation of FD 2008/947/JHA relating to non-custodial and probation sanctions and measures.

In broad terms, the purpose of these FDs is to ensure that, in a common European area of justice based on mutual trust, non-nationals subject to criminal proceedings are not treated unfairly in comparison with citizens of that country. This is particularly important in view of the substantial number of EU citizens who are imprisoned in other Member States. The overarching aim of STEPS 2 has been to try to understand the law, policy and practice relating to FD 909; to appreciate the opportunities it brings and the challenges it encounters; to identify areas of good practice that might be shared with all countries; and to advance the guiding purposes of FD 909.

There were accordingly four workstreams in the STEPS 2 project, investigating:

1. Enhanced cooperation and mutual trust between member states
2. Increasing understanding and awareness of the FD909 for staff, people who have offended and victims
3. Development of resettlement and aftercare practices
4. Improving prison management through improved information management.

2. OBJECTIVES AND ACTIVITIES

It is the third of these workstreams that was led by De Montfort University and is the subject of this report. Although much of the discussion about the FD has centred on prison and the logistics of transfer, the FD identifies social rehabilitation as its guiding rationale. It is increasingly recognised that this cannot be achieved without appropriate resettlement services and, in particular, strong continuities between experiences during the period in prison and work done with the individual after leaving custody. While much is known about the effectiveness of resettlement practices, the needs of people sentenced in an issuing state and sent to serve their sentences in another country are distinctive and pose particular challenges for sentence management and for continuity of intervention and support after release.

The focus of this workstream is on developing best practice in resettlement in such circumstances, with particular attention to rehabilitation, reintegration and public protection. This involves looking at the services that are offered to foreign national prisoners (FNPs) during their time in prison (sometimes referred to as through care) and also after their release (resettlement and after-care). The aim of the research has been to find out more about the

difficulties that prisoners and criminal justice personnel are encountering as they try to put the FD into effect; to discover creative solutions to common problems; and to find examples of good practice so that these ideas can be shared across all EU countries. In order to meet the objectives of this workstream, we attempted to obtain some information from every EU country and to examine procedures in more detail in those countries where practice seems best developed.

Workstream 3 was assigned the following activities.

- i. To undertake a [Literature review](#), reading studies about best resettlement practice, including research into 'what works' in resettlement. There was to be particular reference to studies into the resettlement needs of non-national prisoners and people who have offended who have been transferred between countries.
- ii. To make [contact with EU member states](#) to gauge the use of FD 909, the particular resettlement provisions that have been set in place for foreign nationals and attempts to identify promising practices in these areas. This work was to be done in collaboration with project participants and other partners.
- iii. To hold [study visits](#): these would involve meetings with people serving prison sentences, with personnel from prison and, where possible, from probation agencies to explore the opportunities and challenges in delivering strong continuities between the custodial and post-custodial phases of the sentence. There would be particular attention to the issues that need to be taken into account for people transferred under FD 909.
- iv. To analyse findings and produce a report: The final report (this document) would try to detail the distinctive resettlement challenges and obstacles (both in the issuing state and the country to which individuals are transferred), ways of overcoming obstacles and next steps for organisations.
- v. To contribute to the project database – for example, developing protocols of data exchange especially in relation to assessed risk and criminogenic needs.
- vi. To participate in the final conference, presenting on the findings of this research and recommendations for best practice.

2.1 Methods of Inquiry

The challenges of undertaking this inquiry have been demanding. In principle, it is relatively easy to find out the legal position in member states and, in particular, whether or not FD 909 has been transposed into domestic law. Policy is rather harder to determine. Some information may be available online, but not always and rarely at the level of detail needed to meet the objectives of this particular Workstream. The information we require is about the realities of practice more than law and policy.

Even identifying the best respondents in each country proved difficult. Several attempts were made to contact the responsible authorities, using project contact lists, our own contacts from

other projects, suggestions from CEP and EuroPris (to whom we are most grateful) and referring to Council of Europe country factsheets (http://www.coe.int/t/dghl/standardsetting/prisons/Country%20factsheets_en.asp) and the Council's database of responsible authorities (http://www.coe.int/t/dghl/standardsetting/pc-oc/Country_information2_en.asp) Likely contacts were sent an initial [letter](#) (see Appendix II).

In some cases, despite our best efforts, we could not find anyone in a position to discuss this with us. One Head of Probation referred us the Head of the Prison Service – who immediately referred us back to Probation – thus acting out some of the difficulties involved in considering the respective 'through the gate' responsibilities associated with FD 909. Some countries reported that they had not made any use of the FD or not enough use of it to be able to discuss this profitably.

In those cases where we able to progress, the next step was to try to arrange an interview via Skype. Where this was not possible, respondents were sent a written [questionnaire](#) (see Appendix III). Full questionnaires and interview schedules are reproduced in the Appendices to this report, but among the most important questions we have been seeking to answer are:

- what kind of services are provided to prisoners to prepare them for release / promote social rehabilitation?
- how is this done in the case of foreign nationals? do they have access to the same services? do they have any special support (e.g. to facilitate family contact)?
- what services are available to prisoners after release?
- how are returning citizens 'connected up' with these systems to ensure they get the support they need?
- what if any additional supports are made to returners?

From the countries that responded to the questionnaires, we approached those countries that seemed to have some good practices in the re-settlement of FNPs. We also attempted to identify a range of experiences, based on differences in geography, history, culture and legal processes, in order to arrange a variety of more in- depth study visits.

3. THE PURPOSE OF FD 909: THE CONCEPT OF SOCIAL REHABILITATION

Before strategic policy decisions can be taken and practice can be developed, it is important to try to appreciate the purpose and rationale of Council Framework Decision 2008/909/JHA. The concept of social rehabilitation is central, as articulated in Article 3:

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

In several places in the text of the FD, it is said or implied that social rehabilitation should be the principal consideration when deciding whether or not to transfer a prisoner: in other words, within the provisions of the FD, a prisoner should serve their sentence in that country where their prospects of social rehabilitation are best.

The FD is in line with other and associated Framework Decisions in this respect. FD 2008/947/JHA sets the aim of:

'... facilitating the social rehabilitation of sentenced persons, improving the protection of victims and of the general public, and facilitating the application of suitable probation measures and alternative sanctions ...' (Article 1)

Yet neither 909 nor 947 FD offers much explanation of what exactly *social rehabilitation* means or how processes of transfer can contribute to its enhancement. The text shows that FD 947 sets itself the wider purposes of 'facilitating the social rehabilitation of sentenced persons, improving the protection of victims and of the general public ...' It is an interesting question whether the 'protection of victims and of the general public' is understood to be something that is achieved through rehabilitation (which protects the public by reducing reoffending) or as distinct objectives: is there a single objective here (rehabilitation) or two - or maybe three?

3.1 Meaning of 'rehabilitation'

The rehabilitation of sentenced persons remains a problematic area of criminal justice policy and practice. As we have seen, while rehabilitation is at the centre of penal policy in many countries, the meaning of the term is contested and variable. Conceptual difficulties are aggravated by the challenges of translation. There is rarely a simple one-one correspondence between words in different languages. Some words – perhaps especially abstract terms - often carry connotations which can be lost in translation, while new connotations may unwittingly be imported. If the meaning of rehabilitation in English is inherently contested, the extent to which apparently equivalent terms in other languages correspond with it is also uncertain. This is both a linguistic and a conceptual difficulty. Similar questions arise for other over-lapping concepts which often appear in discussions about rehabilitation - for example: reform, resettlement, reintegration, through care, aftercare, re-entry, and other associated terms.

Some take the words *rehabilitation* and cognate terms like *resettlement* and *reintegration* to imply that people who have offended had enjoyed a status or social circumstances from which the offence and consequent punishment represent a lapse and to which they should now be restored. But to what extent have prisoners ever been settled or 'integrated'? As Carlen (2012) points out

'The majority of criminal prisoners worldwide have, prior to their imprisonment, usually been so economically and / or socially disadvantaged that they have nothing to which they can be advantageously rehabilitated. Sure, they are returned to their place in society, but from that disadvantaged place they are, too frequently, returned to prison again, and again and again.'

So do sentences of imprisonment change people for the better, or simply reinforce and extend their marginalised status leading to increased rates of recidivism? The answers to such key questions remain disputed (Maruna *et al.* 2004), and theoretical consideration of them rarely influences resettlement policy and practice (Maguire and Raynor 2006).

Others regard the essence of rehabilitation as the process of a 'change for the better' (Robinson and Crow 2009:10), a process that would typically involve some change in the thinking, attitudes and behaviour of the individual which would lead to reduced (or no) reoffending. This *correctional rehabilitation* (Raynor and Robinson 2009) is perhaps the most common conception in policy and in research. At the same time, it is important to remember another – perhaps earlier – conception of rehabilitation (McWilliams and Pease 1990) as the restoration of the individual to their original rights, an idea well expressed by the French *rétablir dans ses droits* (McNeill 2011). In this sense, rehabilitation does not depend upon personal reform, but is an entitlement that follows from the completion of the lawfully imposed sentence. So understood, rehabilitation is a right for people who have offended and conceptually distinct from any personal reform. Personal change by no means ensures that an ex-offender will be 'restored' to their rights; nor, for that matter, is such restoration to rights an indication that change has taken place.

Correctional rehabilitation in many countries is informed by an approach to treatment known as RNR (Risks, Needs and Responsivity). The most effective programmes in reducing offending are said to be those that respect the principles of risks, needs and responsivity. In outline, the risk principle states that intervention should be calibrated according to the risk of reoffending, with the more intensive and extended interventions delivered to those at highest risk. The principle could accordingly be used to determine who should be worked with and to what level. The need principle requires the focus of intervention to be on those needs or factors associated with offending. These are commonly referred to as criminogenic needs. Responsivity, probably the least well-developed of these principles, is, at its best, a proper acknowledgement of differences among people: it is unlikely that any single intervention will be best for everyone and so methods should be adapted to these individual characteristics.

RNR has become the most influential model in modern rehabilitation (Andrews and Bonta 2010; see also Raynor and Robinson 2009). It is to be noted that RNR fundamentally depends upon *assessment* and the problems of undertaking sound assessments which might inform a sentence plan and then sharing them with the country in which the sentence is to be carried out is a substantial challenge for the effective implementation of FD 909.

A criticism of RNR (arguably misplaced) has been that it overlooks social disadvantage. While there are answers to this objection, there is a risk that the focus on the thoughts, behaviour and feelings of individuals could tend to marginalise other ways of understanding the origins of offending in social disadvantage and injustice. As Smith (1998: 108) says

'an exclusive stress on offending behaviour entails the expectation that offenders, and not their social circumstances, must change, and encourages the abstraction of the offending act itself from the personal and relational context which could make it intelligible.'

This criticism is all the sharper when considering the position of groups, perhaps especially women and people from minority ethnic groups, whose offending behaviour and experiences of criminal justice can only be fully understood within that broader socio-political context. Indeed people who have come from another country and have offended must also be understood in this way: the demands of settling in another country, often with limited social support and

difficulties in securing accommodation and employment, are likely to be associated with offending.

We need a fuller conception of the several dimensions involved in rehabilitation. McNeill (2012) has argued that 'psychological', 'legal', 'moral' and 'social' forms of rehabilitation are all equally important in bringing about desistance from crime. Once again, the implications of these several dimensions of rehabilitation are complicated in the case of foreign national prisoners.

In some countries, rehabilitation has become subordinate to public protection and is expected to give way to it where these objectives conflict: indeed policy sometimes seems to imply that rehabilitation is valued only to the extent that it may contribute to public protection (Robinson and McNeill 2004). The FDs by contrast, especially 909, place especial emphasis on rehabilitation. This is already potentially problematic, since while rehabilitation has an important place in the penal policies of many countries, it is just one among several penal objectives. Others include: (retributive) punishment, deterrence, incapacitation and reparation. It is not immediately obvious that rehabilitation should take priority over these and other legitimate policy objectives. It is also to be noted, however, that these objectives may *change* in the course of the implementation of a sanction. For example, if someone was originally sentenced to a long term of imprisonment in order to protect the public, efforts at rehabilitation must be made to ensure that they are safe for their eventual release. Even if other rationales determined the original sentence, those responsible for its implementation have a duty to maximise the prospects of rehabilitation.

3.2 Social rehabilitation

The term *social rehabilitation* is much more common in the lexicon of instruments and international conventions and their associated commentaries than in the Anglo-American criminological literature. For example, the International Covenant on Civil and Political Rights, adopted by the United Nations in 1966, requires that 'The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.' (United Nations 1966 – Article 10 [3]) The expression is also to be found in Council of Europe Recommendations (including the European Prison Rules) and, significantly, in the Council of Europe Convention on the Transfer of Sentenced Persons of 21st March 1983, which is a precursor to FD 909.

In much of the literature, as we have seen, the term *rehabilitation* is more usually to be found and it is an open (and interesting) question what the adjective *social* adds here. Compared to correctional rehabilitation, 'social' rehabilitation aims to restore social status, as well as informal recognition and acceptance. It seems likely that social rehabilitation, then, attempts to encompass both the conception of personal change for the better and the idea of restoration to rights. Yet it also adverts, perhaps, to a wider understanding of what might be involved in supporting personal change.

Social rehabilitation is founded on a close engagement with places and communities. It focuses on ecological factors, the social circumstances and opportunity structures in different geographical and social contexts (Flynn 2012). Three basic components may be distinguished. First, social rehabilitation emphasises the structural means - welfare benefits, accommodation,

education, training and employment - which make successful desistance from crime achievable. Second, it includes factors which act indirectly on the quality of institutional support available to people who have offended, including programme interventions of treatment and assistance which may be adversely affected by a lack of funding or prison overcrowding, for example (Wright *et al.* 2012) or by the especial challenges of access facing foreign nationals in prison (Ugelvik 2014). And third, it includes the social circumstances necessary for full re-admittance and civic participation of the reformed ex-offender in the wider community (McNeill 2012). In the sense employed in FD 909, and indeed almost all international transfer conventions relating to sentenced persons more generally (United Nations Office on Drugs and Crime 2012), the term *social rehabilitation* therefore focuses on processes of transition – the ‘resettlement’, ‘reintegration’ or ‘re-entry’ - of people post-release back into community settings.

Once it is appreciated that desistance involves more than individual cognitive change, it becomes clear that unless people have fair access to the resources they need, it will be very much harder for them to desist from offending. An initiative in England and Wales some years ago, inspired by a report into the social exclusion experienced by many people who have offended (and especially by ex-prisoners), identified a number of ‘pathways’ out of offending and pointed to a number of ‘key areas’ where strategy and services, commonly undertaken in partnership with other agencies, needed to be enhanced (Home Office 2004). These pathways were:

- Accommodation
- Education, Training and Employment
- Mental and Physical Health
- Drugs and Alcohol
- Finance, Benefit and Debt
- Children and Families of people who have offended
- Attitudes, thinking and behaviour (which had been the principal focus of RNR)

While this was part of a policy statement in England and Wales and was grounded on research undertaken in the UK, it seems likely that most countries would recognise these or very similar ‘pathways’, even if they would wish to add to or subtract from the list and give varying weight to these influences. Homelessness, unemployment, poor health, substance use and poverty always and everywhere make it much harder to find ways of living in which offending has no place. Again, all countries acknowledge the potential value of partners and families in supporting desistance.

As specified in *Article 3* of Framework Decision 909, the purpose of transferring sentenced persons between ‘issuing’ and ‘executing’ states is to facilitate their ‘social rehabilitation’. To what extent can the removal of sentenced persons from one country to another secure their successful social rehabilitation? Is it practicable? What challenges does it present? Or, indeed, is the expectation that by transferring sentenced persons back to their home countries they will desist from crime flawed and unrealistic? In the next section, we review what the academic and policy literature has to say about these matters.

4. LITERATURE REVIEW

While other workstreams have focused on the legal aspects of transfer, our concern here is to identify the practical and theoretical aspects as well. Specifically, in Workstream 1 Dr Carmen Garcia and Professor Ioan Durnescu have undertaken a comprehensive review of the literature available on FD 909. Our review overlaps with this, but focuses especially on the rationale of FD 909 and its objective of social rehabilitation. The objective of the Framework Decision is not only to ensure that the person is safely and expeditiously transferred in appropriate cases, but that this is done in a way that enhances the prospects of their social rehabilitation as far as possible. To explore this goes far beyond the law and must include a scrutiny of policy and practice. The hard reality here is that a transfer could take place fully in accordance with law, but without any real likelihood that the individual's prospects for social rehabilitation are improved at all. Attention solely to transfer between prisons is at risk of losing the critical importance of understanding what does, and what ought to, happen after release.

4.1 *Good practice in resettlement*

In thinking about rehabilitation and resettlement, a useful distinction can be made between human and social capital. Most of the 'pathways' identified by the UK Home Office could be regarded as aspects of *social capital*, the social circumstances and opportunities that must be made available to people who have offended to support social inclusion and desistance. While social circumstances and opportunities are likely to include a broad and diverse range of processes and practices necessary for full re-admittance and civic participation, social capital is most often 'operationalized in terms of family and kinship relations and employment opportunities' (Farrall 2004: 60) Human *capital* is constituted by people's thinking and behaviour, their abilities and, perhaps above all, their attitudes and motivation – the principal focus of RNR.

In an influential paper, Maguire and Raynor (2006) argued that while social circumstances are certainly important, people can and do make choices and these are not determined by their environment: 'Agency is as important as - if not more important than - structure in promoting or inhibiting desistance.' (Maguire and Raynor 2006: 24) Personal agency is a function of attitudes and motivation, so that developing and sustaining motivation is crucial to resettlement. Farrall (2004: 61) also focuses on individual-level processes and practices associated with social capital, distinguishing between 'social capital which is "active" or "passive", (that is to say, pursued deliberately or created as a by-product of other social interactions); can be inherited from others; can become depleted or eradicated; requires investments before it can become fully utilized; and can be reactivated by others.' One aspect of this is that there needs to be some continuity in experience between prison and the community after release. This continuity, ideally, should not only be in relation to the services made available, but in the people involved in providing those services, be they services provided directly by state officials or, as is increasingly the case, especially in neoliberal administrations, by community actors via state contracts with private companies or Non-Governmental Organisations. As Garland (2001) has argued, government priorities structure the philosophies and methods of rehabilitation deemed appropriate at any historical moment. Depending on the approaches taken by different institutions in different countries at any given

time, including the extent to which they might align with pre-conceived state policy goals and guidelines, offender resettlement services are likely to be based on highly varying assumptions about the official meaning, nature and purpose of social rehabilitation (see Kaufman, 2015). While for the most part research on resettlement has focused upon the evaluation of specific programmes, in summarising their findings of resettlement evaluations, Maguire and Raynor (2006: 31) concluded that ‘... continuity of contact with project workers ... “through the gate” was significantly associated with lower reconviction rates. ... the maintenance of motivation [is] also easier in the context of a relationship.’

Décarpes and Durnescu (2014) usefully summarise what research tells us about best practice in resettlement.

- Resettlement work should start as soon as possible after the final sentence
- A process should be designed to ensure continuation and consistency between in-prison activities and post-release services
- The message that a prisoner needs to receive from staff is that he / she is responsible for his / her life and that change is possible
- Motivation and agency are important ingredients for a successful re-entry (see above)
- RNR and good lives models are complementary and provide a solid base for people striving to desist
- Prison programmes should focus on developing human capital (e.g. education, problem-solving skills, vocational training, drug rehabilitation etc.) with a special focus on transition mechanisms
- Pre-release and post-release programmes should continue the work done in prison and should focus more on supporting motivation and developing social capital and legitimate opportunities (e.g. family, social network, employment, etc.)
- Multi-modal programmes for pre-release should be created in order to cover the diversity of risks, needs and responsibility levels among people who have offended
- A buffering zone between in-prison and post-prison work should be established to support transition (e.g. halfway houses, drop-in centres, step down programmes etc.)
- Communities should be made aware of the risks posed by social exclusion and they should be assisted to avoid concentrated disadvantages
- Governments should be encouraged to take a more rehabilitative approach towards ex-prisoners rather than follow neo-liberal policies that enhance social exclusion and incarceration
- The balance between the right to know and the right to private (or a new!) life should be settled in such a way that desistance is promoted and unnecessary and unfair stigmatization is avoided
- Families should be more involved in pre-release and after release interventions since they represent a protective factor when they are trained to get people who have offended back into their community.

When part or nearly all of a prison sentence is served in another country before transfer takes place, the challenges of achieving some of these elements of good practice are especially demanding. It is also important to note that the success of offender resettlement services is heavily influenced by factors largely outside the influence of criminal justice interventions. No matter how good the programmes, movement towards successful resettlement is likely to be

overwhelmed by broader social forces - lack of resources, limited opportunities for gainful employment, impoverished families, crime-prone neighbourhoods - as well as restricted opportunities to participate politically and civically, and be recognised as full members of society. In sum, the social circumstances, economic opportunities and civil rights available in the countries to which foreign national prisoners return is crucial to their successful social rehabilitation.

4.2 The particular resettlement needs of foreign nationals

On the face of it, it seems perfectly sensible to transfer foreign national prisoners back to the countries where they would normally reside and to which they will return after release. Their position as non-nationals in the countries in which they are detained is often uncertain, if not precarious. A feature of recent global social change is that foreign nationals often no longer have recourse to the same legal protections as citizens (Zedner 2010). Indeed, the connection increasingly made in Western European countries between immigration and crime, referred to in the criminological literature as 'crimmigration' (Bosworth and Kaufman 2011), has resulted in foreign nationals being treated with deep suspicion if not outright hostility (Banks 2011). Unsurprisingly, isolation, discrimination and racism, language barriers, and limited understanding of the criminal justice system and their immigration status are all common experiences for foreign national prisoners (FNPs) (Bhui 2009). Moreover, FNPs face significant difficulties contacting legal representatives and other specialised staff, and communicating vital information regarding their cases (van Kalmthout *et al.* 2007). Staff lack the knowledge, skills and the resources to deal constructively with the issues and needs FNPs often present to them (Ugelvik 2014). Again, FNPs often do not receive the same opportunities as domestic prisoners to benefit from rehabilitative programmes such as temporary release, home detention curfew, or education and training, including those provided in open or semi-open prisons, on the basis they present a security risk or, lacking a permanent home address, for fear they will abscond (Ugelvik 2014).

Owing to the daily problems and frustrations they face, removing FNPs to their home countries is therefore seen as 'forward -looking... The reintegration of an offender is immediately progressed.' (De Wree *et al.* 2009: 116). Cultural, social and language differences are erased and personal relationships with families and friends are more easily managed. Furthermore, foreign national prisoners returning home are more likely to be accepted as citizens and granted the status and civil rights of subjects denied to them elsewhere.

However, while it might appear intuitively sensible to transfer foreign national prisoners back to their home countries, in practice there are significant problems to overcome. Although the growth of the FNP population has generated a significant amount of research in recent years (see Banks, 2011 for a discussion of this from a UK perspective), Ugelvik (2014: 108) has pointed out how little is known about FNPs and 'the challenges they experience and represent'. Addressing gaps in research and information relating to FNPs necessitates engagement with issues of migration and immigration, discrimination, citizenship and human rights; and more fundamentally the interconnection between immigration and criminal justice policies and practices.

We need to consider the challenges which must be resolved in order to achieve the aim of supporting the social rehabilitation of FNPs transferred back to their home countries under FD 909, while touching briefly on some of the wider political, legal and cultural perspectives on the 'criminology of mobility' (see, for example, Aas 2011; Bosworth, 2011; Bosworth and Guild 2008; Bosworth and Kaufman 2012). These challenges include:

- the likely different expectations of 'issuing' and 'executing' states regarding the overall purpose of the Framework Decision;
- relatedly the uncertainty that a shared understanding about the meaning and purpose of social rehabilitation will transcend national boundaries;
- variable prison and community settings which will impact on the social rehabilitation of foreign national prisoners after their transfer;
- the levels of acceptance or otherwise of foreign national prisoners regarding their transfer.

Implementation of the FD will have a different impact in different countries. Over recent years, new migration and immigration patterns across Europe have reconfigured criminal justice systems in varying ways. Whereas most Western European countries must now cope with increasing numbers of FNPs in their prisons, most Eastern European countries may anticipate an influx of large numbers of indigenous offenders transferred back to their countries of origin to serve out the remainder of their sentences. Ugelvik (2014: 110) has shown that, two decades after the fall of the walls dividing Europe into two, the average population of FNPs in Western European countries is 26 per cent, compared to less than 3 per cent in the old Eastern Bloc countries. This suggests there is a fundamental schism in how the Framework Decision is likely to be viewed by different countries. A major concern is that, while issuing states may seek to expel foreign national prisoners back to their countries of origin, whether or not this conduces to their social rehabilitation, executing states must find the most pragmatic and cost effective ways of dealing with them. While issuing states may fail to advise FNPs or perhaps advise them poorly about their social rehabilitation needs because the overriding priority is simply to reduce the economic burden of imprisoning them, executing states may fail to provide or be unable to provide the necessary support required simply because the resources are unavailable to do so. The problem becomes particularly acute when prisoners are transferred against their will as may happen under the Framework Agreement. This point is discussed further below.

While the meaning and purpose of social rehabilitation in the Framework Agreement is expected to transcend national boundaries, it is far from certain this is achievable. Padfield *et al.* (2012: 24) have argued that for conventions on the transfer of sentenced persons to function effectively, mutual trust between nation states is paramount. However, 'this may be difficult to engender in cases where a conviction results in very different public reactions in the two states'. Recent global social change to the political economy of European countries (for example, those which have made the transition from authoritarian rule to democratic government), has caused different specificities of administrative law, criminal justice and civil society to emerge. In particular, closer international relationships between nation states have resulted in the introduction of new and varied practices of punishment. Nelken (2009) has pointed out how strict legal considerations often take precedence for governments during times of recession. For instance, local legal cultures in developing European countries have

been keen to embrace new private sector criminal justice initiatives to save money but also to cope with rising crime and prison overcrowding, as a consequence of increased levels of transnational crime (particularly human trafficking and drugs). As a consequence, the reality of dealing with prisoners is very different across European countries. Owing to varying political ideologies and economic pressures, countries privilege different justifications for punishing people who have offended. While some countries emphasise the right of prisoners to receive rehabilitation and reintegration support, others may prioritise social control or 'are silent on the subject of the purpose of the implementation of punishment' (Padfield *et al.* 2012). Approaches to resettlement and reintegration, and the release systems and the systems of probation which stem from them, therefore vary significantly across Europe. Furthermore, criteria to achieve legal rehabilitation (in the sense defined earlier), dependent on the expunging of criminal records and the opportunity to set aside criminal pasts and not disclose periods of imprisonment, also vary from country to country.

As previously stated, social rehabilitation addresses environmental and social factors thought to support or obstruct desistance from crime. It therefore affirms the importance of place and ecological context. For the Framework Decision to achieve its aim of furthering the social rehabilitation of foreign national prisoners, this must first involve a close consideration of the prison environment they will experience on return to their home countries and the opportunities for social rehabilitation available in it. The purpose of the FD entails accommodating them in a prison environment conducive to their social rehabilitation (Rotman 1994). Harsher, more punitive and overcrowded conditions, as well as degrading and poorly resourced regimes which offer inferior standards of education, training and treatment and reduced opportunities for home leave or conditional early release – inferior, that is, to those they experienced in the issuing state – are inconsistent with this overall aim.

Similarly, consideration needs to be given to the social circumstances FNPs will experience after their release from prison. Research has shown that for people to live in a different residential area to the one in which they began offending may impact positively on their social rehabilitation. By distancing themselves from criminal opportunities and deviant peers and findings means to the development of legitimate social capital, wider support networks and links to new institutions of support are opened up to them (Farrall 2004). On the other hand, impoverished social circumstances and opportunity structures encumbered by poverty, social and cultural isolation, lack of jobs, residential instability and family disruption predict recidivism directly (Sampson *et al.* 2002).

To what extent are the social circumstances and opportunity structures, in the places and residential neighbourhoods FNPs will inhabit after transfer to their home countries, likely to support their social rehabilitation? The tendency of global capitalism to entrench inequality and insecurity has persuaded, or forced, large numbers of people in impoverished and destabilised situations to relocate and seek a better and safer future for themselves and their families. While global change has created opportunities for some, others have been 'effectively imprisoned by it' (Massey, 1997: 317). As a consequence, the willingness of many FNPs to accept that their social rehabilitation is best served in their home countries and return to them voluntarily cannot be guaranteed. In many cases, the influences that led to their migration will still apply.

A key recommendation of the European Prison Rules (2006) is that in order to further their social rehabilitation, all prisoners should be accommodated in prisons as close to their homes as possible (Rule 17.1). But what constitutes 'home' to a foreign national prisoner is a subjective decision which does not necessarily accord with any objective policy decision about what is their country of origin or birth – or even of ordinary residence. Therefore, any decision to transfer prisoners to countries in which they fear for their security or to which they have lost any meaningful ties is likely to be resisted. Researching the experiences of FNPs in the UK, Bosworth has observed that:

'Legally, foreign ex-prisoners face the most difficult battles in persuading the UK Boarder Agency not to deport them because their claims to protection or family ties are balanced against the risk they pose to the community as ex-offenders. However, many of these individuals have also lived in the UK for a long time and have a number of personal ties here. They commonly speak with regional accents, reflecting their long-term residence in parts of London or large northern cities like Birmingham or Manchester. In a multicultural country like Britain, they are in all ways, other than their legal documents, indistinguishable from citizens.' (Bosworth 2012: 132)

No doubt many other countries would find people in the same situation.

Finally, the identification of the social rehabilitation needs of FNPs necessitates assessment of their personal, social and offending histories. Personal and social information is required to assess the willingness of foreign national prisoners to engage positively with the decision to transfer them. As much as the social conditions people experience in prison and the community settings they are returned to are likely to shape the choices they make, the degree of personal motivation or 'agency' they are prepared to invest in successfully staying away from crime is crucial (Maguire and Raynor 2006). Unless FNPs are properly consulted, provided with relevant information, and their opinion taken into account they are unlikely to work positively towards their social rehabilitation.

Such information is equally important for the protection of the public. Data on the offending histories of FNPs guides risk assessments and resultant decisions made about the conditions of their confinement and release (Bhui 2004). Significant improvements need to be made in respect of this. Ugelvik (2014: 113) has observed that at present 'most foreign national prisoners lack such a history, and often look like walking and talking question marks from the perspective of the prison officers responsible for making, for them, important and life-changing decisions'. In recognition of the fact that under certain circumstances Article 6 of FD 909 provides for the possibility of transfer without the consent of sentenced persons, the European Commission has committed itself to assessing 'whether Member States correctly set out in their implementing legislation an effective procedure to give a role to the sentenced person in the transfer process' (European Commission 2014: 8). This is not only an ethical obligation, but also seems central to the offender's engagement with the whole process which is a precondition for social rehabilitation.

This section has summarised the findings of research on resettlement and on the particular challenges arising from FD 909. The next section considers how the researchers in Workstream 3 went about their responsibility to find out about practice in the Member states.

5. FINDINGS

A written questionnaire was sent to representatives of 17 different EU countries asking them about the use of FD 909 with reference to its implementation in general and specifically to the impact that the element of social rehabilitation has had on the way that each country has carried out its responsibilities under the Framework Decision. The countries who responded with completed questionnaires were Croatia, UK (with reference to England and Wales), Estonia, Finland, Latvia (Probation only), Netherlands, Romania, Slovakia, Slovenia and Sweden.

5.1. Questionnaires

5.1.1. Outgoing transfer of prisoners to other countries

In terms of transferring prisoners to another country, the responses varied considerably, with one country (England and Wales) using it 47 times and Latvia using it to transfer out on 41 occasions (although it is to be noted that not all of these transfers were to EU countries - other destinations, for example, including Russia and Ukraine, and therefore not taking place under FD 909). At the other extreme, there were a number of countries who have the legislation in place, but had not yet transferred a prisoner under the FD (Estonia, Sweden) or had used it only once (Croatia, Slovenia.) Others countries had completed between 10 and 15 transfers (Netherlands, Finland), while other countries again responded by saying they had used the FD, though gave no numbers (Romania, Slovakia).

With reference to having special measures in place to support the rehabilitation of foreign national prisoners (FNPs), most of the countries responded that they do inform FNPs about the right to serve their sentence in their home country, but that in reality FNPs are treated the same as any other prisoner and that there is no special policy or practice for FNPs. Two countries (Romania and Slovakia) stated that they did inform all FNPs of their right to contact their home country's diplomatic mission and one country (Slovakia) actively puts together prisoners of the same nationality or language which enables them to exchange information and experiences. Only one country (Sweden) stated explicitly that the principle behind any transfer was to enable the prisoner to serve the sentence in the country which would best enable them to become a law abiding citizen (the heart of the principle of social rehabilitation).

There was a mixed response to the question of whether the individual is asked about their social rehabilitation needs:

- 2 countries said that they did not specifically ask about this;
- 3 stated that they addressed needs as part of the normal assessment process of all prisoners and FNPs did not get asked specifically about their rehabilitation needs in relation to their home country;
- 3 countries did specifically ask about the needs to the person in relation to returning home to their country (England, Netherlands, Sweden);
- 2 did not reply to the question.

The question about the type of information that is transferred with the prisoner produced a more uniform response. Most countries stated that they would only send the information on the Certificate and that they would not send additional information about the sentence plan or assessments unless this was explicitly requested. 2 countries said they would send relevant information about the person's medical history. All but 2 of the countries responded that they would not pass on any information about the risks the person posed of re-offending or the risk of causing serious harm to others. The exceptions (Sweden and the Netherlands) stated they would inform the country of a serious mental illness or extreme aggressive behaviour, particularly in relation to the safe transport of the prisoner.

The challenges that were outlined by those countries that responded to this question were around obtaining files and information from other countries, as well as the difficulties of identifying the right contact in the other country to initiate the process. Other issues raised by one country (England) were the difficulties of helping FNPs with their isolation, ensuring language barriers are overcome, providing some balanced approach to the person and their culture and religion and enabling the individual to understand the different procedures. The most relevant comment in terms of this research was that the main challenge is working out the country in which the opportunities for social rehabilitation are best for each individual. There can be no automatic assumption that social rehabilitation is best promoted in the country of ordinary residence or in the country of origin.

5.1.2 Incoming transfer of prisoners from other countries

The range of transfers into countries was similar to the transfers out. Figures differed widely – one country did not differentiate under what protocol prisoners were transferred and their figures included those transferred under the EU Arrest Warrant process (Slovakia) as well as other warrants. Two countries (Estonia, Romania) were unable to provide numbers; one country (Netherlands) received 60 people, whilst at the other extreme another country (Finland) had only received 1 person. Other transfer numbers ranged from 4 (Slovenia) to 18 (Croatia) people.

Only one of the countries who responded had any special social rehabilitation procedures for people returning to their country under the terms of FD 909. All the others said that these individuals were natives of their country and were therefore treated the same as anyone else sentenced in the country, using the same diagnostic and assessment procedures and the normal sentence planning and release arrangements. Only one country had a policy of housing people close to their families or home community – but again it was explained that this was the normal procedure for all. One country (England and Wales) said that people returning from

foreign prisons are assigned to two prisons (one for men, one for women) where staff and regimes were gaining experience and insights into some of the distinctive problems of re-adjustment that beset returning prisoners.

Answers to questions about the information that the countries would like to receive from the transferring state were very interesting, contrasting markedly with the minimal information sent when the countries transferred an outgoing prisoner. 7 out of the 8 countries who answered this question wanted medical information and an assessment of the risk of harm the prisoner presented to other people. 5 countries would like to receive social, medical, and psychiatric and prison behaviour reports as well as criminal records, assessment of needs, explanation of work / employment history, any substance dependencies and treatment programmes. Two countries (England, Netherlands) said they needed only the Judgement and Certificate since, whatever had taken place before, they would begin the whole assessment process from the start when the person is received back into the country. One country said they would like to see a CEP or EuroPris website that held information about each countries sentencing policies, prison regimes, release arrangements and re-settlement provision.

In terms of the information they would like to receive about the risks of an individual re-offending or causing harm to others, of the 8 who answered the question all said they would like information about the person's medical history and an assessment of the risk of harm s/he poses, giving any evidence about high risk. Two countries also highlighted the usefulness of any information about criminal contacts, organised crime connections, previous convictions and behaviour in prison. That said, such information is rarely available and is not considered essential for determining the transfer request.

There was a mixed response to the position of each country about providing information to the individual about their entitlement to social rehabilitation. Two countries (Netherlands, Estonia) said they would provide information about the prison system to people before they were transferred, but only if this was explicitly requested. All said that they would provide information to people once received back into their country – either verbally in groups or individually or by written brochures / information sheets. However these were about the basic details of their sentence and what that entails, including their rights and obligations. Only one country (Romania) specifically said that they provided information about rehabilitation measures and probation / resettlement services. Two countries (Netherlands, Sweden) said that they supported social rehabilitation by working with the person on individual rehabilitation plans.

To the question about the authorities contacting family members on the progress of transfer, none of the 7 countries that responded took the initiative in making contact. 2 (Netherlands, Croatia) said that they had published contact details and would respond with information if family members contacted them. The other 5 countries said that it was the responsibility of the person to contact their family on their return to the country and each had the facility to allow this to happen. Only the Netherlands said that, as this might be a delicate matter, they would only contact the family on the request of the individual directly if he/she contacted them through the embassy staff in the country where they had been sentenced.

All the countries who responded said that they supported social rehabilitation by doing an individual assessment of their needs and preparing a sentence plan which has social rehabilitation as one of its primary aims. However this was the same procedure as was provided for all prisoners and there was no additional or specialised support for returning prisoners who had been sentenced abroad. One country (Netherlands) said they would always try to place the individual in a prison close to their home to facilitate family and work contact.

There was a range of challenges outlined by the respondents. Only 2 countries (Slovenia, Slovakia) indicated that their challenge was re-integrating returning people into society on release from prison, although one suspects that this is true of many / most other countries. Other challenges were about

- being provided with sufficient information about the individual to enable the best possible opportunity for social rehabilitation;
- the time taken by the individual to readjust to the new regime;
- the difficulties if a returning prisoner found they now had to serve a longer sentence in their home country;
- overcrowding in the prisons due to a lack of financial and human resources;
- a person being transferred back while their family is still abroad;
- a prisoner with a serious mental illness being transferred back.

In terms of examples of good practice, there was limited knowledge or experience because of the short time that the FD 909 has been in operation. The only comments were that most countries start the whole process of collecting information and doing assessments and sentence planning from the beginning because there is no process in place for the systematic exchange of agreed standardised information (although it is possible to speculate that they may not know enough about assessment procedures in other countries to have confidence in them in any case). One example of good practice was the Dutch International Bureau which has volunteers who visit all Dutch prisoners in prisons abroad. These volunteers are trained in motivational interviewing and can also give some information to the prisoner (see Hofstee-van der Meulen 2012 and also her talk at <https://www.youtube.com/watch?v=yIeYgk0qIDA>).

Good Practice Example

The Dutch Probation Service has established an International Office that promotes the rehabilitation of Dutch detainees held in other countries. Their mission is to assist and support Dutch citizens serving prison sentences abroad, by providing information and advice. They attempt to lower risks of reoffending by preparing people for their return to the Netherlands while still serving their sentence. The International Office is 'a strong advocate of international cooperation in all aspects of probation in order to improve the quality of rehabilitation practices and services in other countries'.

One of the most valuable contributions this office makes is in their deployment of volunteers to visit people in prisons in other countries. This not only gives practical benefits and helps people to think about their options on release, but also gives a strong message that the Netherlands is concerned with those of its citizens imprisoned abroad and keen to offer them support.

See http://www.reclassering.nl/documents/Algemene%20brochure_ENG_WEB.pdf

Other ideas about improving continuity between custody and community for returning prisoners was to ensure the Probation Service was included in working with the prisoner (Croatia), creating an improved database to share information between the prison, probation and courts (Romania) and the development of a specialised service for prisoners returning from abroad to help them to return to society (Slovenia).

The final ideas offered by responding countries about the use of FD 909 and how it may be improved to help with social rehabilitation were about the better exchange of information on the sentence served abroad to enhance continuity. This was tempered, however, by the suggestion that each country has to develop more trust and confidence in the value of the received information: otherwise it will just be seen as from a different system with a different language and culture, as well as expressing potentially conflicting ideas and attitudes towards punishment and sanctions. Other ideas were about simplifying and unifying practices in rehabilitation and penal policies to make it easier to transfer and putting in place deadlines for transfer to help speed up procedures. This would improve prospects of social rehabilitation by providing a longer period to work with the prisoner in their home country to prepare for release.

5.2 Study visits

As discussed earlier, this workstream has been trying to go beyond law and policy to explore the opportunities and the difficulties of implementing the Framework Decision. It is an uncomfortable fact that transfers could take place in perfect accordance with the FD and the law of the nations concerned, but if the individual is not supported to prepare for release nor has access to the necessary services 'through the gate', the rationale of the FD – social rehabilitation – will be thwarted and risks of reoffending increased.

The ways in which transfer takes place - and how this may be very different from the expectations of the FD, the implementing authorities or the prisoners concerned – need to be much better understood. This was the purpose of a series of study visits that were undertaken in a number of countries. On these visits, staff and prisoners (where possible) were interviewed to find out their perceptions of how FD 909 was operating and their views about its achievements and limitations, as well as how processes might be improved.

In the accounts that follow, there will be occasions when we draw attention to some of the difficulties that these countries are encountering in implementing the FD, as well as to the energy and sincerity with which they are approaching this task. We are especially appreciative that countries have allowed us to see their difficulties, so that all Member States can learn from their experiences. Our summaries are not intended to be critical in any way and indeed we are confident that those countries who have allowed us to undertake study visits are among the nations that are working hardest and most creatively to develop best practice in implementation.

5.2.1 Croatia

A study visit to Croatia was undertaken. Croatia is an instructive example of a country with energetic and creative staff in prison and in probation who are striving to do their best for all prisoners and with due regard to the particular needs of non-nationals serving sentences of imprisonment. Rehabilitation in Croatia is well established and affirmed in the Law on the Enforcement of the Prison Sentence that declares that the purpose of imprisonment is 'to, with human treatment and respect for dignity of the person, ... enable that person for life in freedom according to law and social rules'. Rehabilitation is primarily based on an individual 'treatment' model. Based on a diagnostic assessment of risk and needs carried out centrally at the Centre for Diagnostics in Zagreb Prison, the aim is to address criminogenic factors related to offending. Croatia is also an instructive example of a country in which broader social opportunities to develop social capital are limited. While the importance of preparation for release is affirmed in law, social rehabilitation encompassing education, work, free time, contact with family, as well as 'through care services' in the community, are less well developed and provided according to capacity and resources only. Economic forecasts in Croatia are negative and unemployment rates are high. Probation services in Croatia are relatively new, under-resourced and very much in a state of formative development. Similarly, the voluntary, not-for profit sector in Croatia is small and has only recently become recognised as a source of social support for released prisoners. Unless released conditionally, no formal supervision requirements are imposed on released prisoners, many do not receive help and support with reintegration and reoffending rates remain high.

All persons sentenced to more than six months in prison or with sentences of longer than six months remaining are sent to the Centre for Diagnostics in Zagreb, where a comprehensive assessment takes place to establish a treatment plan. All persons transferred from other countries are sent to the Centre for Diagnostics regardless of length of sentence.

Good Practice Example

The Centre for Diagnostics in Zagreb receives all prisoners returning to Croatia. This enables the Centre to develop considerable expertise, not only in general assessment and treatment planning, but also in identifying and responding to the distinctive requirements of those who have started their sentences in other countries. In countries where such reception services and procedures are not centralised and where prisoners may be returned to any of a number of different prisons, it will be much harder for the necessary experience and skill to be acquired and much more difficult too to provide prisoners with the information that they need before transfer about what they are to expect.

It is an objective of the diagnostic process to produce an individual sentence plan for prisoners, including an individual programme of enforcement of the sentence, work schedule, education, and leisure activities. However, although the prison population has declined since 2010, owing to changes in the Act of Criminal Procedure and the Criminal Code, and conditions and regimes have improved, the Croatian Ministry of Justice reported in 2015 that there is a high probability this trend is only temporary. In particular, overcapacity in maximum safety conditions is still present and most certain will be present in the future. As a consequence work, education and leisure opportunities in Croatian prisons have remained limited. This flags up the necessity of regularly monitoring population trends and conditions in prison

administrations across European member states to assess whether opportunities for prisoners to benefit from social rehabilitation are stable over time. As well as identifying training and education opportunities, and special treatment programmes as necessary during the period of their imprisonment, the diagnostic process assesses prisoner plans for the future after their release. It is intended that prisons in Croatia enable contacts with the outside world and preparation for release, encouraging prisoners to maintain contacts with their families, as well as with outside institutions and associations. No later than three months prior to release, the prisoner attends individual or group advisory sessions. These inform the prisoner of their rights, for instance services provided by Centres of Social Welfare. They are also advised to engage in job search, although prisoners are under no obligation to contact social services after release including the employment service. Almost all prisoners leave prison without a job to go to. Released prisoners may also contact the enforcement judge to receive help and support. The prison and probation services are seeking to improve after care services through cooperation with civil society organisations, but the voluntary, not-for-profit sector in Croatia is not well developed and few NGOs are funded and tasked with resettlement work.

The legislation has changed quite recently, but according to the new Criminal Code, the court may release prisoners conditionally if they have served at least half, but not less than three months of the sentence imposed, if it is reasonably expected the prisoner will not reoffend and they agree to the release. The Probation Service oversees supervision in these cases. In 2014, the court approved 262 conditional releases. Decisions on conditional release are granted on the basis of evidence presented that prisoners have been active and engaged in their own rehabilitation. Also, the length of conditional release may be dependent on whether prisoners have a place to live and family support. Both these factors are important to take into account regarding decisions made to transfer foreign national prisoners, especially the procedures adopted to share information about them between issuing and executing states.

At the time of the study visit, no foreign national prisoners had been transferred *from* the Centre for Diagnostics. Foreign nationals are informed about the possibility of transfer and are given the opportunity to contact relevant consulates or embassies. They are also given the opportunity to contact their family. A particular challenge hampering the transfer process is the language barriers; for example all psychological tests carried out at the Centre are in Croatian. In 2014, 16 Croatian national prisoners were transferred from other countries and, to date, 14 have been transferred in 2015. A further difficulty experienced by staff at the Centre is the lack of information about the prisoner including the nature and the course of the sentence enforced to date, and assessment of risk.

Interviews with (foreign national) prisoners at the Centre revealed that they would wish to be transferred if (in order of importance):

- conditional release was granted;
- prison conditions were of a better standard;
- their personal security could be guaranteed (gangs in Serbian prisons was a particular concern);
- they were made aware of their human rights and legal advice was available;
- family ties could be maintained,
- support on housing and jobs was available. (On this point it was explained that jobs were 'very hard to find in Croatia'.)

Overall, prisoners felt that issues relating to the 'here and now' of imprisonment were more important than future considerations relating to their release.

5.2.2 Finland

This visit involved a discussion with staff in the Central Administration Unit of the Criminal Sanctions Agency in Helsinki and individual interviews with three male prisoners (2 in closed conditions and one in an open prison) who were to be transferred back to the Netherlands under FD 909 and two female prisoners in an open prison who had been transferred back to Finland from Sweden under the Nordic Transfer Agreement (see best practice).

There are 500 FNPs in Finnish prisons out of a total prison population of 3,100 – and although Finland adopted FD 909 into its legal processes in 2011, there have been very few prisoners transferred either into Finland or out of Finland under FD 909. Those prisoners who have been involved in transfer under FD 909 have been interviewed by prison staff and asked about their views on returning to their country of residence or staying in Finland; transfer application papers have then been completed. All FNPs are given the right to have an attorney to represent them during the transfer process and this is seen as a vital part of the process by the Finnish Sanctions Agency. Most cases also have contact with their home embassy officials. The principle is that all FNPs are treated the same as any other prisoner in that they have an assessment of their risks and needs carried out by specialist staff and a sentence plan prepared. Yet in reality, access to specialist programmes during the sentence are often difficult to access because of language barriers. Any decisions about transfer take into account the individual's connections to Finland, where their family resides and where they might have employment. FNPs are given access to telephones and are able to write to family and friends, but the Finnish prison staff do not pro-actively contact family unless expressly asked to by prisoners.

In terms of information, there is an information sheet prepared by the Sanctions Agency to explain the process of transfers but this is not routinely given to FNPs. There is little information given to outgoing prisoners about the regimes / sentences of the country to which they are returning – simply because this type of information is not available. Only factsheets from the UK and the Netherlands are available. Apart from the information on the Transfer Certificate, only medical details or risks relevant to the actual transfer journey, are shared with the outgoing country. Details of the assessment or sentence plan that relates to rehabilitation are not sent or received and the whole process ends on the transfer of a prisoner out of the country or starts for a prisoner returning to Finland. To facilitate the transfer arrangements, FNPs are initially placed in one of two prisons, although many are subsequently transferred to other prisons to serve some, or all, of their remaining sentence.

Good Practice Example

Since 1963 there has been an agreement in place between Finland, Sweden, Norway, Denmark and Iceland to enforce judgments and decisions in criminal cases in a Nordic country other than the sentencing country. The foundation for this co-operation is provided by the closeness of legislative provisions in the different Nordic countries and is a relatively simple process with little bureaucracy. It is facilitated because each of the countries have designated staff

members who deal with these transfers and they, and their contact details, are known to each other. At the request of the sentencing country, enforcement of a custodial penalty can take place in the country of citizenship or habitual residence of the convicted person. The sentence can also be enforced in the country where the convicted person is living at the time, if this is the most appropriate option in view of the circumstances. The consent of the convicted person to the transfer is not required.

Nordic cooperation also covers enforcement of confiscation and fines, and the arrangement of supervision of persons who have received conditional sentences or probation in cases of conditional release.

In terms of the prisoner interviews none of the three male prisoners had ties to Finland and all wanted to return to the Netherlands because of their families and the improved prospects of social rehabilitation. They also believed that they would be entitled to earlier supervised release from their prison sentence in the Netherlands, which would not be available in Finland because they were foreign nationals with no fixed residence in Finland. Two of the three believed they had not had access to assessments / planning / courses / programmes / work opportunities because they were foreign nationals and were to be returned home. The third, however, had had a positive experience in terms of these opportunities. The two female prisoners had both wanted to be transferred to Finland where their sentence would be shorter because of a more liberal early release scheme. They both had family in Finland, but had lived most of their lives in Sweden – social rehabilitation was not decisive in either case: rather it was a pragmatic decision for a shorter sentence.

However all five of the prisoners said that they had similar experiences in that they had received little or no information from anyone about the possibility of transferring their prison sentence and that they had only found out about it either through word of mouth from other prisoners or through their legal representative. They all had immense frustration about the process of transfer as there were no deadlines for the process. They kept being told by staff involved that it would happen soon, but in all 5 cases this had been going on for at least 9 months. This created anger, and depression because of the uncertainty: all said the “not knowing” when the transfer might take place was the worst part as they couldn’t plan anything with family, work or even get into programmes or facilities on offer in the prisons. All of them also said that the prison staff had little or no knowledge about the transfer process and what it entailed and they therefore couldn’t get any answers to their questions.

The 3 Dutch prisoners all questioned why there was a 28 day delay in sending the transfer papers to the executing state. They understood it was to give them time to appeal against the process, but since they had all consented to it and signed that they wanted to be transferred, they felt that this was unnecessary and simply added to the delay of the transfer, increasing their frustration.

The proposals for good practice coming from all the discussions with both staff and prisoners during this study visit are that:

- Legal representation for prisoners subject to transfer arrangements is vital;

- Clear written information about the transfer process should be provided to all FNPs in simple language as soon as they are sentenced. Preferably this information should be in their own language, but if that is not available then a widely spoken language such as English which would enable them to have some knowledge and understanding;
- Each prison should have at least one prison staff member who is trained, and is an expert, in prisoner transfers;
- The transfer process should have time limits for the sending and the returning of the transfer papers by the issuing and executing state;
- Where the prisoner has applied for or consents to the transfer, there should be no delay in sending the transfer papers.

5.2.3 Estonia

There is no formal training provided for staff in Estonia about the FD 909 process, although meetings are held where discussions are held about how best to organise the process and systems and to agree roles and responsibilities. There is no national policy about timescale, but this is planned to be introduced over the next year to try to speed up the whole process and enable prisoners to have a clearer idea of how long the process will take. The response time from the executing country to decide about accepting transfer can be protracted and is not something Estonia can influence.

Foreign National Prisoners are not treated in any special way. They have an assessment and sentence plan, but what they are able to access very much depends on their linguistic abilities: all education, for example, is provided only in Estonian. Social rehabilitation is therefore limited by practicalities – access to work placements, art and libraries are the predominant activities for FNPs, although these are not specifically determined by the individual's social rehabilitation needs. All staff agree that social rehabilitation should be at the heart of the transfer process, but the reality falls short of this and the main aim is just to return the prisoner to their country of origin. The staff believe that to get the benefits of social rehabilitation the prisoner must want to return to their country and it should not be against their will.

The assessment and sentence plan, any identified risks and rehabilitation needs are not transferred with the individual – only the certificate and judgement and any medical or safety risks which are specifically related to the actual travel arrangements. In Estonian law, personal information cannot be transferred abroad and for this to change an obligation under FD 909 will have to be approved. The specialist staff do contact the FNP's embassy / consular staff if the person has no identity papers. Letters and telephone calls are made available for the prisoner to contact their family, friends and embassy if they wish. There are no specific information leaflets, either about the Estonian prison system for FNPs or about the systems in other countries. Nor is there an information leaflet about the transfer systems, although it is planned to introduce this in the coming year.

Prisoners returning to Estonia are also treated the same as any other prisoner. An assessment and sentence plan is prepared from a blank start if the person is serving 12 months or longer and the individual's social rehabilitation needs are not fully addressed until the period just before their release. Not all prisoners are subject to statutory supervision by the probation

service following release. Families are not contacted by the authorities about the transfer back to the country and it is the prisoner's responsibility to contact friends, family or other interested persons.

Estonian staff made a number of suggestions to improve the FD 909 process:

- Reduce the bureaucracy by introducing shorter time limits for each country to carry out their part of the process – it is currently too slow and protracted
- Provide some additional basic information about the individual's social rehabilitation needs
- Identify a specialist member of staff in each prison dealing with FNPs in EU countries who can provide direct information to central HQ staff dealing with the transfer
- The two states involved in the transfer should have an obligation to contact the family, subject to the individual's consent, to inform them officially of the anticipated transfer
- The EU should arrange seminars for the experts in the FD process in each country to come together to exchange ideas, knowledge, contacts and learn from each other.

Good Practice Example

In Tallinn prison there is one specialist staff member who is responsible for all the work with Foreign National Prisoners. This staff member is the expert on transfers and provides advice and guidance to prisoners, their lawyers, other prison staff and anyone who has an interest in the prisoner. The staff member sees all FNPs within 10 days of their arrival – usually much quicker - and starts the process of collecting information, completing transfer forms and explaining the process to the individual. Translators are used if needed. The staff member uses a spreadsheet to keep track of all FNPs and follow their progress through the system. There is a specialist unit in the Ministry of Justice HQ that deals with all FNPs, prepares the forms and paperwork and progresses the transfers with other countries. This unit works closely with the specialist staff member to follow each transfer individually.

5.2.4 Spain

A prison in Spain was visited and some members of staff and a number of prisoners were interviewed. It seems that FD 909 has made very little difference to the number of transfers taking place. Delay is a persistent problem. We met both prisoners who did not want to be sent out of Spain but who were being transferred anyway

Two other focus groups were held in a prison in Spain. Instructive experiences included the case of a UK citizen who had lived in Spain for 30 years, bringing up a family and running a business, who had been facing transfer. He had been able to make his case in person to a judge (via videoconference) and had been permitted to stay. He was well off financially and most people in the group felt that it is much harder to make a case without such resources. Some felt that the decision had been taken without any regard to their personal circumstances and felt unfairly treated. One person, an Albanian national, had lived in Germany for many years before moving to Spain, but was now being sent to Albania where, he felt, there was

nothing for him. Another man from a country outside the EU had been in Spain for 10 years, but felt that no account had been taken of this in the decision to deport him. Many people in the group did not feel that they had been treated fairly.

Someone who was keen to return to his country of origin complained about the inordinate amount of time it had taken for the authorities in the executing state to respond to the request for transfer. Another non-national insisted that his roots were in Spain, but he was being sent back to his country of birth anyway. The prison authorities wanted to challenge this decision and it was instructive to see that the prison staff wanted to be actively involved in decisions about social rehabilitation. Prisoners here felt that they were well-informed about their rights, which is not usually the case to judge from the research literature.

What influences people's own preferences about transfer? The factors most commonly mentioned were sentence length, their ties / social rehabilitation and their expectations about prison conditions were the three most important things for prisoners. (Interestingly, one man from Bosnia said that he had been greatly helped by a Spanish NGO and felt a degree of emotional attachment to the country that had shown him such respect – much more attachment, indeed, than to his own country of birth.) A strongly held view was that that individualisation is key and that every case needs to be considered on its merits. This principle does not fit well with procedures governed by laws, rules and bureaucracy.

Good Practice Example

In a prison in Spain, the Judge responsible for taking the decision about whether or not the prison sentence should be served in another country visits the prison and speaks to people individually. She invites them to put their case and discusses their social rehabilitation with them. She sometimes takes decisions that go against the individual's own express preferences. For example, one person wanted to serve their sentence in another country (the country of nationality). This may have been because of his perception that he would serve a shorter time in prison. But the Judge was satisfied that his 'roots' were in Spain, that this was his country of normal residence and that his best prospects of social rehabilitation were in Spain.

While not all countries proceed in this way (and in some places law and process would make this impossible), this practice ensures that people feel 'heard' and that their point of view has been taken fully into account. In some countries, it may be that a form is filled in and dispatched and then an answer comes back, often a long time after, with a decision. The individual may have no idea how that decision was arrived at and is 'distanced' from the entire process. As is argued elsewhere in this report, the *legitimacy* of decisions makes a considerable difference and the efforts made in Spain to involve the individual in the process supports this legitimacy.

5.2.5 England and Wales

The following account is based on discussion with staff in the Foreign National Prisoners' team in the National Offender Management Service, which is part of the Ministry of Justice.

Government policy is that Foreign National Prisoners should wherever possible serve their sentences in their own country. All FNPs who are subject to deportation or removal from the

United Kingdom are accordingly considered for transfer under the FD. Prisoners are informed of the intention to seek transfer and are invited to submit representations to the Secretary of State if they wish to do so. Representations are made in writing and there is no oral hearing. Although the consideration process is an administrative one with no judicial involvement, prisoners are able to challenge the Secretary of State's decision by way of judicial review. The actual social rehabilitation of the person to be transferred is seen as the responsibility of the home country: England & Wales just has the responsibility to ensure their return. The decision about transferring prisoners is an administrative process with the Secretary of State making the decision, although in practice this is delegated to civil servants in the Ministry of Justice. It does not involve the Judiciary. There is no set period for a foreign national to qualify as a resident under the FD. Each person is considered on a case-by-case basis.

There are challenges in working with FNPs who are to be transferred out of the country under FD 909. Isolation is a problem – often because they are the only person from that country and there is a lack of language understanding. To help overcome these challenges, the regime tries to put in peer support where possible, trained chaplaincy who help with the observance of religious festivals and any special dietary provision. Translation services are provided, telephone calls (free 5 minute phone call once per month) as well as flexibility of family visiting days and face to face access to prison staff who speak the same language.

Once sentenced to imprisonment, the policy is that FNPs are treated the same as any other prisoner and assessment and sentence planning should take place in case they are not eventually transferred. In practice, however, FNPs who are thought liable to removal at the end of sentence might not be prioritised for sentence planning and other intervention on the assumption that their removal makes this unnecessary. E-learning and face to face learning is now available for Offender Managers and Offender Supervisors who manage FNPs. This training, along with the 'TRACKS' toolkit (see below) provides information on prisoner transfer as well as other removal mechanisms.

When a person is transferred, only the information on the Certificate is sent with them; the assessment and sentence plan is not transferred. Any information about health or risks of harm is only exchanged for the purpose of ensuring safety on the transfer journey itself. There is no contact made with the individual's family – either for returning or departing prisoners. However facilities such as telephone calls and letters are made readily available for the prisoners to do this themselves.

The innovative web-based information tool TRACKS (see below) provides prisoners and staff with information about the regimes and re-settlement opportunities in their home country. This is being translated into the language of each EU country. In general, however, it is difficult to get information from other countries and one of our Recommendations is for a website, available for staff and prisoners, which would contain country- specific and up-to-date information about the sentencing policy, prison regimes, release arrangements and community supervision.

Good Practice Example

At a prison in England, the Resettlement Unit receives people who are likely to be transferred to another country in the final months of their sentence. Recognising that some

people are transferred or deported with little or no release plans and with no idea about how to access services that might be able to help them, the Unit has been liaising with national embassies. (It is worth noting that liaison with embassies and consulates is commended as good practice by the European Prison Rules [Rule 37].) The Unit has approached them with requests for information about provision and support in key areas like accommodation and employment and compiling a database for as many countries as possible. Some of the embassies approached our beyond the EU (for example, Caribbean and African countries), but the prison has also liaised with many European embassies. Responses have been uneven: some countries have been supportive and informative; others markedly less responsive.

With support from prison staff (and sometimes from other UK agencies like the *Citizens Advice Bureau*) prisoners are given information and encouraged to write for themselves to the central named authority in their respective countries. Although the information that prisoners need is local – i.e. at a level that embassies are unlikely to be able to provide – at least they have a first point of reference in the country to which they will be transferred. This initiative also expects prisoners to take responsibility for themselves as far as they can, although this must be supported by resettlement services in the country to which they are to be transferred.

There is also an obvious gain in making sure that embassies are aware of these developments and do as much as they can to contribute to the collective endeavour to support social rehabilitation. Staff in the Unit hope that in time representatives from the embassies may visit the prison to speak to people awaiting transfer. This would be of considerable value – not only to people in prison, but also in raising the embassies' awareness of the needs of people who have offended who are going to their country to complete their sentence.

Interviews and discussions with prisoners took place at two prisons in England. Many prisoners expressed themselves vehemently and spoke vividly of their experiences. Few distinguished between FD 909 and other mechanisms of what they referred to as 'repatriation'. The main points to come out of these interviews were:

1. A significant number of prisoners do not want to be transferred under 909 because they have lived in the UK for a number of years, have worked in the UK, have family (including children) and a home in the UK. Whereas, in their 'home country' they have no family, no home and no means of support which might encourage them to stay away from crime in the future. The implications of this for 'social rehabilitation' are plain and they do not see how it has been decided that their rehabilitation is advanced by being sent to their country of origin.
2. Prisoners have no knowledge of FD909. They have received no information about it formally, and staff at the prisons have provided no information to them either formally or informally.
3. Prisoners have no knowledge of any appeal procedures.
4. Information received about the process comes from other prisoners leading to rumour and exaggeration.
5. There is a palpable sense of anger and frustration about the lack of knowledge concerning their cases. Some prisoners also appear to be understandably worried about what will happen to them.
6. Staff at one prison say they have received no information about processes of transfer under FD 909.

7. At present, no information about prisoners (including relevant information about their rehabilitation or risk assessment) is provided to prison authorities in executing states.

These findings are very similar in tone and content to the discoveries of a recent paper based on research undertaken in an English prison (Warr 2016).

5.3. Summary of Findings

There has so far been relatively limited use of Framework Decision 909, as other Workstreams are likely to report. Some countries have used the FD both to transfer prisoners into the country and to transfer prisoners out, but in most countries the numbers are relatively few and several countries seem not to have used the FD at all. Foreign National Prisoners are usually informed of the opportunity to make representations about serving their prison sentence in their home country, but even if there is a policy to provide a specialist service for FNPs, in reality it is clear from our findings that FNPs were actually treated the same as any other prisoner – at best, since there are certain rights and privileges that are far less readily accessible by them (Ugelvik 2014). Even treating them 'the same' is at least potentially problematic because in many cases their needs may be significantly different and ought to be explored case by case.

Virtually none of the countries had any special social rehabilitation procedures for prisoners returning to their country under FD 909. All said that the prisoners were treated the same as any prisoner sentenced in the country, using the same diagnostic and assessment procedures and the normal sentence planning and release arrangements. There was no additional or specialised support for returning prisoners who had been sentenced abroad. All countries say that on return they will complete an individual assessment of the prisoner's needs and prepare a sentence plan, which has social rehabilitation as one of its primary aims, once the person has returned to their country.

Information exchange between countries seems minimal, rarely going beyond the requirements of the formal Certificate, and usually no more than is necessary to meet the legal requirements of the FD. Although there are examples of sharing information about medical needs, about behaviour in prison and about potential for violence (to ensure safety on the journey), this seems quite insufficient to sustain any sentence plan or support attempts at social rehabilitation in terms of meeting individuals' needs or of reducing the likelihood of their reoffending. Countries would like to receive far more helpful information such as social, medical, psychiatric, prison behaviour reports as well as criminal records, assessment of needs, explanation of work / employment history, any dependencies and treatment programmes. In terms of the risk of the person's re-offending or causing serious harm, the majority of countries would also like to receive any assessment of these risks that has been carried out.

It is interesting to see that while staff who receive prisoners arriving from other countries recognise the value of relevant, reliable information, they (and their colleagues) seldom take an initiative in supplying such information when transfers out of the country take place.

Disappointingly, 7 out of the 10 countries who answered the question in our questionnaire did not ask the individual about their social rehabilitation needs. In general, there is rarely much sign of attempts to involve prisoners actively in the transfer process, beyond respecting their right to be heard while the decision is under consideration and providing them with some information. Yet active participation of the individual offender should be maximised throughout. This includes the prisoner's right to be heard and to participate in key decisions - not only about whether transfer should take place at all, but what must be done to manage the process in a manner that supports their own ideas about what would help them in their rehabilitation.

Good Practice Example

In the UK, a website Tracks (<http://www.tracks.uk.net/>) has been created as a resource for the resettlement of Foreign National Prisoners. This toolkit is designed to help foreign national prisoners and professionals working with them to plan for their resettlement upon release. The site is user-friendly, clear and includes extremely important information about the law and about practicalities. Much of the information is available in several different languages and the website offers a lot of valuable advice, including guidance about how to make preparation for release.

Only 2 countries made any effort to contact prisoners in another country with information about serving their sentence in their home country and none of the countries would take the initiative to contact the prisoner's family to inform them about the potential transfer.

In short, there is little evidence from our findings that social rehabilitation plays an important part in the FD 909 process. Indeed it seems to play little or no part in the decision making or in the processes that follow the decision in those countries who use the Framework Decision.

There is also little evidence of any actual practice, or even thoughts about good practice, to meet the challenges of through the gate release into the community of FNPs who are transferred back to their country of origin. This is plainly essential to ensure that their social rehabilitation needs are followed up and needs and risks are being addressed by formal community supervision or voluntary support. This is despite the fact that the research shows that they have specific needs arising from their incarceration in another country – such as mental health needs from harsh prison regimes, lack of information and planning, isolation from family, and lack of training / educational development.

To begin to change this state of affairs, there is a need for clear liaison between the countries involved – not just negotiation about whether legal requirements are satisfied, but some active sentence planning. Preparatory work with the prisoner should be undertaken in the issuing state, and reliable induction procedures carried out in the executing state. This should include a comprehensive assessment that considers risks (especially, though not only, risks of reoffending), needs and the best way in which these may be met, together with due attention

to the effect that their experiences in the issuing state may have had upon them and the implications this carries for their resettlement.

The scale of this challenge must not be underestimated. A great deal of good resettlement work is based on reliable and effective communication and achieving this even within a single jurisdiction is formidably difficult. As Maguire and Raynor put it 'There are ... indications that some of the critical ingredients in effectiveness depend on interagency collaboration of a kind that will not be easy to reproduce.' (2006: 32) Such difficulties will increase dramatically when liaison is needed between different countries. The logistics of arranging reliable systems of cooperation that are (i) inter-agency; (ii) 'through the gate'; (iii) international are exceptionally complex.

6. RECOMMENDATIONS

6.1 General Recommendations

6.1.1 Information: Need for reliable information about each country

We would recommend the development of an EU database with information about each country's sentencing practices (including, for example, conditions of early release), prison populations and regimes, and rehabilitation processes so that outgoing prisoners can be informed about the situation to which they will be returning. As with all such databases, it is essential that each country takes responsibility for making sure that national information is kept up to date so that opportunities available for social rehabilitation are monitored over time.

6.1.2 Contacts: Need for prompt identification of responsible authorities

The whole process of transfer would be improved by having a named single point of contact in each country (for example, an 'International Desk') which would deal with transfers. This could be achieved by setting up a website (with limited access), so that the appropriate contact point for each country can be immediately identified. This will also enable the issuing state to send the transfer papers early in the process to the right person who will have responsibility for completing the transfer within the given time limits. The international desk (or equivalent) would liaise with prison and resettlement authorities within its own country once the transfer had been agreed to make sure that social rehabilitation needs are identified and met.

6.1.3 Specialist staff

Each of the member states should also develop a specialised service with trained staff members in each prison who will deal with foreign national prisoners and those returning from abroad. These expert staff will accumulate skills and experience to enable them to help all prisoners to understand the system and processes and assist them to return to their society and enhance their opportunity for social rehabilitation. In particular the staff working with prisoners involved in the FD 909 process should know the detail of the Framework Decision

and fully understand the process and time lines, as well as having some knowledge of other jurisdictions so that the prisoners could be given information that is reliable and up to date. Our recommendation is that there should be at least one specialist staff member in each prison that holds foreign national prisoners who has been trained to work with them and who has a specialist knowledge of the FD 909 process.

6.1.4 Implementing sentence plans: Work on resettlement should not be delayed

Among the most important recommendations to be made to Member States is that resettlement plans for foreign national prisoners should not be suspended or delayed pending decisions about prison transfer. These decisions take time and even if some of the immediate practical difficulties may be mitigated as personnel become more familiar with the procedures, delay is likely to continue to be a problem. Final decisions about transfer (or not) are often not made until quite late on into a sentence. There is a significant risk that some states have / will have completely unrealistic expectations of the likelihood of transferring people and provide no resettlement support in the mistaken belief that they will all be transferred. It is recommended accordingly that all foreign national prisoners should have active resettlement intervention in the issuing state up until transfer. States should have plans for both eventualities - transfer or staying – and to neglect these possibilities risks negating attempts at social rehabilitation and puts the public at risk of further offending.

6.1.5 Time Limits: Timely and clear

All the evidence about effective social rehabilitation points to the importance of continuity of planning and relationships. In order for these to have maximum impact, time to develop and implement plans and develop meaningful relationships is very important. It is vital therefore that the transfer process is started as soon as the person is sentenced in the issuing state and our recommendation is that there are time limits put on to the various stages of transferring the papers – to give the staff dealing with this some deadlines and, most importantly, to give the prisoners an understanding of how long the process will take. This would reduce the tensions and uncertainties which many prisoners now experience and enable them to start some realistic planning for their return to their community.

6.1.6 Information exchange: Continuity

We would strongly urge that an additional form / completed template is appended to the Certificate giving information about the returning prisoner to contribute to the assessment of risks and needs that must be addressed to support the prisoner's social rehabilitation in the executing state. Workstream 4 has devised such a template. Even if each country undertakes its own assessment processes on return, every attempt should be made to build on any resettlement work that has been started in the issuing state, including evidence of prisoners having engaged positively in their own rehabilitation. While foreign nationals are in a

distinctive position, many of them have 'criminogenic' needs which may lead to further offending unless addressed. This will be the case whether transfer takes place or not.

There are plainly limits to the extent to which the issuing state can influence the post-release experience. At the same time, as much as possible should be done to ensure continuity. There will also be cases where the individual has been assessed (in the issuing state) as presenting continuing risks of reoffending, including risks of serious harm to the public, and in these cases the issuing state should take responsibility for alerting the executing state. Where there is a single reference point like an international desk (see 6.1.2), the authorities in both states could liaise to make sure that the necessary information reaches those who must manage the risks.

While this seems to represent an efficient model, we are reluctant to be too prescriptive about information exchange. We are aware that there are examples of existing good practice that have been developed bilaterally between countries that have experience of transfer under other legal arrangements. For example, Ireland has well-trying and successful arrangements for exchanges with the UK; the Nordic countries manage these arrangements well, as do Estonia and Finland; and we understand that smooth exchanges take place between the Czech Republic and Slovakia. No doubt there are other examples to be found. These arrangements, often informal, are likely to have originated in experience, mutual trust and confidence, a shared understanding of the problem to be solved and common language and culture. It will be important to ensure that new protocols established under FD 909 do not disrupt such efficient and effective processes where they exist. It should also be said that systems being developed under FD 909 are new and may well need to be audited and revised in the light of experience.

6.1.7 Liaison with resettlement agencies: Through the prison gate

Some countries have probation agencies and / or NGOs with a responsibility to support resettlement, although as presented earlier in this report the nature and provision of such through the gate services varies considerably across European Member States. Sometimes there are specialised agencies (for example, *Prisoners Abroad*, who are committed to supporting people imprisoned in countries other than their own country of normal residence). Whatever the national position, it is recommended that prison services and probation agencies liaise with resettlement organisations to alert them to the distinctive position of people transferred 'back' to their country. While each individual is unique, there are likely to be some difficulties that many of them will experience. These should be identified and skills and resources developed to support social rehabilitation.

6.2 Best Practice

Among the priorities of FD 909 are that everything possible must be done to make sure that people in prison are not disadvantaged on the grounds of their nationality and that the processes of transfer try to reflect the best standards of resettlement practice. This raises the question of what 'best practice' is anyway. [Appendix I](#) sets out some of the guiding principles of best practice resettlement which can constitute a benchmark against which the experiences

of foreign national prisoners may be tested. On this basis, it is possible to begin to specify best practice under FD 909.

6.2.1 Best Practice for returning prisoners transferred under FD909

Good communication is the key to success in any transfer arrangements where the aim is to enhance prospects of social rehabilitation. This communication is with the prisoner as well as between the statutory agencies involved in the transfer.

- i. The prisoner should be informed of what the sentence arrangements will be on their return to their country of residence. This should be achieved by the prison authority responsible for transfer under FD 909 giving reliable information (for instance, in the form of a leaflet) setting out the legal position of returning prisoners and how their prison sentence will be implemented.
- ii. The prisoner should be contacted by the Embassy staff, or a representative, from their country of residence to discuss transfer arrangements, contact with family / partner and the help / support that can be provided by the country of residence to facilitate their social rehabilitation.
- iii. At that meeting, or by letter, permission should be obtained from the prisoner for the authorities of their country of residence to contact their family / partner or important people in their life to tell them about the impending transfer and involve them in any sentence planning and support arrangements.
- iv. A liaison officer should be appointed in the person's country of residence to be case worker during the transfer process to ensure that transfer is carried out following best practice in social rehabilitation.
- v. Returning prisoners should be placed in a specialist prison (or prisons) where staff are trained in dealing with the specific needs of returning prisoners and can provide the advice / guidance and support that are needed to maximise their opportunities for re-settlement into their home community.
- vi. The trained staff / key worker should arrange early visits for the prisoner, if appropriate, with their family / partner / important people to facilitate re-settlement and social rehabilitation.
- vii. After the assessment and sentence planning has been carried out at the specialist prison then the individual, accompanied by all relevant sentence documentation including the sentence plan and post release plan, should be transferred to the nearest appropriate prison to their home community.
- viii. The prison key / case worker should arrange a pre -release planning meeting with the supervising officer (if there is post sentence statutory licence supervision in place), all local agencies who will be working with the prisoner in their home area, any mentor / volunteer who will be involved and any relevant family members. This meeting is to review progress on the sentence plan and agree the post sentence objectives in the community.
- ix. Successful re-settlement 'through the gate' processes in the release of a prisoner rely on clear communication with any external supervising officer, external agencies and family / partner / important individuals. All those involved should provide intense

supervision and support during the initial release period to assist in achieving the outcome of social rehabilitation.

6.2.2 Best Practice for prisoners transferred out of a country

- a) There should be one (or more) specialist prisons where people who are to be transferred out of the country under FD 909 are placed so that these may benefit from having experienced staff who are trained to work with people in such circumstances to aid their social rehabilitation.
- b) The staff in the prison should ensure that the individuals know about their situation and the details of the potential transfer, what their rights are and that they do have a voice in the process.
- c) One key worker / liaison officer should be appointed to work with each individual before and during the transfer process to ensure continuity and avoid misunderstandings
- d) At the earliest opportunity – preferably at the beginning of any sentence - the person should be given in writing - translated into their language – a leaflet explaining about the FD 909 process and how that might impact on them and their social rehabilitation.
- e) As part of the process of transfer, the key worker should obtain the individual's views about the transfer and ensure that these views are heard by the relevant authority that will make the final decision about transfer.
- f) The key worker should contact the relevant embassy staff to set up a meeting with them (or their representative) to discuss the details and implications for the transfer of the prison sentence.
- g) The individual should be given assistance and every opportunity to send regular letters to, and have telephone calls with, their family / partner in their country of residence.
- h) Whilst serving their sentence in the issuing state, the individual should not be discriminated against and should be allowed opportunities to take part in work and programmes, in the same way as a prisoner who is normally resident in that country.
- i) The key worker – or the prison authorities – must contact the authorities in the individual's home area to explain about the transfer and ensure the relevant documentation is sent to the right place and right person.
- j) The key worker should discuss with the individual the people who should be kept informed about the pending transfer – for example, where appropriate, family / partner / important person in their lives who will be able to assist in their social rehabilitation.
- k) Once transfer has taken place, the key worker should ensure that relevant information is sent to the authorities in the receiving country.

7. CONCLUDING REMARKS

Countries will no doubt take their own decisions about how judgements are to be made concerning transfer. Perhaps different political priorities will lead countries to interpret FD 909 in various ways. But once the decision to transfer has been taken, the challenge must be to go

about this in a way that makes the prospects of social rehabilitation the guiding consideration. There is a risk that, if the FD functions at all, the legal formalities may be observed, but the spirit and the purpose of the FD may be lost. It could then deteriorate into a morally empty process of exporting unwanted prisoners and frustrating their rehabilitation.

We would urge the EU, and each of the Member States, to give full consideration to the above recommendations and put in place the best practice guidelines and to work towards implementing these proposals. This will take time and effort, but there are rewards for all involved - prisoners, staff and the general public (because reoffending will be reduced) – if the FD is implemented in its spirit as well as in the letter of the law. If these recommendations are put in place, they will support people in returning to the community which is fitted to their rehabilitative needs, increase the likelihood of their social rehabilitation and reduce the likelihood of re-offending.

REFERENCES

- Aas, K. (2011) ‘“Crimmigrant” Bodies and Bona Fide Travellers: Surveillance, Citizenship and Global Governance’, *Theoretical Criminology* **15** (3): 331-46
- Andrews, D. and Bonta, J. (2010) ‘Rehabilitating Criminal Justice Policy and Practice’, *Psychology, Public Policy, and Law* **16** (1): 39 – 55
- Banks, J. (2011) ‘Foreign National Prisoners in the UK: Explanations and Implications’, *The Howard Journal of Criminal Justice* **50** (2): 184-98
- Bhui, H.S. (2004) *Going the Distance: Developing Effective Policy and Practice with Foreign National Prisoners*, London: Prison Reform Trust
- Bhui, H.S. (2009) ‘Foreign National Prisoners: Issues and Debates’ in H.S. Bhui (ed.) *Race and Criminal Justice*, London: Sage
- Bosworth, M. (2011) ‘Human Rights and Immigration Detention’ in M-B. Dembour and T. Kelly (eds.) *Are Human Rights for Migrants? Critical Reflections on the Status of Irregular Migrants in Europe and the United States*, Abingdon: Routledge
- Bosworth, M. (2012) ‘Subjectivity and Identity in Detention: Punishment and Society in a Global Age’, *Theoretical Criminology* **16** (2): 123-40
- Bosworth, M. and Guild, M. (2008) ‘Governing through Migration Control: Security and Citizenship in Britain’, *British Journal of Criminology* **48** (6): 703-19
- Bosworth, M. and Kaufman, E. (2011) ‘Foreigners in a Carceral Age: Immigration and Imprisonment in the US’, *Stanford Law and Policy Review* **22** (1); 101-27
- Carlen, P. (2012) *Against Rehabilitation: For Reparative Justice: 22nd Eve Saville Memorial Lecture* – available online at <http://tinyurl.com/p8bcrtm> (accessed August 2015)

Council of Europe (1983) *Convention on the Transfer of Sentenced Persons*, available online at <http://conventions.coe.int/Treaty/en/Treaties/Html/112.htm> (accessed August 2015)

De Wree, E., Vander Beken, T. and Vermeulen, G. (2009) 'The Transfer of Sentenced Persons in Europe', *Punishment and Society* **11** (1): 111-28

Décarpes, P. and Durnescu, I. (2014) 'Where are we in resettlement research?' *EuroVista* **3** (2): 47 – 67 – available online at <http://euro-vista.org/eurovista-vol3-2/page/2/> (accessed August 2015)

Durnescu, I. (2012) *Resettlement research and practices: An international perspective*, available online at <http://tinyurl.com/njkdhrq> (accessed August 2015)

European Commission (2014) *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*. Brussels: European Commission – available online at http://ec.europa.eu/justice/criminal/files/com_2014_57_en.pdf (accessed August 2015)

Farrall, S. (2004) 'Social Capital and Offender Reintegration: Making Probation Desistance Focused' in S. Maruna and R. Immarigeon (eds.) *After Crime and Punishment: Pathways to Offender Reintegration*, Cullompton: Willan

Flynn, N. (2012) *Criminal Behaviour in Context: Space, Place and Desistance from Crime*, London: Routledge

Garland, D. (2001) *The Culture of Control: Crime and Social Order in Contemporary Society*. Oxford: Oxford University Press

Hofstee-van der Meulen, F. (2012) 'Detained Abroad '17th CDAP, 23 November 2012 – available online at <http://tinyurl.com/o5fmuz4> (accessed August 2015)

Home Office (2004) *Reducing Reoffending: National Action Plan*, available online at <http://www.worksforfreedom.org/all-articles/item/503-celebrating-practice-that-empowers> (accessed August 2015)

Kaufman, N. (2015) 'Prisoner Incorporation: The Work of the State and Non-governmental Organizations', *Theoretical Criminology* 19(4): 534-53

Maguire, M. and Raynor, P. (2006) 'How the resettlement of prisoners promotes desistance from crime Or does it?' *Criminology and Criminal Justice*, **6** (1), 19-38

- Maruna, S., Immarigeon, R. and LeBel, T. (2004) 'Ex-offender Reintegration: Theory and Practice' in S. Maruna and R. Immarigeon (eds.) *After Crime and Punishment: Pathways to Offender Reintegration*, Cullompton: Willan
- Massey, D. (1997) 'A Global Sense of Place' in T. Barnes and D. Gregory (eds.) *Reading Human Geography*, London: Arnold
- McNeill, F. (2011) 'Probation, credibility and justice', *Probation Journal* **58** (1): 9-22
- McNeill, F. (2012) 'Four Forms of "Offender" Rehabilitation: Towards an Interdisciplinary Perspective', *Legal and Criminological Psychology* **17** (1): 18-36
- McWilliams, W. and Pease, K. (1990) 'Probation practice and an end to punishment', *Howard Journal*, 29: 14 -24
- Nelken, D. (2009) 'Comparative Criminal Justice: Beyond Ethnocentrism and Relativism', *European Journal of Criminology* 6: 291-312
- Padfield, N., van Zyl Smit, D. and Dunkel, F. (2012) *Release from Prison: European Policy and Practice*, London: Routledge
- Raynor, P. and Robinson, G. (2009) *Rehabilitation, Crime and Justice*, Basingstoke: Palgrave Macmillan
- Robinson, G. and Crow, I. (2009) *Offender Rehabilitation: Theory, Research and Practice*, London: Sage
- Rotman, E. (1995) 'Beyond Punishment' in A. Duff and D. Garland (eds.) *A Reader on Punishment*. Oxford: Oxford University Press
- Sampson, R., Morenoff, J. and Gannon-Rowley, T. (2002) 'Assessing "Neighbourhood Effects": Social Processes and New Directions in Research', *Annual Reviews of Sociology* 28: 443-78
- Smith, D. (1998) 'Social work with offenders: the practice of exclusion and the potential for inclusion' in Monica Barry and Christine Hallett (eds.) *Social Exclusion and Social Work: Issues of theory, policy and practice*, Lyme Regis: Russell House
- Ugelvik, T. (2014) 'The Incarceration of Foreigners in European Prisons' in S. Pickering and J. Ham, (eds.) *The Routledge Handbook on Crime and International Migration*, London: Routledge
- United Nations General Assembly (1966) *International Covenant on Civil and Political Rights* - available online at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> (accessed August 2015)
- United Nations Office on Drugs and Crime (2012) *Handbook on the International Transfer of Sentenced Persons*, Vienna: United Nations – available online at

https://www.unodc.org/documents/organized-crime/Publications/Transfer_of_Sentenced_Persons_Ebook_E.pdf (accessed August 2015)

Van Kalmthout, A., Hofstee-van der Meulen, F. and Dunkel, F. (2007) *Foreigners in European Prisons*, Nijmegen: Wolf Legal Publishers

Warner, J. (2005) 'The social construction of the criminal alien in immigration law, enforcement practice and statistical enumeration: Consequences for immigrant stereotyping', *Journal of Social and Ecological Boundaries*, **1** (2): 56-80

Warr, J. (2016) 'The deprivation of certitude, legitimacy and hope: Foreign national prisoners and the pains of imprisonment', *Criminology and Criminal Justice*, 1- 18

Wright, K., Pratt, T., Lowenkamp, C. and Latessa, E. (2012) 'The Importance of Ecological Context for Correctional Rehabilitation Programs: Understand the Micro- and Macro-Level Dimensions of Successful Offender Treatment', *Justice Quarterly* **29** (6): 775-98

Zedner, L. (2010) 'Security, the State and the Citizen. The Changing Architecture of Crime Control', *New Criminal Law Review* 13(2): 379-403

APPENDICES

Appendix I General good practice in resettlement

1. As a basic principle, resettlement practice should always be “Inclusive”. By this is meant that the individual prisoner, who is the central point of any through care / re-settlement process, should be included in any decisions so that their views are obtained and taken into consideration when decisions are taken throughout the whole sentence. Where decisions are taken that are contrary to the individual’s preferences, this should be explained respectfully.
2. The individual should be fully informed about the sentence, the assessment process and the options involved in sentence planning. Their views about their personal needs, their risk of re-offending and their potential to cause harm to other people should be taken into account when developing objectives for their sentence plan and post release arrangements.
3. The family / partner / close relatives or important individuals in the prisoner’s life, should be involved in the sentence planning and release arrangements, with the prisoner’s permission. This is especially important when dealing with a young person under the age of 25 years.
4. There should be one person who is the nominated key worker / supervising officer in the prison who manages the sentence with the individual while in custody and who prepares the sentence plan / release plan with the prisoner. The importance of trust and continuity in relationships is vital for the successful re-settlement of prisoners.
5. There should be one nominated supervising officer (if there is statutory supervision on release) and / or volunteer / support worker or mentor who will work with the individual on their release into the community to achieve the post release objectives in the sentence plan and provide support to overcome any personal needs and reduce the risk of re-offending.
6. Appropriate referrals should be made by the key worker and / or the individual in person to relevant agencies within the prison environment and in the community to provide support, training, help or advice that might be needed to achieve the areas outlined in the pre and post release planning.
7. Regular reviews of the progress against the sentence plan objectives should be carried out with the individual and any staff from other agencies who are engaged with the prisoner to achieve those objectives – these staff could be from statutory or voluntary agencies, NGOs, charities or other professional bodies such as education or housing.
8. A pre-release meeting should be arranged in which relevant people who have worked with the person during custody and those who will be involved in supervising or supporting / engaging with her / him once released should be included. The prisoner is a vital member of this meeting. The meeting will review progress against the sentence plan objectives and agree the responsibility and timings for the remaining objectives to be achieved on release into the community.

9. If the family, partner or important people (to the individual) are integral to the success of the release arrangements then they should also be involved in the planning for p release into the community.
10. Travel / transport arrangements should be in place and be clearly explained. If necessary and appropriate, someone should be at the prison gate to support their travel to their home / accommodation.
11. If there is no statutory supervision on licence following the prison sentence, then every effort should be made to ensure there is an independent mentor, adviser or volunteer available in individual's home area to provide support on their return to their community.
12. In addition to the problems faced by all prisoners, women prisoners additionally often face multiple problems related to childcare, family issues and discrimination on the labour market. Women are also more likely than men to run into obstacles because of unmet mental health needs or difficulties in re-joining employment. Many women prisoners have also been subjected to violence and / or sexual abuse or have been subjected to working in the sex industry. It is clear that the issues faced by women foreign national prisoners will be exacerbated – they face all the normal problems, but also face these additional difficulties. Women prisoners need to have additional support, one to one case work and trained staff who are aware of the additional difficulties they may face.

Appendix II Letter to Directors

Implementing EU Framework Decision 909

Dear Director

At the request of The European Commission, De Montfort University, Leicester UK is undertaking some research into EU Framework Decision 2008/909/JHA (on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences ...). We know that the proper implementation of FD 909, and in general the responsibility to meet the needs of foreign national prisoners, is a concern of all Directors of Prison and Probation Services across Europe.

Our work is part of a wider project (STEPS 2 Resettlement - JUST/2011/JPEN/AG/4605) to identify the opportunities and the difficulties of putting the FD 909 into effect. Our workstream is mainly about the principle of *social rehabilitation*. This principle is central to FD 909 and to see how social rehabilitation might be promoted involves looking at the services that are offered to foreign nationals during their sentence (sometimes referred to as through care) and also after their release (resettlement and after-care). The aim of our research is to find out about creative solutions to common problems and to find examples of good practice so that these ideas can be shared across all EU countries. In order to do this we need to obtain information from every EU country.

So I am writing to ask if you could please identify someone in your Department (or another agency if that is more appropriate) who is knowledgeable about services of rehabilitation offered to prisoners during their sentence and after their release and who would be prepared to correspond with us about it. Please be assured that we will not make large demands on their time. It would be greatly appreciated if you could help us in this way by giving us a name, their role and their email address.

With all good wishes

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Appendix III Questionnaire

STEPS 2 RE-SETTLEMENT

Work-stream 3 – De Montfort University, Leicester, UK

FD 909 - Development of Re-settlement and after-care to support social rehabilitation

Introduction

STEPS 2 Re-Settlement is a project to support the implementation of Framework Decision 909. The FD says that transfer should take place when this would facilitate the social rehabilitation of the individual concerned and our contribution to the research project is to find out how this can best be achieved. Work undertaken with all prisoners during their time in prison and after their release should try to support them in their social rehabilitation, but how this can be done when prisoners are transferred to another country is a challenge for all EU member states. We are trying to find out examples of good practice and to try to have a better understanding of the difficulties that will need to be addressed if the FD is to fulfil its potential.

It would be greatly appreciated if you would help with this vital piece of research. We will not attribute anything you say to you or to your country without asking your permission.

Questions

Background

Name		Country	
1.	What organisation do you work in and what is your role?		
2.	How much are you involved in the implementation of FD 909?		

Outgoing Prisoners (i.e. prisoners transferred from your country)

3.	Has your country made much use of the FD 909 for outgoing prisoners?		
4.	What measures do you have in place to support the social rehabilitation of Foreign National Prisoners (FNP's)?		
5.	In the FD 909 process do you ask the FNP about their social rehabilitation needs?		
6.	What information do you provide to the receiving country about the FNP who you are transferring under FD909? (for example providing a social background report or a written assessment)		
7.	Do you pass on any information that will help the receiving country to support their social rehabilitation		

	needs?	
8.	Do you inform the receiving country about any risks of re-offending or the risk of the FNP causing serious harm to other people?	
9.	What are the challenges for your country in working with FNP's who are to be transferred out of the country under FD 909?	

Incoming prisoners (i.e. prisoners returning to your country)

10.	Have many prisoners been returned to your country under FD 909?	
11.	What re-settlement practices do you have in place for prisoners returning to your country under FD 909?	
12.	What information would you want to receive from the issuing country about someone who is being transferred back to your country under FD909 so that you can support their social rehabilitation?	
13.	When someone is being transferred back to your country under FD909, what information would you want to receive from the issuing country about their risk of re-offending or risk of causing harm?	
14	What information do you provide to the prisoner about through- care and aftercare services on their return to your country?	
15	Do you contact the prisoner's family and keep them informed of the progress of the transfer and visiting arrangements?	

16	What do you do to support the prisoner's prospects of social rehabilitation which is one of the main aims of FD 909?	
17.	What are the challenges for your country in working with prisoners who are transferred back to your country under FD 909?	

General

18.	Can you give me any examples of good re-settlement practice that relates to FNP's from any other EU country that you know about?	
19.	Can you give us some of your ideas about how to provide a service for FNP's which gives continuity between the custody and the post custody phases when they are returned to their country under FD 909?	
20.	Any other comments that relate to the use of FD 909? (in particular relating to the Social Rehabilitation of prisoners for both incoming and outgoing prisoners)	

Conclusion

Thanks for help with the questionnaire – there will be a final conference for STEPS 2 Re-Settlement to which you or a representative(s) from your country will be invited – there will also be a 'best practice' report written and distributed by the EU/NOMS.

STEPS 2 RE-SETTLEMENT
Workstream 3 – Leicester De Montfort University
Development of Re-settlement and after-care practices
Questions for Fieldwork Interviews

Section 1 - General Re-settlement Work

1. Do you provide *through care*? (Also known as Re-settlement/Re-integration/Re-entry /Through the Gate) with prisoners while they are in prison? When they return to the community?
2. Who carries out this work?
 - a) Probation service
 - b) Prison Service
 - c) Social Services or equivalent state agency
 - d) NGO (voluntary body; charity; etc.)
 - e) Commercial provider
 - f) No one (there isn't any resettlement)
3. Do you have different providers of services who work with the offender
 - before release from the prison
 - post release in the community
4. Do you have statutory supervision post release under a form of licence requirement?
5. Do you provide voluntary after care services? By the State or Charities or any other body?
6. Is someone responsible for working with the offender on an Action Plan (or equivalent) to prioritise what should be done to overcome needs/risks? In the prison? In the community?

Section 3 – Factors involved in Decisions about transfer

Administrative

7. What is the basic assumption/standpoint of your country about the transfer of prisoners?
8. How long does the process of transfer under FD 909 take on average?
9. Who would make the decision about transfer under FD 909? The State in an administrative process or the Courts in a judicial process?
10. When would be best for an optimal transfer to take place?
11. Do you deport offenders to other countries because of a custodial sentence? Does this influence or impact on the FD909 process?
12. Do you do this during or after the prison sentence is completed?

Criteria

13. What criteria do you consider to decide on which cases to transfer under FD909?
14. How much of the views of the offender do you take into account when making a decision to transfer under 909?
15. How is the individual given an opportunity to make representation about this?
16. When making a decision about transfer of offenders under 909 do you use nationality or country of residence as a deciding factor?
17. Will length of time in the country mean a person has a 'country of residence' qualification?
18. Do you have a specific length of stay to qualify? E.g. one year, two years, five years?
19. Are the individual's social ties such as family, educational ties, employment considerations taken into account when deciding to transfer using 909?
20. What weighting will be given to re-settlement or social rehabilitation needs that the person making the decision should consider?
21. Do you think early release arrangements or harsh sentence arrangements in either country play any factor in the decision about transfer under 909?
22. Is public protection a relevant issue that you consider when making the decision under FD909?
23. What other considerations will be taken into account (e.g. risks of reoffending)?

Section 2 – Issues involving transfer of prisoners to your country

24. How do through-care and re-settlement services connect with people who have been transferred to your country?
25. Can you detail any specific difficulties that offenders from your country face who transfer in from another country? How do you provide for this?
26. What role should the offender's family/relations play in the transfer process of someone returning to your country?
27. If a transfer takes place late in a sentence i.e. just before release what after-care services are in place in your country?
28. If an offender returns to your country under FD909 are they given specific information about what services are available to them following transfer back to your country?
29. What kind of information from the transferring country will your country need to help make the decision?
30. Do you take into consideration the views of the immediate community about the potential return of the prisoner (if it is a serious offence involving violence, kidnap, sexual offending or trafficking)?
31. Do you consider the risks posed to the community at large and whether or not they are aware of the potential return?
32. Which countries do you mainly receive transferred offenders from?

Section 2 – Issues involving transfer of prisoners from your country

33. If you (or anyone) does carry out a form of through care, what service do you provide to Foreign National prisoners (FNPs) who may be transferred to another country under 909?
34. Is this different from the provision for people who are staying?
35. Can you detail any specific difficulties that you find that offenders from other countries serving a sentence in your country have to face? How do you provide for this?
36. Do you involve the offender's family via the appropriate authority in another country?
37. What information would you provide to another country to whom you want to transfer an offender under 909? Who would provide this – especially if your country does not undertake much through care work?
38. What information should be provided to the offender from another country serving a prison sentence in your country about the 909 process?
39. Do you consult or take into account the views of the victims when making a decision under 909?
40. To which countries do you mainly transfer offenders?

Appendix IV Interview schedules

Schedule for Staff Interviews / Focus Groups

STEPS 2 Re-settlement – Leicester De Montfort University

Research into FD 909 and the impact of Social Rehabilitation on the transfer process

Staff Focus Groups - Foreign National Prisoner – Interview Outline

The interview schedule is a semi structured interview schedule. It will be used flexibly to allow participants to discuss their views, perceptions, attitudes and experiences in an open way.

Introduction

- Introduce yourself and explain about the research (who it is for, aims of study, how their participation will help).
- Briefly outline the structure of the interview
- Stress confidentiality and how data will be used and stored.
- Remind staff of voluntary nature of their involvement and that they are free to terminate the discussion at any point without giving a reason and they don't have to answer any questions that they do not want to.
- Answer any questions that the participants may have.

Ask each staff member to outline their circumstances:

- How long have they worked in this speciality of FNP's
- What is their role?

General Questions to all staff:

1. Do they know anything about the FD 909 process?
2. Were they given any information or have they had any training about the FD909 process? Written or verbal.
3. Is language/translation a barrier to effective communication?

Outgoing Prisoners:

4. Do you provide outgoing prisoners with any information about the FD 909/deportation process?
5. Do they think that their role is to help the prisoner returning to their country of residence to improve their prospects of social rehabilitation such as establishing personal relationships, getting housing, or employment/work training
6. Do the staff know that prisoners can make representations about remaining in the country – particularly if they believe it will assist their social rehabilitation? Do they help them to make sure their representations are submitted?
7. Do they have any contact with the family/relatives/friends of the prisoner about their return to their country of residence
8. Do they think that returning the prisoner to their country of residence will assist them in stopping re-offending?

9. Do you provide outgoing prisoners with any information about the regime that they are being returned to? Is it translated into the language of that country?
10. Do they gather and then send any information with the outgoing prisoner? If so what information is sent to the receiving country?

Incoming prisoners:

11. What information do you give to the incoming prisoner about what they can expect on their return to this country – about their prison sentence? About their prospects of social rehabilitation?
12. Do you see your role as helping the incoming prisoner to socially rehabilitate?
13. Do you receive any information from the authorities in the sending country about your incoming prisoner?
14. Would it be helpful if personal information such as previous convictions, behaviour in prison, medical record, work history etc. was transferred with the prisoner in order for the staff to help to rehabilitate the prisoner?
15. Are prisoners given any additional help on their return to this country?
16. Are their relatives/family contacted by the prison to inform them about their return?
17. After being received back into this country are efforts made to transfer a prisoner to a prison near to their home area?

Conclusion to all staff:

18. Do they have any ideas about how the whole process could be improved from a staff point of view?
19. Any other comments

Thank them for their participation and that they have contributed to this important piece of research which it is hoped will improve the transfer process for future prisoners and assist individuals to be re-settled more easily into their country of residence.

Schedule for prisoner interviews / focus groups

STEPS 2 Re-settlement – Leicester De Montfort University

Research into FD 909 and the impact of Social Rehabilitation on the transfer process

Foreign National Prisoner Focus Groups – Interview Outline

The interview schedule is a semi structured interview schedule. It will be used flexibly to allow participants to discuss their views, perceptions, attitudes and experiences in an open way.

Introduction

- Introduce yourself and explain about the research (who it is for, aims of study, how their participation will help).
- Briefly outline the structure of the interview
- Stress confidentiality and how data will be used and stored.
- Remind participants of voluntary nature of their involvement and that they are free to terminate the discussion at any point without giving a reason and they don't have to answer any questions that they do not want to.
- Answer any questions that the participants may have.

Ask each participant to outline their circumstances:

- Where were they sentenced: UK or EU (Which country)?
- How long was the sentence?
- How long do they expect to serve in this country/on return to their country?

Both outgoing and incoming prisoners

Important areas to examine:

20. Do they know anything about the FD 909 process? Was the 909 procedure used for their return/is being used to get them back to their country of residence?
21. Do they think that returning to their country of residence will help their prospects of social rehabilitation such as establishing personal relationships, getting housing, or employment/work training?
22. Have they been given/were they given the opportunity to contact family/relatives/friends about their return to their country of residence?
23. Would they be/have been happy with personal information – previous convictions, behaviour in prison, medical record, work history etc. being transferred to the authorities in the country to which they are returning in order for them to be helped to rehabilitate?
24. One of the principles of the 909 process is to help prisoners with their social rehabilitation and that usually is meant to include assisting the person to stop re-offending. Do they think that returning to their country of residence will assist them in stopping re-offending?
25. Have they been given/were they given any information about the prison regime/sentence they might expect on returning to their country of residence? Or about

the licence requirements/ details of the after care service when they are released from prison?

26. Did they have/do they expect to have any particular problems or difficulties when returning to their country of residence that are specific to them as a prisoner returning to a country to serve their sentence?

Useful information to be gained if possible:

1. Were they given any information about the FD909 process? Was it in a written format – and was it translated in their language - or was it verbally told to them by a person and could the person speak their own language?
2. Do they know that they could make/have made representations about remaining in the country – particularly if they believe it will assist their social rehabilitation?
3. Have they had/did they get any support from their countries embassy/diplomatic staff?
4. Do they have any ideas about how the whole process of transferring a prison sentence from one country to another could be improved from a prisoner’s point of view?
5. Any other comments

Thank them for their participation and that they have contributed to this important piece of research which it is hoped will improve the transfer process for future prisoners and assist individuals to be re-settled more easily into their country of residence.

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