

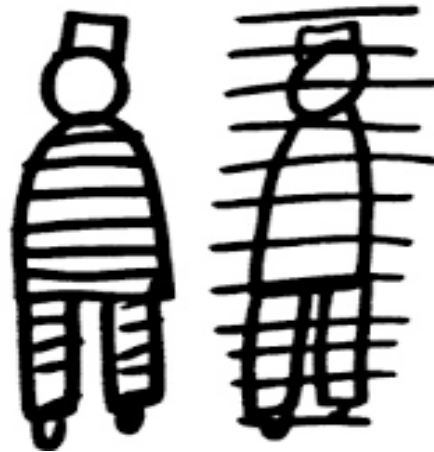


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Implementing
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Obstacles and Solutions in the implementation of the FD 2008/909/JHA

STEPS2 Resettlement: Support for Transfer of European Prison Sentences towards Resettlement

Completion date: 18/12/2015 Written by: Carmen Garcia, Esther Montero Perez de Tudela, Ioana Morar, Roberta Palmisano, Vincenzo Picciotti, Simona Popa, Luisa Ravagnani, Miguel Angel Ruiz Albert, Ruiz Yamuza Florentino Gregorio, Ioan Durnescu

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Research/Editorial Board:

Carmen Garcia
Esther Montero Perez de Tudela
Ioana Morar
Roberta Palmisano
Vincenzo Picciotti
Simona Popa
Luisa Ravagnani
Miguel Angel Ruiz Albert
Ruiz Yamuza Florentino Gregorio
Ioan Durnescu

The STEPS2 Resettlement Project was led by the National Offender Management Service (NOMS)

Project Director:

David Atkinson

Project Managers:

Craig Georgiou, Vivette Wadey

Project support

Vivette Wadey, Kim Lau

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This report has been reviewed by Ioan Durnescu and edited by the editorial board and Vivette Wadey

Author

Ioan Durnescu

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Introduction

This paper describes the obstacles and possible solutions in the implementation of the Framework Decision 2008/909/JHA1 (FD hereinafter) on the application of the principle of mutual recognition to judgements imposing custodial sentences or measures involving deprivation of liberty and is a result of collaborative work conducted by researchers and practitioners from Spain, Italy, England and Romania, as part of the STEPS2 project.

This report is based on the following:

1. Rapid literature assessment
2. Questionnaires and interviews conducted with Romanian sentenced persons in Spain, Italy and England
3. Four case studies
4. Workshops organised in Sevilla, Brescia and Bucharest¹

A note of caution must be sound from the very beginning: this report is focused on the situation in these four jurisdictions and therefore the obstacles and solutions identified may be context specific. It may also be that these obstacles and solutions are common for other jurisdictions as well but careful consideration of the context is required.

The solutions were developed by the partners mainly through direct consultations and also during the three workshops mentioned above (especially during the last one, in Bucharest).

A. Obstacles

Based on the documents and the activities mentioned above, several obstacles were identified in the process of the FD implementation. For the sake of clarity they are classified into:

- I. Theoretical issues
- II. Legislative obstacles

¹ Apart from the authors mentioned on the cover of this report other participants in the workshops contributed to the debates. We are grateful for their thoughts to: Gabriel Paun, Daniel Motoi, Santiago Hernandez Castilo, Silvia Frassine, Jonas Grimheden, Javier Nistal, Julián García García, Maria Martinez Encisco, Florin Ardeleanu, Nick Flynn, Saskia de Reuver and Isabelle Tocan.

III. Obstacles related to the transposition laws

IV. Obstacles related to the judicial practice

V. Obstacles related to the practical implementation of the transfer

I. Theoretical issues

Although the rapid literature review put forward several potential obstacles such as the neglect of the procedural rights of the sentenced person or the application of the double criminality principle, our project found them mostly theoretical concerns. However, our discussions found the principle of social rehabilitation as posing some difficulties with legal and practical implications.

I.1 Social rehabilitation

As emphasised many times (see Wree et al., 2009; Canton, in press), although the ratio legis of the FD is to promote social rehabilitation (art. 3 (1) and art. 4 (2), (6)) the clarification of it through examples is rather limited – based on residence and on family, linguistic, cultural, social, economic and other links demonstratives of attachment to the Executing State (recitals 8 and 9). As we know from the literature these links are not enough to reduce reoffending or promote desistance (see Maguare and Raynor, 2006 – for the importance of offender agency, relationship, continuity of treatment; Robinson and Crow, 2009 – for changes in thinking, attitudes and behaviour) and sometimes they can work in the anti-social direction (see Martinez and Abrams, 2013 – for how families could lead to re-enactment of old roles and negative dynamics).

II. Legislative obstacles

II.1 The lack of time limits for the procedures in the Issuing States

The FD text provides for two time limits: 90 days for the final decision on the recognition of the judgment (art. 12 (2)) and 30 days for the concrete transfer (art. 15 (1)). A new date for the transfer may be decided by the States when unforeseen circumstances appear. In this case the transfer shall take place within 10 days from the new date.

Although the FD is very clear about the time limits after the certificate is forwarded to the Executing State, it is sadly silent regarding the time limits for the procedure in the Issuing State. In some cases this procedure can take up to one year.

Presentations made by the representatives of Spain and Italy in the Brescia workshop emphasised also as one of the problems the excessive duration prior to forwarding the certificate:

Italy active procedure with failure:

- involving a Romanian inmate, male, 45 years old, domiciled in Romania, liable for 5 crimes including sexual violence and escape from house arrest, sentenced to six years imprisonment
- Procedure started on 2013
- The detainee had expressed his consent to the transfer
- May 2014: Transmission of the documentation to Romania without translation of the judgment in the Romanian language
- November 2014 rejection because one of the five crimes ascribed to the detainee is considered as a crime only in Italy (escape from house arrest)

Source: Presentation provided by Roberta Palmisano, Brescia, March 2015

The same excessive duration of the preliminary procedure in the Issuing State was stressed in the three case studies of transfer from England to Romania (see Annex 1 for the case studies). In almost all three cases the procedure in the Issuing State was lacking transparency (from the sentenced person's point of view) and took at least 3-4 months.

As we have seen in our interviews conducted in Spain, the length of time required by the procedure is the main reason for refusing the transfer. Only 41% of the respondents in Spain (out of 83 participants) would consider the transfer possibility for themselves. The main reason given by those not willing to transfer to Romania was the length of time (see Annex 3 for more details).

As the duration of the preliminary procedure in the Issuing State was emphasised by all the participants in our project as one of the main difficulties and the excessive length of time required by the procedure was mentioned as the main reason not to consider the transfer by the vast majority of the Romanian respondents we can safely conclude that the lack of time limits for the procedure in the Issuing State could generate systematic difficulties in the implementation of the FD and therefore we strongly recommend concrete actions in amending this state of facts.

II.2 The lack of a specific obligation for the Issuing State to inform the Executing State regarding the sentenced person's behaviour and progress

The principle of information exchange and consultation between Member States is mentioned many times in the FD text but mostly in relation to the decision to recognise or not the sentence. The obligation of the Issuing State to inform the Executing State about the assessments the sentenced person was made subject to, the programmes (s)he undertook already, any disciplinary situation, involvement in work and so on is not provided anywhere.

As stressed by most respondents in the sentenced person survey, the transfer procedure is appealing to sentenced persons at the beginning of their sentence. Once the sentenced person starts their sentence, they also begin enjoying different rights and privileges. As the transfer procedure takes time it is quite likely that sentenced persons have accumulated some privileges by the time of transfer.

The lack of this information, as we have seen in the case studies (see Annex 2), forces the surveillance judges or the prison authorities to consider the sentenced person as if he/she is at the starting point of his/her sentence. This means that (s)he is likely to be classified in a closed regime, with less privileges etc. which might discourage sentenced persons to be willing to transfer in the future.

I.3. The absence of the obligation for the Issuing State to inform the sentenced persons about the prison conditions in the Executing State

The FD mentions several times the word 'consultation' or the obligation of the Member States to inform each other on different issues. However, all these obligations are associated only to the judicial decision of recognition and enforcement. Moreover, consent or at least the opinion of the sentenced person is mentioned a few times without providing that the opinion or consent shall be given only after the sentenced person is informed about the features of the prison system he/she is about to be transferred to.

As we have seen in the survey, interviews and case studies, sentenced persons want/need to know more about the prison system they are to be transferred to in terms of: conditional release, access to prison benefits/rights (visits, leave, correspondence, intimate visits etc.), access to work and so

on. Furthermore, they would like to know more about the transfer procedure, in particular its length.

III. Obstacles related to the transposition laws

Due to the wide diversity of judicial systems and traditions across the EU, the FD allows for each Member State to regulate its own ways to transpose the FD. When doing so, some Member States have chosen to add more grounds for refusal, to define differently the rehabilitation principle than in the FD or provided some grounds for refusal as mandatory (see also Report of the European Commission to the Parliament and the Council / COM(2014) 57 final). Other obstacles may be associated with the manner in which consent or the opinion of the sentenced person is regulated in the transposition laws.

As can be easily anticipated, partial and incomplete transposition of the FD may lead to huge difficulties in the process of recognition and therefore hampers the application of the mutual trust in the area of criminal justice.

III.1. The definition of social rehabilitation

Recital 9 of the FD points out some elements of social rehabilitation as the ‘person’s attachment to the Executing State, whether he or she considers it the place of family, linguistic, cultural, social or economic and other links to the Executing State’. The FD encourages Member States to consult each other before making the decision to transfer or not as for the rehabilitation prospects in the Executing State. However, different Member States may consider social rehabilitation in different ways.

III.2. The definition and consequences of ‘where the person lives’

According to the FD, consent of the sentenced person is not required in three situations. One of the most difficult situations in the transposition law and in practice is: *“The consent of the sentenced person shall not be required where the judgment together with the certificate is forwarded: (a) to the Member State of nationality in which the sentenced person lives” (art. 6.2.a)*. In these cases the consent of the Executing State is not required (art. 4.1.a). In the Recital 17 the FD explains to a certain extent what shall be the meaning of this expression: *sentenced person*

'lives', this indicates the place to which that person is attached based on habitual residence and on elements such as family, social or professional ties.

In the transposition laws, the Spanish legislation (Law no. 23/2014) differentiates between when Spain is the Issuing State and when it is the Executing State. When Spain is the Executing State, the law requires for the sentenced person to be a Spanish national and to “reside” in Spain to avoid the consent of the sentenced person or that of the Spanish court (art. 77.1.a) and art. 81.2.a). When Spain is an Issuing State the definition is larger: the sentenced person can be transferred without his/her consent to the State of nationality in which the person is attached based on “habitual residence” and on elements like family, labour or professional ties (art. 67.2.a). The transfer to the State of nationality where the person has his or her habitual residence (art. 71.2.a) does not require the consent of the Executing State.

The Romanian law (Law no. 300/2013) defines the state ‘where the person is living’ as the state where the sentenced person ‘has close connections based on the ordinary residence and other elements such as family, social, professional and cultural relationships’. In practice, the expression ‘ordinary residence’ caused many interpretations: is the address stipulated on the identity card, the place where the person effectively lived in the past five years etc.

Although the FD requires that the competent authority of the Issuing State (and that of the Executing State when its consent is required: art. 4 (6)) must be “satisfied” that the enforcement of the sentence by the Executing State “would serve the purpose of facilitating the social rehabilitation of the sentenced person” (art. 4 (2)), there is a risk that the residence of the sentenced person (sometimes described or interpreted as habitual or ordinary residence, other as legal residence or the residence for a number of years), as transposition of the term “where the person lives”, can serve as a basis for a presumption and therefore as the only basis on which for the competent authority of the Issuing State will forward the sentence or the competent authority of the Executing State will refuse consent when necessary.

III.3 Grounds for refusal regulated as mandatory

Art. 9 of the FD provides that ‘the competent authority of the Executing State MAY refuse to recognise the judgement ...’. The key word here is ‘may’ which introduces to some extent the idea

of an optional decision. Some of the countries involved in the project regulated these conditions as mandatory grounds for refusal.

In Spain the grounds for refusal are indicated using a verb that conveys the idea of a mandatory refusal in the art. 85 of the Law no. 23/2014, but in some instances the mandatory nature of the refusal is only apparent: sometimes the Court must consult the competent authority of the Issuing State or give a deadline that allows time to explain, complete or correct the information provided; in other cases the Court may avoid the refusal through an adaptation of sentence or even taking an active role in lifting the obstacles (cases of immunity, for instance).

Italy regulates in art 13 of the Legislative Decree the grounds for refusal of recognition by the Court of Appeal in accordance with the provisions of art. 9 of the Framework Decision. Anyway, the Italian legislator, has eliminated the discretionary power of the competent authority in regard of the evaluation of the grounds for refusal, by imposing them as mandatory, as an obstacle for the recognition.

In the Romanian Law of transposal (Law 302/2004) art. 151 & art. 155 indicates the grounds for refusal as mandatory.

This form of regulating the grounds for refusal may introduce systematic distortions in the process of transferring sentence persons between Member States and therefore may attract an infringement procedure from the Commission.

IV. Obstacles related to the judicial practice

Many difficulties may arise in practice due to the large number of competent authorities, access to information regarding pending cases (on-going trials), court hearings, overcrowding and so on.

IV.1 The competent authority

The competent authority is defined in each country involved in the project depending on the specific circumstances of the sentenced person:

1. When Spain is the Issuing State – if the sentence has started to be implemented, the competent authority is the prison supervisory court or the Central Prison Supervisory Court (for some crimes).

If the person did not start to serve the sentence, the competent authority is the criminal court that rendered the sentence. When Spain is the Executing State, the competent authority is the Central Criminal Court (if the sentence implementation has not started) and the Central Prison Supervisory Court (if the implementation has started).

2. When Italy is the Issuing State – the competent authority is the prosecutor of the surveillance court. In the passive procedure, the competent authority in Italy is the Court of Appeal of the district where the person resides.
3. In Romania the procedure is both judicial and administrative. Ministry of Justice plays a very important role as a central authority coordinating all the administrative aspects of the procedure. The surveillance judge is the competent authority when Romania is an Issuing State. When Romania is an Executing State, the competent authority is the Court of Appeal of the place where the sentenced person has the domicile.

As it can be noted, although we covered only four jurisdictions, we can observe already a wide variety of situations regarding the competent authority. It can be predicted that, at least for a while, this diversity will lead to a diverse practice and a low level of predictability. This diversity is likely to be more manifest in areas of the law amenable to interpretation (see the definition of the ‘ordinary residence’ in Romania).

IV.2 Time limits

As noted above, many judicial and non-judicial authorities are involved in the recognition and the transfer procedure. This long and complex procedure comes in a context in which many courts are already over-crowded. This combination of factors is likely to produce delays and therefore the time limits provided in the FD and the transposition laws are likely to be only indicative. As we noted in our survey, delays are likely to discourage sentenced persons to engage positively with the opportunity. As Romanian sentenced persons stressed several times, if the transfer would not take place at the beginning of the sentence implementation, they would not be interested in being transferred. The main reason for that is that they would already start to enjoy the benefits that progression in the sentence implementation brings (e.g. more freedom, more rights, more opportunities for paid work etc.). Sometimes these time limits are described in the law as mandatory, sometimes as indicative.

In Spain the time limits are the same as in the FD and are presented as mandatory. Spanish Law imposes different deadlines to the Central Courts: first, to cooperate with the competent authority

of the Issuing State when requiring information (20 days); secondly, to delay recognition decision if the certificate is incomplete or erroneous (60 days maximum). Third, to issue its final decision on the recognition of the sentence (90 days, but it is debatable whether this time frame is suspended when the delay is due to an incomplete or incorrect certificate); fourth, to the transfer of the sentenced person (30 days from the final court order recognising the judgement). The system of counting the time limits is governed by the Organic Law for the Judicial Power.

Italy has chosen the mandatory form for the time limits and the Italian law provides for two different time limits, one for the active procedure (30 days to transfer the convicted person from the date on which the final decision of recognition of the Executing State has been communicated to the Ministry of Justice) and another for the passive procedure (60 days), plus possible decision of an extended deadline of another 30 days.

The Romanian legislation provides for these time limits as compulsory. However, in practice there are practitioners suggesting they recommend time limits.

However, sentenced persons participating in the survey complained systematically about the length of the procedure. They mentioned this problem as the main obstacle in the effective implementation of the FD.

IV.3 Pending causes

During the debates held in Sevilla and Brescia it was understood that judiciary is not likely to start the recognition and the transfer procedure if there are indications that the sentence person has criminal proceedings pending against him/her. Moreover, the information flow between different branches of the judicial system (in Spain, for instance) does not allow the judge responsible for the transfer to consult quickly the databases of the trial courts to check if a particular person has any pending causes. In this case, the surveillance judge in Spain has no choice but to wait a reasonable time (not a specified time) until he/she is sure no more pending causes will be brought against the potential transferred person. This may create delays and frustration among the sentenced persons.

In Spain the delivery of new judgements against the same sentenced person may, under certain circumstances, influence the previous ones, limiting the total amount of time to serve in prison for the total of sentences. These limits are regulated in the Spanish Penal Code and must be determined in a court order by the sentencing judge who issued the last judgement; therefore, it is not really a question of enforcement of sentences but a modification of judgements. The Issuing State may expect the competent authority of the Executing State will respect the court order establishing the total amount of time to serve in prison as a result of the different judgements (transmitted simultaneously or not). The perspective of the Executing State may be different. The consultation and agreements regulated in art. 17 (3) (4) can help resolve these situations.

IV.4 Conditional and other forms of early release

Conditional release conditions in all four countries tend to be quite similar (sentenced persons become eligible for conditional release after serving two thirds of the sentence). However, the conditional release practices are quite different in all four countries as far as foreign sentenced persons are concerned.

In Spain, due to the fact that most Romanian sentenced persons have no fixed residence or do not comply with other conditions for prison leave and other forms of preparation for release, they tend to max out or at least to be released very close to serving the full sentence.

After the *Sulejmanovic v. Italy* and *Torreggiani v. Italy* where European Court of Human Rights (ECHR) enacted pilot judgement procedures, Italy has adopted the Law-Decree no. 146/2013 by which prison time is reduced every semester, introduced more opportunities for electronic tagging etc. Therefore, although the conditional release conditions are similar to those in Romania. Italy has also other forms deducting the time spent behind bars. This reality makes the Romanian sentenced persons less interested to transfer to Romania from Italy.

In Romania about 80% of the sentenced persons are conditionally released which makes Romanian sentenced persons in Spain at least quite interested in being transferred for executing the rest of the sentence in Romania.

IV.5 The certificate being difficult to complete

During the discussions in the workshops and project meetings, we understood that some judges might find the certificate quite difficult to complete. Incomplete or badly completed certificates may lead to refusing the recognition or to delays in the procedures.

V. Obstacles related to practical implementation of transfer

V.1. Language and costs

In their notification most of the European countries mentioned only their own language(s) as the language used in the certificate. This creates huge costs for translations but also delays in the procedure. For example, in Italy all certificates are sent to the Ministry of Justice, which is responsible for translating these documents. As it turned out, this takes a lot of financial resources and time for the Italian authorities to deal with transfer cases. In some cases, the translation is not up to decent standards and the Executing States need to ask for clarifications which again introduces delays in the system.

V.2 Establishing the identity of the sentenced person

As resulted from the discussion in the Sevilla and Brescia workshops, some foreign sentenced persons have no identity papers and therefore their identity is established by the Issuing State based on different alternative procedures. However, these procedures do not seem to work effectively in all cases and sometimes the Executing State is asked to recognise a sentence for a person that does not exist in the national registry. Another related problem is the one of transcribing the name of the person in a correct way. Spain and Romania have in their alphabet different diacritics that exist only in their language.

V.3 Huge differences in the detention conditions

As emphasised many times by the sentenced persons, the detention conditions are hugely different between Spain/Italy, on one hand and Romania on the other hand. The time spent outside of their cell, the square meters available for each sentenced person, the available bedding and so on makes some Romanian sentenced persons think twice if they really want to be

transferred or not. These differences are acknowledged also in the Committee for Preventing Torture (CPT) reports and in the ECHR jurisprudence.

V.4 The lack of information for sentenced persons

During the interviews with the Romanian sentenced persons in Italy and in Spain it was stressed that the sentenced persons have no information about the transfer possibility, about the Romanian penitentiary system, about how the prison sentences are implemented in Romania, the conditions for conditional release or how the transfer procedure is organised and so on. In this context, it is difficult for them to make any (informed) decision regarding the transfer.

V.5 The lack of cooperation between prison administrations in Europe

The examined case studies show it was clear that there is no cooperation between prison administrations in Europe. The only paper found in the penitentiary file of the transferred persons was the Romanian judicial decision to recognise the sentence passed by a judge from another EU state. The Romanian Penitentiary Administration received no information about the assessment of the sentenced persons, the programmes undertaken by the sentenced person in the Issuing State, the behaviour of the sentenced person during incarceration etc. As a consequence, the Romanian authorities treated the sentenced persons as if they were at the beginning of the sentence although they had already served a large part of their sentence in the Issuing State. They were all classified in the closed regime where there was less freedom, fewer programmes, fewer opportunities etc.

V.6 Working with mental health persons

As noted in many research and policy documents, many sentenced persons are suffering different forms of mental illnesses. Working with these persons is always very difficult in the prison context. Very often transfer is a very stressful experience, especially if done without consent and cooperation. Therefore special attention should be allocated to working with this category of sentenced persons. Medical staff from prison services in different Member States should cooperate and exchange information that allows transfer to take place in ethical and effective ways.

B. Solutions

During the debates, the project team acknowledged that all these obstacles are generated by the novelty of the instrument in the field of mutual recognition of the custodial sanctions. Although some experience in this field exists due to the Convention of the Transfer of sentenced Persons, adopted by the Council of Europe in 1983 (with the Additional Protocol from 1997), the FD put forward some innovations that make its implementation quite a new experience for the Member States (e.g. the lack of consent in some cases, the competent authority decided by each Member State etc.).

Most of the solutions developed by the project team could be incorporated into a **Guidelines for Implementation** document that can be forwarded to the Member States by the Commission. The aim of this Guideline would be to interpret and clarify some of the provisions of the FD text.

The Guidelines could contain the following points that would smooth the implementation of the FD 909:

1. The term 'social rehabilitation' should be understood as an open concept. The criteria suggested in the FD text are not exclusive but only examples of criteria. When assessing the social rehabilitation prospects the competent authorities should take a case by case approach and look also at work opportunities, the existence of the health services in and outside the prison service and so on. The availability of treatment programmes and appropriate prison conditions could also be taken into consideration when evaluating the social rehabilitation.
2. The translation of the reference in the FD 909 to the State in which the sentenced person "lives" as the State of "residence" of the sentenced person (sometimes described or interpreted as habitual or ordinary residence, others as legal residence or the residence for a number of years) should not amount to a presumption (nor conclusive or rebuttable) of the prospects of rehabilitation and therefore should not lead to an automatic forwarding of the judgment or to an automatic refusal of consent based only on such residence.

It should be clear that despite the lack of the residence in the Issuing State may be one of the elements to assess the difficulty of social rehabilitation (and therefore a reason to forward the judgment to another State, especially the State of nationality of the sentenced person where he or she "lives") does not relieve the competent authority of the Issuing State to pay due consideration to other elements of rehabilitation (after consultation, if necessary, with the Executing State in connection with such elements).

It should also be clear that despite the lack of residence in the Executing State determines the need to obtain the consent of the competent authority of that State before the transfer of the sentence (art. 4.(1) (6)), and despite that this lack of residence may be one of the elements to assess the difficulty of social rehabilitation in the Executing State, that does not relieve the competent authority of the Executing State to pay due consideration to other elements of rehabilitation (art. 4(6)).

3. With regards to the grounds for refusal as mandatory, the Commission should consider for the future evaluation of the transposition procedure that the use of the verb “may” in art.9 (1) should not be interpreted literally in all cases, but should consider the rationale behind each case. For example, the heart of the system (the criteria set in article 4 (1)) is hampered if the judge could recognise the judgement even if this criteria are not present (see art. 9.1.b). In other cases constitutional principles and European fundamental rights (*ne bis in idem* for instance) are involved in the refusal and prevent the attribution of discretion to the judge. In some cases the verb “may” only seems to impose a duty to give due consideration to some of the grounds for refusal by reference to appropriate consultations between authorities or offering the opportunity to complete or correct deficiencies (as reflected in numeral 3 of article 9 FD).
4. The Member States should be encouraged to recommend the competent authorities and prison administrations to follow the shortest timeframe prior to forwarding the certificate. As a recommendation the procedure in the Issuing State should not take more 30 days with a possibility for extension with another 60 days, in special cases. The term should be calculated from when the request of the sentenced person or the prison administration was registered by the competent authority or when the competent authority issues a formal decision to proceed *ex officio*. Procedural rights in the issuing state should be strengthened: right to information, right to a lawyer etc.
5. The Member States that have a close cooperation in implementing FD 909, may adopt a document that could describe in details the cooperation procedure. These details could be: name, telephone number and email address of the people involved, specific interpretations of different provisions (see ‘residence’, for example), consultations procedures etc. The Memorandum of Understanding² between Romania and Italy can be a good example (see Annex 3). Medical aspects regarding

² However, the Member States should be careful not to further complicate the FD implementation by introducing new concepts or concepts that are not in line with the FD philosophy.

mental health should be also included in these protocols. Consular authorities may be also involved in issues regarding identity or other official documents.

6. Member States should be encouraged to inform each other on the progress of the sentenced persons in the Issuing State. Information should include: any assessment, treatment programs, work, health, disciplinary issues, rewards, regime and so on. This information should be presented in a synthetic way in the same time with the certificate forwarding or the latest when the transfer is effective.
7. Member States should be encouraged to reach agreements on early or conditional release as contemplated in article 17 (3) (4) of the FD. These agreements may provide security for sentenced persons on the time frame and on the necessary requirements to obtain an early or conditional release in the executing state and furthermore allow ensure due consideration in the execution state to the sentenced persons behavior and progress in the prison system of the issuing state. Good practices in this respect will encourage the sentenced persons requests or consent to be transferred.
8. Concrete ways to inform the sentenced persons regarding the prison conditions and the rehabilitation prospects in the Executing States should be developed. Sentenced persons should be able to express their opinion or consent based on reliable information. The brochure elaborated by the partners in this project for the Romanian sentenced persons may be an example (see Annex 4). Another example can be the one of Jamaica that opened a hotline for Jamaican sentenced persons held in England and also a DVD explaining the deportation procedure and the sentenced person's rights. These resources may be made available through well-known European networks (e.g. Europris, JPEN etc.). By well informing the sentenced persons regarding the prison conditions, conditional release and social rehabilitation prospects, the number of post-transfer complains will also decrees.
9. An informed opinion or the consent of the sentenced person will benefit from the use of standardized forms. These forms may enumerate for the sentenced persons:
 - the different aspects that will be considered by the competent authority in making the decision to forward the judgment and in which their opinion or the information they can provide is relevant (for example enumerate the different ties or links that are relevant to determine the prospects of rehabilitation, requesting their personal perspective or provide relevant information)
 - the consequences of consent (specially the exception to the specialty principle: art. 18.2.e FD).

- the consequences of the transfer (specially the application of the execution law of the executing state with respect to early or conditional release and, if possible, the agreements reached in accordance with article 17 (3) (4).

10. Competent authorities should be trained on how to complete the certificate. Training may take place jointly with competent authorities that should cooperate more often together (e.g. Romania with Italy and Spain). Special attention should be paid to the sections dealing with the opinion of the sentenced person. In the certificate it should be mentioned explicitly if the sentenced person consented or not and to what. Special attention should be also paid to how different names are spelled out and what sort of characters should be used for different sounds.
11. In the countries where there is more than one competent authority either for incoming or for outgoing cases, a central authority may be created with a clearing house role. This authority may coordinate the administrative side of the mutual recognition and would ensure a more unified practice (e.g. see the role of the MoJ in Romania). Once contact has been established between the issuing and executing authorities, the role of the coordinating authority may decrease in order to facilitate and speed up consultations and agreements.
12. Member States should be encouraged to monitor the mutual recognition cases to identify the time spent at each stage of the procedure and take the necessary steps to improve the procedure in such a way that it will become shorter and more effective. In this context, pre-consultation may be a good way of avoiding time spend for correcting mistakes or requests for more information.
13. It is a fact that all cases of are not at the same level of complexity and that increased complexity is related to the delay in the proceedings. National Authorities should be aware of this reality and give priority to the simplest cases. In this respect, cases where is given the consent of the sentenced person will be resolved more quickly, and therefore should have priority over initiated *ex officio*. This priority will benefit from the cooperation of the prison administration when it is within their competence identifying cases that are considered suitable for the transfer and make them known to the competent authorities.
14. Even with the consent of the convicted person the procedure is more complex when the identity and residence of the sentenced person are in question. These cases would benefit from a regularization or clarification of the sentenced person administrative situation in the Executing State prior to the transfer request. The prison administration can facilitate or cooperate with the

sentenced person in such regularization, especially if they are willing to opt for the transfer procedure.

15. Standards or protocols for prison administration can be established in order to give priority to cases in which the condemned person express its willingness to be transferred, helping them to the fill the transfer request and, if necessary, to regularize their situation with respect to identity and residence in the Executing State.
16. Member States should be encouraged to design internal/domestic inter-agency mechanisms to avoid fragmentation and delays in the procedure. All actors involved should be included in clear procedures of communication. Consular authorities should be also included in this domestic networks in order to solve any identity problem.
17. Member States may be encouraged to use other languages than their own especially for the supporting documents. Certificates and judgments can be in the languages mentioned in the notifications sent to the Secretariat but other documents may be in other languages that are accessible to the actors involved.

Looking to the future some members of the network were of the opinion that Commission should strive to set up minimum detention conditions and forms of conditional release across EU Member States. Equivalent detention conditions and close conditions for applying conditional release or other forms of early release may discourage sentenced persons to go 'forum shopping' and observe more the social rehabilitation aspirations.

As some members of the network suggested, one way of working towards this aim is for the Commission to get involved in the development of the prison infrastructure especially in the countries where CPT reports inhuman or degrading treatment. This development should aim at improving the detention conditions and should not lead to an increase in the prison population. Special conditions to ensure that the prison population will not rise should be in place (e.g. only countries below the average custodial rate in Europe may be eligible for this infrastructure programme).

In order to avoid human rights implications, the Commission should get more actively involved in consolidating the procedural and substantial rights among sentenced persons.

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Annex 1

Case studies of transfer between England and Romania

Case Study 1 – VM

This case study presents a Romanian sentenced person transferred from England to Romania in December 2014. As background information, the sentenced person was a 45 year old male, married with four children. At the time of transfer his family was living in Spain, all of them working in agriculture. He was accused of rape, being sentenced to 15 years imprisonment and he expressed his favourable opinion to the transfer.

In 2007 he ran to England because of an arrest warrant in Spain from 2006, with a sentence of four years and nine months. He was arrested in England in 2009 and was sentenced to eight months in prison for false documents. At the time of his arrest the authorities found out his real name and the warrant for his arrest in Spain for pimping. After the completion of the eight months of the penalty in England, Interpol took over his case in 2012 and he was extradited to Spain to serve the sentence of four years and nine months.

In 2012, when he was supposed to be presented to the Commission for approval of a leave he was refused because while he was incarcerated in Spain he received a European warrant from England. He was taken to the Court in Madrid where all the facts for which he was accused in England were presented to him and he accepted to be transferred for the judgement. He was arrested in 2009 by British authorities on the basis of a complaint of rape made by one of his tenants at that time. Denying the charges he was allowed to leave being investigated on the loose. After a month he was informed that the complaint has been withdrawn and the charges were dropped. The case was reopened in 2010 with the same accusations of rape. On December 28th, 2012 he was transferred to Manchester, where he was given a trial period of six months and on 8th of July 2013 he was found guilty of rape and sentenced to 15 years in prison.

He was transferred again to Spain to finish the term of four years and nine months, and in January 2014 he returned to England for completion of the 15 year sentence. One month after he arrived in England, in February 2014, he filed the paperwork for the transfer to Romania. He justified this through the lack of friends and family who were still in Spain and the stress factor not knowing

English. He discussed the decision to transfer to Romania with his family because a transfer in Spain was only possible by giving up to the Romanian citizenship.

Transfer information was obtained from the Manchester penitentiary staff in charge of extraditions. Communication was facilitated through an interpreter provided by the prison staff.

The first step towards the transfer had been a request for extradition made in the penitentiary to the Home Office. He was helped by a staff member who dealt with the extraditions and by the fact that he spoke Spanish facilitated communication with the sentenced person.

After filling out the application and waiting for a month without a response, the sentenced person claimed that he went on hunger strike³ for a period of three months. During this time, Embassy representatives came a few times in the penitentiary to inquire about the detainee's status.

In August 2014 he received a definitive answer of transfer acceptance from Romanian authorities and in December he was transferred to Romania, in Rahova penitentiary. The sentence has not undergone any adaptation. In February 2015 he was transferred to the prison in Giurgiu where he will remain to complete the rest of his 15 years punishment.

The sentenced person is pleased with the decision he took although there are advantages and disadvantages. It is worse in conditions and activities, because time passes slowly it is more difficult due the lack of activities and it is better because he is visited often by friends and a nephew.

Case Study 2 – NA

This case study presents a Romanian sentenced person transferred from England to Romania in November 2013. The inmate is a 27 year old male, married with no children. Because he married his wife during the incarceration time, he lost connections with her and he doesn't know where she is at the moment.

He was arrested on 7 August 2009 in Romania based on a European Arrest Warrant and he was extradited to England a few days later where he was put on trial for rape and human trafficking.

³ There is no evidence of this hunger strike in the prison records.

He was represented by an ex officio counsel and was sentenced to 21 years in prison, after the appeal made by the prosecutor he was sentenced to life imprisonment. The sentenced person claims that he is innocent; that he was only the driver of the girls and that there is no DNA or other physical evidence to sustain the charges. The girls were arrested by British authorities for prostitution and sentenced to six months in prison. Six months after they were arrested, they testified that they were raped and forced into prostitution by the sentenced person in question.

Immediately after conviction, in August 2011 he started the procedure to transfer to Romania. He personally sent by mail the papers to Romania to the Ministry of Justice but he also followed the procedures from the penitentiary sending the same papers through the prison staff. The paper sent by mail arrived in Romania but the ones sent through the prison staff did not. The same thing happened with all the papers that ought to be signed by the sentenced person, they were lost or they were delayed by months.

The first attempt of transfer was received with a refusal, because British authorities were demanding the Romanian authorities to keep the punishment for life. The Romanian state can only convict to life detention if the felony is murder and only to a maximum of 18 years for human trafficking and rape. The British authorities declined the transfer.

The second time when he submitted the paperwork for the transfer there were major delays due some errors made by the prison staff in the transfer forms. After he waited a long time for an answer the sentenced person decided to go on hunger strike⁴. During this, the detainee's father obtained an audience with the Minister of Foreign Affairs in Bucharest who contacted the Embassy of Romania in London and sent Romania's representatives to verify the detainee status.

It was after this visit in the summer of 2013 the transfer papers were sent from England to Romania. The Bucharest Court of Appeal converted his detention for life to a punishment of 18 years and the sentenced person gave his consent of the transfer.

In the autumn of 2013, two years after starting the procedure, he was transferred to Romania where he has the support and visits from his parents and brothers.

⁴ This was his statement. There is no evidence of this strike in the prison records.

At the moment, after six years of imprisonment he is trying all the legal ways to prove his innocence and the evidences.

Case Study 3 – GA

Romanian citizen, aged 40, transferred from the UK to Romania on 31 January 2014. The inmate is not married but most of his family are in Romania.

He arrived in England in 1998 and worked until 2005 as legal project manager in construction. As a result of violence between two gangs one man died and the sentenced person in question was arrested for murder on 26th September 2005. In 2006 he was convicted to a minimum of 21 years detention and a sentence for life imprisonment. Unhappy with the decision made he appealed and after five years a new trial in 2012 gave the final decision that was the same as the previous one. He completed nine years of his sentence in England, 23 months in Belmarsh prison and nearly seven years in Swaleside prison.

After an unsuccessful appeal in May 2012 he requested repatriation. He was informed by the prison staff of this possibility. The first step was to complete an application in the prison towards NOMS. To speed up the procedure, at his lawyer's advice he also sourced a Romanian lawyer who kept him informed of the procedure in Romania.

After one month he received confirmation that the application was at NOMS and that it will be sent to the Ministry of Justice in Romania. With the help of Romanian lawyers he found out that in September 2012 his demand went from England to Romania where the Ministry of Justice has assigned a new court term.

Initially the transfer was refused on the basis of translation errors made by Romanian authorities. The application was referred back by the Romanian lawyers to NOMS and on the 25th October 2013 his transfer was approved. After the adaptation of his sentence he received 25 years in prison. He still argues that the adaptation of the sentence was not correct because the Romanian judge used the life sentence for conversion, not the minimum of detention. Also, it was not kept in mind the rehabilitation efforts made by the sentenced person in those nine years of imprisonment.

On January 31st 2014 he was brought to Romania to Rahova prison, where he stayed for two months and then transferred to Giurgiu prison. He was transferred from a semi-open regime in England to the maximum security in Romania.

He adapted very quickly, even though he complained about the prison conditions. He works and has educational activities and he is looking forward to a fresh start once he is released

Annex 2

Report on the sentenced person survey

- Romanian sentenced persons in Italy and Spain -

Spain

Introduction

This report is based on 83 questionnaires completed by the Romanian sentenced persons in August to September 2014 in Huelva Prison, September to October 2014 in Topas Prison, October 2014 in Lugo Prison and September 2014 in Algeciras Prison all in Spain.

The questionnaire was self-administered and all sentenced persons completed the questionnaire voluntarily. All Romanian sentenced persons available agreed to participate in the survey.

One researcher was available to assist sentenced persons in fulfilling the task.

Demographic profile

82 participants were men and one participant was a woman placed in preventive arrest in Topas Prison. All of them were over 20 years old. The main age categories were:

- 25.3% were aged between 36-40 years,
- 18.1% between 26-30,
- 18.1% were between 20-25 years old.

The level of education is quite low:

- 42.2% graduated between 5 to 8 classes
- 41% graduated between 9 to 12 classes
- 4.8% graduated less than 4 classes.
- 2.4% with university degree
- 9.6% refused to answer.

Most of the sentenced persons who completed the questionnaires were unmarried (56.6%).

In more than half of the married cases, the sentenced person's wives are in Spain.

Almost half of the sentenced persons had children (50.6 %). In most cases they had one or two children. Over 27.7% of the children live in Romania.

These stats seem to suggest that Romanian sentenced persons are accompanied in Spain by their spouses but not necessarily by their children. In most cases, the children live in Romania with grandparents or other relatives.

Social variables

Over 44% of the Romanian sentenced persons arrived in Spain between 2006-2010. 31.3% of them arrived in Spain even earlier (between 2000-2005).

75.9% of them emigrated to Spain for economic reasons ('to find a job', 'to find a better life' etc.).

Only 4.8% of them reached Spain for holiday reasons.

Over 66.3% of the respondents were in employment when arrested. Most of them were involved in the agriculture or construction industry.

Offending history

Over 36% were convicted for property crimes. 14.6% were sentenced for drug related crimes. 7.2% were in prison for sex crimes and 10.2% were sentenced for violent crimes (including homicide). However, a large proportion of respondents refused to answer (21.7%). A large proportion of them (6%) are on preventative arrest.

Over 71.1% of respondents stated that they had no previous convictions in Romania. 'Only' 21.7% of them had previous convictions in Romania. 78.3% of respondents had no previous convictions in Spain.

Almost half of them (43.4%) had between one to five years until full release. Only 4.8% had to wait between one to six months until release. 36.1% did not respond to this question. The proportion of non-response is even higher (51.8%) for the question regarding the time until conditional release. 25.3% estimate that they had between one to five years and 19.2% estimate less than one year until conditional release.

More than 77% stated that there was no expulsion order imposed on them. Therefore they will not be removed from Spain once released.

Justice system

The answers of the question regarding the satisfaction on the justice system are polarised: 44.3% of the respondents stated they were totally unsatisfied while 20.5% of them stated they were very satisfied. 10.8% did not respond to this question.

The answers regarding the detention conditions are more nuanced: 21.7% stated that they were totally unsatisfied, 33.7% were neither satisfied nor unsatisfied and 20.5% were very satisfied with the detention conditions.

Most of the sentenced persons (84.3%) had no disciplinary reports. More than 60% had rewarding reports.

Most of the 'pains of incarceration' were: the lack of communication with the family (26.5%), abuse in the prison (9.6%), language difficulties (8.4%), and the restriction for work during the preventative arrest (4.8%). A large number of respondents did not respond to this question (39-47%).

Rehabilitation

51.8% were involved in programmes and activities aimed at reducing the risk of reoffending. Most of them are work related activities (22.9%), or school activities (14.5%). About 62.7% of the sentenced persons stated that they worked during incarceration. The nature of the work was manual.

'Only' 19.3% of the sentenced persons used drugs before imprisonment and 'just' 14.5% continue to use drugs even during imprisonment. Cocaine, cannabis and marijuana seem to be popular. None of the respondents are on drug treatment. This should be taken with caution as the fear of disclosure is quite high on this subject.

Only six sentenced persons were on mental health treatment and only three were suffering from a highly contagious disease – hepatitis B (see the comment above on under-reporting).

The Transfer

38.6% of the respondents were not aware of the possibility of transfer to Romania to serve the rest of their sentence. Those who knew about this possibility found out about it from other sentenced persons or from prison staff, in equal proportion.

The vast majority of sentenced persons have no idea what the transfer is (61.4%). Others think that the transfer is for the benefit of the sentenced persons (20.5%), for a better cooperation between the member states (1.2%) or for exercising the right for conditional release (2.4%). More than 14% did not respond to this question.

Although they were not aware of this possibility before, 41% of the sentenced persons would take this option seriously for themselves. The main reason for this is 'to be close to the family' and to have 'more attention in the prison'. Those not willing to transfer mentioned the length of time needed for transfer as the main reason. Maybe this is the reason most of the sentenced persons stated that before making a decision about transfer they would like to know more about how long the transfer process would take, the documents needed and what are the prison conditions are like in Romania. More than 61% did not respond to this question. The main worries expressed by the sentenced persons regarding the transfer were 'the worse prison conditions in Romania' (27.7%) and the length of the process (7.2%).

The main benefits of the transfer to Romania seem to be conditional release (15.7%), the family (13.3%) and social benefit after release (2.4%). Only 33.7% of the sentenced persons stated that they would recommend this option to other sentenced persons. They would recommend this option at the beginning of the sentence and for being close to the family.

In order to improve the implementation of this possibility, the sentenced persons suggest:

- The procedure to take a shorter time – 14.5%
- Romania to pay more attention to its citizens detained abroad - 10.2%
- Improving the prison conditions in Romania – 4.8%
- The possibility to work in the Romanian prisons - 2.4%

Italy Questionnaires

Introduction

This report is based on five questionnaires completed by the Romanian sentenced persons in October 2014.

Demographic profile

All five participants were men. All of them were over 25 years old. Three of them were between 40-45 years old, one was 39 and one was 28 years old.

Three of them graduated between nine and 12 classes, one of them has a university degree and one graduated eight classes.

Three of the sentenced persons completing the questionnaires were married and in these cases the sentenced person's wives were in Romania. In these cases all three of them had children who live in Romania.

Social variables

All the participants arrived in Italy between 2006-2010 and all of them emigrated to Italy for economic reasons ('to find a job')

Only two respondents were in employment when arrested. They were employed in the construction industry.

Offending history

One participant was convicted for sexual crime, three for property crimes and one for violent crimes. Two of the respondents stated that they had previous convictions in Romania and one of them had a previous conviction in Italy.

Three of them had between one to five years until full release. Only one of them had to wait between one to six months until release. Also, one of them had to wait ten years until full release. Regarding the time until conditional release two of them had to wait between one to five years and two estimated less than one year until conditional release.

Only one respondent had no expulsion order imposed.

Justice system

All sentenced persons who answered the questionnaire stated that they were either unsatisfied or totally satisfied with the justice system. The answers to the detention conditions are the same, all of them were unsatisfied or totally unsatisfied with it.

Four sentenced persons had no disciplinary reports and four had rewarding reports.

The 'pains of incarceration' were: the lack of communication with the family (2), abuse in the prison (1). Two respondents did not respond to this question.

Rehabilitation

All of the respondents were involved in programmes and activities aimed at reducing the risk of reoffending. Most of them were work related activities (3), or school activities (2). Four of the sentenced persons stated that they worked during incarceration. The nature of the work was manual.

None of the sentenced persons used drugs before imprisonment and none of them were on drug treatment. Also, none of them were on mental health treatment or suffering from a highly contagious disease

The Transfer

All the respondents are aware of the possibility of transfer to Romania for serving the rest of their sentences. They knew about this possibility from prison staff.

Three of the sentenced persons think that the transfer is for the benefit of the sentenced persons. Two of them did not respond to this question.

Only two sentenced persons would take this option seriously for themselves. The main reason for this was 'to be close to the family'. Those not willing to transfer mentioned the lack of conditions in Romanian penitentiaries.

Maybe this is the reason most of the sentenced persons stated that before making a decision about transfer they would like to know more about how long the transfer process would take, the documents needed and what the prison conditions were like in Romania. Two of them did not respond to this question. The main worries expressed by the sentenced persons regarding the transfer were 'the worse prison conditions in Romania' (3) and the length of the process (1).

The main benefits of the transfer to Romania seem to be conditional release (1) and the family (2). Only one of the sentenced persons stated that he would recommend this option to other sentenced persons, he recommends this option for being close to the family.

In order to improve the implementation of this possibility, the sentenced persons suggest:

- Romania to pay more attention to its citizens detained abroad - 1
- Improving the prison conditions in Romania – 1

Conclusions

These results should be taken with some reservations. First, this is not a representative sample. However, this is an important number and send over some important and strong messages. Secondly, there are many questions where a large number of sentenced persons did not respond. Depending each question, the reasons for not answering might be: fear, lack of knowledge, 'too much to write' etc.

Some of the topics should be picked on during the debates and the case studies: why time is so important since they have time to wait (check the 'deep freeze' theory), how can they find out more about the prison conditions in Romania etc.

Annex 3

The Memorandum of Understanding

between Italy and Romania to improve cooperation on the transfer of sentenced persons under Council Framework Decision 2008/909/JHA

The Ministry of Justice of the Republic of Romania and the Ministry of Justice of the Italian Republic, in order to improve cooperation on the transfer of sentenced persons under Council Framework Decision 2008/909/JHA, after having discussed the issues which create problems or delays in the field of judicial cooperation have agreed to:

1. Encourage direct contacts among their respective judicial authorities competent for the transfer procedure of sentenced persons, in particular as regards requests for additional information, which are the main cause of delay in the procedure. Nevertheless remains the need to notify them - for information - to the central authorities;
2. Encourage the translation of the requests for additional information at least into the English language, in order that they be immediately understood by the receiving authorities, also in consideration of the particularly tight deadlines often given for replying;
3. Recommend to the judicial authorities to give a deadline for the reply adequate with the complexity of the requested activities or additional information;
4. Prepare, in view of their distribution to the counterpart's judicial authorities, explanatory notes describing the national law provisions on the benefits granted to sentenced persons and on the aggregation of sentences in the execution phase;
5. Recommend - as regards Italy - to the judicial authorities, in the case of aggregation of sentences, to issue a separate certificate for each judgment relevant to the request, or – where a single certificate is chosen – to add to it a certificate on the state of enforcement of the sentence [stato di esecuzione della pena]. In this latter case it will be necessary to state clearly the amount of sentence which remains to be served in Romania, specifying the reasons of any difference in the amount of sentence imposed and the one to be served;
6. Recommend to the respective judicial authorities to describe adequately, in the appropriate field of

the certificate, the facts indicative of the lack of roots of the sentenced person in the issuing State;

7. Recommend to the respective judicial authorities, in the case of sentenced persons who have been identified with different personal details, to certify that the person's identity has been ascertained;
8. Examine the possibility to add to the certificate a the translation only of the counts charged and operative part of the relevant judgments, together with the full text of the judgments in their original language;
9. Examine the possibility to send directly to the sentenced person, at the prison where they are detained, the official communication of the recognition judgments issued by the judicial authorities;
10. Examine the possibility to send directly to the competent authorities any statement made by the sentenced person concerning any appeal against the recognition decision;
11. Strengthen their bilateral judicial cooperation also through the promotion of and participation in, workshops on the practical aspects of the cooperation in the field of the transfer of sentenced persons. In this respect the Director of the Department for International Law and Judicial Cooperation, Ms Viviana Onaca, invited her Italian counterpart to participate, in the second half of this year, in a meeting of the Romanian members of the Offices of the Prosecutor Generals and of the Courts of Appeal who are competent for dealing with these procedures.

| | |
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| For the Italian Ministry of Justice The Director General of the Criminal Justice Directorate Raffaele Piccirillo | For the Romania Ministry of Justice The Director of the Department for International Law and Judicial Cooperation Viviana Onaca |
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Annex 4

The Romanian Brochure – short version

See the attached document.

Annex 5

Rapid Literature Assessment

**on Council Framework Decision 2008/909/JHA of 27 November 2008
on the application of the principle of mutual recognition to judgments
in criminal matters imposing custodial sentences or measures
involving deprivation of liberty for the purpose of their enforcement
in the European Union**

Carmen Garcia & Ioan Durnescu



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Introduction

When implementing sentences of imprisonment, considerable attention is paid to the rehabilitation of sentenced persons to ensure that they are re-socialised and eventually reintegrated into the community. In other words, the objective of rehabilitation may become more significant than it was at the time when the sentence was initially imposed. At that imposition of the sentence, the primary objective of sentencing may have been to ensure that sentenced persons received retributive punishment for the crime they had committed. In the same time, the punishment should also observe the need to rehabilitate sentenced persons in order to become a productive member of society. It may be the case that a sentence can be implemented in different ways that would all meet the requirements of the initial sentence but differ in their effectiveness in terms of rehabilitating the sentenced individual.

Each year tens of thousands of EU citizens are prosecuted for alleged crimes or convicted in another Member State of the European Union. Very often, criminal courts order the detention of non-residents because there is a fear that they will not turn up for trial. A suspect who is resident in the country would in a similar situation often benefit from a less coercive supervision measure, such as reporting to the police or a travel prohibition. These might be the reasons why in countries like Luxembourg, Austria, and Switzerland and so on, the proportion of foreign sentenced persons is very high, sometimes over 70% (for more see <http://www.prisonstudies.org/world-prison-brief>).

The transfer of foreign sentenced persons to serve their sentences in their home countries is an alternative way of implementing a sentence. Arguably, all things being equal, sentenced persons who serve their sentences in their home countries can be rehabilitated, re-socialised and reintegrated into the community better than elsewhere. This is a positive reason for transferring sentenced persons to a state with which they have social links to serve their sentences. Imprisonment in a foreign country, away from family and friends, may also be counter-productive as families may provide sentenced persons with social capital and support, which improve the likelihood of successful resettlement and reintegration⁵.

Methodology

The general aim of this rapid literature assessment is to collect and analyse the existing literature available on the adoption and the implementation of the Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgements in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (hereinafter FD 909).

The ultimate aim of this analysis is to inform the research conducted under the project 'Support for Transfer of European Prison Sentences towards Resettlement' (hereinafter STEPS 2).

The inclusion criteria for the papers to be covered in this assessment were:

1. to be published in Europe,
2. to be published after 2005, when the discussions on the FD 909 started at the EU level,

⁵ "Handbook on the International Transfer of Sentenced Persons". UNODC. 2012.

3. to be in any EU language
4. to deal with the FD 909 – conception, adoption and implementation.

Colleagues from the universities⁶ that are partners in the STEPS 2 project, Workstream 1 focus group attendees contributed extensively to the desk search and also to the elaboration of this report.

The main sources of literature are:

1. Consultation of laws and preliminary documents.
2. Consultation of evaluation reports.
3. Consultation of other projects websites, such as <http://www.europris.org/> , <http://www.euprobationproject.eu> etc.

Background

The first cross-border enforcement of custodial sentences between the Member States was the Convention of the Transfer of Sentenced Persons, adopted by the Council of Europe in 1983.

According to this document, sentenced persons may be transferred to serve their custodial sentence only to their state of nationality and only with their consent and that of the states involved. All members of the Council of Europe ratified this Convention (64). Due to its limited application, in 1997, the Council of Europe adopted the Additional Protocol to the Convention which allows transfer without the person's consent, subject to certain conditions. Only a few countries (36) adopted this Protocol and therefore its application is still very limited. Furthermore, neither of these two documents were explicit in the obligation of the states regarding the enforcement or in setting any time limits for the decisions on the enforcement or for the transfer.

Therefore, this Convention was considered insufficient to adequately respond to the needs of the reality.

According to the Report from the Commission⁷, in a common European area of justice based on mutual trust, the EU has taken action to ensure that non-residents subject to criminal proceedings are not treated differently from residents. This is particularly important in view of the important number of EU citizens who are imprisoned in other Member States. It is in this spirit that the EU adopted in 2008 and 2009 three complementary Framework Decisions: Council Framework Decision 2008/909/JHA1 on the application of the principle of mutual recognition to judgements imposing custodial sentences or measures involving deprivation of liberty (Transfer of sentenced persons); Council Framework Decision 2008/947/JHA2 on the application of the principle of mutual recognition of probation decisions and alternative sanctions (Probation and Alternative Sanctions) and Council Framework Decision 2009/829/JHA3 on the application of the principle of

⁶ University of Huelva and University of Brescia

⁷ 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, 5.2.2014. COM(2014) 57 final

mutual recognition to decisions on supervision measures as an alternative to provisional detention (European Supervision Order)

The Framework Decisions have to be seen as a package of coherent and complementary legislation that addresses the issue of detention of EU citizens in other Member States and has the potential to lead to a reduction in pre-trial detention or to facilitate social rehabilitation of sentenced persons in a cross border context. There are in fact operational links between the three Framework Decisions, but also between the Framework Decisions and the Framework Decision on the European Arrest Warrant.

The Framework Decision 2008/909/JHA (hereinafter FD 909), which is the main focus of this paper, was initiated by Austria, Finland and Sweden and was adopted by the Council based on the following documents:

1. The Tampere European Council (1999) that stressed that mutual recognition of court decisions should become the cornerstone of judicial cooperation.
2. The measures adopted by the Council in 2000 regarding the implementation of the principle of mutual recognition of decisions in criminal matters, including the sentences involving deprivation of liberty and for the extended application of the principle of transfer to cover persons resident in a Member State.
3. The Hague Programme on strengthening freedom, security and justice in the EU.
4. The Green Paper submitted by the European Commission on the approximation, mutual recognition and enforcement of criminal sanctions in the EU where it was envisaged that recognition and enforcement of custodial sentences in another Member State is incomplete and capable of improvement.
5. Art. 31(1) (a) – ‘facilitating and accelerating cooperation between competent ministries and judicial ... In relation to proceedings and the enforcement of decisions’ and 34(2)(b) – ‘the Council may adopt framework decisions for the purpose of approximation of the laws and regulations on the Member States’ of the EU Treaty.

As stated in the explanatory note, the main elements of the proposal were:

- a duty on the Executing State to allow nationals, permanent residents and persons with other close links to serve their custodial sentences or detention orders on the territory of that State, subject to certain grounds for refusal;
- waiver of the double criminality requirement with regard to convictions for certain offences on a list corresponding to that contained in the Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States, OJ L 190 of 18 July 2002;
- if the sentenced person is in the Issuing State, he shall, if possible, be given an opportunity to state his opinion orally or in writing before a ‘European enforcement order’ is issued;
- the consent of the sentenced person is not required when he is a national of the Executing State or when he has his permanent legal residence in that State;
- recognition of the foreign final custodial sentence or detention order and its execution on the basis of a form (so-called European enforcement order);
- time-limits for the decision on the European enforcement order and for the transfer of the sentenced person to the Executing State;
- enforcement of the final custodial sentence or detention order imposed by the sentencing State without conversion proceedings;

- the duration of the sentence may be adapted to the maximum level provided for a criminal act under the national law of the Executing State only where the sanction is incompatible with fundamental principles of the law of the Executing State;
- the nature of the sentence may, if it is incompatible with the law of the Executing State, be adapted to the punishment or measure provided for under the national law of the Executing State for a criminal offence of the same type.

Based on this proposal, the Commission dedicated several meetings with Member States delegates where different issues related to the sentenced person transfer were discussed: the national rules for conditional / early release and / or measures involving full and/or partial deprivation of liberty; the double criminality issue, consent of the executing State and the consent of the sentenced person and so on.

Special discussions took place on issues such as the social rehabilitation, if the lack of it should or should not be a ground for refusal of transfer. In the end the compromise was that the sentenced person would be heard.

When adopting the FD 909 it was agreed that the deadline for the implementation (transposition) was 5 December 2011. By their nature, the Framework Decisions are binding upon the Member States in terms of the result, but it is a matter for the national authorities to choose the form and the method of implementation. Framework Decisions cannot have a direct effect. They need to be transposed in the national legislation. However, the principle of conforming interpretation is binding in relation to the Framework Decisions.

In order to facilitate the implementation of the FD, the EC organised several expert meetings where different impediments were discussed.

For instance, in the meeting that took place in Brussels on 14th of November 2012, participants expressed their concern regarding the ‘transition period’ when the requests are received before the states had transposed the FD. In this case, some participants were of the opinion that the existing instruments (such as the Council of Europe Convention) should be maintained with those who have not yet transposed the FD.

One of the participants (the UK representative) asked if it is not possible to agree on what constitutes a reasonable time period to qualify for residency. Although something mandatory was not agreed, the participants suggested that some kind of guidelines would be useful.

The discussions also stressed the importance of information. It would be impossible for a sentenced person to agree on a transfer unless he/she knows what to expect (e.g. prison conditions, conditional release etc.).

Other issues were discussed regarding the social rehabilitation (‘social reinsertion’) and the multiple offences. In both these cases the MS will have to communicate among themselves and agree the best solution that would facilitate the social reinsertion.

The European Parliament was also consulted and adopted a resolution in 2006 recommending the Council to strengthen the procedural rights of the sentenced persons in the criminal proceedings.

The Framework Decision 2008/909/JHA

The Framework Decision was adopted on 5th December 2008 and it sets out the rules whereby judgments that impose custodial sentences or measures involving the deprivation of liberty delivered in one Member State are to be recognised and enforced in another Member State. The aim is to thus facilitate the social rehabilitation and reintegration of sentenced persons.

Member States must designate the competent authorities for issuing and executing judgements. The competent authority of the Issuing State is responsible for forwarding the judgement accompanied by the certificate annexed to the framework decision directly to the competent authority of one Executing State at a time and in a manner that leaves a written record.

When the sentenced person is located in the Issuing or Executing State and, under certain circumstances, has given his/her permission for forwarding the judgement, it may be transmitted to:

- the Member State of which the sentenced person is a national and where s/he lives;
- the Member State of which the sentenced person is a national and to which s/he could be deported following the judgement, even if this is not his/her place of residence;
- any other Member State, provided that its competent authority agrees to the forwarding.

A judgement may be forwarded only once the Issuing State has ensured that the enforcement of the sentence in the Executing State would serve the purpose of facilitating the sentenced person's social rehabilitation and reintegration. The latter may provide the Issuing State with a reasoned opinion indicating that enforcement by it would not serve this purpose. The Executing State, as well as the sentenced person, may also request the initiation of the procedure for forwarding judgements.

Upon receiving the forwarded judgement and certificate, the Executing State must decide within a maximum of 90 days whether it will recognise the judgement and enforce the sentence.

The competent authority of the Executing State has to recognise the judgement and take all necessary measures to enforce the sentence, unless it decides to invoke one of the grounds for non-recognition and non-enforcement provided in the Framework Decision. The non-recognition of the judgement and non-enforcement of the sentence is possible when the:

- certificate is incomplete or does not correspond to the judgement;
- criteria for forwarding the judgement and the certificate have not been fulfilled;
- enforcement would contravene the *ne bis in idem* principle;
- offence is not recognised as such under the law of the Executing State, with certain exceptions;
- enforcement is statute-barred under the law of the Executing State;
- law of the Executing State provides for immunity;
- sentenced person cannot be held liable under the law of the Executing State due to his/her age;
- remaining sentence is less than six months when the Executing State receives the judgement;

- sentenced person had not appeared in person at the trial where the judgement was passed, with certain exceptions;
- issuing state rejects the request of the Executing State to prosecute, sentence or otherwise deprive the liberty of the sentenced person for another offense committed before the transfer;
- sentence requires for psychiatric or health care or for another measure involving the deprivation of liberty that the Executing State cannot provide;
- offence was committed on the territory of the Executing State.

In case the certificate is incomplete or does not correspond to the judgement, the Executing State may postpone its recognition.

The Framework Decision provides a list of offences that must be recognised and enforced without a double criminality check, if they result in a custodial sentence or a measure involving deprivation of liberty of a maximum of at least three years in the Issuing State. For all other offences, the Executing State may require that they constitute an offence also under its national law in order for them to be recognised and enforced. Where the duration or nature of the sentence is not compatible with the national law of the Executing State, it may adapt the sentence. However, the adapted sentence must correspond as closely as possible to and in no case be harsher than the original sentence.

In line with the law of the Issuing State, the consent of the sentenced person is required for the forwarding of a judgement and certificate to the Executing State for recognition and enforcement of the sentence. However, this consent is not required when the Executing State is the Member State:

- of which the sentenced person is a national and where s/he lives;
- to which the sentenced person is deported upon release, by reason of the order included in the judgement;
- to which the sentenced person has fled or returned, while criminal proceedings against him/her are pending or following a conviction in the Issuing State.

In any event, if the sentenced person is in the Issuing State, s/he must be given the opportunity to provide an oral or written opinion.

When the sentenced person is located on the territory of the Issuing State, s/he must be transferred to the territory of the Executing State within a period of 30 days from the date when the latter has recognised the judgement.

Both the Issuing and Executing State may grant amnesty or pardon. However, only the Issuing State may decide on the review of the judgement⁸.

⁸ This summary can be found at http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_criminal_matters/jl0016_en.htm

State of play - implementation

In February 2014 the European Commission adopted a report called 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.

As stated in this report, the non-implementation of the Framework Decisions by some Member States is very problematic since those Member States who have properly implemented the Framework Decisions cannot benefit from their co-operation provisions in their relations with those Member States who did not implement them in time. Nowadays, nineteen **member states have adapted the Framework Decision**⁹

The principle of mutual recognition, which is the cornerstone of the judicial area of justice, requires a reciprocal transposition; it cannot work if instruments are not implemented correctly in the two Member States concerned. As a consequence, when cooperating with a Member State who did not implement in time, even those Member States who did so will have to continue to apply the corresponding conventions of the Council of Europe when transferring EU sentenced persons or sentences to other Member States.

The objective of developing an area of freedom, security and justice for all EU citizens as laid down in Article 3 of the Treaty on European Union cannot be achieved if Member States do not properly implement the instruments they all agreed upon.

It is necessary to remind the power of the Commission to start infringement proceedings as of 1 December 2014¹⁰.

Difficulties and obstacles

Different sets of obstacles and difficulties can be found in the literature. Some of these difficulties are more theoretical and apply to all FDs, not only to the FD 909.

1. Theoretical Issues:

Two theoretical issues seem to be of great importance:

- The first one, refers to the principle of mutual recognition that regulates mainly the relations between the states and neglects to a large extent to procedural rights of the

⁹ This information is up-to-date as at 31 October 2014. Romania, Italy and Spain have implemented it. <http://www.euopris.org/state-of-play-eu-framework-decisions-909-947-829/>

¹⁰ 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, 5.2.2014. COM(2014) 57 final

sentenced persons. Most often the FDs mention the fundamental rights and the right of the person to be heard or give consent. Apart from that no other remedies or procedural rights are defined.

Regarding this issue, one can claim that in the European Union there are national mechanisms in place that deal with human rights and procedural guarantees for sentenced persons. However, the Commission reaffirmed its interest in positive justice by adopting for instance The Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime.

- The second theoretical difficulty is associated to the double criminality principle. The Framework Decision provides a list of offences (32) that must be recognised and enforced without a double criminality check, if they result in a custodial sentence or a measure involving deprivation of liberty of a maximum of at least three years in the Issuing State. For all other offences, the Executing State may require that they constitute an offence also under its national law in order for them to be recognised and enforced.

2. Implementation obstacles:

The report mentioned above summarises the main difficulties mostly dealing with the way states transposed the FD into their own domestic legislation.

Considerations regarding the transfer

- a. An obligation to accept the transfer unless there are grounds for refusal. While there is an obligation for the Executing State to accept the forwarding, there is no obligation on the Issuing State to transfer. As noted by the Commission, some countries adopted the grounds for refusal as mandatory or even added other grounds for refusal. Both situations are contrary to the letter and spirit of the FD. The same position is shared by the European Court of Justice in Luxembourg which already ruled that the FD should be interpreted in a very restrictive manner¹¹.
- b. The principle of mutual trust – no adaptation of the sentence. The sentence adaptation is allowed only in limited cases where the nature and the duration of the sentence are not compatible. Some countries (Poland and Latvia) widened the possibilities of adaptation

¹¹ In this sense, the Court of Justice of the European Union (Grand Chamber) has delivered a sentence in the case C-396/11, REQUEST for a preliminary ruling under Article 267 TFEU from the Curte de Apel Constanța (Romania), made by decision of 18 May 2011, received at the Court on 27 July 2011, in proceedings relating to the execution of European arrest warrants issued against [Ciprian Vasile Radu](#). This Court has stated: “rules: Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as meaning that the executing judicial authorities cannot refuse to execute a European arrest warrant issued for the purposes of conducting a criminal prosecution on the ground that the requested person was not heard in the issuing Member State before that arrest warrant was issued”.

undermining the spirit of the mutual trust.

- c. Regarding the crime: double criminality principle: list of offences that must be recognised and enforced without a double criminality check.
- d. The link between the FD and European Arrest Warrant. Both FDs allow for the Member States to refuse to surrender a person under a European arrest warrant (or allow for a surrender under the condition that the person has to be returned) where the requested person is a national, a resident or is staying in that Member State if that member State undertakes to enforce the prison sentence. Some Member States regulated this situation only for the nationals.
- e. Declarations on transitional provisions. Based on the FD text, Member States can adopt declarations stating that they use the existing legal instruments on the transfer but not after the 5 December 2011, which is the final date of adoption. It seems that some Member States adopted declarations stating that they will use the existing legal documents even after this date.
- f. The EJM website is designated to provide to practitioners in the field of international judicial co-operation in criminal matters essential, comprehensive and accurate information about all relevant EU instruments. As the Framework Decision 2008/909 provides for direct communication between the competent authorities in the Member States, not only comprehensive and up-dated information on the implementation of the Framework Decision and on declarations made by Member States would facilitate the co-operation in practice, but also an adjusted Atlas on the website of the EJM should be provided in order to allow an immediate identification of the competent authority in the respective Executing State.

Requirement for transfer

- a. Subsequent decisions. In principle, the subsequent decisions need to be adopted by the Executing State. However, there are large differences between Member States regarding the conditional release. In order to consolidate the mutual trust, Executing States need to inform the Issuing States regarding the early or conditional release so the Issuing States can make an informed decision on whether to transfer or not.
- b. Consent: the role of the person concerned in the transfer process – not all the Member States provide enough opportunities for the sentenced persons to express their views regarding the transfer.
- c. Definition of "social rehabilitation"

In the case of Spain this concept has been broadly interpreted as *'The consent of the sentenced person shall not be required where the judgement together with the certificate is forwarded: (a) to the Member State of nationality in which the sentenced **has ties with, considering his habitual residence and his familiar or professional bonds**'.*

Though the Framework Decision does not contain such a ground for non-recognition and non-enforcement, a request according to Article 4, para.1b of the Framework Decision to

the Member State of nationality, to which, while not being the Member State where the sentenced person lives, but he or she will be deported once released from the enforcement of the sentence on the basis of an expulsion or deportation order, is very often refused due to considerations that such a transfer would not serve the purpose of social rehabilitation of the sentenced person. The Framework Decision, however, provides that the final assessment, that the enforcement of the sentence by the Executing State would serve the purpose of facilitating the social rehabilitation of the sentenced person, falls within the responsibilities of the Issuing State. A higher level of imprisonment (related to work and skills training, education, medical treatment, accommodation, etc.) cannot serve as a ground for non-recognition due to reduced prospects of social rehabilitation in the Executing State. A single European Justice area governed by the principle of mutual recognition and enforcement requires an approximation of standards in the prison systems of all Member States.

- d. The Framework Decision aims at facilitating the procedure of cross-border enforcement of sentences by **reducing the number of documents** which have to be provided by the Issuing State to the Executing State in comparison with previous existing legal instruments (see especially the Convention of 21 March 1983 on the Transfer of Sentenced Prisoners – CETS 112 and its Additional Protocol – CETS 167). Though the Framework Decision does not contain an obligation to provide an existing expulsion or deportation order, frequently the competent authorities of the Executing States request not only a transmission of the certificate, the judgement and the statement of the sentenced person, but also of the expulsion or deportation order. According to the text in the certificate only the name of the authority that issued that order, the date of issue and, if available, the reference number have to be provided. In addition sometimes not only the certificate in the language of the Executing State, but also the original of the certificate (in the language of the Issuing State) is requested. Due to this practice the objective of the Framework Decision to facilitate the cross-border enforcement of sentences is not achieved. In fact the proceedings have become more cumbersome due to the new legal framework.
- e. Though the certificate contains on a regular basis already all required relevant information for a decision on the enforcement, **a translation** also of the judgement is requested in most cases, at least partly. A further facilitation of procedure is expected due to restricted translation requirements under Article 23 of the Framework Decision. In principle only the certificate has to be translated in the/an official language of the Executing State. The judgement or essential parts of it have only to be accompanied by a translation into the/an official language of the Executing State, where the respective Member State made a declaration according to Article 23, para.3 of the Framework Decision and where it finds the content of the certificate insufficient to decide on the enforcement of the sentence.

Transfer process

The time limits in Article 12 para.2 and Article 15 para.1 of the Framework Decision are not respected in most cases. To meet the time limit established in Article 15 para.1 an immediate

confirmation of the proposed date/circumstances of the transfer is requested¹².

Another major difficulty is the high costs of transferring sentenced persons from one country to another¹³.

Post transfer considerations

a. Material detention conditions

There are still huge differences between Member States regarding the detention conditions. This might hinder the transfer procedure.

b. Victims

There are still questions about the role and the position of victims in the transfer decision and procedure. What is their role in the transfer process and when should they be informed are only two such questions

Concluding remarks

The need of rehabilitation has inspired the regulations such as the FD 2008/909. In our opinion, in order to improve its implementation, it is necessary to pay attention first to the transposition process.

In this sense, the Report from the Commission established that the level of implementation is far from satisfactory. There are too many states that have not adapted the Framework Decision. At the same time, in the case of those that have done it, the Commission has detected important omissions and discrepancies that should be corrected in order to respect the spirit of the Decision.

Throughout this paper, we have identified the most challenging difficulties presented by the FD as theoretical issues and implementation obstacles. For each category, we have identified concrete issues that may threaten effective and smooth implementation.

In this regard, the Workshop “Operational links between the Framework Decisions ISTEP. Final Conference”, held in Lithuania in 2013 has been very useful to identify them. Together with the problems and obstacles it is necessary to determine possible solutions to them. Several documents, like Minutes of the Experts’ Meeting on the implementation of the Framework Decisions 2008/909/JHA (Transfer of sentenced persons), 2008/947/JHA (Probation and Alternative Sanctions) and 2009/829/JHA (European Supervision Order) Brussels, 14 November 2012 and evaluation reports made by the Commission or the COPEN have contributed to become more aware of the problems and to provide more appropriate solutions.

¹² Austrian delegation to: Working Party on Cooperation in Criminal Matters (Mutual recognition experts) COPEN 151 EUROJUST 98

¹³ EU Framework Decisions related to Detention Issues, Strasbourg, France 20-21 June 2013

Annex 1 Obstacles and difficulties

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

| | | |
|--|--|---|
| Subsequent decisions – in relation to conditional release | Commission report Feb.2014 | Better communication between the Issuing State and the Executing State regarding the conditions. The information can be available also on the EuroPris website for ad-hoc checking. |
| Grounds for refusal – made mandatory or adding more | Commission report Feb.2014 | Change in the transposition laws – attention to ‘may’ |
| No set time limits | Commission report Feb.2014 | Ask the countries to amend the transposition laws. |
| The relationship with the EAW | Commission report Feb.2014 | Ask the Member States to amend the transposition law. |
| Transitional arrangements for after 5 December 2011 | Commission report Feb.2014 | Ask the member States to amend this possibility. |
| Material detention conditions Large differences between Member States | EU Framework Decisions related to Detention Issues (...)Strasbourg, France 20-21 June 2013 | Increase knowledge of other Member States legal systems 2011 Study on material detention conditions (IRCP, University of Tilburg) |
| Victims What is their role in the transfer process and when should they be informed? | EU Framework Decisions related to Detention Issues (...)Strasbourg, France 20-21 June 2013 | |
| Definition of "lawful and ordinary residence" there is no set definition and MS may interpret this in different ways. some MS have one while others have lots. Should this be streamlined? Can every MS have one? The challenge is to know who to contact | EU Framework Decisions related to Detention Issues (...)Strasbourg, France 20-21 June 2013 | |
| Age of sentenced persons There are differences between MS (e.g. an adult in one country may not be an adult in another | EU Framework Decisions related to Detention Issues (...)Strasbourg, France 20-21 June 2013 | |

| | | |
|---|--|---|
| country) | | |
| Competent authorities (CAs) Most MS have established it – how do the other MS know about it? Via factsheets? | EU Framework Decisions related to Detention Issues (...)Strasbourg, France 20-21 June 2013 | EJN website Initiatives like that contribute to solve this problem: COMMISSION STAFF WORKING DOCUMENT Tables "State of play" and "Declarations" <i>Accompanying the document</i> REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the implementation by the Member States of the Framework Decisions 2008/909/JHA, 2008/947/JHA and 2009/829/JHA on the mutual recognition of judicial decisions on custodial sentences or measures involving deprivation of liberty, on probation decisions and alternative sanctions and on supervision measures as an alternative to provisional detention {COM(2014) 57 final} |
| Pre-sentence reports Containing information on the person or social background | EU Framework Decisions related to Detention Issues (...)Strasbourg, France 20-21 June 2013 | |
| Cost of transfer: Where does the money for this come from and who pays? | EU Framework Decisions related to Detention Issues (...)Strasbourg, France 20-21 June 2013 | |

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