



***Implementation of the EU  
Framework Decision on the  
Transfer of Probation Supervision***

**Report of the Expert meeting**

**7<sup>th</sup> -8<sup>th</sup> October 2009**

**Dublin, Ireland**

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## Introduction

The CEP was established in 1981 and now has 30 members. Its primary aim is to 'promote the social inclusion of offenders through community sanctions and measures.' Its membership encompasses practitioners, managers, academics and other stakeholders working in the field of probation and criminal justice. The CEP hosts conferences on probation-related topics with a view to facilitating the exchange of ideas and enhancing pan-European cooperation. Recent conferences themes include 'Resettling Adult Offenders' (Glasgow, 2008), 'Foreigners in European Prisons' (Nieuwersluis, 2008) and 'Electronic Monitoring' (Egmond aan Zee, 2009). The conference reports are published on its website ([www.cep-probation.org](http://www.cep-probation.org)). This document reports on the most recent CEP conference, which was hosted by the Irish Probation Service in Dublin on 8<sup>th</sup> and 9<sup>th</sup> October 2009. The conference theme was: 'The Implementation of the EU Framework Decision on Probation Supervision'.<sup>1</sup>

## Challenges and Opportunities

*Michael Donnellan, Director, The Probation Service*

The presentation opened with a brief overview of The Probation Service in Ireland. The Framework Decision is a 'first for probation.' It provides a framework for action but the policy, legislative and operational procedures now have to be fleshed out. The 27 Member States who have signed up to the Framework Decision are required to implement it by December 2011. Reviewing the statistics on foreign nationals in EU prisons,<sup>2</sup> it was noted that the Framework Decision will present a bigger challenge for countries that have higher numbers of foreign nationals. The Probation Service in Ireland, in collaboration with the Probation Board of Northern Ireland looked at the numbers of foreign nationals on its caseloads on a single day in May 2009. The results revealed that 97% were Irish or UK nationals, meaning that only a very small proportion were from other EU States (which included Romania, Poland, Latvia, and Lithuania, among others).

The Framework Decision is a new and exciting development, which offers a 'third option' for the courts in addition to prison sentences or fines. Transfer of prisoners means simply moving them from one cell to another. The Framework Decision on probation, however, is more challenging because it involves more than simply relocation. A further issue for consideration is the risk of net-widening, that is, a low risk person who would otherwise have received a fine might instead be given a probation order. Notwithstanding these issues, it will yield lasting results by reducing crime and victimisation (N.B. victims are mentioned in Framework Decision). However, if it is not **seen** to be working well, judges may not use it. Therefore, it is important to provide feedback to

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<sup>1</sup> The full text of the Framework Decision along with an outline is available on the CEP website: [www.cep-probation.org](http://www.cep-probation.org)

<sup>2</sup> The World Prison Brief On-Line (2008) is available for download at: <http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/> (accessed 21 October 2009)

judges on the outcomes for probation clients transferred. Publishing statistics on compliance was also proposed.

Probation Services in different Member States will need to become familiar with how each operates. Van Kalmthout and Durnescu (2008) provide an excellent introduction to the probation agencies across Europe.<sup>3</sup> While the numbers of Irish people on probation around Europe is currently unknown the Probation Service receives requests for transfers on a weekly basis. These are undertaken on a voluntary basis at present. A single point of contact was recommended. A review of the Framework Decision will be undertaken in 2014.

The CEP has a central role to play in the exchange of information and expertise through its well-developed communication network and pool of experts. Each State needs to create networks and develop contacts with other relevant States. In Ireland, the preparations for implementation have already begun. New legislation is required to implement the Framework Decision and it has been decided in the Department of Justice, Equality and Law Reform to use this as an opportunity to up-date existing probation legislation. The central challenge is to make trans-national supervision effective most especially in the areas of assessment, programme design, maintaining client motivation and dealing with non-compliance. In conclusion, having a co-ordinated interchange of probation across Member States is a positive development and this expert meeting will begin to address the challenges and opportunities ahead.

### **Welcome address**

*Jimmy Martin, Assistant Secretary, Department of Justice, Equality and Law Reform, on behalf of Mr. Dermot Ahern, T.D. Minister for Justice, Equality and Law Reform,*

The meeting was formally opened and the Minister's apologies for his absence were conveyed. It was suggested that the conference offered an opportunity to increase cooperation and begin the process of implementing the Framework Decision. In Ireland, work on the legislative and administrative aspects of the process has already begun. This is the first legal instrument on probation and it offers a real alternative to prison. Although there are a small number of EU nationals in Irish prisons (225 from 4000) and even fewer on probation, he noted that the percentage is higher in other EU states. The CEP were congratulated for bringing together colleagues to share their experiences of best practice and particular mention was made of the Probation staff members in Ireland who are involved in the CEP. The Probation Service in Ireland was described as a key agency in the criminal justice system in that it works with young and adult offenders in the community and in prison, engages with the courts and various voluntary bodies and is involved in cross-border cooperation.

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<sup>3</sup> Van Kalmthout and Durnescu (2008) *Probation in Europe*. Nijmegen: Wolf Legal Publishers

## Setting the Scene

*Leo Tigges, Secretary General, CEP*

The meeting was first given a brief outline of the CEP, its values and mission, followed by a discussion of a number of recent trends in probation. A growing concern about foreign nationals in European prisons prompted a number of CEP conferences (see for example, *Foreigners in European Prisons*, Netherlands, October 2008).<sup>4</sup> At present, foreign nationals often receive prison sentences because there is no alternative. This is discriminatory. Although the Council of Europe has prepared draft Probation Rules in the past, this is the first time it has been done in a coherent fashion. The Prison Rules had an enormous effect and the draft Probation Rules could have a similar impact by harmonising how probation works across Europe.<sup>5</sup> The significant differences between probation services across Europe will make it more difficult to implement the Framework Decision. There is a need to conduct further research on the effectiveness of probation. The priorities are:

- Data: There are no reliable basic data on foreign nationals in the criminal justice system. It is difficult for countries to provide this information because generic data collection procedures cannot always capture individual probation practices. It was suggested that a study be conducted on the data collection procedures for probation statistics. This would enable countries to generate comparable statistics.
- Recidivism: Recidivism is high and more could be done to encourage resettlement.
- Electronic monitoring: This will be possible but agreements will have to be transferred between countries and involving the electronic monitoring firms. This will require a regulatory framework.
- Best practice: There is a need to disseminate information and foster cooperation across EU.

The trends and priorities outlined here fit together. It is important to show that the Framework Decision can be a success. In order to achieve this, a thorough implementation and strong cooperation are required. If the Framework Decision is shown to be successful, trust will grow in it and probation will be regarded as a valued option with positive effects.

## Roles and Objectives of the EU in relation to the Framework Decision

*David O'Donovan, Deputy Director, The Probation Service*

The presentation began with a historical overview of the events leading to the formulation of the current Framework Decision. The first significant event was the Council of Europe's (1964) *Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders*, which was introduced on a voluntary basis.<sup>6</sup> Only 12 members signed it and just eight ratified it. Some of the signees signed with reservations and availed of opt-out clauses. This

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<sup>4</sup> The conference report can be downloaded from the CEP website: <http://www.cep-probation.org>

<sup>5</sup> When agreed and published The European Prison Rules can be downloaded from the Council of Europe website: <http://www.coe.int>

<sup>6</sup> See Council of Europe website

created difficulties with its implementation and the Convention eventually became a 'dead letter.' Until the mid-1990s, the EU dealt with only economic affairs but the Maastricht Treaty (1993), amended by the Amsterdam Treaty (1999), introduced a third pillar, namely Justice and Home Affairs.<sup>7</sup> The EU aims to create an area of freedom, security and justice which involves mutual recognition of judicial decisions. A programme of measures was agreed in 2004, which made reference to advancing mutual recognition of custodial sanctions and non-custodial sanctions. Article 34 of the Treaty on the European Union requires states to inform and consult each other. Two key themes emerged: coordination and cooperation. These are difficult to achieve in practice as it means that States have to find a way to fit their separate criminal justice systems together. A Framework Decision consists of a structured set of rules designed to facilitate cooperation. Framework Decisions must be agreed by all Member States, are mandatory and must be universally implemented by the date specified. There are no opt-out clauses but there are different pathways and options. The Framework Decision must be transposed into national law in each State. How it is done is a matter for each state but it must be done. The 1964 Convention failed because it was not mandatory and States were allowed to sign with reservations.

The Framework Decision enables the transfer of probation orders between States and provides common rules for the transfer of supervised non-custodial sanctions. In July 2006, a questionnaire was sent by Germany to all EU Ministries asking for information about their probation services. The responses were summarised and sent to each State. The draft text of the Framework Decision was circulated in 2007 as a Franco-German initiative. The text was then debated in the COPEN working group on penal affairs. The final document was agreed by Ministers in November 2008 and subsequently published in the Official Journal of the EU. The key objectives of the Framework Decision are to facilitate the social rehabilitation of sentenced persons; improve victim and public protection; and assist in the application of suitable probation measures and alternative sanctions (see Article 1; see also recital no 8). It is targeted at offenders who do not live in the State where they were convicted and want to return to the State where they ordinarily and lawfully reside.

There is a continuing role for the EU beyond the production of the Framework Decision. The General Secretariat will receive notifications from all Member States, which will be circulated to other States. Member States also have to send information about the domestic legislation transposing the Framework Decision to the Secretariat. The EU Commission will draw up a report on its implementation in December 2014, which may include suggestions for new legislation. The Justice and Home Affairs Council will assess the extent of implementation and may suggest amendments.

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<sup>7</sup> European treaties are available for download at: <http://europa.eu>

## **The Challenges of the Framework Decision on Community Sanctions for Probation Services: Risks, Chances, Pre-conditions**

*Professor Anton van Kalmthout, Professor in Criminal and Penitentiary Law, University of Tilburg*

In this presentation, the key challenges engendered by the Framework Decision were discussed. The Framework Decision only deals with the transfer of community sanctions imposed after trial by the sentencing judge. This excludes many other forms of community sanctions (for example, those used by the police as 'front-door' sanctions and the community sanctions that can be used with conditional pardons or amnesties). The Framework Decision will remain a dead letter unless all 27 States cooperate closely with each other in the process. It was proposed that a European Probation Network, allied with the European Commission, be established. Possible functions for the Network include: supporting the national probation services in implementing the Framework Decision and in preparing and carrying out transfers; ensuring that judges, prosecutors and criminal justice personnel are kept well-informed; gathering information on the use of community sanctions; stimulating the use of the European Probation Rules (currently in draft form); acting as a platform for the exchange of ideas; guaranteeing the rights of clients; and agreeing common definitions.

It was stressed that probation services should be involved in the criminal justice process from the beginning. They should have information about their nationals abroad as well as any foreign nationals in their criminal justice system and should be notified every time a foreign national enters the system (for example, via an electronic database). The study, *Foreigners in European Prisons*, found that foreign nationals were more likely to receive pre-trial detention and, in consequence, were more likely to eventually receive a custodial sentence.<sup>8</sup> From this research, it appears that foreign nationals are under-represented on community sanctions and over-represented in prisons. They are more likely to receive short prison sentences while nationals are more likely to receive community sanctions for similar offences.

The EU recommendations that aim to promote the use of non-custodial sanctions were reviewed. They recognise that the best way to encourage reintegration is to enable the defendant to serve his or her sentence in their home country. Most probation services do not prioritise foreign offenders in their work because it is difficult for them to engage in reintegrative services with foreign nationals who return home. The draft Probation Rules go some way towards addressing this issue. There are difficulties associated with extending mutual recognition to community sanctions because there is so much diversity across Member States. They have a variety of criminal justice systems, different penal policies, and are often resistant to harmonisation of criminal law. There are two particular difficulties: (i) not all states have introduced community sanctions to the same degree, which means that a transfer may not achieve intended reintegration effect. Additionally, a judge

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<sup>8</sup> Van Kalmthout, Hofstee-van der Meulen and Dunkel (eds) (2007) *Foreigners in European Prisons*. (Available from: [www.foreignersinprison.eu](http://www.foreignersinprison.eu))

may not be willing to impose community sanction if he or she knows maximum is lower in executing State. (ii) There is significant diversity between legal structures in different states, for example there are different responses to new offences and breaches in different States.

In conclusion, the Framework Decision will be successful only if it involves close cooperation with the organisations involved in daily practice of community sanctions, along with the expertise to deal with any issues that arise. It should highlight the role of the probation officer in enforcing, supervising and developing community sanctions.

### **Policy Issues: Choices to be Made**

*Ursula Fernee, Assistant Principal, The Probation Service.*

This presentation outlined the process to be followed under the Framework Decision, articulated the choices that need to be made and highlighted the key questions that need to be answered if States are to meet their deadline.

Competent Authority: First, the Framework Decision requires that a Competent Authority be established. Each State needs to decide: (i) whether they will have one or several Authorities, and (ii) who will staff the Competent Authority (e.g. member of the judiciary). The function of the Competent Authority is to both issue and receive orders from courts in other States. This information must be sent by the State to the General Secretariat, from where it will be distributed to all Member States. As a result, it is critical to have clear, effective communication. The Secretariat acts as a 'clearinghouse.' Once the order is made, the sentencing court must complete the *Annex 1* form, providing details of the order. The certificate will then be sent by the sentencing court to the Competent Authority in the issuing state. It will then be forwarded to the Competent Authority in the executing State, which has 60 days to decide whether to accept it. There are four types of measures covered in the Framework Decision (see Article 2): suspended sentences; alternative sanctions (e.g. probation); conditional sentence (e.g. deferred sentences with supervision); and conditional release (early release under supervision after serving part of sentence).

Requirements: *There are 11 requirements (see Article 4), which include a change of residence, restricted access, therapeutic treatment, and so on. The court can choose any of these and each State must be able to provide supervision in all of these areas. The sentencing judge needs to have this information. This raises a number of questions: (i) can each State supervise the standard 11 measures? (ii) Can States offer additional measures? (iii) Do they wish to notify the Secretariat about any additional measures? (If they are notified, other States can choose from them when sentencing an offender.)*

Official languages: The certificate must be translated into the official language of the executing State (Article 21) but States can decide to accept certificates in other languages. Does the State wish to nominate other official EU languages which it will accept?

Executing State: The sentenced person must consent to the transfer process or it will not happen. Under Article 5, the sentenced person does not have to return to his or her home state but may want to go to another Member State (for example, if they want to study or work abroad). The States must decide if the Competent Authority should consent to the above and if so, in what circumstances.

Response from the Executing State: Once agreed, the order must be implemented without delay. The decision to implement an order can be postponed under certain circumstances, for example, if the certificate is incomplete (Article 8). Adaptations can also be made, for example if the order is incompatible with State's legislation. If the issuing State is unhappy with the amendments, they can withdraw the certificate but must do so within 10 days (Article 9). Under Article 10, double criminality means that the offence must be 'criminal' in both states and a list of 32 crimes is provided. There are 11 grounds for refusing recognition, including unavailability of a requirement/treatment; or different ages of criminal responsibility in each jurisdiction (see Article 11). Even if the State refuses to accept the order, they can agree to supervise the sentenced person anyway through an informal arrangement. Again this raises several important questions: (i) Does the member state wish double criminality to be verified in all cases? (ii) Should the Competent Authority agree to supervise without a legal mandate and if so, in what circumstances?

After acceptance: The requirements may need to be changed later to fit with the executing State. If the sentenced person accepts supervision and later, fails to comply, he or she could be sent to prison. The stated norm is that all subsequent decisions will be taken by executing State but some States might want to retain this power within the issuing State. Should the executing State decline responsibility for later decisions on breach?

Premature termination of supervision: The decision may be taken to transfer back to the issuing state where (a) the sentenced person absconds or no longer has a lawful and ordinary residence in the executing state or (b) new criminal proceedings are initiated against the person concerned in the issuing State. Should Member States consider transfer in either or both of these situations and, if so, under what circumstances?

## **Operational Issues Implementing the Framework Decision in the Netherlands.**

Hayke Everwijn, Researcher/ Consultant

The presentation outlined the progress made by the Netherlands to date. A preparatory group has been established and they have prepared a draft of the domestic law (May 2009), are designing the working processes that will be involved, and are discussing possible models for the Competent Authority (for example, deciding who will have input and the impact their involvement will have on their work). They are also collecting statistics on the current numbers

of foreign nationals in order to estimate the expected number of transfers. The main organisational choices that have been made by the Netherlands to date were described (still in draft form). The Public Prosecution Office is likely to act as the Competent Authority and will be advised by the Probation Service. The Netherlands does not envisage a role for the judiciary in deciding on acceptance or adaptations to domestic law as these tasks are in line with the existing responsibilities of the Public Prosecution Office. They have encountered a number of implementation challenges and three were selected for discussion.

Increasing the use of non-custodial options with foreigners living in the EU:

As part of the implementation process, the Netherlands is holding discussions with judges, probation officers, and other criminal justice personnel with a view to changing their working practices and are also asking them for their suggestions. There are several key issues: (i) developing a reliable system of detection of potential transferable sanctions, (ii) creating paths of international information transfer to help avoid the bottle-necks associated with delays in criminal proceedings, (iii) developing mutual trust in the executing possibilities and quality of Member States, and (iv) having easily accessible and reliable information on the executing possibilities in EU States. A central desk could be created to collect information in an accessible form but this might be ambitious in the short-term. Instead, a database could be created between countries that have frequent transfers, which would lead to an EU database over time..

Coordination of the probation tasks: This should be centralised, perhaps by setting up an international probation desk. There are several advantages to centralisation. Given that the initial numbers of transfers will be low, the process would be too fragmented without centralisation. Also, it would help to develop knowledge and experience and thereby lead to better quality and uniformity. Finally, it would increase visibility, approachableness and include a helpdesk function for local probation offices.

Estimating the numbers of expected transfers: There are difficulties associated with estimating the expected numbers of transfers because it is hard to know how judges will respond to the Framework Decision. Currently, the Netherlands has only a small number of transfers – around 10-15 every year. Further research is needed to establish: the extent to which foreigners living in EU get different sentences to native offenders who are comparable on offence, criminal history, and other factors, and the expected level of substitution from other sentences to transferable non-custodial sentences and measures (figures from the Netherlands suggest 50 community service/labour penalties; 10-20 conditional custodial sentences and 5 conditional releases).

In conclusion, the Framework Decision is complex and there are lots of practical issues that need to be resolved, for example tracking the location of the sentenced person and deciding who has responsibility for checking on their residence; setting the criteria for transfers (a general formulation may lead to legal disputes over residence); and determining when the order starts

(it is not stated anywhere that the Issuing State cannot start the order before the transfer but it has been assumed this will not happen). The Netherlands has prepared a draft report '*Report of the First Impact Analysis in the Netherlands*' which will shortly be available in English.

## **Exploring the Policy and Operational Issues**

The delegates were divided into four groups. Two discussed policy issues and two discussed operational issues. There were 1 1/2 hours for discussions on Thursday afternoon and a further hour on Friday morning.

### **Review of findings**

*Gerry McNally, Assistant Director, The Probation Service*

The presentation summarised the results from the two Operational group discussions, beginning with a review of the current state of planning for the Framework Decision across Member States. There was a wide spectrum of knowledge and action evident. Some States are well-advanced, while others have yet to begin. The Framework Decision was welcomed but there was concern about how it would be implemented and at what cost. A number of States already have informal bilateral arrangements in place and some are more structured than others. The Framework Decision will regularise these practices but should build on, rather than replace, existing examples of good practice. Current voluntary practices should be tested and evaluated to identify what works. There are several areas where further information is needed.

First, it is necessary to establish how many foreign nationals are on community sanctions in each State. There are two types of foreign nationals: those who are settled in the country and intend to remain and 'transients' who want to return home or travel on to another State. In addition, it is important for each State to find out where their nationals are in trouble with the law/ in custody and establish what proportion of them wish to return home. Overall, there is a lack of reliable data and it is important to identify ways to address this deficit.

With regards to capacity, it has been assumed that the numbers involved will be small.

It is important to gather quantitative data on the actual numbers involved instead of relying on anecdotal evidence. This will provide the basis for establishing the level of demand the Framework Decision will make on Probation Services. It is clear that some countries will have more foreign nationals than others and it is important to identify the potential impact of the Framework Decision on them. Next, it is important to find out where the demand is likely to originate (i.e. courts or prisons) as, again, this will impact on the resources required. Finally, different levels of priorities are being used – how will this be managed and how will transparency be ensured?

In relation to practice issues, it is important to have good information sharing and communication in order to ensure that equitable Services are delivered across States. It is necessary to establish exactly when supervision begins. Sixty days after the court hearing is a long time and could undermine effective supervision. It is essential to develop a common understanding about what probation is in each jurisdiction in order to maintain mutual trust. In addition, different countries have different rights of movement – how will this impact on the Framework Decision? Next, how informed and real is consent to leave a jurisdiction if the sentenced person is fearful about the consequences of refusal. This could lead to Hobson's choice, where the sentenced person must decide between staying in one jurisdiction where they will be imprisoned or going home and accepting probation supervision.

Suggestions about possible ways to organise information transfer were suggested, namely: (i) an international desk, which would act as the main point of contact and information distributor (internally and externally) (ii) A low-cost network of international desk managers to share knowledge and experience and build trust and reliability. These options raise a number of questions, for example:

- Would it be useful to have a single central information clearinghouse to coordinate, advise and monitor progress across Europe or would it simply duplicate structures? Is it feasible?
- Could a central database of easily accessible, jargon free, information on probation systems, sanctions and options be developed and maintained on each country?
- Practice protocols on information shared between authorities and jurisdictions – who shares what with whom?
- Information in Annex 1 is limited and insufficient for action in practice
- What mechanisms can be created for sharing information on personal background and circumstances, key issues in offence and offending, issues to be addressed
- How can addresses, links, etc be checked prior to transfer?

Information for stakeholders

- How and what to communicate to sentencers, prosecution and defence counsel, offenders and sentence managers on the possible options of supervision transfer? Who needs to know what?
- Whose responsibility is it to inform these stakeholders?
- Who will gather data and report or ensure it is done?
- What impact will the different levels of records and information held across Europe have on practice?
- Given that Member States have different rules on expungement of sentence records, which practice will apply, i.e. is it the record in the issuing or executing state or both?
- How can we deal with different rules including data protection on use and exchange of information?
- What impact will formal arrangements have on current ad hoc arrangements?

Next steps were discussed. It will be necessary to gather and document information on current informal arrangements, consult likely partner jurisdictions, identify the best ways to manage processes in Probation, pilot arrangements before new structures are in place and identify possible obstacles and unintended consequences. In conclusion, it is critical to work on these issues together, not in isolation

### **Workshops: Developing a Blueprint for Implementation**

*Ita Burke, Assistant Principal, The Probation Service*

This presentation summarised the results from the two Policy group discussions. The discussions revealed that different states were at different stages in the process with some further on than others. Time is short and the real benefit of this conference is that it provided an opportunity for policy and practice to come together to see how it will work.

Competent Authority: States had different ideas about what it would look like but none had made final decisions. There needs to be further clarification about the functions and skills (administrative, legal, probation practice) involved. The Competent Authorities need to know how to communicate with each other. These discussions are still at the exploratory stage

Travelling to a 3<sup>rd</sup> State: It would be helpful for each State to have a checklist to deal with this. Some delegates raised the issue of resources to supervise them and were concerned about the possibility of 'jurisdiction shopping.'

Definitions: There was lively debate about what exactly a 'probation measure' is and the term needs further clarification. With regards to the requirements, it was noted that the Probation Service does not always supervise the requirements because some are not typically the responsibility of the Probation Service. There was general agreement about the 11 requirements but some felt there should be additional ones. Finally, some suggested that pre-sentence reports should have a legislative mandate, e.g. order the sentenced person to attend a particular treatment. The issuing State needs to know what requirements can be met in the executing State. It was also clarified that the obligation rests on the individual not the State to attend treatment.

Double criminality: There was also some discussion about 'double criminality,' which means that the crime must be recognised in both the issuing and the executing State. Furthermore, it was observed that the standard list of offences is so broad and covers serious offences that would not necessarily warrant a community sentence. Another issue concerned revocations and breaches. These are the primary responsibility of the executing State and this must be worked into local legislation. Finally, there was some discussion about transposing the Framework Decision into national law. It is important to ensure there is awareness of the legislation across the criminal justice. The Competent Authority needs to be aware that there are different sanctions in different states.

Some additional issues and suggestions emerged from the working group discussions. These are listed below.

### Competent Authority

- Format: Should it be kept separate from the Competent Authority for Prisoners? Should there be one or several? How often will it meet?
- The Competent Authority needs to set out the rules and procedures about how it will operate. They need to develop a blueprint for the actions that need to be taken within the 60 day period, taking into account the agencies that will be involved, their availability, and potential delays. The blueprint should be clear and detailed enough so that personnel at all levels of expertise could implement it. The Competent Authority will have two task lists – one for sending and another for receiving information. It is important to have clear task lists with check lists that can be added to, if necessary. The Prisoner Template, which is already well-developed could inform the process.
- The Competent Authority must ensure it has good communication with the Probation Services and communicate information to key stakeholders.

### Information

- Database: A register of sentencing options with up-to-date country profiles for each jurisdiction could head off early problems if judges knew what sentences were available.
- Hold six-monthly meetings to keep up to date with progress.
- Some suggested creating a central help desk. Should it be an EU desk or a national one?
- It is important to communicate with front-line staff. It was suggested that they should initially be provided with preliminary information and guidelines should be issued at a later stage.

### Legislative

- The following procedure was suggested for drafting the legislation: Start with a bill/ framework, which sets out the scope and end product; consult neighbours' legislation; take legal advice; consult with appropriate bodies/ agencies; feed into government
- Data protection legislation has implications for the transfer of information between States. It will be important to develop a protocol on information sharing.
- The definition of 'therapeutic treatment' is very general and can be interpreted widely.
- The start date for the implementation of the sentence is from the date of acceptance/recognition of the judgement.
- It is unclear whether a sentence could be transferred mid-way through an order. If so, it would be possible for a sentenced person to serve part of the sentence in the issuing State (e.g. if the executing State could not fulfil the requirements imposed by the issuing State).

## Practical

- What should occur if the specified treatment is not available in the executing State or there is a long waiting list? Should it be on the list of requirements?
- Countries without centralised probation services will find it more difficult to implement the Framework Decision. It was suggested that a central desk could be set up to monitor the process and provide quality assurance
- Translation may be an issue for smaller countries in terms of costs and availability of translators

## **Plenary Session**

Role of the CEP: The CEP should have a central role in the dissemination of information and should act as a communication channel. It was suggested that the CEP could gather information from each State about the numbers of EU nationals on probation and in prison and the countries they came from in order to generate an estimate of the numbers of transfers that might be involved. The Framework Decision will have resource implications and it would be useful to have this information. Statistics concerning the numbers of foreign nationals in prisons are available<sup>9</sup> but it is difficult to obtain accurate information on foreign nationals as existing statistics often conflate EU 'citizens' with EU 'residents.' Prison/ probation statistics may not be the best indicators on the numbers eligible for transfer since sentencers may change their policies on foot of the Framework Decision. If so, current data will be obsolete and it will not be possible to extrapolate future numbers from them. In addition to collecting data, discussions should be held with judges, prosecutors, and other criminal justice personnel. Finally, the CEP could lobby the European Commission in an effort to progress the Framework Decision and ensure it is resourced appropriately. .

Communication: It was suggested that it would be useful to set up a network, perhaps through a special category section on the CEP website, containing information about each State. It would be better to use an existing vehicle rather than to develop a new one. At a minimum, each State should put its policy and operations contact names on the site. This would help practitioners to locate the relevant Competent Authority but, in the long-term, it is important to develop a comprehensive atlas. It should contain reliable up-to-date information on the measures used in each country but this is a long-term project. A bid could be made to the EU to develop the database. Key factors are content and ease of access.

Legislative issues: The areas that needed to be targeted have been identified and it is useful to think through the different stages of the process (where is the expertise, etc). Several questions have still to be answered. It would be a good idea to create a forum where the questions Ursula raised in her

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<sup>9</sup> See Van Kalmthout and Durnescu (2008), The World Prison Brief at the International Centre for Prison Studies website: <http://www.kcl.ac.uk/schools/law/research/icps>

presentation can be answered. If the roles, tasks and functions of the Competent Authority resembled those of the Competent Authority for the Framework Decision on prisoners, it might be possible to use the same Competent Authority for both. It is the country's responsibility to implement the Framework Decision and to find their core partners. The CEP could act as a clearinghouse for solutions. It is important that the process begins in the individual States, that is: (i) probation services should work with their Ministry of Justice (ii) Each State needs to find out which foreign nationals it deals with most often and who its core partners will be, and (iii) they should try to influence decisions about the Competent Authority. Since the numbers will be small in the early stages, the initial structure should be as simple as possible.

Follow-up meetings: It would be helpful to organise another meeting in order to update each other on the progress made and share information. Belgium intends to organise a seminar on the issue in July 2010 during their Presidency. The Belgian delegates will send out a questionnaire early next year and hold two further conferences. The CEP will determine whether further meetings are required.

Critical first steps: Research is the primary focus for some. There are problems identifying foreign national prisoners and it is necessary to find out which foreign nationals are sentenced by the courts and how they are sentenced. Another suggestion was to find someone to take responsibility for the Framework Decision.

### **Closing remarks**

*Leo Tigges, Secretary General, CEP; Michael Donnellan, Director, The Probation Service*

Michael Donnellan closed the conference outlining plans for moving forward on the issue. Leo stated that it was an excellent conference and thanked the Probation Service in Ireland for hosting it.