



## **EUROPRIS RESOURCE BOOK**

### **ON THE TRANSFER OF SENTENCED PRISONERS UNDER EU FRAMEWORK DECISION 909**

**EuroPris Framework Decision FD 909 Expert Group**

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## Contents and quick reference links

<b>Introduction</b>	2
<b>Council Framework Decision 2008/909/JHA</b>	3
<ul style="list-style-type: none"> <li>▪ <a href="http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32008F0909">http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32008F0909</a></li> </ul>	
<b>Implementation status of EU Framework Decisions 909, 947, 829</b>	3 - 4
<ul style="list-style-type: none"> <li>▪ <a href="https://www.ejn-crimjust.europa.eu/ejn/EJN_library_statusOfImpByCat.aspx?CategoryId=36">https://www.ejn-crimjust.europa.eu/ejn/EJN_library_statusOfImpByCat.aspx?CategoryId=36</a></li> </ul>	
<b>Competent Authorities</b>	5
<ul style="list-style-type: none"> <li>▪ <a href="https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties.aspx?Id=1540">https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties.aspx?Id=1540</a></li> </ul>	
<b>Staff Training</b>	5
<ul style="list-style-type: none"> <li>▪ <a href="http://steps2.euopris.org/en/home/e-learning-platform/">http://steps2.euopris.org/en/home/e-learning-platform/</a></li> </ul>	
<b>Consent and information about the transfer process</b>	5
<ul style="list-style-type: none"> <li>▪ <a href="http://steps2.euopris.org/en/documents/">http://steps2.euopris.org/en/documents/</a></li> <li>▪ <a href="http://www.euopris.org/fd-909-prisoner-information-sheets/">http://www.euopris.org/fd-909-prisoner-information-sheets/</a></li> </ul>	
<b>European Prison Information System</b>	7
<ul style="list-style-type: none"> <li>▪ <a href="http://www.euopris.org/reports/">http://www.euopris.org/reports/</a></li> </ul>	
<b>Social Rehabilitation</b>	7 - 9
<ul style="list-style-type: none"> <li>▪ <a href="http://steps2.euopris.org/en/documents/">http://steps2.euopris.org/en/documents/</a></li> </ul>	
<b>Time Limits</b>	9
<b>Translation</b>	9
<ul style="list-style-type: none"> <li>▪ <a href="https://www.ejn-crimjust.europa.eu/ejn/ejn_home.aspx">https://www.ejn-crimjust.europa.eu/ejn/ejn_home.aspx</a></li> </ul>	
<b>Interpreting the sentence</b>	10
<b>Practical transfer</b>	10
<ul style="list-style-type: none"> <li>▪ <a href="http://www.euopris.org/resources_package/prisoner-transfer-information-form-version-4/">http://www.euopris.org/resources_package/prisoner-transfer-information-form-version-4/</a></li> </ul>	
<b>Victims</b>	12
<ul style="list-style-type: none"> <li>▪ <a href="http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012L0029">http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012L0029</a></li> </ul>	



## Introduction

This resource book has been developed in conjunction with the EuroPris expert group on Framework Decision 909. It is designed to be used to Competent Authorities to assist in completing transfers of sentenced prisoners. The resource book brings together practical recommendations, best practice and resources developed to assist with the transfer of sentenced prisoners.

Information contained in this resource book is based on practical recommendations and best practice shared by Member States. Guidelines in this document should be read in conjunction with the European Commission Legal Handbook on Framework Decision 909, due to be published in 2018.



## Council Framework Decision 2008/909/JHA

The full text of the Council Framework Decision 2008/909/JHA 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, is available at:

<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32008F0909>

## Implementation status of EU Framework Decisions 909, 947, 829

The table below shows the implementation status as at 31.03.2017 of each EU Member State with regards to the Framework Decision on the Transfer of Prisoners (FD 2008/909/JHA), on Probation and Alternative Sanctions (FD 2008/947/JHA) and on European Supervision Order (FD 2008/829/JHA).

Further information can be obtained via: [https://www.ejn-crimjust.europa.eu/ejn/EJN\\_library\\_statusOfImpByCat.aspx?CategoryId=36](https://www.ejn-crimjust.europa.eu/ejn/EJN_library_statusOfImpByCat.aspx?CategoryId=36)

	<b>FD 2008/909/JHA TRANSFER OF PRISONERS</b>	<b>FD 2008/947/JHA PROBATION AND ALTERNATIVE SANCTIONS</b>	<b>FD 2009/829/JHA EUROPEAN SUPERVISION ORDER</b>
<i>Deadline for implementation</i>	<i>05.12.2011</i>	<i>06.12.2011</i>	<i>01.12.2012</i>
AT (Austria)	YES (01.01.2012)	YES (01.08.2013)	YES (01.08.2013)
BE (Belgium)	YES (18.06.2012)	YES (23.06.2013)	NO
BG (Bulgaria)	NO (process ongoing)	YES (14.03.2012)	YES (27.05.2016)
CZ (Czech Republic)	YES (01.01.2014)	YES (1.1.2014)	YES (01.01.2014)
CY (Cyprus)	YES (23.05.2014)	YES (23.05.2014)	YES (18.11.2016)
DE (Germany)	YES (21.07.2015)	YES (25.07.2015)	YES (23.07.2015)
DK (Denmark)	YES (05.12.2011)	YES (05.12.2011)	YES (01.12.2012)
EE (Estonia)	YES (01.01.2015)	YES (01.01.2015)	YES (01.04.2015)
EL (Greece)	YES (15.11.2014)	YES	YES
ES (Spain)	YES (11.12.2014)	YES (11.12.2014)	YES (11.12.2014)
FI (Finland)	YES (05.12.2011)	YES (05.12.2011)	YES (01.12.2012)
FR (France)	YES (07.08.2013)	YES (17.08.2015)	YES (17.08.2015)



	<b>FD 2008/909/JHA TRANSFER OF PRISONERS</b>	<b>FD 2008/947/JHA PROBATION AND ALTERNATIVE SANCTIONS</b>	<b>FD 2009/829/JHA EUROPEAN SUPERVISION ORDER</b>
<i>Deadline for implementation</i>	05.12.2011	06.12.2011	01.12.2012
HU (Hungary)	YES (01.01.2013)	YES (01.01.2013)	YES (01.01.2013)
IE (Ireland)	NO	NO (process ongoing)	NO (process ongoing)
IT (Italy)	YES (05.12.2011)	YES (26.03.2016)	YES (26.03.2016)
LT (Lithuania)	YES (01.04.2015)	YES (01.04.2015)	YES (01.04.2015)
LU (Luxembourg)	YES (01.03.2011)	YES (20.04.2015)	YES (08.07.2016)
LV (Latvia)	YES (01.07.2012)	YES (01.07.2012)	YES (01.07.2012)
MT (Malta)	YES (01.01.2012)	YES (07.12.2012)	YES (26.08.2013)
NL (Netherlands)	YES (01.11.2012)	YES (01.11.2012)	YES (01.11.2013)
PL (Poland)	YES (01.01.2012)	YES (01.01.2012)	YES (01.12.2012)
PT (Portugal)	YES	YES	YES
RO (Romania)	YES (25.12.2013)	YES (25.12.2013)	YES (25.12.2013)
SE (Sweden)	YES (01.04.2015)	YES (01.01.2016)	YES (01.08.2015)
SI (Slovenia)	YES (20.09.2013)	YES (20.09.2013)	YES (20.08.2013)
SK (Slovakia)	YES (01.02.2012)	YES (01.02.2012)	YES (01.07.2013)
UK (United Kingdom)	YES (05.12.2011)	NO	YES
<b>TOTAL:</b>	<b>26 MS</b>	<b>26 MS</b>	<b>26 MS</b>



## Competent Authorities

Through implementation of Framework Decision 909, individual Member States determine the Competent Authority responsible for issuing and executing certificates for the transfer of sentenced prisoners. In some Member States, the role of the Competent Authority has been adopted by one single agency such as the national prison administration, in others it has been adopted by multiple agencies, responsible for geographic regions such as regional courts.

The European Judicial Network (EJN) maintains a database of Competent Authorities and contact points. This can be referenced at:

<https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties.aspx?id=1540>

The EuroPris expert group have discussed whether it would be possible for Member States with multiple delegated competent authorities, to establish one central authority who could deal with queries regarding relevant courts, queries about legislative processes or chasing responses.

## Staff Training

Through the *Support for Transfer of European Prison Sentences Towards Resettlement* (STEPS 2) project, an e-learning platform was developed to support practitioners using Framework Decision 909.

The e-learning was designed for authorities who are (co-) responsible for the decision making regarding transfer of the execution of the custodial sentence and is divided into 4 chapters:

Chapter 1: objectives, principles and legal framework of Framework Decision 909

Chapter 2: the transfer process

Chapter 3: certificate

Chapter 4: additional information and legislation

The e-learning platform can be accessed in English and Spanish via:

<http://steps2.euopris.org/en/home/e-learning-platform/>

## Consent and information about the transfer process

Framework Decision 909 provides that sentenced prisoners consent to their transfer to another Member State. However, Article 6 of the, sets out the circumstances when the consent of the prisoner is not required, including when:

- the person is a national of the country of the executing state and also lives there;
- the person would be deported to the executing state on completion of their sentence; or,
- the person has fled or otherwise returned there in response to the criminal proceedings.

Where the consent of a sentenced prisoner is not required, the opinion of that prisoner should still be sought and taken into account prior to a certificate being issued. This opinion should be included with the certificate sent to the executing state, with due consideration given to translation of this opinion. In order to give informed consent the prisoner will require information about the process and consequences of transfer.

The process by which Member States obtain the consent and/or opinion of a sentenced prisoner being considered for transfer under the Framework Decision varies, for example



some countries require written consent from the prisoner, whilst others require the prisoner to appear before a judge.

Documents have been developed to communicate the purpose and process of Framework Decision 909. The purpose of these documents is to provide prisoners with additional information about the transfer process and prison regime of the country to which they may be transferred. It is hoped that this will assist in obtaining the prisoner's informed consent to transfer.

- The **Offender Leaflet**, developed by the STEPS 2 Resettlement project provides an overview of the transfer process. Download via: <http://steps2.euopris.org/en/documents/>
- The **Offender Handbook**, developed by the STEPS 2 Resettlement project provides more detailed about the transfer process, prisoner rights and a glossary of technical terms used within the Framework Decision. Download via: <http://steps2.euopris.org/en/documents/>
- The EuroPris expert group has collated **Prisoner Information** sheets to enable prisoners, staff and Competent Authorities to access information about prisons in the executing state and support informed consent for transfer. The information sheets are available in the national language and English and provide an overview of topics such as induction procedures, family visiting and early release arrangements. These can be accessed via <http://www.euopris.org/fd-909-prisoner-information-sheets/>

Further examples of practices used by Member States to provide information on the process and obtain informed consent to transfer include:

- Telephone information line providing prisoners and their families with information on the transfer process. This is supplemented by a factsheet detailing the stages of the transfer process.
- Providing information to sentenced prisoners, explaining that they are being considered for transfer at the earliest possible opportunity. Some Member States have adopted processes that provide information in multiple languages.
- Asking prisoners to sign a consent to transfer declaration. Some Member States have developed and translated a declaration for prisoners to sign, which is regulated by the Competent Authority.
- In cases where prisoners are seeking voluntary transfer or deportation, the issuing state informs them that they will also seek a compulsory transfer to avoid the situation of a prisoner changing their mind later in the process.



## European Prison Information System (EPIS)

The EuroPris Prison Information System (EPIS) has been developed by EuroPris to provide general and operational information on prisons and prison administrations across the EuroPris network. Prison services have direct access and are themselves responsible for updating information on their prison system. The resource provides search functionality across a range of topic areas and countries. Information is contained under the following headings:

- General – including implementation of Framework Decision 909
- Types of treatment/intervention programmes provided
- Population & Staff
- Regime
- Outsourcing
- Technology
- Finance
- Purposeful Activity
- Security & Order
- Welfare
- Throughcare

EPIS also contains an archive of questions and responses to [Knowledge Management System \(KMS\)](#) requests that have been posed and answered by EuroPris members. This provides an operational overview on policy and process within different prison administrations. For more information about KMS please see <http://www.europris.org/kms-guidance/>

EPIS is hosted on the EuroPris website - <http://www.europris.org/reports/>. Access is granted via secure login through recognition of official justice / prison service email addresses. This ensures information is not publicly available. EuroPris has extended domain access to ensure that official email addresses of Competent Authorities are recognised. Requests for access need to be sent to [fraserbryans@europris.org](mailto:fraserbryans@europris.org)

## Social Rehabilitation

The concept of social rehabilitation is central to Framework Decision 909, as articulated in Article 3:

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

However, there is no definition of ‘social rehabilitation’ within the Framework Decision and there is differing opinion about what would contribute towards the social rehabilitation of foreign national prisoners. This issue was further explored by De Montfort University (UK) under [Workstream 3](#) of the STEPS 2 Resettlement project. This can be accessed via <http://steps2.europris.org/en/documents/>

Within this report, the following best practice examples were identified for returning prisoners transferred under Framework Decision 909:

- i. The prisoner should be informed of what the sentence arrangements will be on their return to their country of residence. This should be achieved by the prison authority responsible for transfer under the Framework Decision giving reliable information (for instance, in the form of a leaflet) setting out the legal position of returning prisoners and how their prison sentence will be implemented.



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

The report also identified best practice examples for prisoners transferred out of a country:

- i. There should be one (or more) specialist prisons where people who are to be transferred under Framework Decision 909, are placed so that these may benefit from having experienced staff who are trained to work with people in such circumstances to aid their social rehabilitation.
- ii. The staff in the prison should ensure that the individuals know about their situation and the details of the potential transfer, what their rights are and that they do have a voice in the process.
- iii. One key worker / liaison officer should be appointed to work with each individual before and during the transfer process to ensure continuity and avoid misunderstandings
- iv. At the earliest opportunity – preferably at the beginning of any sentence - the person should be given in writing - translated into their language – a leaflet explaining about the Framework Decision 909 process and how that might impact on them and their social rehabilitation.
- v. As part of the process of transfer, the key worker should obtain the individual's views about the transfer and ensure that these views are heard by the relevant authority that will make the final decision about transfer.



- vi. The key worker should contact the relevant embassy staff to set up a meeting with them (or their representative) to discuss the details and implications for the transfer of the prison sentence.
- vii. The individual should be given assistance and every opportunity to send regular letters to, and have telephone calls with, their family / partner in their country of residence.
- viii. Whilst serving their sentence in the issuing state, the individual should not be discriminated against and should be allowed opportunities to take part in work and programmes, in the same way as a prisoner who is normally resident in that country.
- ix. The key worker – or the prison authorities – must contact the authorities in the individual's home area to explain about the transfer and ensure the relevant documentation is sent to the right place and right person.
- x. The key worker should discuss with the individual the people who should be kept informed about the pending transfer – for example, where appropriate, family / partner / important person in their lives who will be able to assist in their social rehabilitation.
- xi. Once transfer has taken place, the key worker should ensure that relevant information is sent to the authorities in the receiving country.

## Time Limits

The Framework Decision provides a 90 day time limit for the executing state to decide whether it will take over the enforcement of the sentence (Article 12). After which, if the decision has been made to take over the enforcement of the sentence, the Framework Decision provides that the transfer should be completed with 30 days of the final decision (Article 15).

There is no formal mechanism for recording the length of time that enforcement decisions or practical transfers are taking, although some Member States have developed their own internal procedures for measuring the status and progress of requests. However, there is general consensus that the time limits as laid out in the Framework Decision are not being met, which has implications for the number of prisoners being transferred under the Framework Decision.

Issues that are commonly cited as causing delays in the process, meaning that the time limits are not adhered to include: translation, interpreting the sentence, and information exchange with agencies involved in physical transfer arrangements.

## Translation

Under Article 5, the issuing state of the Competent Authority is required to send the certificate and judgement to the executing state. Competent Authorities set out which languages they will accept certificates to be sent to them in – details can be accessed via the European Justice Network - [http://www.ejn-crimjust.europa.eu/ejn/ejn\\_home.aspx](http://www.ejn-crimjust.europa.eu/ejn/ejn_home.aspx)

Translation can be costly and timely to procure and cause delays in Competent Authorities issuing certificates for transfers, in particular relating to the judgement and answering supplementary questions the executing state may have.

Best practice:

- As discussed at EuroPris expert group meetings, it is not necessary to fully translate the whole of the judgment. Instead, to satisfy Article 6, a summary of the judgement should be contained in the certificate and include a description of the main facts of the offence. However, where cases were of particularly high risk, or there were distinct differences in sentencing policy, or where the case was particularly complex, the executing state may still request a translation of the full judgement.



- In cases where a two countries are in regular communication e.g. one country receives a high volume of requests to transfer the sentence from another country, regular communication is encouraged. This could take the form of a conversation between Competent Authorities prior to a certificate being issued, or could be a bilateral meeting so that the issuing state understands the elements of the judgment that are most important for the executing state to receive. This would help to avoid repeated requests for further information.

## Interpreting the sentence

Experts responsible for the transfer of sentenced prisoners have often expressed difficulty in obtaining and understanding early release arrangements in other Member States. To add further complexity, there is a lack of consistency regarding how pre-sentence detention is calculated and accounted for by other Member States.

The Framework Decision is explicit in limitations on sentence adaptation and does not provide scope for sentence conversion or the executing state effectively re-sentencing a prisoner following transfer. A different sentence may only be imposed ('adapted'), when the sentence in the issuing state exceeds that of the executing state. In this case a sentence can only be adapted to that maximum sentence and no lower. In some cases, the executing state may be able to recognise part but not all of the sentence. In these circumstances Chapter II, Article 10, provides for 'partial recognition and enforcement'. The possibility of partial enforcement should be considered before refusing a request in these circumstances. Discussion between the Competent Authorities is essential in these cases.

Best practice:

- Include the date the sentence started (and anticipated release date where applicable) on the certificate as well as the length of sentence, so that it is clear how long has been served and how early release arrangements might be calculated.
- Issuing states should use section (j) of the certificate to elaborate on information relevant to understanding the sentence and early release arrangements in their country. Where possible, this should include information on how time on remand is accounted for, effect of other sentences and whether early release arrangements are mandatory or discretionary and if that would entail release on licence or full discharge.
- If supplementary information on early release arrangements as annex to the certificate, it can be helpful for the issuing state to provide supplementary explanation of how this applies to the particular case.
- For a prisoner with multiple convictions, it should be clearly stated how long the sentence for each conviction is and whether sentences are running consecutively or concurrently. This is especially important where an executing state might not recognise one or more of the offences.
- Summary information on early release arrangements is included within the [Prisoner Information](#) sheets from many countries. These can be accessed via <http://www.euopris.org/fd-909-prisoner-information-sheets/>



## Practical Transfer

Time delays can also be caused by information about the prisoner's immediate needs not being fully declared in the first instance e.g. if they were to have a disability that might affect physical transfer arrangements.

There are multiple agencies responsible for the physical transfer of prisoners in Member States, including prison agencies and Interpol and information needs to be appropriately shared with these agencies to manage the risk and responsibility for the transfer of prisoners.

Member States have cited a lack of escort staff, difficulties with airlines accepting prisoners on flights and transiting through other countries as rationale for the 30-day transfer period not being adhered to. Whilst Member States are seeking to address these issues individually, common concerns should be raised through the EuroPris expert group to develop a collective understanding.

Best practice:

- The issuing state should seek to include any information that would be vital to the practical transfer arrangements or early days in custody, such as physical needs of the prisoner within section (I) of the certificate. This would enable the executing state to be prepared for adequate transportation, accommodation and medical arrangements to be made.
- The [Prisoner Information Document](#), developed by the EuroPris expert group should be completed and accompany a prisoner during transfer. Whilst there are data protection limitations as to what can be included on the form, information that is necessary and proportionate for the safety of the prisoner and accompanying staff should be included. This form can be downloaded from the FD909 group resource pages: [http://www.europris.org/resources\\_package/prisoner-transfer-information-form-version-4/](http://www.europris.org/resources_package/prisoner-transfer-information-form-version-4/)
- Member States adequately scope and seek to ensure they have enough staff capacity to escort prisoners.
- Where Member States have entered into contractual arrangements with private companies for the transfer of prisoners, information on these arrangements should be shared with the issuing state.
- Travel documentation is not always crucial for the enforcement of transfer. It is the responsibility of the issuing state to ensure that the requisite travel documents are available.



## Victims

Under implementation of the [Victims Directive](#) (2012/29), Member States will have considered how victims should be notified of the transfer of a foreign national prisoner – <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012L0029>

The following best practice examples have been provided to the EuroPris expert group:

- Where the victim is known and in contact with either the prison/probation service or a victim-focused organisation in the issuing state, they should be contacted to see if they would like to make a representation regarding the prisoner transfer.
- Where there is not a specific victim-liaison officer, the issuing state should seek to establish the views of the victim at the earliest possible opportunity.
- Where there are known victims' issues, the issuing state should share this information with the executing state at the earliest possible opportunity.



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PRACTICE**

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