



Preparation for prison transfer under Framework Decision 909, 'What can prisons do'?

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EuroPris and FD909 expert group



The EuroPris expert group on the transfer of foreign national prisoners was established in 2012 to assist member states with the implementation of EC FD 2008/909/JHA and examine lessons that could be learned through shared exchange of information.

The European Commission provided additional funding to EuroPris to invite all 28 EU Member States to attend the expert group meeting from 2015.

Experts are representatives of the authority responsible for the transfer of foreign national prisoners which include national prison services, Ministry of Justice and Courts.

What is FD909?

- Framework Decision 2008/909/JHA (FD 909) provides for the transfer of prisoners between Member States of the European Union.
- Transfer can take place with or without the consent of the prisoner concerned.
- The FD 909 provides for the transfer of an individual or the transfer of enforcement of a sentence when a person is already present in the Executing State
- Executing State has only limited grounds on which to refuse to accept the return of its nationals.
- Aim of the FD 909 is to support the social rehabilitation of offenders who find themselves in prison outside their own country.

Differences between CoE Convention and FD909

| Convention (outside EU) | FD909 (within EU) |
|---|--|
| Treaty | EU regulation: mutual recognition (and trust) |
| Voluntary transfer | Compulsory transfer (possible) |
| Two procedures: 1. conversion 2. continued enforcement | One procedure 1. continued enforcement |
| No time limits | Time limits |
| Early or conditional release according the law of executing state | Explicit possibility to take over foreign release date |
| Executing state collects detainee | Issuing state delivers detainee |

Implementation

Implementation status of FD909 and notifications: EU states, excluded Bulgaria

https://www.ejn-crimjust.europa.eu/ejn/EJN_library_statusOfImpByCat.aspx?CategoryId=36

Competent Authority

- In some Member States, the role of the Competent Authority has been adopted by one single agency such as the national prison administration (f.ex. UK, Sweden, Finland), in others it has been adopted by multiple agencies (in most of the EU states), responsible for geographic regions such as regional courts.
- Most of the Member States with multiple delegated competent authorities have established one central authority (f.ex. the Ministry of Justice) who could deal with queries regarding relevant courts, queries about legislative processes or chasing responses.

Grounds for FD909 transfer

- Final judgment (article 1(a))
- Custodial sentence, 'deprivation of liberty' (article (1)(b))
- Executing State is (article 4(1))
 - a) the MS of nationality of the sentenced person in which sentenced person lives
 - b) the MS of nationality, to which, while not being the MS where he/she lives, the sentenced person will be deported, once he/she is released from the enforcement of the sentence on the basis of an expulsion or deportation order included in the judgment or in a judicial or administrative decision or any other measure taken consequential to the judgment; or
 - c) any MS other than a MS referred to in (a) or (b), the competent authority of which consents to the forwarding of the judgment and the certificate to that MS.
- Facilitating the social rehabilitation of the sentenced person (article 3(1))
- Sentenced person is in the Issuing State or in the Executing State (article 3(2))
- Sentenced person has given his/her consent where required (article 4(1)(c), article 6)
- Double criminality verified where required (article 7)
- The Executing State is not refusing the recognition and enforcement based on grounds listed in article 9

The process of transfers

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

Consent and information about the transfer process

- FD 909 provides that sentenced person consent to his/her transfer to another MS. However the consent of the sentenced person is not required (article 6):
 - 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 his/her sentence; or,
 - the person has fled or otherwise returned there in response to the criminal proceedings.
- Where the consent of a sentenced person is not required, the opinion of that person should still be sought and taken into account prior to a certificate being issued.
- The process by which MS's obtain the consent and/or opinion of a sentenced person being considered for transfer under the FD909 varies, for example
 - Requirement of written consent from the prisoner,
 - Requirement of the prisoner to appear before a judge.

Consent + information about the transfer process (1/3)

- Providing 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](http://steps2.euopris.org/en/documents/), developed by the STEPS 2 Resettlement project provides an overview of the transfer process. Download via: <http://steps2.euopris.org/en/documents/>

Consent + information about the transfer process (2/3)

- 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/wp-content/uploads/2016/07/Annex-4.10.-Workstream-2.2-Offender-Handbook.pdf>
 - Which countries agree to transfers?
 - What is the transfer agreement? What does it do?
 - How does it work?
 - What is my country of nationality or permanent residence?
 - What is compulsory transfer? Why transfer? Can I be made to go back if I don't want to? Can I back out of the process?
 - What is a voluntary transfer? Reasons to transfer? How do I apply for a transfer? Do I have to go back to the country I was born in? Can I back out of the process if I had initially agreed?
 - How does the transfer work?
 - What is the process for transfers?
 - Will the transfer be automatic?
 - How long does it take?
 - What information is sent?
 - How does the actual transfer happen?
 - Will I have to serve the same time in prison?
 - Are prison conditions different in my home country?
 - Can I return to the issuing state after transfer and being released?
 - Is the Prisoner Transfer Agreement the only way I can be sent home?
 - What to consider before you apply?

Consent + information about the transfer process (3/3)

- 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.europris.org/fd-909-prisoner-information-sheets/>

Social rehabilitation

- The concept of social rehabilitation is central to FD 909 (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.'
- 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.euopris.org/en/documents/>

Time limits

- No time limit for issuing the FD909 certificate.
- 90 day time limit for the executing state to decide whether it will take over the enforcement of the sentence (article 12).
- The transfer should be completed with 30 days of the final decision (article 15).

Translations

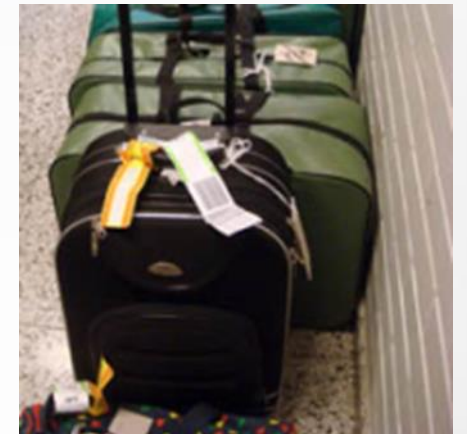
- The Issuing State sends the certificate (FD909 Annex I) and judgment to the Executing State with the language the executing state will accept – details https://www.ejn-crimjust.europa.eu/ejnupload/Practical_info/CS/ImplementationCSNov16.PDF
- Translation can be costly and timely to procure and cause delays in Competent Authorities issuing certificates for transfers, in particular relating to the judgment 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.
 - Regular communication is encouraged.

Interpreting the sentence

- Difficulties in obtaining and understanding early release arrangements in other MS.
- Lack of consistency regarding how pre-sentence detention is calculated and accounted for by other MS.
- FD909 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 (article 8). 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 (article 10). 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.

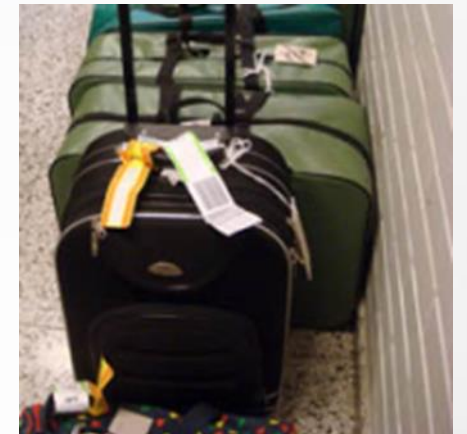
Practical Transfer

- There are multiple agencies responsible for the physical transfer of prisoners in MS, including prison agencies and Interpol. Information needs to be appropriately shared with these agencies to manage the risk and responsibility for the transfer of prisoners.
- 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.
 - The **Prisoner Information Document** should accompany a prisoner during transfer with information that is necessary and proportionate for the safety of the prisoner and accompanying staff should be included. This form is developed by EuroPris expert group and can be downloaded:
http://www.europris.org/resources_package/prisoner-transfer-information-form-version-4/



Practical Transfer

- Best practice
 - MS adequately scope and seek to ensure they have enough staff capacity to escort prisoners.
 - Where MS 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.



Recourse book by EuroPris (in June 2017)

<http://www.euopris.org/expert-groups/framework-decision-2008909jha-transfer-of-prisoners/>

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 (decision makers of the transfers) using FD 909.

The e-learning 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/>

Court of Justice of the European Union

www.curia.europa.eu



Thank You!

