

Expert group on Framework Decision 2008/909/JHA – Transfer of Prisoners

The EuroPris expert group on the FD 909 – Transfer of prisoners met in Brussels on 29th and 30th August 2013 to discuss matters relating to the effective transfer of prisoners under this Framework Decision. The workshop was attended by representatives from 5 Member States that had already transposed this Framework Decision and a representative from the European Commission. The aim of the workshop was to discuss the practicalities of using this Framework Decision and transferring prisoners from one jurisdiction to another. Topics under discussion included: processes for transfer in each member state, challenges and obstacles (management of human rights, justification for enforcing FD 909 and the use of Article 9 to name but a few), provision of information to prisoners and preparing for the transfer processes.

The Group recognised that it was still early days in terms of the implementation of the Framework Decision although most experts now had experience of transferring prisoners both into and out of their countries. Based on this experience, the experts made a number of recommendations intended to help improve the process for both prisoners and those officials involved in the transfer process. These recommendation focus largely, although not exclusively, on the provision of information.

RECOMMENDATIONS

DATABASE

A database should be developed to hold relevant information to support the effective transfer of prisoners under FD 909. This information should be provided on a basic level and should be accessible to all member states to assist them in issuing their transfer certificates correctly.

The database should include:

- Central authorities – Names and contact details
- Declarations
- Early and conditional release arrangements

EuroPris currently provides information on central authorities and declarations via their website¹. It is proposed that this information is collated and presented in a more coherent manner, per country. This information would be managed by EuroPris however the expectation would be that countries are requested by the European Commission to provide updated information on a quarterly basis or more frequently where applicable.

FACTSHEETS FOR STAFF/OFFICIALS

The group propose the development of country factsheets to aid transfers under FD 909. These factsheets would be similar to those developed by the ISTEP project for FD 2009/947/JHA – Transfer of community penalties and alternative sanctions².

¹ <http://www.euopris.org/resources/>

² The ISTEP factsheets can be found at the project website – www.probation-transfers.eu



Basic information should be provided in a 1 or 2 page sheet. Some information may already be available in the outline database described above; however this would provide more specific detailed information per country. The following information was identified by the group as necessary information for officials/staff in countries to be aware of when using FD 909:

- Who to contact in the other jurisdiction? The premise of the FD is that you should be able to make contact with your counterparts in other countries and discuss the case prior to sending the certificate.
- Languages spoken – this will be useful for those calling other countries to know what language they can speak on the telephone, and also what languages the certificates will be sent in.
- Release arrangements should be included on a basic level. Countries should avoid referring to the specific legislation of that country which other member states will not understand or have access to.
- Conditional and early release schemes – as with the point above, only top level information should be provided at this stage and contact can be made if further information is required.
- Prison regime may be important to inform staff (and prisoners) of the available programmes/training to confirm whether they match or are similar enough to those the individual is currently completing in the issuing state.
- Declarations (including double criminality)
- Practical arrangements for transfer. It may not be the central authority that undertakes the actual transfer and therefore the issuing state should be aware of the authority and details of those undertaking the transfer.

FACTSHEETS FOR PRISONERS

In addition to the factsheet for officials/staff, it was also agreed that information should be made available to the prisoners themselves. The group agreed that a one page flyer would be of use to inform them of the process, what to expect and how the transfer will affect them. It was agreed that in order for a prisoner to make representations they need to have enough information to be able to decide whether the situation in the executing state is suitable for them. This will make a significant difference to the transfers that are voluntary and those that are compulsory. The flyer should include:

- 1) A short description of the process of the transfer with information of the competent authorities and of the possibility to appeal (as receiving/executing state),
- 2) Brief information about prison conditions such as regime, education possibilities, rehabilitation programs etc., and
- 3) Information on early release schemes.

The issuing state should provide information to the sentenced person about legal consequences of the transfer (the consequences which are defined in the FD909, such as Articles 6 and 18).

STATISTICAL INFORMATION

It was proposed that Member States record a short set of information regarding transfers and bi-annually are requested by the European Commission to share this data. This information will provide an indication of the extent to which the FD 909 is used, numbers of transfers per country and where the most significant amounts of transfers are going from/going to. EuroPris has the capabilities to manage this information and holding such data provides the opportunity for research and analysis to be undertaken as and when required.

Data to be recorded should include:



- Numbers of transfers
 - Differentiation between voluntary and compulsory transfers
 - Incoming and outgoing requests (e.g. certificates received)
 - Most prominent countries for incoming and outgoing requests.
 - Issues that arise (e.g. countries that do not pay costs of transfer and the effects)
 - National laws that apply in different circumstances and how they affect cases
 - Time limits – are they met?

INFORMATION TO ACCOMPANY PRISONERS

Information cards should be produced to travel with the prisoner. This would provide notification of any medical and risk issues. If there are any issues with required on-going treatment then the executing state must be aware what medication they require and why they are taking it as well as being adequately prepared to look after them. It would also need to cover level of risk that the individual may pose as well as their sentence, their sentence length and any disabilities. Therefore the executing state should have enough information to be adequately prepared for the level of risk the individual poses. In Finland they have a sheet with this basic information with room for the flight details to be added, this is sent prior to the prisoner leaving. EuroPris will be allowed access to this to see whether a generic document can be made and circulated amongst member states.

ARRANGEMENTS WITH EMBASSIES

Member States should look to put in place arrangements with embassies to gain travel documents for prisoners if they don't have them already. There should be a formal note/letter from the relevant authority in the executing to state to show they are a national and they need emergency travel documentation to be transferred back there.

IMPLEMENTING LEGISLATION

The European Commission will consider making the national implementing legislations of every Member State available online. This may assist other Member States in understanding how countries have applied the FD and adapted it into their laws. However the EC receive the laws in the original language and translation is costly and often not reliable. Therefore member states would need to be responsible for approving the translations.

Member States are asked to send their implementing legislation to the European Commission upon implementation of the FD 909 into law.

FACE TO FACE CONTACT

It is very important for each Member State to have the opportunity to meet the relevant employees in other member states who will be dealing with the framework decision. This allows them to communicate and build relationships and trust and therefore makes it easier for transfers to occur more effectively. The European Commission (supported by EuroPris) will host an expert meeting in November 2013 to be attended by all member states which will provide an opportunity for communication and collaboration between the central authorities.