

Discussion paper

Informal Justice and Home Affairs Ministers' Meeting

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Working Lunch (Justice)

Transfer of sentenced persons and social rehabilitation

On 27 November 2008 the Council adopted the Framework Decision 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 (2008/908/JHA).

According to article 29 of the Framework Decision Member States shall take the necessary measures to comply with the provisions of the Framework Decision by 5 December 2011. In its Green Paper of 14 June 2010 ("Strengthening mutual trust in the European judicial area – a Green Paper on the application of EU criminal justice legislation in the field of detention"), the Commission highlighted the importance of the above Framework Decision in the context of mutual recognition instruments and their impact on mutual trust between Member States in the area of detention.

The purpose of the Framework Decision is to establish an effective mechanism for transferring sentenced persons from one Member State to another in order to facilitate their social rehabilitation.

When considering the transfer of a sentenced person, the issuing State shall take into account various factors, such as the sentenced person's attachment to the executing State, whether he or she regards it as his or her linguistic, cultural, social or economic centre, and whether there are family ties or other links to the executing State.

In accordance with the principle of mutual recognition, the executing State shall accept the decision of the issuing State to transfer the sentenced person unless one of the grounds for refusal in the Framework Decision applies.

Effective rehabilitation is not only in the interest of the sentenced person and his or her home country. To the extent that the sentenced person has engaged in for example cross border criminal activity, other Member States have a similar interest in reducing the risk that the person in question relapses into crime.

It seems a reasonable assumption that the sooner the transfer of the sentenced person takes place the greater are the chances of successful social rehabilitation. It is therefore essential to facilitate the effective application of the Framework Decision and to ensure that the necessary procedures and tools for speedy transfer of sentenced persons are in place. The Commission has already held one expert meeting with Member States to discuss the implementation of the Framework Decision and is planning another session in early 2012.

In order to facilitate the implementation and practical use of the Framework Decision the Presidency would like to encourage a debate on the issue of transfer.

Ministers are in this regard invited to give a brief state of play on their implementation of the Framework Decision into national law and to share any lessons learned.

The Presidency furthermore invites ministers to consider the following questions:

- Is there a need for additional measures to facilitate the successful implementation and practical use of the Framework Decision? If so, which measures could be envisaged?
- Could the practical effect of the Framework Decision be improved by establishing general procedures or structures in Member States (e.g. single points of contact)?
- Is there a need for EU measures on social rehabilitation in prisons in order to ensure effective rehabilitation across Europe?