



Strasbourg, 17 October 2011
pc-cp/docs 2011/pc-cp (2011) 15 bil

PC-CP (2011) 15
Bilingual/Bilingue

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Council for Penological Co-operation
(PC-CP)

**MEMBER STATES' COMMENTS ON THE
DRAFT RECOMMENDATION
CONCERNING FOREIGN PRISONERS**

COMMENTS OF THE FOLLOWING COUNTRIES INCLUDED:

1. Denmark
2. England and Wales
3. Germany
4. Latvia
5. Netherlands
6. Norway
7. Russian Federation
8. Switzerland

GENERAL COMMENTS

Denmark: The definition of foreign prisoners is too broad and should not include foreigners, who have a permanent address in the country. Foreigners with a permanent address in the country should be integrated and treated on equal terms with nationals. Recommendations should not use the wording “shall” but the wording “should”. The recommendation should not impose duties on consular representatives.

England and Wales: The UK reserves its position on the application of the recommendation and of the commentary document. We agree with comments from other member states that there is too much detail and prescription of what should be done and how. We would welcome simplification leading to more realistic guidelines for practice.

We have concerns about the mandatory wording of most of the propositions and emphasise that the documents will have the status of recommendations for good practice and do not amount to a legally binding or enforceable convention. It is therefore important that these documents do not use language and are not framed in such a way that may imply they *must* be applied, in order to avoid any potential for legal challenge.

The UK would accordingly wish to see changes to the language to avoid any potential for misinterpretation. The previous recommendation – No R (84)12 – (which these draft documents will replace) used the term ‘should’ throughout and we propose avoiding the term ‘shall’ which currently appears throughout the document and using ‘should’ or ‘where appropriate should’ instead. We also propose that the term “guideline” replace the word “rule” throughout.

It is important for the wording of the recommendation not to be prescriptive so that it does not cut across or conflict with other work ongoing in the EU. Moreover, the UK considers it appropriate that a measure of flexibility is retained in how the recommendation guides certain aspects of policy and operational practice to enable foreign national offenders (FNPs) to be managed in alignment with existing and emerging domestic policies, operational practices and priorities in relation to prisons and offender management.

For example, the UK Government published plans for the development of criminal justice policies in England and Wales in its Justice Green Paper (*Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*). Our management of FNPs as a group within the broader prisoner population needs to be developed in step with these wider policies and approaches. For example, we are considering the impact of new policy initiatives such as plans for more prisoners to work a full working week.

It is notable that whilst the Recommendation aims at reducing the number of foreign nationals in prison, improving their treatment, meeting their needs and supporting social integration after release it does not necessarily reflect the extent to which deportation or removal of a foreign offender to their country of origin is seen as a key outcome by many member states including the UK. We have made specific comments below on where this priority might be better reflected.

Netherlands: Substitute “throughout” the document “shall” by: should.

Norway: As the Recommendation should apply to the Correctional Services only, duties and obligations incumbent on Health Care Authorities should be left out of the Recommendation, throughout the document; Exchange “shall” to “should” throughout the document.

Switzerland: Nous soutenons la volonté de porter une attention particulière au défi spécifique posé par les détenus étrangers. Nous constatons cependant que le projet présenté repose largement sur la Recommandation Rec(2006)2 sur les règles pénitentiaires européennes (RPE) et qu'il n'apporte ainsi que très peu de nouveautés essentielles. Dans la mesure où la Suisse connaît une très forte population carcérale étrangère (en moyenne 70%), les RPE sont, de fait, déjà pleinement appliquées aux détenus étrangers. Un nouvel instrument, supplémentaire aux RPE, relatif à cette catégorie de personnes ne semble donc, à priori, pas nécessaire. Nous prions, par conséquent, le PC-CP d'examiner quelles nouvelles dispositions spécifiques aux détenus étrangers pourraient être adoptées, en complément au chiffre 37 des RPE. Nous espérons que ces remarques puissent aider le PC-CP à formuler une proposition qui se limite aux nouveautés essentielles, strictement nécessaires, et permettre ainsi de renoncer à l'adoption d'un nouvel instrument.

The Committee of Ministers, under the terms of Article 15. b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members, in particular through harmonising laws on matters of common interest;

Considering the large number of foreign prisoners detained in the prisons in its member states;

Recognising the difficulties which these prisoners may face on account of such factors as differences in language, culture, customs and religion, and lack of family links and contact with the outside world;

Desirous of alleviating any possible isolation of foreign prisoners and of facilitating their treatment with a view to their social reintegration;

Considering that such treatment should take into account the special needs of foreign prisoners and ensure that it provides them with opportunities equal to those accorded to other prisoners;

Taking into consideration:

- the European Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5);
- Convention on the Transfer of Sentenced Persons (1983) (ETS No. 112);
- Additional Protocol to the Convention on the Transfer of Sentenced Persons (1997) (ETS No. 167);
- Recommendation No. R (92) 16 on European rules on community sanctions and measures;
- Recommendation R(92)17 concerning consistency in sentencing;
- Recommendation No. R(93)6 concerning prison and criminological aspects of the control of transmissible diseases including AIDS and related health problems in prison;
- Recommendation No. R(97)12 on staff concerned with the implementation of sanctions and measures;
- Recommendation No. R(98)7 concerning the ethical and organisational aspects of health care in prison;
- Recommendation No. R (99) 22 concerning prison overcrowding and prison population inflation;
- Rec(2003)22 on conditional release (parole);
- Recommendation (2006) 2 on the European Prison Rules;
- Recommendation (2006) 13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse;
- Recommendation CM/Rec (2010) 1 on the Council of Europe Probation Rules

Bearing in mind:

The UN Model Agreement on the Transfer of Foreign Prisoners and recommendations on the Treatment of Foreign Prisoners (1985);

The UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Resolution2010/16);

The EU 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;

The EU Council Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions;

The EU Council Framework Decision 2009/829/JHA on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention;

Considering that Recommendation No. R(84) 12 of the Committee of Ministers to member states concerning foreign prisoners needs to be replaced by a new recommendation reflecting the developments which have occurred meanwhile in penal policy, sentencing practice and the overall management of prisons in Europe,

Recommends that governments of member states:

- be guided in their legislation, policies and practice by the rules contained in the appendix to this recommendation, which replaces Recommendation No. R(84) 12 of the Committee of Ministers to member states concerning foreign prisoners;

- ensure that this recommendation and the accompanying commentary to its text are translated and disseminated as widely as possible and more specifically to all relevant authorities, agencies, professionals and associations which deal with foreign offenders, as well as to the offenders themselves.

Appendix to Recommendation CM/Rec (2012) XX

I. Scope and basic principles

Scope

COMMENTS on 1

Netherlands: the scope is unclear / too broad: scope should be limited to people in detention under criminal law; now it relates to any person in whatever form of detention (so also including aliens detention, mentally insane people (who have not committed any crimes), the elderly, who are in a care facility and may be restricted to leave etc.); It is not clear whether recommendation also relates to juveniles; should focus on adults; “foreign prisoner” and “nationality” are not very useful concepts for this recommendation; there are many people in detention who do not have the nationality of the state where they are detained, but do have residency and consequently will not return or be returned to their country of nationality

1.1 This Recommendation applies to foreign offenders who are, or may be, remanded in custody by a judicial authority or who have been, or may be, deprived of their liberty following conviction and are detained in a prison.

1.2. This Recommendation also applies to foreign persons:

- a. who are detained for any other reason in a prison; or
- b. who have been remanded in custody by a judicial authority or deprived of their liberty following conviction and who may, for any reason, be detained elsewhere.

1.3. All foreign persons who are detained in a prison or who are detained in the manner referred in section 1.2.b. are regarded as prisoners for the purpose of this Recommendation.

2. For the purpose of this Recommendation:

COMMENTS on 2

Latvia: Latvia would like to pay attention to the definition on “foreign offender” included in the Draft Recommendation, which provides that the term “foreign offender” means an offender, who does not have nationality of the state in which he or she is subject to criminal proceedings, sanctions or measures or is deprived of liberty, whereas in the Draft commentary on the Recommendation it is said that the term „foreign offender” should be broadly interpreted (Rule 2, p.3) and it can be concluded that it contains not only nationals, but also persons with dual nationality, those awaiting the finalization of decisions on immigration status and

stateless persons. Latvia would like to highlight an aspect that is important as there is also such status as non – citizen in Latvia. If the definition is read without Draft commentary, it can be understood that also a non-citizen can be regarded as foreign prisoner.

Norway: The definition of “offender” and “foreign offender” should be deleted. Attempting to lay down a legal definition for the use as a constitutional element here is, in our view, neither practical, nor necessary or appropriate for realising the aim of this text. Hence, “offender” is suggested being changed with “prisoner”, which is considered to be more suitable in this regard as it covers police custody and pre-trial detention; as well as execution of sentences without being in conflict with the presumption of innocence, etc. (The fact that the EU has used “offender” in some comparable texts does not change the situation. A CoE Recommendation must be in accordance with ECHR and CoE standards.)

a. **an offender** means any person who is alleged to have or who has committed an infringement of the criminal law. The term “offender” shall include anyone facing criminal proceedings and is used without prejudice to the presumption of innocence and the establishment of guilt by a judicial decision.

PROPOSED CHANGES on 2a

Norway: Foreign prisoner means a person who does not have the nationality of (or is resident in) the state in which he or she is subject to criminal proceedings, sanctions or measures or is deprived of liberty.

COMMENTS on 2a

Netherlands: Why are offenders who have already been sentenced and are serving a sentence excluded?

b. **foreign offender** means an offender, as defined in section 2a, who does not have the nationality of the state in which he or she is subject to criminal proceedings, sanctions or measures or is deprived of liberty.

PROPOSED CHANGES on 2b

Netherlands: “(...) state **and does not have legal residency** in which he or she is (...)”.

Norway: Delete

c. **foreign prisoner** means a foreign offender or other foreign person detained in a prison as defined in section 2e.

PROPOSED CHANGES on 2c

Netherlands: “(...) foreign offender detained in a prison (...)”.

COMMENTS on 2c

Netherlands: It is more logical to put this as the last definition (2e) and “or other foreign person” must be deleted, because it does not give any indication of what is meant by it.

d. **judicial authority** means a court, a judge or a prosecutor.

e. **prison** means an institution reserved primarily for detainees who have been remanded in custody by a judicial authority or have been deprived of their liberty following conviction.

Basic Principles

3. Foreign offenders shall be treated with respect for their human rights and with due regard for their particular situation and individual needs.

PROPOSED CHANGES on 3

Netherlands: “(...) be treated with due regard for their particular situation, **due to their detention in a state which is not their home state.**”

COMMENTS on 3

Netherlands: “Human rights” should be deleted, because they have to be respected vis a vis any person on the territory, detained or not. “Individual needs” should be deleted, because they have to be taken into account with any prisoner.

4. Foreign offenders shall be entitled to be considered for the same range of non-custodial sanctions and measures as other offenders and shall not be excluded from consideration on the grounds of their status.

PROPOSED CHANGES on 4

Norway: “A foreign prisoner, **who is not subject to expulsion or international transfers, should** be entitled to be considered for the same range of non-custodial sanctions and measures as other **prisoners** and **should** not be excluded from consideration on the grounds on their status.”

Netherlands: “(...) consideration **solely** on the grounds (...)”

5. Foreign offenders shall not be remanded in custody or sentenced to custodial sanctions on the grounds of their status, but, as for other offenders, only when strictly necessary and as a measure of last resort.

PROPOSED CHANGES on 5

Netherlands: “(...) sanctions **solely** on the grounds (...), only when necessary (...)”

COMMENTS on 5

Latvia: The recommendations included in the Draft Recommendation should not create risks of discrimination towards other prisoners. For example, Latvia agrees on the provision of the Art.5 that “foreign offenders shall not be remanded in custody or sentenced to custodial sanctions on the grounds of their status”, but Latvia would like to stress that it should not create situations that the status of foreign offender excludes application of custody at all.

6. Foreign prisoners shall be entitled to full consideration for early release.

PROPOSED CHANGES on 6

Germany: “**Sentenced** foreign prisoners shall (...)”.

COMMENTS on 6

Germany: La recommandation ne peut s’appliquer à la détention provisoire. Cependant, il ressort seulement des commentaires que la Recommandation vise exclusivement la détention pour purger une peine privative de liberté. Il conviendrait alors de le préciser également dans la Recommandation même.

Netherlands: This is too general. This will be true for foreign prisoners who have legal residency and will not lose that status. They will be allowed to stay. However foreign prisoners who do not have legal residency or will lose their status, will have to leave the country. More specification is necessary.

7. Positive steps shall be taken to avoid discrimination and to address specific problems that foreign offenders may face while subject to community sanctions or measures, in prison, on transfer, and after release.

PROPOSED CHANGES on 7

Germany: “Legal and administrative provisions shall be reviewed to ensure that any discrimination that foreign offenders may face while subject to community sanctions or measures, in prison, on transfer, and after release, is avoided.”

Netherlands: delete

COMMENTS on 7

Germany: Il ne s'ouvre pas à l'esprit ce que l'on entend par mesures positives devant être prises pour éviter toute discrimination des détenus étrangers et pour résoudre les problèmes spécifiques auxquels les détenus peuvent être confrontés lorsqu'ils sont soumis à des sanctions ou des mesures appliquées dans la communauté, en prison, lors du transport, et après la libération. Seuls les commentaires contiennent des observations relatives à la nature et à l'envergure des activités réclamées. Il conviendrait alors de le préciser également dans la Recommandation même.

Netherlands: must be deleted since it is formulated in such a general wording that it has become meaningless.

8. Foreign offenders who so require shall be given access to interpretation and translation facilities, and where appropriate, provided with an opportunity to learn a language that will enable them to communicate more effectively.

COMMENTS on 8

Netherlands: What is meant by access to interpretation and translation facilities? Where should he have access: in prison, during transportation, etc? Why here a general rule and in specific chapters specific rules? For offenders in pre trial detention specific rules on interpretation/translation are applicable. The interpretation/translation should be limited to specific purposes, such as

9. The prison regime shall accommodate the special welfare needs of foreign prisoners and prepare them for release and social reintegration.

PROPOSED CHANGES on 9

Germany: “The prison regime shall accommodate the special welfare needs of foreign prisoners and **should** prepare **those who are deprived of their liberty following conviction** for release and social reintegration **as far as possible.**”

COMMENTS on 9

England and Wales: This provision should include recognition that many FNPs will be subject to deportation or removal at the end of their sentence and that approaches to preparation for release may be adapted accordingly.

Germany: La recommandation prévoyant que l'autorité carcérale devrait soutenir les préparations mises en œuvre en vue de l'intégration sociale respectivement la réinsertion d'un détenu étranger se trouve dans un conflit d'intérêts avec la présomption d'innocence pour ce qui concerne la détention provisoire, la Hauptverhandlungshaft (détention pour garantir les débats dans la procédure accélérée sans existence d'un motif classique de détention) et la Ungehorsamshaft (détention pour non-comparution aux débats sans motif valable nonobstant citation) ainsi que le placement provisoire. La réinsertion sociale présuppose toujours que la culpabilité de la personne détenue a déjà été établie au cours des débats. Tel n'est cependant pas le cas pour ce qui concerne la détention provisoire et les autres catégories de détention du fait qu'elles visent notamment à garantir le bon déroulement de la procédure pénale, donc aussi des débats. Pour ce qui concerne les détenus étrangers (condamnés) devant être expulsés ou souhaitant retourner de leur propre gré dans leur pays d'origine, l'intégration sociale à travers le système pénitentiaire allemand n'est pas possible, ce qui vaut en particulier si le retour s'effectue dans un pays situé hors de l'Europe.

Netherlands: What is meant by “special welfare needs”? Preparing for social integration is impossible if the offender is not legally residing in the State of detention.

10. When it is in the interests of justice and social reintegration foreign offenders shall be transferred to serve their sentences in a state with which they have links, provided that their human rights will not be infringed by doing so.

PROPOSED CHANGES on 10

Germany: “When it is in the interests of justice and the social reintegration of foreign offenders, **such offenders who are deprived of their liberty following conviction** shall be transferred to serve their sentences in a state with which they have links, provided that their human rights will not be infringed by doing so.”

Netherlands: “**Foreign offenders shall be allowed, in accordance with the applicable convention, to apply for transfer to another State to serve their sentence.**”

COMMENTS on 10

Germany: Dans la mesure où il est recommandé que des personnes détenues peuvent purger leur peine privative de liberté à l'étranger respectivement dans les pays avec lesquels ils ont des liens car cela est dans l'intérêt de la réinsertion sociale et de la justice, et à condition que cela n'enfreigne pas leurs droits de l'homme, il se pose la question de savoir, si une telle recommandation peut être transférée à la détention provisoire et ses catégories spécifiques ce que font croire les observations à la section II Règle 13 du document PC-CP (2011) 6 rev. Le fait que la détention provisoire et ses catégories spécifiques servent à assurer le bon déroulement de la procédure s'y oppose le cas échéant. La mise en détention vise à garantir que l'accusé soit rapidement disponible pour participer aux débats ou pour l'exécution d'une peine privative de liberté (après révocation du sursis de l'exécution avec mise à l'épreuve). Ceci présuppose l'exécution de la détention provisoire etc. dans le pays même car un transfert à partir de l'étranger exigerait bien trop de temps pour assurer la présence dans les délais de l'accusé aux débats ou aux fins de l'exécution de la peine. Dans la mesure où l'on se base sur l'idée de la réinsertion pour l'exécution de la détention à l'étranger, il existe un conflit d'intérêts avec la présomption d'innocence lors de la détention provisoire et ses catégories spécifiques comme il a été précisé sous I.9.

11. Specialised training in dealing with foreign offenders shall be provided for the judiciary, prison, probation police staff and consular representatives, as well as all other relevant agencies, professionals and associations which have regular contact with such offenders.

PROPOSED CHANGES on 11

England and Wales: “**Appropriate training** in dealing (...) offenders **should** be (...)”

Netherlands: “(...) be provided, **where appropriate**, for the prison, probation police staff, which have regular contact with such offenders.”

COMMENTS on 11

England and Wales: The UK Government cannot mandate training for the judiciary because it is independent of government so the wording should reflect this. Prison governors are required to ensure that staff are trained appropriately for the roles in which they are deployed.

Netherlands: The judiciary should be deleted because they have their own statute and are in regular contact with foreigners whether they are detained or not. Consular representatives are only dealing with nationals thus to them it is not the prisoner abroad is not a foreigner.

12. Sufficient resources shall be allocated in order to deal effectively with the particular situation and specific needs of foreign prisoners.

PROPOSED CHANGES on 12

Netherlands: delete

COMMENTS on 12

England and Wales: Rule 12 states that sufficient resources shall be allocated to deal effectively with the particular situation and specific needs of foreign prisoners. This goes wider than European Prison Rule 4 (referred to in the Commentary) which says “Prison conditions that infringe prisoners’ human rights are not justified by lack of resources”. We would argue that this rule is not needed or if it is retained, it should adopt the same terms as EPR 4. As elsewhere in the rules we would wish to see “shall” replaced by “should.”

II. Use of remand in custody

13.1. In order to ensure that remand in custody of foreign offenders is used only when strictly necessary and as a measure of last resort, it shall be governed by Recommendation Rec (2006) 13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse.

PROPOSED CHANGES on 13.1

Netherlands: “(...) only when necessary and (...)”

13.2 In particular, foreign offenders:

- a. shall always be considered for alternatives to remand in custody; and
- b. shall not be regarded as a flight risk and remanded in custody solely on the basis of their nationality or paucity of their links with the state in which the offence is alleged to have been committed.

PROPOSED CHANGES on 13.2

Germany: “a. shall, like national offenders, always be considered for alternatives to remand in custody; and b. shall not be regarded as a flight risk and remanded in custody on the basis of their nationality except where further reasons exist which would justify the imposition of custody on a national offender as well.”

Netherlands: “(...) in custody solely on the sole basis of their nationality.”

COMMENTS on 13.2

England and Wales: We do not agree that paucity of links with the state in which an offence was allegedly committed can be entirely disregarded as a potential indicator of risk of absconding. We would wish to reserve the right for courts to make decisions based on the risk of absconding.

Germany: S’oppose à la recommandation, concernant les délinquants étrangers, d’étudier toujours la possibilité de recourir à des mesures alternatives à la détention provisoire (paragraphe 13.2 a), le fait que, s’agissant de la détention provisoire etc., un étranger ne peut se voir attribuer un statut différent de celui d’un ressortissant. La question de savoir s’il existe une alternative à la détention, comme par exemple un sursis à la mise en détention assortie d’obligations, se pose dans la même mesure pour tous les inculpés déjà en raison du principe de la proportionnalité et non pas seulement pour les étrangers. Dans la mesure où il est recommandé de ne pas supposer à l’égard des étrangers un risque de fuite et d’ordonner la détention provisoire sur la base de leur nationalité (étrangère) et vu qu’ils présentent seulement de faibles liens sociaux avec l’État dans lequel l’infraction est censée avoir été commise (paragraphe 13.2 b), cette recommandation se heurte au fait que, selon l’article 112 par. 2 no 2 du Code de procédure pénale allemand, le motif du placement en détention, à savoir le danger de fuite, est supposé exister en particulier, lorsqu’un inculpé ne dispose pas de liens familiaux et sociaux stabilisés susceptibles de s’opposer à la tendance de se soustraire à la procédure pénale par la fuite. De faibles liens sociaux ou familiaux représentent également pour les Allemands un facteur susceptible de constituer le motif de détention qu’est le danger de fuite, parallèlement à d’autres aspects à examiner dans le cas d’espèce concret.

III. Sentencing

COMMENTS on Part III

Denmark: This chapter should be deleted, since it falls under the responsibility of the courts.

England and Wales: We understand that it was agreed by CDPC that this part will be removed.

14.1. In order to ensure that custodial sanctions are imposed on foreign offenders only when strictly necessary and as a measure of last resort, sentencing shall be governed by Recommendation R(92)17 concerning consistency in sentencing. In particular, foreign offenders shall be considered for the same range of non-custodial sanctions or measures as national offenders.

14.2. The judicial authorities shall be provided with pre-sentence reports about the personal circumstances of foreign offenders and their families, the likely impact of various sanctions on them and the possibility and desirability of their being transferred after sentencing.

PROPOSED CHANGES on 14.2

Germany: “If possible, the judicial authorities should be provided with (...)”

COMMENTS on 14.2

Germany: Il semble difficile d’informer les autorités judiciaires avant le prononcé de la peine au sujet de la situation personnelle de l’inculpé étranger, car, en règle générale, la seule source d’information est l’inculpé lui-même. Aller chercher de telles informations par la voie de l’entraide judiciaire n’apparaît guère proportionné et pas non plus prometteur, notamment eu égard à l’obtention d’informations à partir de pays non-européens. Pour ce qui est de purger sa peine dans son pays d’origine – cf. les commentaires – la personne condamnée a toujours la possibilité de former des demandes ou d’adresser des suggestions relatives à l’entraide en matière des exécutions. Comme l’examen de ces questions n’incombe pas au juge chargé de l’affaire, il n’y a nul besoin de disposer de telles informations lors des débats.

Netherlands: Making pre-sentence reports is dependent on the circumstances and the co-operation of the offender. It will not be possible to mention anything concrete about a possible transfer in a pre-sentence report since a transfer requires the acceptance of the receiving State.

14.3. When imposing sentences, account shall be taken of the impact that different sentences may have on individual foreign offenders and on their dependants so as to avoid disproportionate hardship and obstacles to social reintegration.

PROPOSED CHANGES on 14.3

Netherlands: Delete

COMMENTS on 14.3

Netherlands: The imposition of sentences belongs to the core task of independent courts. We do not want any rules directed to courts in this recommendations, although they will take these circumstances into account.

IV. Conditions of imprisonment

Admission

COMMENTS on 15.1 – 15.4

England and Wales: These provisions need to reflect that it will not always be feasible to have to hand information in a language that every FNP will understand. This would not be practical when dealing with over 160 nationalities. However, each prison establishment has access to interpretation and translation services

which can be used where appropriate to ensure that all prisoners understand written local prison policies and practices on reception.

15.1. At admission, foreign prisoners shall be provided with information, in a language they understand, orally and, where possible, also in writing about:

- a. their rights and duties as prisoners including regarding contacts with their consular representatives;
- b. the main features of the prison regime and the internal regulations;
- c. rules and procedures for making requests and complaints;
- d. their rights to legal advice and assistance; and
- e. international transfer possibilities at different stages of the criminal process.

PROPOSED CHANGES on 15.1

England and Wales: “At admission, **or as soon as practicable after admission**, foreign prisoners **should** be provided”

Germany: “At admission, foreign prisoners **should** be provided (...) **In addition, they should be informed in the same way about**

- d. their rights to legal advice and assistance; and
- e. international transfer possibilities at different stages of the criminal process, **if they have not received this information from the court or the prosecutor.”**

COMMENTS on 15.1

Germany: En raison de la multitude de nationalités différentes des détenus dans les établissements pénitentiaires, les obligations d’informations ne pourront pas être remplies de façon continue. Ceci vaut quant à la complexité de la coopération internationale en matière pénale notamment aussi eu égard aux obligations d’informer sur les possibilités de transfèrement vers l’étranger aux différentes étapes de la procédure pénale. Ces obligations incombent en revanche à la juridiction (pendant la procédure intermédiaire et la procédure principale) respectivement au parquet (pendant la procédure d’enquête et la procédure d’exécution).

15.2. Prisoners shall be allowed to keep up-to-date versions of this information in their possession.

PROPOSED CHANGES on 15.2

England and Wales: “**Where provided with information in writing**, prisoners **should** be allowed...”

Germany: “(...) in their possession **insofar as it is available.”**

Netherlands: “(...) in their possession **or to have free access to this information.”**

COMMENTS on 15.2

Germany: Il n’est pas réalisable dans la pratique d’autoriser les détenus à garder en leur possession des versions à jour des informations sur les droits et devoirs, le régime pénitentiaire, des possibilités de présenter des requêtes et des plaintes et les conventions d’entraide judiciaire dans une langue qu’ils comprennent.. Les personnes détenues en Allemagne proviennent de 148 pays. Il n’est pas possible d’équiper chaque établissement d’un matériel d’information pertinent, d’autant plus que les détenus étrangers ne devraient pas avoir, dans leur totalité, un niveau de lecture suffisant. Dans la pratique les établissements se servent de codétenus appropriés pour procéder à la communication des informations à divulguer.

Netherlands: This information may well be available in prisons (e.g. the library). There may also be security reasons that not all prisoners are allowed to keep paperwork of any kind in their possession.

15.3. Immediately after admission, prison authorities shall assist foreign prisoners, who wish to do so, to inform their families, legal advisers, consular representatives and other persons or organisations competent to assist them, of their imprisonment.

15.4. Staff trained to deal with foreign prisoners shall be involved in their admission procedure.

PROPOSED CHANGES on 15.4

Netherlands: “(...) admission procedure, **whenever possible.**”

Allocation

COMMENTS on 16.1 – 16.3

England and Wales: Prison authorities in England and Wales work to prioritise the allocation of FNPs liable to removal or deportation in a number of designated prisons which aim to improve joint working with immigration authorities throughout the removals process. There is also concern that rule 16.2 appears to require that non-resident FNPs should be prioritised for particular prison establishments which might also represent priority locations for some resident FNPs and non-FNP prisoners (for example, where such an establishment was the closest to their home). A more flexible approach to balancing needs and priorities would be more appropriate. Moreover, whilst rule 16.2 is made subject to safety and security requirements, no such qualifications are indicated for rule 16.3 concerning allocating prisoners together on the basis of nationality, culture or religion. The Northern Ireland Prison Service has also flagged that there may be some restrictions in allocation given that NIPS has only three prison establishments. In light of these concerns, we wish to ensure that allocation principles and decisions are reserved by the UK and to see “shall” amended to “should”, as elsewhere.

Netherlands: The following provisions go into too much detail, which makes them unrealistic.

16.1. Decisions regarding the allocation of foreign prisoners shall take into account the views of such prisoners and the need to alleviate their potential isolation and facilitate their treatment and contact with the outside world.

PROPOSED CHANGES on 16.1

Netherlands: “(...) to alleviate their **possible** isolation.”

COMMENTS on 16.1

England and Wales: We would suggest changing the reference to prisoner “views” to prisoner “needs” to reflect that a prisoner might want something that isn’t conducive to their safety and rehabilitation.

Netherlands: Treatment and contacts with the outside world are aspects that are of concern for any prisoner.

16.2. Subject to the requirements of safety and security, and the individual needs of foreign prisoners, consideration shall be given to housing non-resident foreign prisoners in prisons close to transport facilities that would enable their families and consular representatives to visit them.

PROPOSED CHANGES on 16.2

Germany: “(...) consideration **should** be given to housing non-resident foreign prisoners **as far as possible** in prisons close to transport (...).”

Netherlands: Delete

COMMENTS on 16.2

Germany: Lors du choix de l'établissement devant accueillir des détenus étrangers l'aspect de la proximité de missions diplomatiques, consulaires et moyens de transport permettant à leurs familles de leur rendre visite ne joue aucun rôle en Allemagne. Ce sont les programmes généraux d'exécution qui sont déterminants, il est possible d'y déroger pour des motifs de traitement du détenu.

Netherlands: too much detail

16.3. Where appropriate, foreign prisoners should be allocated to prisons where there are others of their nationality, culture or religion.

PROPOSED CHANGES on 16.3

Netherlands: “Where appropriate, consideration should be given to allocate foreign prisoners to prisons where there are other prisoners of their nationality and speak their language.”

Accommodation

17. Decisions on whether to accommodate foreign prisoners together shall be based primarily on their individual needs and the facilitation of their social reintegration, while bearing in mind the requirements of safety and security.

PROPOSED CHANGES on 17

England and Wales: “social reintegration or removal to their country of origin, while ensuring a safe and secure environment for prisoners and staff”.

Netherlands: “shall be based on the requirements of safety and security while taking into account their individual needs.”

COMMENTS on 17

England and Wales: We would wish to reserve the right to accommodate FNPs in line with prison priorities and in such a way to ensure the safety of prisoners and staff. We would like to see the line strengthened from “while bearing in mind the requirements of safety and security” to “while ensuring a safe and secure environment for prisoners and staff”.

Netherlands: Social reintegration is most likely not an option for non legally residing foreign prisoners.

Hygiene

COMMENTS on 18

Germany: Étant donné le changement fréquent de la population carcérale dans les établissements pénitentiaires allemands il n'est pas possible, en règle générale, de prévoir des locaux de détention équipés d'installations sanitaires spécifiques pour les différents groupes culturels de détenus. Tout d'abord, les installations sanitaires à utiliser en commun doivent, elles aussi, assurer, en termes d'hygiène, un standard suffisant pour tous les détenus.

Latvia: According to the Art.9 of the European Convention on Human Rights everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others.

Latvia would like to stress an aspect that prisoners should not be assigned to any extra privileges or better living conditions based on prisoner's belonging to certain religion. It has been affirmed also by the European Court of Human Rights that the Art.9 of the Convention cannot be used as a ground to demand recognition of prisoner's special status if he or she makes complaints regarding prison uniform or compulsory work that infringe religious beliefs (McFeely and others v. the United Kingdom, (1980)DR20, p.44) .

Thus Latvia is in an opinion that proportionality should be taken into account between convicts' rights to practice certain religion and the duty to serve sentence and also between one prisoner's rights to practice certain religion and to respect certain culture requirements and the rights of other prisoners (Art.18). Therefore, being conscious

of the sensitivity of the issue, we would raise a proposal for discussion if it would be more appropriate to use “should” instead of “shall” in this Article.

18.1. Facilities for sanitation and hygiene shall accommodate the cultural and religious preferences of foreign prisoners.

PROPOSED CHANGES on 18.1

Germany: “(...) hygiene **should as far as possible** accommodate the cultural (...)”

Latvia: “hygiene **should** accommodate”

Netherlands: “(...) of foreign prisoners, **while maintaining relevant medical and hygiene standards.**”

18.2. Rules that require prisoners to keep their appearance clean and tidy shall be interpreted in a manner that respects prisoners’ cultural and religious preferences.

PROPOSED CHANGES 18.2

Latvia: “tidy **should** be”

Netherlands: “(...) religious preferences, **while maintaining relevant medical and hygiene standards.**”

Clothing

19.1. Where prisoners are allowed to wear their own clothes and provided that such clothes are compatible with the requirements of safety and security, they may reflect the prisoners’ cultural and religious traditions.

19.2. Clothes provided by prison authorities shall, as far as possible, respect the cultural or religious sensibilities of foreign prisoners.

PROPOSED CHANGES on 19.2

Netherlands: “**Where prison clothes are mandatory, the** prison authorities (...)”

COMMENTS on 19.2

Netherlands: Why is this special for non residing foreign prisoners?

Nutrition

20.1. In addition to providing a nutritious diet that takes account of the cultural and religious requirements of prisoners, prison authorities shall, where possible, provide foreign prisoners with opportunities to purchase and cook food that make their diet more culturally appropriate.

PROPOSED CHANGES on 20.1

Netherlands: “(...) requirements of prisoners **as far as possible**, prison (...)”

COMMENTS on 20.1

England and Wales: The Scottish Government has observed that prisoners would not be allowed to cook their own food, although they may be allowed to work in the kitchens as part of their rehabilitation. This is an example of the provisions being too detailed as to how prisons should operate. We suggest this be removed.

20.2. The times at which meals are served shall be adjusted to meet the religious requirements of foreign prisoners.

PROPOSED CHANGES on 20.2

Germany: “The times at which **served** meals **are taken** shall be adjusted (...).”

Netherlands: Delete

COMMENTS on 20.2

Germany: Nous estimons que les heures des repas ne peuvent pas être adaptées aux traditions religieuses et culturelles de 148 nationalités différentes. Ceci n’est pas réalisable dans la pratique. Le cas échéant, il sera possible d’adapter aux traditions religieuses non pas les heures auxquelles les repas sont servis mais les heures auxquelles ils se prennent effectivement (comme par exemple la consommation du repas après le coucher du soleil).

Netherlands: This is too much detail

Legal advice and assistance

21.1. Foreign prisoners shall be informed in a language they understand orally and, where possible, also in writing, about their right to legal advice in criminal proceedings and other legal matters, in particular those concerning their personal status while in prison and after release.

PROPOSED CHANGES on 21.1

Germany: “(...) they understand orally **or**, where possible, **in writing**, about their right to legal advice in criminal proceedings.”

COMMENTS on 21.1

Germany: Référence est faite aux observations relatives à la Règle 15. 2. Outre cela, le droit allemand prévoit une information écrite et, si une information écrite n’est pas suffisante ou impossible, une information seulement orale, donc l’inverse de ce que prévoit la Règle 21.1. C’est pourquoi une formulation alternative devrait être prévue.

En outre, une extension de l’information à d’autres matières juridiques ne semble pas s’imposer.

21.2. Foreign prisoners shall be informed about possible legal aid and, where necessary, assisted in accessing such legal aid.

21.3. Foreign prisoners who are not fluent in the language in which a judicial, administrative or disciplinary procedure involving them is conducted, shall be provided with a translation of the relevant documents and, if necessary, with an oral account of the contents of these documents in a language they understand.

PROPOSED CHANGES on 21.3

Netherlands: “(...) shall be provided with an oral account of the contents of these documents **by a professional interpreter** in a language (...).”

21.4. An interpreter shall be provided to foreign prisoners who need one in order to communicate with their legal adviser.

PROPOSED CHANGES on 21.4

Germany: “(...) their legal adviser **in matters concerning the criminal proceedings for which they have been imprisoned.**”

COMMENTS on 21.4

Germany: Déjà pour des raisons financières, du point de vue allemand les autorités carcérales ne peuvent faire bénéficier aux détenus étrangers les services d'un interprète dans le contexte de conseils juridiques portant sur des questions concernant leur détention, leurs affaires familiales, le droit des étrangers et toute autre affaire. Un tel droit n'existe que dans la procédure pénale. D'autres droits relèvent de la compétence des représentations étrangères.

21.5. Prison authorities shall facilitate the provision of administrative and legal assistance by outside agencies to foreign prisoners.

PROPOSED CHANGES on 21.5

Netherlands: "(...) by outside **approved** agencies (...)"

COMMENTS on 21.5

Netherlands: Not just any agency is allowed into the prison.

Contact with the outside world

COMMENTS on 22 and 23

England and Wales: We would suggest these rules should be made clearly subject to any security requirements, inserting "Subject to any security requirements should be allowed..." "

22.1. To alleviate the potential isolation of foreign prisoners, special attention shall be paid to the maintenance and development of their relationships with the outside world, including contacts with family and friends, consular representatives, probation and community agencies and volunteers.

PROPOSED CHANGES on 22.1

Netherlands: "To alleviate the **possible** isolation (...) including contacts with family, consular representatives, community agencies and volunteers."

COMMENTS on 22.1

Netherlands: We are dealing with non residing foreign prisoners, whose stay most likely will not continue after their release.

22.2. Foreign prisoners shall be allowed, as far as possible, to use a language of their choice during such contacts.

PROPOSED CHANGES on 22.2

Netherlands: "(...) as far as **compatible with requirements of safety and security**, to use a language (...)"

22.3. Rules for making and receiving telephone calls and other forms of communication shall be applied flexibly to ensure that foreign prisoners who are communicating with persons abroad have equivalent access to such forms of communication as other prisoners.

22.4. Indigent foreign prisoners shall be assisted with the costs of communicating with the outside world.

PROPOSED CHANGES on 22.4

Germany: "Indigent foreign prisoners **should** be assisted with the costs of communicating with the outside world **to an adequate (appropriate?) extent.**"

COMMENTS on 22.4

Germany: Même si les commentaires relatifs à la présente recommandation ont été relativisés, il paraît peu réaliste de supposer que tous les établissements pénitentiaires disposent déjà de la possibilité d'appels vidéo ou de vidéoconférences afin de permettre aux détenus étrangers de communiquer le moins cher possible avec leurs proches. Du point de vue allemand l'expression « doivent » est donc inappropriée.

22.5. In order to optimise contact, visits to foreign prisoners from family members who live abroad shall be arranged in a flexible manner, which may include allowing prisoners to combine their visit entitlements.

22.6. Support and information shall be provided to enable family members who live abroad to visit foreign prisoners.

PROPOSED CHANGES on 22.6

Germany: “As far as possible, support and information should be provided to enable (...).”

Netherlands: Delete

COMMENTS on 22.6

England and Wales: We are concerned about what is meant by "support" and would prefer to see it removed. We would not provide financial assistance to enable families to visit from abroad: it would be for families to seek financial assistance from the authorities or otherwise in the prisoner's own country.

Germany: En sus de leurs fonctions déjà assez complexes les autorités pénitentiaires ne peuvent pas être chargées d'organiser les visites des membres de la famille d'un détenu en provenance de l'étranger. Cette recommandation est peu réaliste. Elle devrait être supprimée.

Netherlands: This is not a task for prisons. It may be a task for consular diplomats but we should not address what they should or should not do in this recommendation.

22.7. Special measures shall be taken to enable foreign prisoners to maintain regular and meaningful contact with the children in their care.

COMMENTS on 22.7

Netherlands: Again this recommendation deals with non residing foreign prisoners.

22.8. In order that prison authorities are able to inform family members of foreign prisoners of the death, serious illness, injury or transfer of such prisoners to another prison or other facility, the authorities shall endeavour to keep up-to-date contact details of such family members.

22.9. Prison authorities shall endeavour to ensure that family members of foreign prisoners have up-to-date contact information about the prison or other facility in which such prisoners are held, unless the prisoner objects.

PROPOSED CHANGES on 22.9

Germany: Delete

COMMENTS on 22.9

Germany: Cette recommandation manque également de réalisme. L'on ne peut attendre des établissements pénitentiaires de fournir régulièrement aux membres de la famille résidant à l'étranger et souhaitant – le cas échéant – rendre visite aux détenus des informations à jour comment contacter les services concernés. Les établissements ne peuvent pas non plus s'occuper activement d'une mise à jour des adresses éventuellement disponibles des membres de la famille qui résident à l'étranger. Cette tâche incombe aux détenus adultes eux-mêmes qui ne sont pas placés sous tutelle !

Norway: 22.9 is contradictory to provisions regarding the duty of secrecy in Norwegian law and is, thus, unacceptable to Norway.

COMMENTS on 23

Latvia: Concerning the right to information (Art.23) in order to provide access to radio and television broadcasts, newspapers, periodicals and other publications in a language the respective prisoner understands, considerable financial means will be necessary, and also there might be situations when there is not such a possibility at all. This is why we would propose to use “should” instead of “shall” in this Article.

23.1. Foreign prisoners shall be allowed to keep themselves informed regularly of public affairs by subscribing to newspapers, periodicals and other publications in a language they understand.

PROPOSED CHANGES on 23.1

Latvia: “prisoners **should** be”

23.2. To the extent possible, foreign prisoners shall be given access to radio and television broadcasts and other forms of communication in a language they understand.

PROPOSED CHANGES on 23.2

Latvia: “prisoners **should** be”

23.3. Probation agencies, approved associations and volunteers providing support to foreign prisoners shall be given access to such prisoners who wish to have contact with them.

PROPOSED CHANGES on 23.3

Latvia: “prisoners **should** be”

Contact with consular representatives

PROPOSED CHANGES on 24.1 – 26.2

Netherlands: Delete

COMMENTS on 24.1 – 26.2

Netherlands: (The recommendation) focus on foreign prisoners who are detained under criminal law. It does not seem appropriate to include specific rules on consular contacts, which are governed by a Convention that leaves it open these contact are handled. Moreover no CoE State can oblige foreign diplomats to observe these rules.

24.1. Foreign prisoners have the right to regular contact with their consular representatives.

24.2. Foreign prisoners shall be given reasonable facilities to communicate with their consular representatives.

24.3. Foreign prisoners who are without consular representation in the country in which they are detained have the right to regular contact and to facilities to communicate with representatives of the state which takes charge of their interests.

24.4. Refugees and stateless prisoners, have the right to regular contact and be given the same facilities to communicate with representatives of the national or international authorities whose task it is to serve the interests of such prisoners.

PROPOSED ADDITION on 25

Russian Federation: “25.4 Competent authorities shall fully provide consular agents with information concerning nationals of the represented states who are detained or under investigation in the country”.

25.1. Prison authorities shall inform foreign prisoners of the role of consular representatives and the actions that may be taken on their behalf by such representatives.

25.2. Prison authorities shall cooperate fully with consular representatives and national or international authorities whose task it is to serve the interests of foreign prisoners.

25.3. Prison authorities shall keep a list of:

- a. contacts between consular representatives and foreign prisoners; and
- b. where foreign prisoners waive their right to such contact.

PROPOSED CHANGES on 25.3

Germany: Delete

COMMENTS on 25.3

Germany: Il n'apparaît nullement pourquoi il serait nécessaire d'établir des listes particulières faisant ressortir dans quels cas et à quelles dates les détenus étrangers souhaitent ou non des contacts avec des représentants consulaires. Les diplomates n'ont pas besoin de la « preuve » ou « trace » de ces visites mentionnée aux commentaires.

Role of Consular Representatives

26.1. With a view to facilitating the exercise of consular functions set out in the Vienna Convention on Consular Relations, consular representatives shall take the following measures in respect of, and with the consent of, foreign prisoners who are their nationals or for whom they are otherwise responsible, as soon as possible after admission:

- a. provide oral and written information which shall include relevant contact details and the available forms of assistance;
- b. regularly visit such prisoners;
- c. offer any assistance possible to promote the social reintegration of such prisoners; and
- d. contribute to the provision of reading materials in languages understood by the prisoners they represent.

PROPOSED CHANGES on 26.1

Germany: “(...) whom they are otherwise responsible,

- a. **as soon as possible after admission** provide oral and written information which shall include relevant contact details and the available forms of assistance;
- b. **visit prisoners according to their needs;**
- c. (...)
- d. contribute **as far as possible** to the provision of reading materials in languages understood by the prisoners they represent.”

COMMENTS ON 26.1

Germany: La réponse à la question de savoir si les représentants consulaires doivent rendre visite aux détenus et combien de fois les ressources disponibles le permettent varie selon chaque cas d'espèce. À la Règle 26.3 (ancienne version) le terme « régulièrement » devrait donc être supprimé et remplacé par l'expression « selon leurs besoins ». La mise en œuvre de la recommandation figurant dans la Règle 26. 5 (ancienne version) pourrait s'avérer en partie difficile si les matériels de lecture demandés ne sont pas disponibles.

26.2. In order to assist foreign prisoners, consular representatives shall keep themselves informed about the laws and regulations governing imprisonment in the state in which they are offering assistance, the services they are able to offer and the mechanisms for the international transfer of such prisoners.

PROPOSED CHANGES on 26.2

Germany: “(...) shall keep themselves **generally** informed about the laws and regulations governing imprisonment **and the conditions of imprisonment** in the state in which they are offering assistance the mechanisms for the international transfer of such prisoners.”

COMMENTS ON 26.2

Germany: Cette recommandation semble aller trop loin et devrait être formulée de façon plus générale, par exemple en prévoyant que les représentations consulaires se tiennent informées des conditions de détention appliquées notamment aux lieux où sont détenus leurs propres ressortissants.

Prison regime

27.1. In order to ensure that foreign prisoners have equal access to a balanced programme of activities additional positive measures shall be taken, where necessary. This may include assistance with interpretation and classes to learn the language in which the activities will be conducted.

27.2. Access to activities shall not be restricted because the prisoners concerned may be transferred, extradited or expelled.

PROPOSED CHANGES on 27.2

Netherlands: Delete

Norway: Delete or “activities **should** not”

COMMENTS on 27.2

Netherlands: The fact that the prisoner may be expelled or extradited does mean that access to certain activities is restricted (especially activities outside the prison).

Norway: 27.2 is – at least partly – contradictory to Norwegian practice and the legal framework regulating execution of sentences. Prisoners who are not going to be reintegrated into the Norwegian society, will at times not benefit from the activities that prisoners who are going to be reintegrated benefit from. Thus Norway would prefer to have it deleted. As a minimum amendment, “shall” must be altered to “should”.

Work

28.1. Foreign prisoners shall have opportunities equal to those of other prisoners in respect of work and vocational training, including programmes outside prison.

PROPOSED CHANGES on 28.1

Netherlands: “(...) in respect of work and vocational training.”

Norway: Delete or “prisoners **should** have”

COMMENTS on 28.1

Denmark: Exceptions should be made for foreign prisoners who are to be expelled.

England and Wales: These provisions need to recognise that access to income-producing work in certain circumstances, for example outside prison, may be restricted by the immigration status of the particular prisoner.

Netherlands: Foreign prisoners without residency are excluded from activities outside the prison.

Norway: 28.1 is – at least partly – contradictory to Norwegian practice and the legal framework regulating execution of sentences. Prisoners who are not going to be reintegrated into the Norwegian society will at times not benefit from the activities that prisoners who are going to be reintegrated benefit from. Thus Norway would prefer to have it deleted. As a minimum amendment, “shall” must be altered to “should”.

28.2. Where necessary, special measures shall be taken to ensure that foreign prisoners have the same access as other prisoners to income-producing work.

PROPOSED CHANGES on 28.2

Norway: Delete or “measures **should** be”

COMMENTS on 28.2

England and Wales: These provisions need to recognise that access to income-producing work in certain circumstances, for example outside prison, may be restricted by the immigration status of the particular prisoner.

Norway: 28.2 is – at least partly – contradictory to Norwegian practice and the legal framework regulating execution of sentences. Prisoners who are not going to be reintegrated into the Norwegian society will at times not benefit from the activities that prisoners who are going to be reintegrated benefit from. Thus Norway would prefer to have it deleted. As a minimum amendment, “shall” must be altered to “should”.

28.3. Foreign prisoners may transfer at least a part of their earnings to family members who are resident abroad.

28.4. Foreign prisoners who work and contribute to the social security system of the state in which they are imprisoned shall be allowed, where possible, to transfer such contributions to their state of nationality or another state.

COMMENTS on 28.4

England and Wales: We are concerned that this rule appears to be a significant departure from European Prison Rule 26.17 (“As far as possible, prisoners who work shall be included in national social security systems”) and furthermore does not reflect current international practice on agreements to help people attain entitlement. The UK does not transfer contributions to other systems for other workers, so would not and could not do so for prisoners. We expect other countries would take the same view, as cross-border social security is not based on the transfer of contributions but on the protection of entitlements and the payment of benefits abroad where the relevant conditions are met. We therefore suggest that this rule should be revised accordingly to reflect current international practice.

In practice, HM Revenue and Customs do not treat prisoners working in prison as subject to national insurance, so no entitlement to contributory benefits accrues and the question of transferring any rights does not arise. However, this provision would have application to prisoners working outside prison who earn enough to pay national insurance and who would be treated the same way as any other migrant worker. A foreign national prisoner would be able to access such work provided their immigration status allowed. It is also possible that some foreign prisoners will have worked legally (in the UK) and gained some legitimate entitlement at an earlier stage.

Norway: 28.4 does in our view, not belong in this context; as it is not a matter of Correctional Services.

Exercise and recreation

29.1. The exercise and recreational activities provided for foreign prisoners shall be consistent with their culture.

PROPOSED CHANGES on 29.1

Germany: “**As far as possible** the exercise and recreational activities provided for foreign prisoners **should** be consistent with their culture.”

COMMENTS on 29.1

Germany: S'agissant de la présente recommandation, le terme « doivent » est également inapproprié car du point de vue allemand la mise en œuvre de la recommandation ne paraît pas réalisable.

Netherlands: What does this mean?

29.2. Prison authorities shall encourage activities that promote positive relations amongst prisoners from the same culture and between prisoners from different backgrounds.

PROPOSED CHANGES on 29.2

Netherlands: “(...) amongst prisoners **regardless of their** backgrounds.”

Education and training

30.1. Foreign prisoners who are not fluent in the daily working languages of the prison shall be given the opportunity and encouraged to learn them.

PROPOSED CHANGES on 30.1

Germany: “(...) of the prison **should as far as possible** be given the opportunity and encouraged to learn them.”

COMMENTS on 30.1

Denmark: Exceptions should be made for foreign prisoners who are to be expelled.

Germany: Il existe des établissements plus petits qui ne sont pas en mesure de permettre à certains détenus étrangers d'apprendre une langue. C'est pourquoi nous estimons le terme « doivent » inapproprié également dans ce contexte.

30.2. To ensure that educational and vocational training is as effective as possible for foreign prisoners, prison authorities shall take account of their individual needs and aspirations, which may include working towards qualifications that are recognised and can be continued in the country in which they are likely to reside after release.

30.3. The prison shall be stocked with reading materials and other resources that reflect the linguistic needs and cultural preferences of the foreign prisoners in that prison and are easily accessible.

PROPOSED CHANGES on 30.3

Germany: “**As far as possible** the prison **should** be stocked with reading materials (...)”

COMMENTS on 30.3

Germany: Aucune bibliothèque d'une prison ne peut disposer de livres dans leurs langues maternelles pour tous les détenus étrangers tenant compte de leurs divers intérêts. Le terme « doivent » paraît donc inapproprié.

Freedom of thought, conscience and religion

31.1. Prison authorities shall facilitate the exercise of religious and other beliefs by foreign prisoners but shall not compel such prisoners to profess any faith or participate in any practice or service.

PROPOSED CHANGES on 31.1

Netherlands: “(...) foreign prisoners **and** shall not compel (...)”

31.2. Prison authorities shall keep a list of approved representatives of the full range of the religions and beliefs professed by foreign prisoners and, as far as it is practicable, grant prisoners access to these representatives.

COMMENTS on 31.2

Netherlands: What is meant by: full range of the religions and beliefs? Any denomination within a religion? What are beliefs?

Health

32.1. Foreign prisoners shall have access to the same health care and treatment programmes that are available to other prisoners.

PROPOSED CHANGES on 32.1

Netherlands: “(...) shall **not be excluded from** health care (...)”

32.2. Sufficient resources shall be provided to deal with specific health problems which may be faced by foreign prisoners.

PROPOSED CHANGES on 32.2

Netherlands: Delete

COMMENTS on 32.2

Netherlands: This is the same for all prisoners.

32.3. Medical and health care staff shall be trained to interact with foreign prisoners and to deal with their individual problems and specific diseases.

PROPOSED CHANGES on 32.3

Germany: “(...) health care staff shall **exercise sensitivity when interacting** with foreign prisoners and **dealing** with their individual problems and specific diseases.”

COMMENTS on 32.3

Germany: Le personnel des services de santé est tenu sans restriction aucune de s'occuper des problèmes individuels de chaque détenu quelque soit son origine. Pour ce qui concerne l'exigence d'une formation spéciale, référence est faite aux commentaires ad 15.4.

32.4. To facilitate the health care of foreign prisoners, attention shall be paid to all aspects of communication. Such communication may require the use of an interpreter who is acceptable to the prisoner concerned and who shall respect medical confidentiality.

32.5. Health care shall be provided in a way that is not offensive to cultural sensitivities and requests by foreign prisoners to be examined by a medical practitioner of the same gender shall be granted as far as possible.

COMMENTS on 32.5

Germany: Dans les établissements pénitentiaires ne travaillent qu'un nombre restreint de médecins. Un traitement par des médecins du même sexe est assuré dans la mesure du possible ce qui ne peut cependant pas toujours être garanti s'agissant d'un traitement par des spécialistes et en cas d'urgence.

32.6. Where possible, psychiatric and mental health care shall be provided by specialists who have expertise in dealing with persons from different religious, cultural and linguistic backgrounds.

32.7. Special attention shall be paid to preventing self-harm and suicide among foreign prisoners.

PROPOSED CHANGES on 32.7

England and Wales: “Attention shall...”

Netherlands: Delete

COMMENTS on 32.7

England and Wales: In the UK there are sound arrangements in place for assessing and responding to risks of self-harm and other issues of vulnerability for all prisoners. As these arrangements are based on assessment of risk, they will give rise to particular attention where this is required. However, it would not be appropriate to provide special attention where this had been assessed as not required. We do not therefore consider it appropriate for the word “special” to be retained in this rule in relation to all FNPs as a matter of course.

Netherlands: This goes for any prisoner.

32.8. Consideration shall be given to the transfer of foreign prisoners, who are diagnosed with terminal illnesses and who wish to be transferred, to a country with which they have close social links.

PROPOSED CHANGES on 32.8

Netherlands: Delete

COMMENTS on 32.8

Netherlands: It is not very realistic that such prisoners will be accepted in their home country.

32.9. Steps shall be taken to facilitate the continuation of medical treatment of foreign prisoners who are to be transferred, extradited or expelled, which may include the provision of medication for use during transportation to that state and, with the prisoners’ consent, the transfer of medical records to the medical services of another state.

PROPOSED CHANGES on 32.9

Netherlands: Delete

COMMENTS on 32.9

Netherlands: Too much detail. These are matters that have to be dealt with on a case by case basis

Good Order, Safety and Security

33.1. Prison staff shall ensure that good order, safety and security are maintained through a process of dynamic security and interaction with foreign prisoners.

COMMENTS on 33.1

Netherlands: What is meant by: “a process of dynamic security and interaction with foreign prisoners”?

33.2. Prison staff shall be alert to potential or actual conflicts between groups within the prison population that may arise due to cultural or religious differences and inter-ethnic tensions.

33.3. To ensure safety in prison, every effort shall be made to enhance mutual respect and tolerance and prevent conflict between prisoners, prison staff or other persons working or visiting the prison, who come from different backgrounds.

33.4. The nationality, culture or religion of a prisoner shall not be determinative factors in the assessment of the risk to safety and security posed by such prisoner.

PROPOSED CHANGES on 33.4

Netherlands: Delete

COMMENTS on 33.4

Netherlands: These factors may very well be relevant in the assessment of the risk to safety and security posed by such prisoner, especially in relation to other prisoners.

33.5. Prison directors shall keep themselves informed of the cultural and religious backgrounds of the foreign prisoners in their institutions.

PROPOSED CHANGES on 33.5

Germany: “(...) in their institutions. Prison staff should also do so in order to prevent conflicts and create an atmosphere of tolerance among prisoners.”

COMMENTS on 33.5

Denmark: Denmark proposes this article to be deleted. Actually we have foreign prisoners from more than 50 different countries and it would not be possible for prison directors to keep themselves informed as said in the article. We find that article 40.1. is sufficient to secure respect for cultural diversity and understanding of the particular problems faced by foreign offenders.

Germany: Il ne paraît pas plausible pourquoi l'obligation de se tenir toujours informé des origines culturelles et religieuses des détenus soit limitée aux directeurs de prisons. Cette obligation existe par principe – bien entendu à tous les niveaux – pour l'ensemble du personnel pénitentiaire.

Women

34.1. Special measures shall be taken to combat the isolation of foreign women prisoners.

PROPOSED CHANGES on 34.1

Netherlands: Delete

34.2. Special attention shall be paid to meeting the psychological and healthcare needs of foreign women prisoners, especially those who have children.

PROPOSED CHANGES on 34.2

Netherlands: “(...) women prisoners who have children.”

34.3. Arrangements and facilities for pre- and post-natal care shall respect cultural and religious diversity.

Children

COMMENTS on 35

Denmark: The rules on children are much more excessive than the European Prison Rules, where according to article 36.1. “Infants may stay in prison with a parent only when it's in the best interest of the infants concerned”. In the Draft Recommendation on Foreign Prisoners it seems to be a right for foreign prisoners to have their infants with them in prison – even without any age limit (Art. 35.2). Only an impartial authority may restrict this right and decide that the infant shall be removed from the prison. We find it important that it is possible - in national rules - to restrict the right for prisoners to have infants with them in prison and to set some age limits. Prisoner's right to have infants with them in the prison should be the same for foreign prisoners as for nationals. Only the best interest of the child should be considered and the decision should be based on the opinion of the prison system (as responsible for the security) as well as the opinion of the social authorities.

35.1. Arrangements and facilities for the care of children who are in prison with their parent shall respect cultural and religious diversity.

PROPOSED CHANGES on 35.1

Netherlands: Delete

COMMENTS on 35.1

Netherlands: This applies to any prisoner.

Norway: 35.1 does not fit the Norwegian system; as we do not put children in prison together with their parents.

35.2. Decisions on whether the child of a foreign prisoner may be removed from prison, shall be taken by an impartial authority that considers the best interests of the child in the light of the views of the parents and the availability of appropriate care arrangements in the state in which the parent is in prison and in the state to which the child may be sent.

COMMENTS on 35.2

Norway: 35.2 does not fit the Norwegian system; as we do not put children in prison together with their parents.

35.3. Special arrangements shall be made to facilitate visits, correspondence and other forms of communication by children with their imprisoned parent, in particular when they live in a different state.

PROPOSED CHANGES on 35.3

England and Wales: “Arrangements shall...”

Netherlands: “(...) children with their imprisoned parent.”

COMMENTS on 35.3

England and Wales: In the UK there are already sound arrangements in place for all children of prisoners as a standard matter so we do not see the need for the word “special” to be retained in this rule.

Netherlands: Deletion as a consequence of the limitation of the definition of foreign offender.

35.4. The legal status of any children in prison with their foreign parent shall be determined as early as possible during the sentence of that parent, with special care being taken to resolve cases where children born in prison have a different nationality to that of their parent.

PROPOSED CHANGES on 35.4

Netherlands: Delete

COMMENTS on 35.4

Netherlands: This is a matter of national laws concerning nationality.

Norway: 35.4 does not fit the Norwegian system; as we do not put children in prison together with their parents.

V. Release

Preparation for Release

36.1. All foreign prisoners shall be prepared for release in a manner that facilitates their reintegration into society whether they are to remain in the state in which they are detained or are to be transferred or expelled.

PROPOSED CHANGES on 36.1

England and Wales: “All foreign prisoners should be prepared for release in a manner that facilitates their reintegration into society.”

Germany: “(...) society **if** they are to remain in the state in which they are detained.”

COMMENTS on 36.1

England and Wales: All foreign national prisoners who are to be released into the community within the UK will receive similar resettlement support to that which will be available for domestic prisoners. We do have prisons which assist prisoners and prepare them for release abroad where this is possible but this specific assistance will not be available for all FNPs and may not be possible in respect of a number of countries. We suggest deletion of the sentence from “whether they are to remain in the state.....”. As elsewhere, we would like “shall” to be changed to “should”.

Germany: Référence est faite aux observations quant à la Règle 9. La 2^{ème} alternative figurant dans la Règle 36.1. devrait être supprimée La Règle 36.4 traite des expulsions de manière adéquate et exacte. Même si la prise de contact avec les autorités du pays d'origine paraît possible au sein de l'UE nonobstant de grandes difficultés, elle ne l'est pas du tout au niveau universel. Du point de vue allemand l'expression « doivent » paraît donc inappropriée.

Netherlands: Unrealistic. The question arises whether this is asking the impossible. How exactly should prisoners be prepared for release in a manner that facilitates their reintegration into society, if that is not the society in the state where they are detained?

36.2. In order to facilitate the reintegration of foreign prisoners into society:

- a. their legal status and their situation after release shall be determined as early as possible during their sentence;
- b. support and care shall be provided by probation and other agencies which specialise in assisting former prisoners to find employment and housing and in meeting their other needs;
- c. where appropriate, prison leave and other forms of temporary release shall be granted to them; and
- d. they shall be assisted in making or re-establishing contact with family and friends.

PROPOSED CHANGES on 36.2 b – d

Netherlands: Delete

COMMENTS on 36.2 b – d

Netherlands: This is unrealistic for non residing foreign.

36.3. Where foreign prisoners are to remain after release in the state in which they were detained, all necessary steps shall be taken to provide them with information about official and other forms of support and to assist them to communicate with the agencies that provide such support.

36.4. Where foreign prisoners are to be expelled from the state in which they are being detained, efforts shall be made, if the prisoners consent, to establish contacts with the authorities in the state to which they are to be sent with a view to ensuring support both immediately upon their return and to facilitate their reintegration into society.

PROPOSED CHANGES on 36.4

Germany: “(...)efforts **should** be made,(...)”

Netherlands: Delete

COMMENTS on 36.4

England and Wales: We believe this goes beyond what we can be reasonably be expected to do. If retained, this should be drafted in a much more flexible way, preferably with the aim of facilitating contact where possible.

Germany: See Comments on 36.1

Norway: 36.4 does, in Norway's view, not belong here; as it regards immigration matters and not correctional services.

36.5. Where foreign prisoners are to be transferred to another state to serve the remainder of their sentence, the prison authorities shall, if the prisoner consents, provide the following information to the state to which the prisoners shall be sent:

- a. the treatment the prisoners have received;
- b. the programmes in which they have participated;
- c. medical records; and
- d. any other information that will facilitate continuity of treatment and care.

PROPOSED CHANGES on 36.5

Netherlands: Delete

COMMENTS on 36.5

Netherlands: No extension of obligations relating to transfer of prisoners.

36.6. Where foreign prisoners are to be transferred to another state to serve the remainder of their sentence, the authorities of the receiving state shall provide the prisoners with information on conditions of imprisonment, prison regimes and possibilities for release.

PROPOSED CHANGES on 36.6

Netherlands: Delete

COMMENTS on 36.6

Netherlands: No extension of obligations relating to transfer of prisoners.

Consideration for release

37.1. Foreign prisoners, like other prisoners, shall be considered for release as soon as they are eligible.

COMMENTS on 37.1

Netherlands: Release will be considered but not be granted to foreign prisoners who do not have legal residency.

37.2. In particular, steps shall be taken to ensure that detention is not unduly prolonged by delays relating to the finalisation of the immigration status of the foreign prisoner.

PROPOSED CHANGES on 37.2

Netherlands: Delete

37.3. Decisions on the release of foreign prisoners shall not be influenced negatively by their immigration status, by the paucity of their social links or by the possibility that they may be transferred or expelled.

PROPOSED CHANGES on 37.3

Netherlands: Delete

COMMENTS on 37.3

Netherlands: Release will be considered but not be granted to foreign prisoners who do not have legal residency.

Release from Prison

38.1. In order to assist foreign prisoners to return to society after release, practical measures shall be taken to provide appropriate documents and identification papers and assistance with travel.

PROPOSED CHANGES on 38.1

Netherlands: Delete

COMMENTS on 38.1

England and Wales: Arrangements on release from prison. If foreign national prisoners are being released into the community in the UK they will only need the same documents as any other prisoner although their passport will normally be returned to them. We suggest changes be made to reflect these arrangements.

Netherlands: Prison authorities have no responsibilities in this respect. Responsibility lies with the prisoner himself and the authorities of the home state and most likely an immigration service will be involved.

38.2. Where foreign prisoners will return to a country with which they have links, the consular representatives shall assist them in this regard.

PROPOSED CHANGES on 38.2

Germany: "(..) in this regard **if the prisoner consents.**"

Netherlands: Delete

Norway: Delete

COMMENTS on 38.2

England and Wales: We fully support consular representatives assisting with the provision of documents to enable prisoners to return to their country of origin. In the UK, if foreign prisoners are being deported/removed or repatriated to serve their sentence they will have their passport or travel document which will have been obtained from their embassy/consulate by the UK Borders Agency.

Germany: Le consulat ne peut intervenir qu'avec l'accord des détenus.

Netherlands: See above no obligation for consular assistance

Norway: 38.2 should be deleted, cf. CDPC's general comment regarding consular services.

International Transfers

COMMENTS on 39

England and Wales: We note that the June meeting agreed that this part is to be deleted as it is dealt with by CoE convention and an EU framework decision.

39.1. Foreign prisoners shall be advised about the possibility of serving their sentence in a state with which they have links and of the steps that they need to take to initiate transfer to such a state.

39.2. Where foreign prisoners qualify for transfer to another state, the prison authorities shall advise them about the consequences of such a transfer and assist them to seek independent advice.

PROPOSED CHANGES on 39.2

Denmark: “Where foreign prisoners qualify for transfer to another state, **they should be advised** about the consequences of such a transfer and **assisted** to seek independent advise **about such consequences**”.

Netherlands: “Where foreign prisoners **has indicated that he wants to** qualify for transfer to another state, the prison authorities shall **assist them to seek advice.**”

COMMENTS on 39.2

Denmark: In Denmark the decision on transfer to another state is not taken by the prison authorities. Therefore advising and assistance will not be given by the prison authorities.

Netherlands: The rest is not the responsibility of the prison authorities.

39.3. To ensure that transfers facilitate the social reintegration of foreign prisoners and do not infringe upon their human rights, the prisoners’ views, the prisoners’ familial, linguistic, cultural, social and economic links and the conditions of imprisonment in the proposed enforcing state shall be taken into account before the final decision is made.

39.4. States shall cooperate to facilitate transfers where they are in the interests of justice and the social reintegration of the prisoners concerned.

PROPOSED CHANGES on 39.4

Netherlands: Delete

COMMENTS on 39.4

Netherlands: No additional rules on transfer in this recommendation

VI. Persons who work with foreign offenders

PROPOSED CHANGES on VI

Netherlands: Delete the titles: Selection, Training and Specialisation

COMMENTS on VI

England and Wales: (40 and 41.1 – 41.4) We would expect staff to be able to demonstrate appropriate skills for working with a diverse prisoner population, and a respect for cultural diversity and knowledge of the appropriate law would be an expectation in many roles. However, we would not expect staff to receive specific language training given that there are 160 nationalities represented in our prisons, and consider references to linguistic abilities, specific selection criteria and particular training requirements for specific staff to be overly prescriptive, particularly bearing in mind that a wide variety of staff in a prison are likely to work at some point and in varying capacities with foreign national prisoners. We suggest specific selection criteria and training requirements are deleted.

Norway: Chapter VI is far too detailed (and also includes consular services) and should, hence, be deleted. It is not for the CDPC to regulate consular services.

Selection

40. Persons who work with foreign offenders shall be selected on criteria that include cultural sensitivity, interaction skills and linguistic abilities.

PROPOSED CHANGES on 40

Netherlands: Delete

Training

41.1 Persons who work with foreign offenders shall be trained to respect cultural diversity and to understand the particular problems faced by such offenders.

41.2. Such training may include learning languages spoken most often by foreign offenders.

41.3 Training programmes shall be evaluated and revised regularly to ensure they reflect changing populations and social circumstances.

PROPOSED CHANGES on 41.3

Netherlands: Delete

41.4 Persons who work with foreign offenders shall be kept informed of current national law and practices and international and regional human rights law and standards relating to the treatment of foreign offenders, including this Recommendation.

Specialisation

42.1. Appropriately trained persons shall be appointed to engage in specialised work with foreign offenders and to liaise with the relevant agencies, professionals and associations on matters related to such offenders.

42.2. States shall provide their consular representatives with information and training on legal measures and practical problems that affect such offenders and the provisions of this Recommendation.

VII. General provisions

PROPOSED CHANGES on VII including 43.1 – 43.3

Netherlands: Delete

43.1. The authorities shall be responsible for the collection of empirical data related to foreign offenders.

43.2. Such data shall be collected in a way that allows regional and other comparisons.

43.3. Any policies and practices related to foreign offenders shall be based on such data and research and their effectiveness and impact of shall be evaluated regularly.