

Report for 38th PCCP Working Group Meeting
20-22 May 2025, Madrid
Dr. Róisín Mulgrew

Revision of the 2012 Recommendation concerning foreign prisoners
DEFINITIONS, SCOPE AND BASIC PRINCIPLES

This report contains my preliminary views on the revision of the definition and basic principles sections of Recommendation CM/Rec(2012)12 concerning foreign prisoners and the reasons for these suggested changes, having regard to the views expressed by the PCCP Working Group at its 37th Meeting, in Malta, contemporary regional penal policy, human rights law and scholarship.

The preamble requires review following the completion of the draft Recommendation.

A. DEFINITIONS

1. Inclusion of Residency

I agree with Michael's proposal to open the scope of the Recommendation to foreign nationals with residency, when appropriate, by simply removing the reference to residency in Rule 1a to read 'foreign person means any person who does not have the nationality of the State **where they are**'

My formulation also includes the adoption of gender-neutral language – using they instead of he/she [this should be reviewed throughout upon completion]

This approach accords with UN definition - 'prisoners who do not carry the passport of the country in which they are imprisoned' to include those that have lived in the country for long periods of time, but have not been naturalised and those who have recently arrived covering those who travel to commit an offence, long-term residents without citizenship and short-term legal residents.¹

Important to review carefully at the end of the revision process to ensure the provisions accurately cover the Recommendation's contents and objectives and that consistent terminology has been used throughout.

2. Definition of probation

To reflect the expanded scope of the revised Recommendation to include probation, it is necessary to include a new sub-section in Rule 1 with a definition of probation

For example CM/Rec (2010)1 defines probation as 'the implementation in the community of sanctions and measures, defined by law and imposed on an offender. It includes a range of activities and interventions, which involve supervision, guidance and assistance aiming at the social inclusion of an offender, as well as at contributing to community safety'

This could be adopted or adapted to form a new Rule 1 g?

Or, we could adopt a similar approach to that taken in CM/Rec (2025)2 on the promotion of the mental health of prisoners and probationers and the management of their mental disorders

3. For the purposes of this recommendation, "prisoners" are incarcerated persons to whom the European Prison Rules (Recommendation Rec(2006)2-rev) are applicable.

¹ UNODC, Handbook on Prisoners with Special Needs, 2009 at 79.

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4. For the purposes of this recommendation, “probationers” are persons subject to probation as defined in the European Probation Rules (Recommendation CM/Rec(2010)1).

B. SCOPE

Need to broaden to include probation explicitly or is it sufficient as it is?

Current rule...

3. This recommendation applies to foreign prisoners and to other foreign persons who are not in prison but who are subject to criminal proceedings, and criminal sanctions and measures, and who may be or have been deprived of their liberty.

C. BASIC PRINCIPLES

1. Current Basic Principles

In the current 2012 Recommendation, the Basic Principles read as follows in Rules 3-12

II. Basic principles

3. Foreign prisoners shall be treated with respect for their human rights and with due regard for their particular situation and individual needs.
4. Foreign suspects and offenders shall be entitled to be considered for the same range of non-custodial sanctions and measures as other suspects and offenders; they shall not be excluded from consideration on the grounds of their status.
5. Foreign suspects and offenders shall not be remanded in custody or sentenced to custodial sanctions on the grounds of their status, but, as for other suspects and offenders, only when strictly necessary and as a measure of last resort.
6. Foreign offenders sentenced to imprisonment shall be entitled to full consideration for early release.
7. Positive steps shall be taken to avoid discrimination and to address specific problems that foreign persons may face while subject to community sanctions or measures, in prison, during transfer and after release.
8. Foreign prisoners who so require shall be given appropriate access to interpretation and translation facilities and the possibility to learn a language that will enable them to communicate more effectively.
9. The prison regime shall accommodate the special welfare needs of foreign prisoners and prepare them for release and social reintegration.
10. Decisions to transfer foreign prisoners to a State with which they have links shall be taken with respect for human rights, in the interests of justice and with regard to the need to socially reintegrate such prisoners.
11. Sufficient resources shall be allocated in order to deal effectively with the particular situation and specific needs of foreign prisoners.
12. Appropriate training in dealing with foreign suspects and offenders shall be provided for the relevant authorities, agencies, professionals and associations which have regular contact with such persons.

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2. Preliminary Remarks

These remain solid and valid foundational principles.

However, developments in the law, policy and practice in relation to foreign suspects and offenders since the adoption of the 2012 Recommendation have made it important to strengthen them in some regards and to (re)focus on key aspects.

A review of regional policy and scholarship since 2012 reveals that the issues of rehabilitation and discrimination require stronger and more direct attention in the Basic Principles. Further, the professional role played by prison and probation staff needs to be highlighted.

As there is a need to add more precise basic principles in some regards, and that some current rules replicate substantive provisions, there is scope to consolidate/merge the rules on sanctions and sentencing.

My recommendations (at this point) include the same number of basic principles, with substantive changes, and reasons for suggestions, set out below.

3. Recommendations for the Basic Principles and Explanations

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

I recommend that this rule be retained as it currently is - this speaks to the important need to consider equality of treatment of foreign suspects and offenders as a group but also the specific needs of individuals. Foreign offenders represent a very diverse group. For example, in Zurich, Switzerland, between 2015-2020, inmates originated from 170 countries.²

The rule also continues to situate the Recommendation's approach within a human rights frame.

While this is consistent with all Council of Europe penal policy recommendations, it is important to note that since the adoption of the 2012 recommendation the restructuring of prison estates and the adoption of agreements to rent penal capacity in other countries to house foreign prisoners have raised concerns about the protection of the fundamental rights of foreign offenders.

For example, the agreement between Denmark and Kosovo for the rental of penal space for convicted persons from non-EU countries due to be deported, has been viewed with caution, with warnings that this form of 'commodification of foreign national prisoners can undermine the protection of prisoners' rights' including legal certainty and the non-derogable protection against torture and inhuman treatment.³

² Naser Musli et al, 'The Swiss Prison Study (SWIPS): Results from a registry-based study of prisoners in Switzerland from 2015 to 2020' (2024) 154 *Swiss Medical Weekly* 3351.

³ See Linda K Minke and An-Sofie Vanhouche, 'Renting cells abroad: Understanding contemporary policy responses to prison overcrowding' (2023) 24(1) *Nordic Journal of Criminology* 1-16.

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*4. Foreign suspects and offenders shall be considered for the full range of non-custodial sanctions and measures and shall not be remanded in custody or sentenced to custodial sanctions solely on account of their legal status **or lack of ties to the prosecuting state.***

This new rule reduces the number of provisions in the 2012 Recommendation by merging 2012 Rules 3 and 4. It avoids duplication of the substantive provisions in the body of the Recommendation, while retaining the fundamental principles.

These issues remain fundamentally important given the continued over-representation of foreign nationals in detention. The over-representation of foreign nationals in European penal systems has been attributed to ‘significant and substantive differences in the assignment of pre-trial detention to foreign citizens which affects the risk of future incarceration’ with disparities linked to foreign defendants being viewed as flight risks and assumptions that reduced attempts to participate in trial mean punishment can begin during PTD.⁴ Foreign nationals are treated differently to ‘citizens’ by courts in several European countries.⁵ They are more likely than citizens to have their case referred to court, and subsequently, to be detained, convicted and imprisoned.⁶ Nationality grounds often made it virtually impossible to avoid detention due to assumptions about flight risk, a focus on facilitating deportation with detention, and a failure to examine the personal circumstances of the defendant. There have also been concerns about the racist or xenophobic approach of some members of the judiciary in some countries.⁷ Other factors identified include annoyance with foreign nationals considered to have entered the country to commit crime, logistical factors in relation to non-citizens without permanent residence and a view that reintegration is less needed as defendants are unlikely to remain in the country.⁸

Despite the Council of Europe’s 2012 Recommendation’s position that a lack of ties alone is not sufficient to conclude there is a flight risk,⁹ and the EU Commission’s Recommendation that a lack of links with the prosecuting states alone is not sufficient to direct pre-trial detention on the basis of flight risk¹⁰ - foreign nationals remain disproportionately affected by the overuse of pre-trial detention, and the denial of alternatives to custody due to perceptions about flight risk (lack of family ties).¹¹

⁴ Hilde Wermink, Michael T Light and Alicja P. Krubik, ‘Pre-Trial Detention and Incarceration Decisions for Foreign Nationals: a Mixed-Method Approach’ (2022) 28 *European Journal on Criminal Policy and Research* 367-380.

⁵ Anthea Hucklesby, Miranda Boone and Christine Morgenstern, ‘Foreign Nationals in pre-trial detention: A neglected and urgent challenge’ in Christine Morgenstern, Walter Hammerschick and Mary Rogan (eds) *European Perspectives on Pre-Trial Detention: A Means of Last Resort?* (London: Routledge, 2023).

⁶ Michael T. Light and Hilde Wermink, ‘The Criminal Case Processing of Foreign Nationals in the Netherlands’ (2021) 37(1) *European Sociological Review* 104-120.

⁷ Catherine Heard and Helen Fair, *Pre-Trial Detention and its Over-Use: Evidence from Ten Countries* (November 2019) at 19-20.

⁸ Michael T. Light and Hilde Wermink, ‘The Criminal Case Processing of Foreign Nationals in the Netherlands’ (2021) 37(1) *European Sociological Review* 104-120.

⁹ Rule 13.2b.

¹⁰ European Commission Recommendations (EU) 2023/681 of 8 December 2022 on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions, para 18.

¹¹ See Fair Trials, ‘Assessing Flight Risk in pre-trial detention decision-making: A European Comparative’ June 2024 at 4, 9, 17, 55-6.

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*5. Foreign offenders sentenced to imprisonment shall be entitled to full consideration for early **and compassionate** release.*

Former rule 6 becomes rule 5 and only a minor adjustment is suggested – the simple introduction of the words ‘and compassionate’ release. This basic principles aligns with 2020 EPR Rule 37.8 ‘Sentenced foreign prisoners shall be entitled, as with all other prisoners, to full consideration for early release as soon as they are eligible’.

The recommendation to include compassionate release reflects the importance of recognising the greying of the prison population across the region and the human rights implications of continued detention in cases of terminally ill prisoners.

6. Positive steps shall be taken to avoid discrimination in the treatment of foreign suspects, offenders and prisoners, particularly on the grounds of nationality and legal status.

This amended rule – now rule 6 - re-affirms the non-discrimination principle.

There is a strong legal and policy basis underpinning the non-discrimination principle in Europe. Further, there is a consistent explicit reference to the prohibition of discrimination on the grounds of nationality or other status. This includes treaty law - Article 14 European Convention on Human Rights – ‘the enjoyment of rights and freedoms... shall be secured without discrimination on any grounds such as ... national or social origin... or other status’ and recommendations of the Committee of Ministers – see Rule 6 CM/Rec (2017) 3 on Community Sanctions and Measures - no discrimination on basis of nationality and ‘other status’ and need to take account of ‘diversity and distinct and individual needs of suspects and offenders’; Rule 7 CM/Rec (2014) on electronic monitoring – no discrimination in imposition or execution of EM on grounds of ... nationality, national ...origin etc; Rule 23 CM/Rec (2012) 5, the European Code of Ethics for Prison Staff, ‘prison staff shall ... not discriminate against any prisoners on the basis of ... national or social origin... or other status’.

In particular, the revised 2020 European Prison Rules state in Rule 13 that the rules should be applied impartially, without discrimination on any ground such as ... national ... origin, or other status. This reflects the position adopted in Rule 2(1) of the Nelson Mandela Rules – ‘rules shall be applied impartially. There shall be no discrimination on the grounds of ... national or social origin, or any other status’.

Literature and reports published since 2012 have repeatedly demonstrated, however, discriminatory treatment and/or outcomes for foreign nationals in contact with the criminal justice system with respect to remand to custody, experience in prison, access to healthcare etc, primarily on the basis of their nationality or non-citizen status.¹²

¹² See Catherine Heard and Helen Fair, *Pre-Trial Detention and its Over-Use: Evidence from Ten Countries* (November 2019) at 20; Paul Gavin, ‘Not “proper” foreign national prisoners: Irish ex-prisoner reflections on imprisonment in England and Wales’ (2024) 71(1) *Probation Journal* 26-46; Emma Kaufman, ‘Finding Foreigners: Race and the Politics of Memory in British Prisons’ (2012) 18 *Population, Space and Place* 701-714; David M Doyle, Joe Garrihy, Maria Cleary and Muiread Murphy, ‘Foreign national prisoners, discrimination and race relations in Irish prisons’ (2024) 57(2) *Journal of Criminology* 143-160; Luisa Ravagnani and Carlo Alberto Romano, ‘Foreigners in the probation system in Italy: Substantial Discrimination and Challenges’ (2024) 16(1) *European Journal of Probation* 53-67.

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*7. Positive measures shall be taken to meet the distinctive needs foreign persons may have while subject **to probation**, community sanctions or measures, in prison, during transfer and after release.*

This reaffirms the need to take positive measures to ensure equal and equitable treatment in practice and aligns with the wording used in the 2020 EPR Rule 37.1 - ‘positive measures shall be taken to meet the distinctive needs of prisoners who are foreign nationals’.

It adds probation to the scope of the rule.

8. Foreign prisoners who so require shall be given appropriate access to interpretation and translation facilities and the possibility to learn a language that will enable them to communicate more effectively.

Retain as it is – no proposed change.

9. The prison regime shall provide a balanced programme of activities and prepare foreign offenders for release and social reintegration into free society.

This rule was amended as the new BP 7 now addresses distinctive needs.

More importantly, it was considered important to highlight the need to ensure the provision of a balanced programme of activities that provides a sufficient quality regime for all prisoners and one that is designed to prepare foreign prisoners for release.

The preamble of the European Prisons Rules highlights these fundamentally important concepts and calls for states to ensure that prisons ‘offer meaningful occupational activities and treatment programmes to inmates, thus preparing them for their reintegration into society’.

It is also clear from European penal policy that it is a basic and fundamental principle that ‘**all** detention’ be managed ‘so as to facilitate the reintegration into free society of persons who have been deprived of their liberty’ (EPR Rule 6). Moreover, the ‘regime for sentenced prisoners shall be designed to enable them to lead a responsible and crime-free life’ (EPR Rule 102.1). This is also reflected in the Nelson Mandela Rules (‘purposes of a sentence of imprisonment... can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release’... Rule 4(1)).

The European Prison Rules make it clear that the ‘regime offered for all prisoners shall offer a balanced programme of activities’ (Rule 25.1). This is also considered to be a crucial element in ensuring good order (Rule 49). Moreover, individual sentence plans should include work, education, other activities and preparation for release (Rule 103.4) and preparation for the release of sentenced prisoners relies on these elements and liaison with service in society (Rule 107).

The ‘duties of staff go beyond those required of mere guards and shall take account of the need to facilitate the reintegration of prisoners into society after their sentence has been completed through a programme of positive care and assistance’ (Rule 72.3 EPR).

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Yet, research has repeatedly shown that rehabilitation and reintegration objectives have been overshadowed by removal focus for foreign offenders.¹³ Further, the restructuring the prison estate to facilitate deportation and embedding border management within prisons have changed the focus from rehabilitation to removal, resulting in the exclusion of foreign nationals from rehabilitation efforts and objectives.¹⁴

Structuring penal process and the prison estate on the basis of nationality or citizenship has created both a ‘practical and philosophical shift’ in priorities and prison organisation.¹⁵ This approach has ‘repercussions not only for the administration of punishment and its function, but also for the ideals of justice and equality’.¹⁶ Aas argues that this restructuring of the penal estate has resulted in the ‘emergence of a differentiated, two-tier approach to criminal justice and a more exclusionary penal culture directed at non-citizens’ that has shifted ‘the nature of penal intervention from reintegration into the society towards deportation and territorial exclusion’.¹⁷

Foreign nationals often are not able to access a balanced programme of activities even where these are available for national prisoners. Even if a good programme of activities is available – those unable to speak the national language are likely to be excluded and therefore experience a new pain of imprisonment – the pain of non-participation.¹⁸ A lack of meaningful activities and the often-remote location of foreign national prisons can also considerably add to pains of imprisonment experienced by FN prisoners.¹⁹ Croux et al argue that this can be alleviated by moving from a supply driven model to the creation of tailor-made activities for foreign national prisoners.²⁰

The 2012 Recommendation refers to the need to ensure ‘equal access to a balanced programme of activities’ and requires that prison authorities should ‘where necessary, take specific measures to counter the difficulties foreign prisoners may face’ (Rule 26.1). Further, access to activities ‘shall

¹³ Rob Canton and Nick Hammond, ‘Foreigners to Justice? Irregular migrants and foreign national offenders in England and Wales’ (2012) 4(3) *European Journal of Probation* 4-20; Róisín Mulgrew, ‘The role of oversight in foreign-national only prisons: counteracting the disapplication of rehabilitation’ (2018) 70 *Crime, Law and Social Change* 77-92.

¹⁴ Mary Bosworth, ‘Deportation, detention and foreign-national prisoners in England and Wales’ (2011) 15(5) *Citizenship Studies* 583-595; Jelmer Brouwer, ‘Bordered penalty in the Netherlands: The experience of foreign national prisoners and prison officers in a crimmigration prison’ (2020) 22(5) *Punishment and Society* 703-722; Cristina Güerri, ‘Border control within Spanish prisons? Intersections between immigration control and imprisonment at the southern border of Europe’ (2024) 26(3) *Punishment and Society* 486-506.

¹⁵ Thomas Ukelvik, ‘Seeing like a Welfare State: Immigration Control, Statecraft, and a Prison with a Double Vision’ in Katja Franko Aas and Mary Bosworth (eds) *The Borders of Punishment* (OUP, 2013) 183-198.

¹⁶ Hallam Tuck and Dorina Damsa, ‘All-foreign prisons: sites of (colonial) nation-building’ in Mary Bosworth et al. (eds), *Handbook on Border Criminology* (Elgar, 2024) 235-251.

¹⁷ Katja Franko Aas, ‘Bordered Penalty: Precarious membership and abnormal justice’ (2014) 16(5) *Punishment and Society* 520-541.

¹⁸ Flore Croux, Stijn Vandeveld, Bart Claes, Dorien Brosens and Liesbeth De Donder, ‘An appreciative inquiry into foreign national prisoners’ participation in prison activities: The role of language’ (2023) 20(1) *European Journal of Criminology* 251-269.

¹⁹ Jelmer Brouwer, ‘Bordered penalty in the Netherlands: The experience of foreign national prisoners and prison officers in a crimmigration prison’ (2020) 22(5) *Punishment and Society* 703-722.

²⁰ Flore Croux, Stijn Vandeveld, Bart Claes, Dorien Brosens and Liesbeth De Donder, ‘An appreciative inquiry into foreign national prisoners’ participation in prison activities: The role of language’ (2023) 20(1) *European Journal of Criminology* 251-269.

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not be restricted' because the prisoner faces transfer, extradition or expulsion (Rule 26.2). Access to work, education, exercise and recreation etc should be facilitated (Rules 27-29).

Given empirical reports that this is not happening in many places, it was considered essential to include the need to provide a balanced programme of activities in the basic principles, while continuing to re-affirm the 2012 Recommendation's focus on the need to ensure reintegration.

The removal of activities, rehabilitation programmes and preparation for reintegration based on assumptions of where the person may go upon release fails to achieve regional penal policy objectives and risks constituting discrimination.

There is no permitted exception on the grounds of nationality under contemporary regional penal policy: the duty to provide a meaningful regime and preparation for reintegration applies to all detention and persists irrespective of the society or country the prisoner will ultimately live in upon release.

Furthermore, this is an important public safety consideration given that legal status decisions are often not reached until very late in the sentence, and may change so that the prisoner will remain in the sentencing state (for immigration or human rights reasons). Many offenders may return to the prosecuting state at a later stage, and many are citizens of the European Union.

10. Decisions to transfer foreign suspects or offenders to a State with which they have links shall be taken with respect for human rights, the need to promote social reintegration and the informed views of such prisoners.

This basic principle has been shortened in part (removed in the interest of justice) and extended in others to reflect reported concerns about procedural issues and the provision of relevant information to prisoners to ensure their views are informed.

Despite rehabilitation being the stated objective of FD 909, this often contradicts other explicit and implicit objectives including the reduction of the prison population²¹ and removal – with the risk that it is deployed 'as an excuse to effectively deport foreign offenders' without their consent.²² The FD 909 removed the veto prisoners could exercise over their inter-state transfer under the COE Convention.²³ The lack of consent raises questions about the 'coherence between the transfer of non-consenting prisoners and the rehabilitation perspective'.²⁴ It also increases the importance of ensuring respect for procedural rights in transfer proceedings and to take care to avoid risks to the anti-torture prohibition on account of inadequate conditions of detentions in the proposed

²¹ See Valeria Ferraris, 'Enhancing social rehabilitation or finding a back door to reduce prison overcrowding: The failed implementation of FD 909 in Italy' in JA Brandariz, W Klaus, A Martynowicz (eds) *Forced Mobility of EU Citizens: Transnational Criminal Justice Instruments and the Management of 'Unwanted' EU Nationals* (Routledge, 2024) 35-50.

²² Patricia Faraldo-Cabana, 'One step forward, two steps back? Social rehabilitation of foreign offenders under Framework Decisions 2008/909/JHA and 2008/947/JHA' (2019) 10(2) *New Journal of European Criminal Law* 151-167.

²³ See UNODC, *Handbook on the International Transfer of Sentenced Persons*, 2011; Róisín Mulgrew, 'The International Movement of Prisoners' (2011) 22(1) *Criminal Law Forum* 103-143.

²⁴ Patricia Faraldo-Cabana, 'Transferring Non-Consenting Prisoners' in Stefano Montaldo (ed) *The Transfer of Prisoners in the European Union: Challenges and Prospects in the Implementation of Framework Decision 2008/909/JHA* 61-78.

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executing state.²⁵ The inclusion of consideration of informed views reflects the current Rule 35.6 that those eligible for transfer, should be ‘assisted in seeking independent advice about the consequences of such a transfer’ – it is clearly implied that an informed view should take part in the decision-making process (as do the explicit provisions of the relevant international legal instruments).

Inclusion of Probation

The 2012 rule only referred to the transfer of sentenced persons (COE TTSP, EU FD 909) – changed to ‘foreign suspects and offenders’ to extend to include FWD 847 and (cover European Supervision Order – **review**).

*11. Sufficient resources shall be allocated in order to deal effectively with the particular situation and specific needs of foreign suspects and offenders in prison and **on probation**.*

Retained with only a minor amendment to include probation.

12. Persons who work with foreign suspects or offenders in prison and probation should be provided with specialist training to promote and maintain professional standards in their specialised work.

Detail has been added to this rule in some regards and removed in others – to bring the focus back to prison and probation. The reason was twofold

- to reflect the requirements of the European Prison Rules and other contemporary regional penal standards, and
- to address concerns about the de-professionalisation of the roles of persons working with foreign offenders within systems that prioritise removal

The removal focus of criminal justice process for many foreign nationals has resulted in a ‘new role for prison staff’.²⁶ My 2018 study found that ‘a lack of information about and involvement in the immigration process, or resources and training to provide meaningful support to prisoners’ meant that officers working in foreign-national only prisons were ‘no longer able to fulfil one of the core aspects of their job – the provision of assistance with rehabilitation and resettlement’.²⁷ Brouwer’s 2020 study also found that the limited opportunities for prison officers to work with prisoners on rehabilitation in a foreign-national only prison in the Netherlands meant that prison officers ‘struggled to find meaning and satisfaction in their work’.²⁸ Probation experts have also highlighted that the distinctive and individual needs of foreign offenders are often insufficiently

²⁵ Marija Pleić, ‘Challenges in Cross-Border Transfer of Prisoners: EU Framework and Croatian Perspectives’ in D. Duić and T. Petrašević (eds) *EU Law in Context – Adjustment to Membership and Challenges of the Enlargement* 375-399.

²⁶ Cristina Güerri, ‘Border control within Spanish prisons? Intersections between immigration control and imprisonment at the southern border of Europe’ (2024) 26(3) *Punishment and Society* 486-506.

²⁷ Róisín Mulgrew, ‘The role of oversight in foreign-national only prisons: counteracting the disapplication of rehabilitation’ (2018) 70 *Crime, Law and Social Change* 77-92 at 84-5.

²⁸ Jelmer Brouwer, ‘Bordered penalty in the Netherlands: The experience of foreign national prisoners and prison officers in a crimmigration prison’ (2020) 22(5) *Punishment and Society* 703-722.

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appreciated and that not enough is done to support rehabilitation and desistance – the political focus on removal and deportation has distorted any principled approach to policy and practice.²⁹

It is important that the Basic Principles of the revised Recommendation underscore not only the relevance and value of training, but also the importance of maintaining the *specialist and professional role* played by prison and probation staff working with this group of suspects and offenders.

The European Prison Rules are clear – prison staff ‘carry out an important public service’ and their training should ‘enable them to maintain high standards of care’ of prisoners (rule 8). Further, staff should ‘manifest a clear sense of purpose of the prison system’ (72.2), have duties that go beyond ‘mere guards’ and take account of the ‘need to facilitate the reintegration of prisoners into society after their sentence’ and do so through a ‘programme of care and assistance’ (72.3). In addition, staff must be provided with training to ‘operate at high professional and personal standards’ (72.4). This is particularly the case for staff who work with foreign national prisoners – these staff should receive ‘specific training for their specialised work’ (81.3).

The European Code on Ethics for Prison Staff, CM/Rec(2012)5 also states in Rule 19 that ‘prison staff shall be sensitive to the special needs of individuals, such as... foreign nationals... and make every effort to provide for their needs’ and that prison staff ‘shall work towards facilitating the social reintegration of prisoners through a programme of constructive activities, individual interaction and assistance’ (Rule 22).

Similarly under the European Probation Rules, 2010, it is imperative that all probation staff, throughout their career, ‘maintain and improve their knowledge and professional abilities’ through training and development (Rule 25) and that management should ensure the ‘quality of probation work’ by providing, inter alia, guidance and supervision to staff (Rule 30). It is clear that probation agencies must be in a position to ‘provide services accessible to offenders of foreign nationality, especially in respect of ... resettlement’ (Rule 63).

The Recommendation on Community Sanctions and Measures, CM/Rec(2017)3 also places high value on ‘staff of high professional quality’ that are trained on COE principles on the implementation of sanctions and measures (rule 77). They also state that staff require adequate training to enable them to have a ‘sound understanding of their particular field of activity, their practical duties and the ethical requirements of their work’ and encourage them to ‘contribute to an enhancement for their work’ with a requirement for the regular development of their professional competence through ‘further training’ (rule 83).

The broader scope of the current BP 12 should become part of a substantive rule within the body of the Recommendation.

4. Draft Basic Principles for Recommendation 2026

On this basis, my recommendations for draft basic principles for the revised recommendation would look as follows...

²⁹ Rob Canton and Nick Hammond, ‘Foreigners to Justice? Irregular migrants and foreign national offenders in England and Wales’ (2012) 4(3) *European Journal of Probation* 4-20.

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5. Foreign offenders sentenced to imprisonment shall be entitled to full consideration for early and compassionate release.
6. Positive steps shall be taken to avoid discrimination in the treatment of foreign suspects, offenders and prisoners, particularly on the grounds of nationality and legal status.
7. Positive measures shall be taken to meet the distinctive needs foreign persons may have while subject to probation, community sanctions or measures, in prison, during transfer and after release.
8. Foreign prisoners who so require shall be given appropriate access to interpretation and translation facilities and the possibility to learn a language that will enable them to communicate more effectively.
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11. Sufficient resources shall be allocated in order to deal effectively with the particular situation and specific needs of foreign suspects and offenders in prison and on probation.
12. Persons who work with foreign suspects or offenders in prison and probation should be provided with specialist training to promote and maintain professional standards in their specialised work.

As the thematic revision progresses, there may be a need to review the basis principles to discuss if further basic principles are required – for example in relation to gender, mental health, technology?