Application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions. Framework Decision. Initiative Germany and France

2007/0807(CNS) - 12/06/2007

The Council reached a common understanding on certain "key elements" of a draft Framework Decision on the recognition and supervision of suspended sentences, alternative sanctions and conditional sentences:

1) Aim of the Framework Decision:

- as regards the sentenced person, the objective is that it allows a sentenced person to return to his/her place of habitual residence during the period of probation, which facilitates the social reintegration of the person concerned. In this respect, the initiative favours the free movement of persons within the European Union;
- as regards the victim, the benefit is that it allows sentenced persons to be subject to obligations with a view to victim protection also at their place of habitual residence and subsequent decisions to be taken in case of breach of such obligations. In this respect, the initiative also helps to maintain public order and protect society;
- as regards justice in general, the benefit of the initiative is that it allows the judiciary to apply the most adequate solution in a particular case and contributes to the application of non-custodial measures to 'non-resident' offenders;
- in respect of the EU Member States that are party to the Council of Europe Convention of 30 November 1964 on the Supervision of Conditionally Sentenced or Conditionally Released Offenders in the relationship between EU Member States, the draft Framework Decision is to replace that Convention and further expand on it.

2) Scope of its application:

- the scope of the draft Framework Decision relates to the supervision by a Member State of "suspensory measures", which are imposed on the basis of, or contained in, a "suspended sentence"," conditional sentence" or a decision on "conditional release";
- the basis for the imposition of "suspensory measures" will always be a judgment by a court, which establishes that the person has committed a criminal offence. A substantial number of delegations would advocate that, on the basis of such a decision, the concrete "suspensory measures" could also be imposed by an authority other than a court, in accordance with the relevant rules of national law. However, this issue is still open and needs to be further examined. These definitions may need to be further refined;
- subject to further discussion of the political aspects, and in line with the wishes of a very large majority of delegations, “alternative sanctions” that are decided by a court should in general terms also be included in the scope of the Framework Decision. It should however be examined whether certain limitations would be required for such inclusion. In this context, it needs to be further discussed whether the scope of the Framework Decision should be extended to "alternative sanctions" that are decided by a public prosecutor rather than by a court.

3) Types of suspensory measures and alternative sanctions:

- there will be a list of types of suspensory measures and alternative sanctions, which the Member State, in which the sentenced person is lawfully and ordinarily resident, is obliged to supervise if so requested by the issuing State and in conformity with all other provisions of the Framework Decision and without prejudice to the grounds for refusal;
- Member States will each be required to ensure that as an executing Member State their authorities can supervise such suspensory measures or alternative sanctions irrespective of whether or not the same type of measure or sanction is currently provided for in their own legislations in the case of their own criminal proceedings;
- given the possibility that the specific suspensory measure or alternative sanction imposed by the court [or other competent authority in an issuing State], even if it falls under the categories of measures/sanctions to be set out in the Framework Decision, may not exist in identical terms in the executing State, the Framework Decision will provide for the possibility for the executing authority to adapt the specific measure or sanction as it has been determined by the issuing authority and bring it in line with the type of measure/sanction, which exists in the executing State for similar offences;
- each Member State has the possibility of deciding that in addition it is prepared to supervise suspensory measures and alternative sanctions other than those set out on the list mentioned above. In such a case, the Member State concerned will notify the General Secretariat of the Council which will make the information received available to all Member States and to the Commission. This will allow the court or other authority in the issuing State to determine which other types of measures or sanctions can be supervised in a specific other Member State without prior consultation.

4) Division of competences between the issuing State and executing State:

- while the executing State will primarily have the role of ensuring that the person complies with the suspensory measures or alternative sanctions, the Framework Decision will also need to address the possibility that the person does not comply with the measures/sanctions;
- the competent [judicial] authority in the executing State will in general have jurisdiction to take all subsequent decisions relating to the judgment, i.e. in particular any decision which is required in view of non-compliance by the sentenced person with suspensory measures or alternative sanctions imposed. However, it may be necessary to make provision for certain exceptions to this rule in the case of "conditional sentences" and "alternative sanctions". In both cases, if the person has not complied with the measures/sanctions, the decision to finally impose a custodial sentence or other measure involving the deprivation of liberty may need to be taken by the judicial authorities of the issuing State which had jurisdiction of the case when the conditional sentence or alternative sanction was first imposed;
- it may also be necessary to allow the executing State, in certain cases and notwithstanding its obligation to supervise the measures/sanctions imposed, to refuse to assume responsibility for taking such subsequent decisions and thus leave that responsibility with the authorities of the issuing State. Depending on which State will have jurisdiction over such subsequent decisions, the Framework Decision will need to set out certain information requirements to ensure proper cooperation between the authorities in both States.

It should be noted that the common understanding does not commit delegations to specific wording of the Articles, which still need to be further discussed. Furthermore, this common understanding may need to be modified in the light of the work that has still to be carried out on other aspects of the draft Framework Decision, which are not covered by the key elements concerned.

The Council instructed its preparatory bodies to continue the work on this draft Framework Decision on the basis of the common understanding. The Council also discussed the issue of double criminality and decided to come back to this issue at a later session.