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

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In adopting the report drafted by Ms Maria da Assunção **ESTEVES** (EPP-ED, PT), the Committee on Civil Liberties, Justice and Home Affairs amended, in the framework of the consultation procedure, the initiative of the Federal Republic of Germany and of the French Republic with a view to adopting a Council Framework Decision on the recognition and supervision of suspended sentences, alternative sanctions and conditional sentences.

The main amendments adopted by the Committee are as follows:

- the objectives of the framework decision need to be clarified: the objectives must clearly support a penal policy which promotes alternatives to imprisonment. Thus the framework decision must seek to ‘facilitate the social re-integration of sentenced persons, to improve the protection of victims and society and to facilitate the application of appropriate suspended sentences, alternative sanctions and conditional sentences’ in the case of offenders who are not resident in the sentencing State. With a view to achieving these objectives, this Framework Decision shall lay down rules pursuant to which the Member State in which the sentenced person has his lawful and ordinary residence shall recognise the judgments passed in another Member State and shall supervise and execute suspended sentences, alternative sanctions and conditional sentences;

- the framework decision should only apply to the recognition of judgments and the transfer of responsibility for the supervision and execution of suspended sentences, alternative sanctions and conditional sentences, and for all other subsequent decisions provided for in the Framework Decision;

- the Committee proposes the inclusion in the framework decision a definition of the concept of 'lawful and ordinary residence' which features in European Court of Justice case-law. The executing State must be the State 'on whose territory the person sentenced has his lawful and ordinary residence' and hence residence should also be a 'criterion' to be taken into account by the 'requested' State for refusing to recognise and to assume responsibility for supervision;

- the framework decision shall not have the effect of modifying the duty to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union and in the Member States' constitutions;

- the list of competent authorities shall be published in the Official Journal of the European Union ;

- among the types of suspensory measures and alternative sanctions covered by Article 5, the Committee added a) the obligation for the sentenced person to inform the competent authority in the executing State of any change place of work or study; b) the obligation to compensate for the prejudice caused by the offence and to notify the executing State's competent authority that this obligation has been complied with;

- a judgment or decision for conditional release that contains one or more of the following suspensory measures or obligations or instructions may be transferred to another Member State, in which the sentenced person is lawfully and ordinarily resident, for the purpose of recognition and supervision of those measures or obligations or instructions;

- for the purposes of this Framework Decision, the person standing trial must be heard before the judgment or the decision for conditional release is transmitted (the consent of the sentenced person is not required). As with the adoption of the decision of transfer, it is necessary to recognise the right of the person sentenced to a hearing. Equally, in the opposite case (withdrawal of the decision), the same right needs to be guaranteed;

- an amendment seeks to delete the reference to the barring of prosecution, since what is involved is not so much prosecution as sentences which have already been applied; Members consider it more appropriate to refer to 'barring the sentence' and not to ‘barring the execution of a sentence’;

- the competent judicial authority in the executing State shall decide, within 30 days (10 days in the original proposal) after receipt of the judgment and the certificate, whether to recognise the judgment and assume responsibility for supervising the suspensory measures and alternative sanctions;

- the Committee also to enshrine the exceptional nature of refusal' by the executing State;

- Article 13 (consultations between the competent judicial authorities) is deleted to prevent an excessive amount of consultation which would undermine the effectiveness of the Framework Decision;

- the report specifies that the competent judicial authority in the State of execution shall immediately inform the competent judicial authority in the issuing State of any decision relating to a) alternative sanctions and modification of the suspensory measures; b) revocation of the suspended sentence and the conditional sentence; c) sentencing in the case of a conditional sentence; lapsing of the suspended sentences, conditional sentences or alternative sanction;

- in cases where suspended sentences, conditional sentences or alternative sanctions are revoked, the executing State shall be responsible for executing the custodial sentence imposed in the judgment. A person must be heard by the judicial authorities before being sentenced in the case of a conditional sentence or if the suspension of the sentence is revoked, in order to ensure that the fundamental principle that defendants must be heard is upheld;

- only the issuing State can take a decision regarding requests for a review of judgments involving suspended sentences, conditional sentences and alternative sanctions, the supervision and execution of which are covered by the framework decision.