Application of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention. Framework Decision

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The Council debated a proposal for a Framework Decision on the European supervision order, and took note of a progress report in respect of a draft Framework Decision on "probation".

These two draft legal instruments aim at reinforcing the application of the principle of mutual recognition in the common area of freedom, security and justice. Both instruments have as their objective to allow persons to comply in their Member State of residence with a non-custodial supervision or probation measure which has been imposed in another Member State.

The Commission proposal on the European Supervision Order (ESO) addresses the pre-trial phase. The Franco-German initiative on "probation" addresses the post-trial phase. Whereas a lot of work has already been carried out on this latter initiative - which is reflected in the Progress report – work on the proposal on the ESO has yet not started.

The Presidency considered it appropriate to have firstly a policy debate in the Council in respect of this Commission proposal and to revise the text accordingly, before starting the work in the Council preparatory bodies. Following the debate, the Presidency drew the following conclusions:

- all Member States support the objectives of the Commission proposal. However, many Member States have doubts regarding the way in which the Commission proposal is drafted. They feel that various practical aspects of the proposal should be reconsidered. A clear example of this is the mechanism for returning suspects to the issuing Member State;
- almost all Member States support the Presidency's view that work on this proposal should be carried forward, but on the basis of a new, completely revised text.

Such revision of the text should adhere to the following principles: i) the European Supervision Order should be based on the principle of mutual recognition; ii) specific features of the national systems of criminal justice and criminal procedure as regards the criteria and conditions for issuing a European Supervision Order should be respected as much as possible; iii) however, some limits should be set on the discretion of the issuing Member State so as to make for simple, swift and effective cooperation within Member States; iv) coherence should be ensured with the approach taken in other instruments of mutual-recognition, by establishing flexible rules on cross-border recognition and enforcement of a European Supervision Order. Further consideration should also be given to the mechanism for returning suspects to the issuing Member State. In this context, particular attention should be paid to the solutions used in the draft Framework Decision on "probation"; v) although the Commission proposal for a European Supervision Order is to a certain extent linked the draft Framework Decision on "probation", the work on both instruments should, at least for the time being, be kept separate, as they involve specific technical aspects (relating to the pre-trial and post-trial phase) and are at different stages of the negotiation.

On the basis of these principles, the Presidency will make a revision of the text of the proposal, in consultation with Commission services, and will submit the revised text to the Council preparatory bodies.