

Judicial cooperation: procedural rights of persons and the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial.

Initiative Slovenia, France, Czech Republic, Sweden, Slovakia, United Kingdom, Germany.

Framework Decision

2008/0803(CNS) - 13/02/2008 - Legislative proposal

PURPOSE: initiative of Slovenia, France, the Czech Republic, Sweden, the Slovak Republic, the United Kingdom and Germany on the enforcement of decisions rendered in absentia and amending related legislation.

PROPOSED ACT: Council Framework Decision.

BACKGROUND: the aim of this proposal is to establish common rules for the recognition and/or execution of judicial decisions in one Member State (the executing Member State) issued by another Member State (the issuing Member State) following proceedings where the person was not present, according to the provisions laid down in the following:

- 1) Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States (see [CNS/2001/0215](#));
- 2) Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties (see [CNS/2001/0825](#));
- 3) Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders (see [CNS/2002/0816](#));
- 4) Framework Decision 2008/.../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 (not yet adopted, see [CNS/2005/0805](#)).

The reason for this initiative is that the various Framework Decisions implementing the principle of mutual recognition of final judicial decisions do not deal consistently with the issue of decisions rendered in absentia. This diversity complicates the work of the practitioner and hampers judicial cooperation.

Solutions provided by these Framework Decisions are not satisfactory as regards cases where the person could not be informed of the proceedings. Framework Decisions 2005/214/JHA and 2006/783/JHA allow the executing authority to refuse the execution of such judgments.

Framework Decision 2002/584/JHA allows the executing authority to require the issuing authority to give an assurance deemed adequate to guarantee the person who is the subject of the European arrest warrant that he or she will have an opportunity to apply for a retrial of the case in the issuing Member State and to

be present at the judgment. The adequacy of such guarantee is a matter to be decided by the executing authority and it is therefore difficult to know exactly when execution may be refused.

Accordingly, it is deemed necessary to provide clear and common solutions which define the grounds for refusal and the discretion left to the executing authority.

CONTENT:

Grounds for refusal: the proposed Framework Decision is limited to the definition of grounds for refusal in instruments implementing the principle of mutual recognition. Therefore, provisions such as the definition of the concept of decision rendered in absentia or rules on the right to a retrial have a scope which is limited to the definition of these grounds for refusal. They are not designed to harmonise national legislation.

The main amendments are as follows:

- the definition of a “decision rendered in absentia” which shall mean a custodial sentence or a detention order when the person did not personally appear in the proceedings resulting in that decision;
- executing judicial authority may refuse to execute the European arrest warrant;
- the executing judicial authority may also refuse to execute the European arrest warrant issued for the purpose of executing a custodial sentence or a detention order, if the decision was rendered in absentia, unless the European arrest warrant conforms to specified conditions;
- the pro forma of the European arrested warrant is amended;
- amendments are also proposed to Framework Decision 2005/214/JHA and Framework Decision 2006/783/JHA with regard to the provisions on certificates, and to the standard form of the certificates on service and confiscation orders;
- implementation will be 18 months after entry into force.

It should be noted that this Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty, and any obligations incumbent upon judicial authorities in this respect shall remain unaffected.