

# 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) - 24/06/2008

The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Armando **FRANÇA** (PES, PT) on the initiative of several Member States to amend a series of Framework Decisions (2002/584/JHA on the European arrest warrant, 2005/214/JHA on the application of the principle of mutual recognition to financial penalties, 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders and 2008/.../JHA on the application of the principle of mutual recognition to judgments in criminal matters) for the purpose of the enforcement of decisions rendered in absentia, calling on – in its draft resolution – both the Council and the Commission to give priority to dealing with any future proposal to amend this text by urgent procedure, as set out in the Lisbon Treaty.

In concrete, MEPs intended, above all, to strengthen the rights of persons judged in absentia by proposing a series of procedural safeguards as well as to facilitate the application of the principle of mutual recognition by eliminating the different approaches towards ‘grounds for non-recognition’. The same framework of amendment is envisaged for each of the amended Framework Decisions.

These amendments, approved under the consultation procedure, can be summarised as follows:

**Overall objective and amendment to the title:** to ensure comprehension of the text, MEPs specified the overall objective of the Framework Decision, which is to strengthen citizens' rights by **promoting the application of the principle of mutual recognition** in respect of decisions rendered following a trial at which the person concerned did not appear in person. They also added a text to the list of those already established by the initiative: Framework Decision 2008/.../JHA on the recognition and supervision of suspended sentences, alternative sanctions and conditional sentences (see [CNS/2007/0807](#)).

**Procedural safeguards:** MEPs ask that procedural guarantees be established to ensure the recognition of judgments in criminal matters. They recall, in this respect, that a Framework Decision on procedural rights in criminal proceedings is essential. In the meantime, MEPs consider it necessary to provide **clear and common solutions which define the grounds for refusal of the execution of the decision rendered following a trial at which the person concerned did not appear in person** as well as the discretion left to the executing authority. MEPs therefore clearly specify these common grounds for refusal and establish a series of new provisions to complete the relevant section of the European arrest warrant or of the relevant certificate under the other Framework Decisions so that the issuing authority gives an assurance that the requirements have been or will be met.

**Recognition and execution of decisions:** MEPs consider that the recognition and execution of a decision rendered following a trial at which the defendant did not appear in person should not be refused:

- if, on the basis of the information provided by the issuing State, it is satisfactorily established that the defendant was summoned in person, or by other means actually received official information of the scheduled date and place of the trial. In this context it is understood that the person should have received such information in good time, i. e. sufficiently in advance to allow him or her to participate in the trial and to effectively exercise his/her right of defence. All information should be provided in a language which the defendant understands;
- where the person concerned, being aware of the scheduled trial, was defended at the trial by a legal counsellor to whom he/she had given an explicit mandate to do so, thus ensuring that the legal assistance was practical and effective. In this context, it should be immaterial whether the legal counsellor was chosen, appointed and paid by the person concerned, or was appointed and paid by the State in accordance with its national law applicable to the rights of the defence, it being understood that the person concerned would have chosen to be represented by a legal counsellor instead of appearing him- or herself at the trial.

**Grounds for non-recognition of a decision:** MEPs consider that the common solutions on grounds for non-recognition should take into account the diversity of situations with regard to the right of the person concerned to a **retrial or to an appeal**. Such a retrial, which aims to safeguard the rights of the defence, is characterised by the following elements: the person concerned has the right to participate in the retrial; the merits of the case, including fresh evidence, will be (re)examined, and the proceedings may result in the original decision being quashed.

**Defence of the rights of persons judged in absentia:** MEPs consider that at a retrial following a conviction resulting from a trial at which the person concerned did not appear in person, the defendant should be in the same position as someone standing trial **for the first time**. Therefore the person concerned should have the right to be present at the retrial, the merits of the case, including fresh evidence, should be (re)examined, the retrial could result in the original decision being quashed and the defendant may appeal against the new decision.

**Technical amendments:** in addition to the above amendments and echoing the texts of the Framework Decisions, technical amendments specific to each Framework Decision are set out by MEPs. In terms of Framework Decision 2002/584/JHA on the **European arrest warrant**, MEPs specify the procedure to follow to inform a person concerned by a European arrest warrant but who has not been ‘officially’ informed. In this case, this person may request a copy of the judgment before being surrendered to the competent authority. If the judgment is rendered in a language which the person concerned does not understand, the issuing judicial authority shall provide an extract of the judgment in a language which the person concerned understands. In this case, the provision of the judgment or an extract of the judgment to the person concerned shall be for information purposes only; it shall not be construed as constituting formal service of the judgment nor shall it activate any time-limits applicable for requesting a retrial or appeal. Other similar amendments were made to the annexes of the different Framework Decisions concerned.