

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

2006/0158(CNS) - 12/12/2008 - Amended legislative proposal for reconsultation

At its meeting on 27/28 November 2008, the Justice and Home Affairs Council unanimously reached a **general approach** on the proposal for a Council Framework Decision on the European supervision order in pre-trial procedures between Member States of the European Union. This general approach introduces a certain number of substantial modifications in the text of the initial proposal as proposed by the Commission on 29 August 2006 (see the summary of the initial proposal), thus requiring a **reconsultation of the European Parliament**.

The new draft Framework Decision introduces, inter alia, the following modifications:

(1) the introduction of a draft certificate and a draft form on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention (as given in the Annex to the draft Framework Decision): the **form** aims, in particular, to indicate any breach of a supervision measure, and any other finding which could result in taking any subsequent decision; the **certificate**, which should be forwarded together with the decision on supervision measures to the competent authority of the executing State, should specify the address where the person concerned will stay in the executing State, as well as any other relevant information which might facilitate the monitoring of the supervision measures in the executing State;

(2) the introduction of several new recitals reaffirming that the Framework Decision: (i) aims to **enhance protection of the general public**, through enabling a person resident in one Member State but subject to criminal proceedings in a second Member State, to be supervised by the authorities in the State in which he or she is resident whilst awaiting trial; (ii) aims to **enhance the right to liberty and the presumption of innocence in the European Union** and, in this context, to promote, where appropriate, the use of non-custodial measures as an alternative to provisional detention; (iii) respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected by the Charter of Fundamental Rights of the European Union; (iv) respects the relevant provisions of the future Framework Decision on the **protection of personal data** processed in the framework of police and judicial cooperation in criminal matters;

(3) the introduction of provisions on the **European arrest warrant**: the Framework Decision should cover all crimes and not be restricted to particular types or levels of crime. That is why the majority of the provisions of the Framework Decision on the European Arrest Warrant should also apply, in the situation when the competent authority in the executing State has to decide on the surrender of the person concerned.

Note that a joint declaration by the Council and by the Commission inserted in the minutes of the Council meeting states that “Article 14(4) does not constitute a precedent for future instruments on judicial cooperation in criminal matters within the European Union” (this paragraph relates to the non-implementation, caused by Member States, of certain provisions of the Framework Decision related to the European Arrest Warrant).

At the end of the Council meeting, the DK, IE, FR, NL and SE delegations noted that they still maintain a Parliamentary scrutiny reservation.