

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 Committee on Civil Liberties, Justice and Home Affairs adopted the report drawn up by Ioannis VARVITSIOTIS (EPP-ED, EL) amending, under the consultation procedure, the proposal on the draft Council Framework Decision 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 (renewed consultation.)

The main amendments are as follows:

Non resident: Members clarified that for the purpose of this Framework Decision, a person is considered as non resident when his/her lawful and ordinary residence is fixed in a Member State different from the Member States where the proceeding is going on.

Definitions: a decision on supervision measures may only be taken by a competent judicial authority. The committee states that one of the most important procedural safeguards is that decisions involving personal freedom should be adopted only by judicial authorities. The same approach was followed in the Commission's proposal. It deleted the provision allowing Member States to designate non-judicial authorities as competent authorities.

It inserted definitions for “competent authority in the issuing State” and “competent authority in the executing State”.

Personal data: a new article notes that the processing of personal data must comply with at least the basic principles laid down in Framework Decision 2008/977/JHA and in the Council of Europe Convention nr 108 of 28 January 1981 for the Protection of individuals with regard to Automated Processing of their personal data and the subsequent protocols.

Types of supervision measures: supervision measures must include an obligation to deposit a certain sum of money or to give another type of guarantee, which may either be provided through a specific number of instalments or entirely at once. This should be an obligation in the Framework Decision.

Adaptation of the supervision measures: the adapted supervision measure shall be of a technical nature only and shall not of itself impose additional obligations on the person concerned. It shall not be more severe than the supervision measure which was originally imposed.

Double criminality: Members deleted the provisions on double criminality. They considered that as this framework decision aims to apply the least coercive measures to suspects who would otherwise most likely be subject to the application of a prison pre-trial measure, it makes no sense to make the recognition and execution of the decision on supervision measures subject to the verification of the dual criminality. In fact, this article on double criminality, excluding the verification of dual criminality for the categories of offences listed, implicitly, allows a ground for refusal based on the lack of dual criminality for all the offences not included in the list. This would concretely result in a worse treatment of the suspect as in case

of lack of dual criminality it would be more likely that he/she would be subject to provisional detention instead of a non detention measure applied in a Member States where that behaviour is not punishable. In addition, the verification of double criminality should gradually disappear from instruments founded on mutual recognition. The provision which this amendment removes is a step in the opposite direction and was not envisaged in the European Commission proposal.

The provisions in the draft Framework Decision are amended in order to take account of the deletion of the Article on double criminality.

Surrender of the person: the committee deleted the provision in the draft Framework Decision that each Member State may notify the General Secretariat of the Council, when transposing this Framework Decision or at a later stage, that it will also apply Article 2(1) of the Framework Decision on the European Arrest Warrant in deciding on the surrender of the person concerned to the issuing State. It noted that, taking into account the aim of this legal instrument, all offences should be covered, without setting a threshold.