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

2006/0158(CNS) - 02/04/2009 - Text adopted by Parliament after reconsultation

The European Parliament adopted by 550 votes to 37, with 35 abstentions, in the context of a renewed consultation, 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.

The main amendments adopted by the plenary are as follows:

Non residents: 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. The purpose of this is to dissuade competent authorities placing in provisional detention (and before their proceeding has taken place), EU non-residents, because of the risk of absconding.

Definitions: a decision on supervision measures may only be taken by a **competent judicial authority**. The Parliament considers that, like the Commission, one of the most important procedural safeguards is that decisions involving personal freedom should be adopted only by judicial authorities. 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: the Parliament calls on the Member States to recognize freedom on the basis of a deposit of money as a supervision measure. This specific measure must include an obligation to deposit a certain sum of money or to give another type of security, which may either be provided in a specific number of instalments or in one lump-sum.

Right of the suspect to be informed in a language he understands: the Parliament states that any decision relating to supervision measures must be drawn up by the competent authority of the Member State in which the person is legally resident, in a language he understands.

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: Parliament deleted the provisions on double criminality. It considers that 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. A certain number of other provisions that

are related to the deletion of the article on double criminality were deleted from the draft Framework Decision.

Surrender of the person: lastly, the Parliament deleted the provision in the draft Framework Decision stating that each Member State should 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.