

Prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings.

Framework Decision. Initiative Czech Republic, Poland, Slovenia, Slovakia and Sweden

2009/0802(CNS) - 19/05/2009 - Legislative proposal

PURPOSE: to promote a closer cooperation between the competent authorities of two or more Member States conducting criminal proceedings whilst maintaining and developing an area of freedom, security and justice.

PROPOSED ACT: Council Framework Decision (initiative of the Czech Republic, Poland, Slovenia, Slovakia and Sweden).

BACKGROUND: the Hague Programme, which was approved by the European Council on 4 and 5 November 2004, requires Member States to consider legislation on conflicts of jurisdiction, with a view to increasing the efficiency of prosecutions while guaranteeing the proper administration of justice. The measures provided for in the draft Framework Decision should aim to prevent situations where the same person is subject to parallel criminal proceedings in different Member States in respect of the same facts, which might lead to the final disposal of those proceedings in two or more Member States. The draft Framework Decision therefore seeks to prevent an infringement of the principle of "ne bis in idem", as set out in Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and France on the gradual abolition of checks at their common borders as interpreted by the European Court of Justice.

Direct contact between competent authorities is the leading principle of cooperation established under the proposal.

CONTENT: the objective of this proposal is to promote a closer cooperation between the competent authorities of two or more Member States conducting criminal proceedings, with a view to improving the efficient and proper administration of justice.

Such closer cooperation aims to:

- prevent situations where the same person is subject to parallel criminal proceedings in different Member States in respect of the same facts, which might lead to the final disposal of the proceedings in two or more Member States thereby constituting an infringement of the principle of "ne bis in idem"; and
- reach consensus on any effective solution aimed at avoiding the adverse consequences arising from such parallel proceedings.

With a view to achieving these objectives, the draft Framework Decision establishes a framework on:

- **a procedure for establishing contact between the competent authorities of Member States**, with a view to confirming the existence of parallel criminal proceedings in respect of the same facts involving the same person;
- **the exchange of information, through direct consultations**, between the competent authorities of two or more Member States conducting parallel criminal proceedings in respect of the same facts

involving the same person, in case they already have knowledge of the existence of parallel criminal proceedings, with a view to reaching consensus on any effective solution aimed at avoiding the adverse consequences arising from such parallel proceedings.

The basic principle is that when a competent authority of a Member State has reasonable grounds to believe that parallel proceedings are being conducted in another Member State, it shall contact the competent authority of that other Member State to confirm the existence of such parallel proceedings, with a view to initiating direct consultations. The contacted authority is under an obligation to reply and the proposal sets out the minimum information to be provided in the request and in the response.

When it is established that parallel proceedings exist, the competent authorities of the Member States concerned shall enter into direct consultations in order to reach consensus on any effective solution aimed at avoiding the adverse consequences arising from such parallel proceedings, which may, where appropriate, lead to the concentration of the criminal proceedings in one Member State.

The draft Framework Decision shall be complementary and without prejudice to the Eurojust Decision.

As Eurojust is particularly well suited to provide assistance in resolving conflicts of jurisdiction, the referral of a case to Eurojust should be a usual step, when it has not been possible to reach consensus.

In addition, as long as consensus on the concentration of criminal proceedings has not been reached, the competent authorities of the Member States should be able to continue criminal proceedings for any criminal offence which falls within their national jurisdiction.

The draft Framework Decision shall not apply to proceedings which are covered by the terms of Council Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

It is proposed that Member States shall take the necessary measures to comply with the provisions of this Framework Decision 30 months after publication of this Framework Decision in the Official Journal.