

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) - 30/09/2009

The Committee on Civil Liberties, Justice and Home Affairs adopted the report drawn up by Renate WEBER (ALDE, RO) amending, under the consultation procedure, the initiative of the Czech Republic, the Republic of Poland, the Republic of Slovenia, the Slovak Republic and of the Kingdom of Sweden for adoption of a Council framework decision 2009/.../JHA on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings.

The main amendments are as follows:

Competent authority: any matter concerning jurisdiction should be dealt with by judicial authorities, meaning a judge, investigating magistrate or public prosecutor.

Obligation to make contact with the competent authority of another country: due to its coordinating role, Eurojust should be involved in the earliest stage.

Obligation to reply: MEPs consider that the reply by the contacted competent authority should not be intended as a "general obligation" but rather as a mandatory duty. The contacted authority shall reply to a request submitted within any reasonable deadline indicated by the contacting authority, or, if no deadline has been indicated, **within 30 days**, and inform the contacting authority whether parallel proceedings are taking place in its Member State.

Required information: minimum information should be included such as name, nationality, date of birth and address of the suspected or accused person and of the victims, if applicable, and other details that are relevant where there is a suspicion that the identity of the suspected or accused person is false.

Obligation to enter into direct consultations: when it is established that parallel proceedings exist, the competent authorities of the Member States concerned shall without undue delay 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. In cases where the suspected or accused person is held in provisional detention or custody, direct consultations shall aim to reach consensus as a matter of urgency.

Procedure to be followed to reach a consensus: MEPs aim to lay down clearly the criteria to set jurisdiction. It is better inserted in the body of the Framework Decision rather than in a Recital. When the competent authorities of Member States enter into direct consultations on a case in order to reach consensus, they shall consider the facts and merits of the case and factors such as: (i) the place where the major part of the crime was committed; (ii) the place where the major part of the loss was sustained; (iii) the location of the suspected or accused person and the possibilities for securing his or her surrender or extradition to another jurisdiction; (iv) the nationality or residence of the suspected or accused person; (v) any significant interests of the suspected or accused person; (vi) any significant interests of victims and witnesses; (vii) the admissibility of evidence or any delays that may occur.

Procedural guarantees: MEPs introduce a new article that states that the person formally charged shall notably at the trial stage: (i) be notified of exchanges of information and consultations between authorities of Member States and between authorities of a Member State and Eurojust, as well as of solutions chosen or failure to reach agreement under this Framework Decision, including of actors involved, contents and reasons; (ii) have a right to make representations as to the best placed jurisdiction before a solution is chosen; (iii) have a right to appeal against any decision taken in accordance with Framework Decision or, in case of failure to reach agreement, to have it re-examined.

Member States shall ensure that appropriate translation, interpretation and legal aid are guaranteed.

Fundamental rights: a new article stipulates that any consensus reached on the basis of the Framework Decision must constitute an expression of fairness, independence and objectivity and must be reached by applying the principles recognised by Article 6 of the Treaty on European Union and reflected by the Charter of Fundamental Rights of the European Union and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, so as to ensure that the human rights of the suspected or accused person are protected.

Data protection: the proposed text provides that [Council Framework Decision 2008/977/JHA](#) of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters should apply to the processing of personal data exchanged under this Framework Decision. MEPs add that the transmission of information relating to so-called racial or ethnic origin, religion or belief and sexual orientation is expressly prohibited.

Cooperation with Eurojust: any national authority shall be free, at any stage of a national procedure, to ask for Eurojust's advice and to refer to Eurojust specific cases which raise the question of the best placed jurisdiction. If Member States decide not to comply with the opinion of Eurojust, they shall inform Eurojust in writing of their decision.

Mention in the annual report: inclusion in annual report The cases referred to Eurojust on which consensus has not been reached among Member States shall be included in the annual report of Eurojust.

The committee calls on the Council **not to formally adopt the initiative prior to the entry into force of the Treaty of Lisbon** so as to allow the final act to be finalised ensuring a full role and control by the Court of Justice of the European Union, the Commission and Parliament (Protocol to the Treaty of Lisbon on transitional provisions). This being the case is committed to considering any further proposal by urgent procedure.