

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) - 08/10/2009 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 544 votes to 184 with 17 abstentions, a legislative resolution amending, under the consultation procedure, the initiative of the Czech Republic, Poland, Slovenia, the Slovak Republic and of Sweden for adoption of a Council framework decision 2009/.../JHA on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings.

Parliament calls 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 Parliament states that it is committed to considering any further proposal by urgent procedure.

The main amendments were 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: in accordance with the Eurojust Decision, the contacting authority shall inform Eurojust at the same time as contacting the other Member States where parallel proceedings are taking place.

Obligation to reply: 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: since no time limit was set in the proposal, Parliament specified that, when it is established that parallel proceedings exist, the competent authorities of the Member States concerned shall without undue delay enter into direct consultations. It added that 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 of reaching consensus: Parliament gives an indicative list of factors that must be considered when reaching consensus. These are: (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: Parliament inserts 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.

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.

Relation to other legal instruments and other arrangements: Parliament specified that the protection afforded to the suspected or accused person must not be reduced when applying bilateral or multilateral arrangements.

Inclusion in annual report: a new clause states that the cases referred to Eurojust on which consensus has not been reached among Member States shall be included in the annual report of Eurojust.