

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

2006/0158(CNS) - 23/10/2009 - Final act

PURPOSE: to establish a European supervision order in pre-trial procedures between EU Member States.

LEGISLATIVE ACT: Council Framework Decision 2009/829/JHA 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.

CONTENT: as regards the detention of persons subject to criminal proceedings, there is a risk of different treatment between those who are resident in the trial state and those who are not: a non-resident risks being remanded in custody pending trial even where, in similar circumstances, a resident would not.

In a common European area of justice without internal borders, it is necessary to take action to ensure that a person subject to criminal proceedings who is not resident in the trial state is not treated any differently from a person subject to criminal proceedings who is so resident.

This Framework Decision lays down rules according to which one Member State recognises a decision on supervision measures issued in another Member State as an alternative to provisional detention, monitors the supervision measures imposed on a natural person and surrenders the person concerned to the issuing State in case of breach of these measures. This Framework Decision respects fundamental rights and observes the principles recognised, in particular, by Article 6 of the Treaty on European Union and reflected by the Charter of Fundamental Rights of the European Union.

The objectives of this Framework Decision are:

- to ensure the due course of justice and, in particular, that the person concerned will be available to stand trial;
- to promote, where appropriate, the use, in the course of criminal proceedings, of non-custodial measures for persons who are not resident in the Member State where the proceedings are taking place;
- to improve the protection of victims and of the general public;
- to enhance the right to liberty and the presumption of innocence in the European Union and at ensuring cooperation between Member States when a person is subject to obligations or supervision pending a court decision.

The main elements of the Framework Decision are as follows:

Designation of competent authorities: each Member State shall inform the General Secretariat of the Council which judicial authority or authorities under its national law are competent to act according to this Framework Decision in the situation where that Member State is the issuing State or the executing State. Member States may designate non-judicial authorities as the competent authorities for taking decisions under this Framework Decision, provided that such authorities have competence for taking decisions of a similar nature under their national law and procedures.

Types of supervision measures: this Framework Decision shall apply to the following supervision measures:

- an obligation for the person to inform the competent authority in the executing State of any change of residence, in particular for the purpose of receiving a summons to attend a hearing or a trial in the course of criminal proceedings;
- an obligation not to enter certain localities, places or defined areas in the issuing or executing State;
- an obligation to remain at a specified place, where applicable during specified times;
- an obligation containing limitations on leaving the territory of the executing State;
- an obligation to report at specified times to a specific authority;
- an obligation to avoid contact with specific persons in relation with the offence(s) allegedly committed.

Other measures may include in particular: (a) an obligation not to engage in specified activities in relation with the offence(s) allegedly committed, which may include involvement in a specified profession or field of employment; (b) an obligation not to drive a vehicle; (c) an obligation to deposit a certain sum of money or to give another type of guarantee, which may either be provided through a specified number of instalments or entirely at once; (d) an obligation to undergo therapeutic treatment or treatment for addiction.

Criteria relating to the Member State to which the decision on supervision measures may be forwarded: a decision on supervision measures may be forwarded to the competent authority of the Member State in which the person is lawfully and ordinarily residing, in cases where the person, having been informed about the measures concerned, consents to return to that State. The competent authority in the issuing State may, upon request of the person, forward the decision on supervision measures to the competent authority of a Member State other than the Member State in which the person is lawfully and ordinarily residing, on condition that the latter authority has consented to such forwarding.

Procedure: when the competent authority of the issuing State forwards a decision on supervision measures to another Member State, it shall ensure that it is accompanied by a certificate, the standard form of which is set out in Annex I of the Framework Decision. The competent authority in the issuing State shall specify: (a) where applicable, the length of time to which the decision on supervision measures applies and whether a renewal of this decision is possible; and (b) on an indicative basis, the provisional length of time for which the monitoring of the supervision measures is likely to be needed, taking into account all the circumstances of the case that are known when the decision on supervision measures is forwarded.

Certificates shall be translated into the official language or one of the official languages of the executing State.

Decision in the executing State: the competent authority in the executing State shall, as soon as possible and in any case within 20 working days of receipt of the decision on supervision measures and certificate, recognise the decision on supervision measures and without delay take all necessary measures for monitoring the supervision measures, unless it decides to invoke one of the grounds for non-recognition referred to in the Framework Decision.

Adaptation of the supervision measures: if the nature of the supervision measures is incompatible with the law of the executing State, the competent authority in that Member State may adapt them in line with the types of supervision measures which apply, under the law of the executing State, to equivalent offences. The adapted supervision measure shall correspond as far as possible to that imposed in the issuing State. The adapted supervision measure shall not be more severe than the supervision measure which was originally imposed.

Double criminality: in accordance with the Framework Decision, a list of 32 offences are set out. If they are punishable in the issuing State by a custodial sentence or a measure involving deprivation of liberty for a maximum period of at least three years, and as they are defined by the law of the issuing State, they shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to recognition of the decision on supervision measures.

Law governing supervision: the monitoring of supervision measures shall be governed by the law of the executing State.

Continuation of the monitoring of supervision measures: when the time period is due to expire and the supervision measures are still needed, the competent authority in the issuing State may request the competent authority in the executing State to extend the monitoring of the supervision measures. The competent authority in the issuing State shall indicate the period of time for which such an extension is likely to be needed. The competent authority in the executing State shall decide on this request in accordance with its national law.

Competence to take all subsequent decisions and governing law: the competent authority in the issuing State shall have jurisdiction to take all subsequent decisions relating to a decision on supervision measures. Such subsequent decisions include notably: (a) renewal, review and withdrawal of the decision on supervision measures; (b) modification of the supervision measures; (c) issuing an arrest warrant or any other enforceable judicial decision having the same effect. The jurisdiction of the competent authority in the issuing State is without prejudice to proceedings that may be initiated in the executing State against the person concerned in relation with criminal offences committed by him/her other than those on which the decision on supervision measures is based.

Information from the executing State: the competent authority in the executing State shall, without delay, inform the competent authority in the issuing State by any means which leaves a written record:

- of any change of residence of the person concerned;
- of the maximum length of time during which the supervision measures can be monitored in the executing State, in case the law of the executing State provides such a maximum;
- of the fact that it is in practice impossible to monitor the supervision measures;
- of the fact that a legal remedy has been introduced against a decision to recognise a decision on supervision measures;
- of the final decision to recognise the decision on supervision measures and take all necessary measures for the monitoring of the supervision measures;
- of any decision to adapt the supervision measures;
- of any decision not to recognise the decision on supervision measures and to assume responsibility for monitoring of the supervision measures, together with the reasons for the decision.

Surrender of the person: if the competent authority of the issuing State has issued an arrest warrant or any other enforceable judicial decision having the same effect, the person shall be surrendered in accordance with the [Framework Decision on the European Arrest Warrant](#).

Costs: costs resulting from the application of this Framework Decision shall be borne by the executing State, except for costs arising exclusively within the territory of the issuing State.

Report: by 1 December 2013, the Commission shall draw up a report on the basis of the information received from Member States. On the basis of this report, the Council shall assess: (a) the extent to which the Member States have taken the necessary measures in order to comply with this Framework Decision; and (b) the application of this Framework Decision.

ENTRY INTO FORCE: 01/12/2009.

IMPLEMENTATION: by 1 December 2012 at the latest.

