

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) - 30/11/2009 - Final act

PURPOSE: prevention and settlement of conflicts of jurisdiction in criminal proceedings in view of maintaining and developing an area of freedom, security and justice.

LEGISLATIVE ACT: Council Framework Decision 2009/948/JHA on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings.

CONTENT: the Hague Programme on strengthening freedom, security and justice in the European Union, which was approved by the European Council at its meeting 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, so as to complete the comprehensive programme of measures to implement the principle of mutual recognition of judicial decisions in criminal matters.

The objective of this Framework Decision 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.

This 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 shall reply to a request submitted

within any reasonable deadline indicated by the contacting authority, or, if no deadline has been indicated, without undue delay, and inform the contacting authority whether parallel proceedings are taking place in its Member State.

The process of exchange of information between competent authorities should be based upon the obligatory exchange of a specific minimum set of information, which should always be provided. The information concerned should notably facilitate the process of ensuring the proper identification of the person concerned and the nature and stage of the respective parallel proceedings.

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. 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 all the factors which they consider to be relevant.

Where it has not been possible to reach consensus, the matter shall, where appropriate, be referred to Eurojust by any competent authority of the Member States involved, if Eurojust is competent to act.

Where consensus has been reached on the concentration of criminal proceedings in one Member State, the competent authorities in the other Member State should act in a way that is compatible with that consensus.

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

Report: the Commission shall, by 15 December 2012, submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have complied with this Framework Decision, accompanied, if necessary, by legislative proposals.

IMPLEMENTATION: 15/06/2012.

ENTRY INTO FORCE: 15/12/2009.