Application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions. Framework Decision. Initiative Germany and France

2007/0807(CNS) - 27/11/2008 - Final act

PURPOSE: to lay down the rules according to which one Member State is to supervise suspended sentences, or alternative sanctions, contained in a judgment given in another Member States (an Initiative of the Federal Republic of Germany and of the French Republic).

LEGISLATIVE ACT: Council Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions.

CONTENT: based on the principle of mutual recognition, the Framework Decision aims at facilitating the social rehabilitation of sentenced persons, improving the protection of victims and of the general public, and fostering the application of suitable probation measures and alternative sanctions in the case of offenders who do not live in the State of conviction.

In order to reach those objectives, the Framework Decision sets rules under which a Member State, other than the Member State in which the person concerned has been sentenced, recognises judgments and, where applicable, probation decisions and supervises probation measures imposed on the basis of a judgment, or alternative sanctions contained in such a judgment, and takes- unless otherwise provided in the Framework Decision - all other decisions relating to that judgment.

The main elements of the text are as follows:

Types of measures concerned: pursuant to the Framework Decision, a judgment that contains either a suspended sentence or an alternative sanction may be transferred to another Member State in which the sentenced person is lawfully and ordinarily resident, for the purposes of recognition and supervision of these measures and sentences:

- an obligation for the sentenced person to inform a specific authority of any change of residence or working place;
- an obligation not to enter certain localities, places or defined areas in the issuing or executing State;
- an obligation containing limitations on leaving the territory of the executing State;
- instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity;
- an obligation to report at specified times to a specific authority;
- an obligation to avoid contact with specific persons;
- an obligation to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence;
- an obligation to compensate financially for the prejudice caused by the offence and/or an obligation to provide proof of compliance with such an obligation;
- an obligation to carry out community service;
-

an obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons;
- an obligation to undergo therapeutic treatment or treatment for addiction.

Procedure: when the competent authority of the issuing State forwards a judgment and, where applicable, a probation decision to another Member State, it shall ensure that it is accompanied by a **certificate**, the standard form for which is set out in Annex I of the Framework Decision. The certificate shall contain the essential elements of the judgment which shall be translated into the official language or one of the official languages of the executing State.

Double criminality: the Framework Decision lists a number of offences (as defined by the law of the issuing State) which, 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**, shall, without verification of the double criminality of the act, give rise to recognition of the judgment and to supervision of probation measures and alternative sanctions (for example: participation in a criminal organisation; terrorism; trafficking in human beings; sexual exploitation of children and child pornography; illicit trafficking in weapons and narcotic drugs; laundering of the proceeds of crime; counterfeiting currency; computer-related crime; environmental crime; murder; rape; illicit trade in human organs and tissue; illicit trafficking in nuclear or radioactive materials, etc.). The Council may decide to add other categories of offences to the list at any time, acting unanimously after consultation of the European Parliament.

Time limit: the competent authority of the executing State shall decide as soon as possible, and **within 60 days** of receipt of the judgment and, where applicable, the probation decision, whether or not to recognise the judgment and, where applicable, the probation decision and assume responsibility for supervising the probation measures or alternative sanctions. The supervision and application of probation measures and alternative sanctions shall be governed by the law of the executing State.

Adaptation: if the nature or duration of the relevant probation measure or alternative sanction, or the duration of the probation period, are incompatible with the law of the executing State, the competent authority of that State may adapt them in line with the nature and duration of the probation measures and alternative sanctions, or duration of the probation period, which apply, under the law of the executing State, to equivalent offences.

Grounds for refusal: the competent authority of the executing State may refuse to recognise a judgment if, inter alia: (i) the certificate is incomplete; (ii) under the law of the executing State, the sentenced person cannot, owing to his or her age, be held criminally liable for the acts in respect of which the judgment was issued; (iii) the judgment was rendered in absentia or issued against a person who has not been found guilty (such as in the case of a mentally ill person) and the judgment or, where applicable, the probation decision provides for medical/therapeutic treatment which the executing State cannot supervise in respect of such persons under its national law.

Jurisdiction to take all subsequent decisions: the competent authority of the executing State shall have jurisdiction to take all subsequent decisions relating to a suspended sentence, conditional release, conditional sentence and alternative sanction, in particular in case of non-compliance with a probation measure or alternative sanction or if the sentenced person commits a new criminal offence. Such subsequent decisions include notably: (i) the modification of obligations or instructions contained in the probation measure or alternative sanction, or the modification of the duration of the probation period; (ii) the revocation of the suspension of the execution of the judgment or the revocation of the decision on conditional release; (iii) the imposition of a custodial sentence or measure involving deprivation of liberty in case of an alternative sanction or conditional sentence. The law of the executing State shall apply to decisions.

Review: by 6 December 2014, the Commission shall draw up a report on the basis of the information received from Member States. This report shall be assessed by the Council and shall be accompanied, if necessary, by legislative proposals.

ENTRY INTO FORCE: 16/12/2008.

IMPLEMENTATION: by 06/12/2011.