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

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The Commission presented a report on the implementation by the Member States of Framework Decision 2008/947/JHA on the application of the principle of mutual recognition of probation decisions and alternative sanctions (Probation and Alternative Sanctions). This Council Framework Decision had to be implemented by 6 December 2011. It applies to many alternatives to custody and to measures facilitating early release (e.g. an obligation not to enter certain localities, to carry out community service or instructions relating to residence or training or professional activities).

In a common European area of justice based on mutual trust, the EU has taken action to ensure that non-residents subject to criminal proceedings are not treated differently from residents. This is particularly important in view of the important number of EU citizens who are imprisoned in other Member States.

The assessment of the numerous replies to the Commission Green Paper of June 2011 on the application of EU criminal justice legislation in the field of detention, showed that the proper and timely implementation of the Framework Decisions should have absolute priority.

The report also focuses on two other legislative texts:

- Council Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments imposing custodial sentences or measures involving deprivation of liberty (Transfer of Prisoners;
- Council Framework Decision 2009/829/JHA on the application of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention (European Supervision Order).

The purpose of this report is therefore twofold:

1. to assess the state of implementation of the Framework Decisions against the background of the powers of the Commission to start infringement procedures as of 1 December 2014;
2. to provide a preliminary evaluation of the national transposition laws already received by the Commission.

Background: each year tens of thousands of EU citizens are prosecuted for alleged crimes or convicted in another Member State of the European Union. Very often, criminal courts order the detention of non-residents because there is a fear that they will not turn up for trial. A suspect who is resident in the country would in a similar situation often benefit from a less coercive supervision measure, such as reporting to the police or a travel prohibition.

The Framework Decisions have to be seen as a package of coherent and complementary legislation that addresses the issue of detention of EU citizens in other Member States and has the potential to lead to a reduction in pre-trial detention or to facilitate social rehabilitation of prisoners in a cross border context.

There are in fact operational links between the three Framework Decisions, but also between the Framework Decisions and the Framework Decision on the European arrest warrant.

State of play of implementation: at the time of writing, the Commission had received notifications on the national transposition laws only from the following Member States:

- Transfer of Prisoners: from DK, FI, IT, LU and UK by the implementation date and from AT, BE, CZ, FR, HR, HU, LV, MT, NL, PL, RO, SI and SK after the implementation date.

- **Probation and Alternative Sanctions**: from DK and FI by the implementation date and from AT, BE, BG, CZ, HR, HU, LV, NL, PL, RO, SI and SK after the implementation date.

- European Supervision Order: from DK, FI, LV and PL by the implementation date of and from AT, CZ, HR, HU, NL, RO, SI and SK after the implementation date.

The non-implementation of the Framework Decisions by some Member States is very problematic since those Member States who have properly implemented the Framework Decisions cannot benefit from their co-operation provisions in their relations with those Member States who did not implement them in time. Indeed, the principle of mutual recognition, which is the cornerstone of the judicial area of justice, **requires a reciprocal transposition**; it cannot work if instruments are not implemented correctly in the two Member States concerned. As a consequence, when cooperating with a Member State who did not implement in time, even those Member States who did so will have to continue to apply the corresponding conventions of the Council of Europe when transferring EU prisoners or sentences to other Member States.

Main conclusions of the report: this report focuses on the evaluation of the selected Articles that form the core part of the Framework Decisions in the light of their aims.

As this is a preliminary evaluation, it is **too early to draw general conclusions on the quality of implementation**. This is also due to the fact that many Member States have not yet complied with their obligation to transpose the Framework Decisions.

The objective of developing an area of freedom, security and justice for all EU citizens as laid down in Article 3 of the Treaty on European Union **cannot be achieved if Member States do not properly implement the instruments they all agreed upon**.

The partial and incomplete transposition of the Framework Decisions hampers the application of the principle of mutual recognition in the area of criminal justice. It moreover **breaches the legitimate expectations of EU citizens** as they lose a precious tool to reduce the negative impact on their lives if they are suspected or accused in another Member State, in particular those citizens who are subject to a European arrest warrant in the pre-trial stage. At the same time the objective of the Framework Decisions to ensure that justice is served while enhancing the social rehabilitation of the suspected or accused person cannot be achieved.

Lastly, late implementation is to be regretted as the Framework Decisions have the potential to lead to a **reduction in prison sentences** imposed by judges to non-residents. This could not only reduce prison overcrowding and thereby improve detention conditions, but also – as a consequence – allow for considerable savings for the budgets spent by Member States on prisons.

Infringement proceedings: keeping in mind the power of the Commission to start infringement proceedings as of 1 December 2014, it is of utmost importance for all Member States to consider this Report and to provide all further relevant information to the Commission, in order to fulfil their obligations under the Treaty.

The Commission urges all those Member States that have not yet done so to take swift measures to implement these Framework Decisions to the fullest extent.