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) - 02/06/2014 - Follow-up document

The Commission presents a report on the implementation by the Member States of Framework Decision 2009/948/JHA on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings.

The report recalls the main objective of the Framework Decision which is to **prevent unnecessary parallel criminal proceedings** concerning the same facts and the same person in the European Union.

It is in the interests of effective criminal justice within the European area of justice to ensure that criminal proceedings are conducted in the best-placed Member State, for example in the State where the major part of the criminality occurred, where the majority of the loss was sustained or where the suspected or accused person or victims have significant interests. This jurisdiction must be chosen in a transparent and objective way in order to safeguard legal certainty for citizens and in order to improve judicial cooperation in criminal matters between authorities that may exercise parallel competence.

This Framework Decision is the first important step in European Union law on prevention of conflicts of jurisdiction.3 In the context of the internationalisation of crime within the European Union, this measure provides added value by improving the proper functioning of the European area of justice. It therefore also contributes to the efficient administration of criminal justice in the Member States.

State of play of transposition: the purpose of this report is to provide a preliminary evaluation of the national transposition laws already received by the Commission.

At the time of writing, the Commission has received notifications on the national transposition laws from the following 15 Member States: **AT, BE, CY, CZ, DE, FI, HU, HR, LV, NL, PL, PT, RO, SI** and **SK.**

More than 1 year after the implementation date, 13 Member States have not yet notified the measures transposing the obligations of this Framework Decision: **BG**, **DK, EE, EL, ES, FR, IE, IT, LT, LU, MT, SE** and **UK.**

7 Member States informed the Commission of the process of preparing relevant transposition measures at national level **(BG, EL, ES, FR, LT, MT** and **SE)**.

In general, the Commission notes that Framework Decisions have to be implemented by Member States as is the case with any other element of the EU acquis. By their nature, Framework Decisions are binding upon the Member States as to the result to be achieved, but it is a matter for the national authorities to choose the form and method of implementation.

The non-implementation of the Framework Decisions by some Member States is 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 European area of justice that this Framework Decision facilitates**, cannot work if instruments are not implemented correctly in all 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 rely on the random and often lengthy practice of traditional mutual legal assistance in criminal matters without a reliable guarantee of a timely detection of bis in idem cases, which should already take place at early stages of criminal proceedings. Such a practice increases significantly a **risk of double jeopardy**.

Main conclusions: this Framework Decision is a first substantial step in preventing breaches of the "ne bis in idem" principle during criminal proceedings and in avoiding the risk of inadequate exercise of jurisdiction by Member States. The degree of implementation of this Framework Decision varies significantly. While recognising the efforts of the 15 Member States that have transposed to date, the **level of implementation of this important piece of legislation is far from satisfactory** as 13 other Member States have not transposed it.

The partial and incomplete transposition of this Framework Decision hampers the effective functioning of the European area of justice. It can moreover undermine the legitimate expectations of EU citizens in certain cases. This is why the Commission encourages the Member States to provide for exact statistical data as regards the referrals of cases, which would enable an assessment of the efficient application of this Framework Decision in practice.

Lastly, the Commission:

- regrets late implementation as this Framework Decision has the potential to increase the efficient administration of criminal justice in crossborder cases by saving time and human and financial resources of the competent authorities in the criminal proceedings;
- calls on 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;
- encourages those Member States that have signalled that they are preparing relevant legislation to enact and give notification of these national measures as soon as possible;
- urges all those Member States that have not yet done so to take swift measures to implement this Framework Decision to the fullest extent.