Taking account of convictions in the Member States in the course of new criminal proceedings. Framework Decision

2005/0018(CNS) - 24/07/2008 - Final act

PURPOSE: to determine the conditions under which, in the course of criminal proceedings in a Member State against a person, previous convictions handed down against the same person for different facts in other Member States, are taken into account.

LEGISLATIVE ACT: Council Framework Decision 2008/675/JHA on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings;

BACKGROUND: some Member States attach effects to convictions handed down in other Member States, whereas others take account only of convictions handed down by their own courts. The principle that the Member States should attach to a conviction handed down in other Member States **effects equivalent** to those attached to a conviction handed down by their own courts in accordance with national law should be affirmed, whether those effects be regarded by national law as matters of fact or of procedural or substantive law.

However, this Framework Decision **does not seek to harmonise** the consequences attached by the different national legislations to the existence of previous convictions, and the obligation to take into account previous convictions handed down in other Member States exists only to the extent that previous national convictions are taken into account under national law. It contains no obligation to take into account such previous convictions, for example, in cases where the information obtained under applicable instruments is not sufficient, where a national conviction would not have been possible regarding the act for which the previous conviction had been imposed or where the previously imposed sanction is unknown to the national legal system.

CONTENT: the purpose of this Framework Decision is to establish a **minimum obligation** for Member States to t**ake into account convictions handed down in other Member States**.

Taking into account, in the course of new criminal proceedings, a conviction handed down in another Member State: according to the Decision, each Member State shall ensure that in the course of criminal proceedings against a person, previous convictions handed down against the same person for different facts in other Member States, in respect of which information has been obtained under applicable instruments on mutual legal assistance or on the exchange of information extracted from criminal records, are taken into account to the extent previous national convictions are taken into account, and that equivalent legal effects are attached to them as to previous national convictions, in accordance with national law. This shall apply to the pre-trial stage, at the trial stage itself and at the time of execution of the conviction, in particular with regard to the applicable rules of procedure, including those relating to provisional detention, the definition of the offence, the type and level of the sentence, and the rules governing the execution of the decision.

The taking into account of previous convictions handed down in other Member States shall not have the effect of interfering with, revoking or reviewing previous convictions or any decision relating to their execution by the Member State conducting the new proceedings.

Measures are also laid down in the case where the offence for which the new proceedings being conducted was committed before the previous conviction had been handed down or fully executed.

This Framework Decision respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union.

Report: on the basis of that information the Commission shall, by 15 August 2011, present a report to the European Parliament and the Council on the application of this Framework Decision, accompanied if necessary by legislative proposals.

It should be noted that this Framework Decision shall replace Article 56 of the European Convention of 28 May 1970 on the International Validity of Criminal Judgments as between the Member States parties to that Convention.

ENTRY INTO FORCE: 15/08/2008. It shall apply from 15/08/2010.