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

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The Commission presents this report on the implementation by the Member States of Framework Decision 2008/675/JHA of 24 July 2008 on taking into account of convictions in the Member States of the European Union in the course of new criminal proceedings.

The report recalls the **main objective of the Framework Decision** which is to ensure that similar legal effects are given to domestic convictions and convictions from other Member States. One of the key provisions of the Framework Decision is the **principle of simple assimilation of convictions** and imposes as a matter of principle, that the legal effects of foreign convictions must be equivalent to the legal effect of domestic convictions ("principle of equivalence"), according to national law. This means that there is an obligation to take foreign convictions into account, to be exercised in accordance with national law (the only obligation for Member States would be to take into account a foreign conviction to the extent that a national conviction would be taken into account).

Previous convictions are to be taken into account at the pre-trial stage, during the trial as well as when the conviction is executed. Due consideration should be given to previous convictions especially in relation to the applicable rules of procedure concerning:

- provisional detention;
- definition of the offence;
- type and level of the sentence;
- execution of the decision.

When previous convictions are taken into consideration by the Member State conducting new proceedings, this shall not have the effect of interfering with, revoking or reviewing the previous convictions.

State of play of transposition: at the time of writing, the Commission had received notifications on the national transposition laws from the following 22 Member States: **AT, BG, CY, CZ, DE, DK, EE, EL, FI, FR, HU, HR, IE, LU, LV, NL, PL, RO, SE, SI, SK and UK**. More than 3 years after the implementation date, 6 Member States have not yet notified the measures transposing the obligations of this Framework Decision: **BE, ES, IT, LT, MT and PT**. 4 Member States informed the Commission of the process of preparing relevant transposition measures at national level (**BE, ES, LT, MT**).

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 Commission states that while the lack of implementation in one Member State does not have direct consequences for the other Member States, in the interests of justice it remains important that a court in one Member State is able to take account of final criminal judgments rendered by the courts in other

Member States. Therefore, the correct application of the principle of equivalence and the need to ensure that, as a matter of principle, the legal effects of foreign convictions are systematically equivalent to the legal effects of domestic convictions, are important in the European area of justice.

Main conclusions: this Framework Decision affirms the principle that 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, whether those effects be regarded by national law as matters of facts or of procedural or substantive law.

Mutual trust: the Framework Decision has considerable added value in promoting mutual trust in penal laws and judicial decisions in the European area of justice as it encourages a judicial culture where previous convictions handed down in another Member State are in principle taken into account.

However:

- while recognising the efforts made by the 22 Member States that have transposed this Framework Decision to date, the level of compliance with the letter and spirit of the Framework Decision **varies significantly**;
- the non-transposition or 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 as they cannot benefit from this instrument aiming at reducing the reoffending of perpetrators of crime;
- late implementation is to be regretted as this Framework Decision has the potential to increase the efficient administration of criminal justice by putting in place legal tools to assess the offender’s criminal past and consequently protect victims.

Next steps: the Commission states that it will continue to closely monitor the Member States' compliance with all requirements of the Framework Decision. Notably the Commission will examine if the Member States duly apply the principle of equivalence and that, as a matter of principle, legal effects of foreign convictions are equivalent to legal effects of domestic convictions, in the Member State’s criminal justice system.

For the Commission, it is of utmost importance for all Member States to take **swift measures to implement this Framework Decision to the fullest extent**. Furthermore, it invites those that have transposed it incorrectly to review and align their national implementation legislation with the provisions of this Framework Decision.