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

2005/0018(CNS) - 17/03/2005 - Legislative proposal

PURPOSE : to define the conditions in which a conviction handed down in another Member State can be taken into account in new criminal proceedings concerning different facts and to lay down a series of rules relating to entries in the national judicial record of convictions handed down in another Member State.

PROPOSED ACT : Council Framework Decision.

CONTENT : this proposal follows up the White Paper on exchanges of information on convictions and the effect of such convictions in the European Union. That White Paper takes stock of the conditions for circulation and use of information on convictions in Union territory and defines the two focuses of future European Union action: improving the circulation of information and ensuring that it can have an impact outside the convicting State, in particular as a means of preventing further offences and at the time when new convictions are handed down.

The former aspect will be covered by a proposal for a decision establishing a computerised system for exchanging information on criminal convictions, which the Commission is planning to present in the first half of 2005.

This proposal covers the second aspect.

Improving the circulation of information will be of limited usefulness if the Member States are unable to make use of the information that is transmitted. The possibility of using the information that is transmitted, on the other hand, should be a considerable incentive to improving the exchanges.

Presented in the conclusions of the Tampere European Council as the “cornerstone” of judicial cooperation in both civil and criminal matters, the mutual recognition principle is the basis of a programme of measures adopted by the Council in December 2000.

Measure 2 of the programme provides for the “adoption of one or more instruments establishing the principle that a court in one Member State must be able to take account of final criminal judgments rendered by the courts in other Member States for the purposes of assessing the offender's criminal record and establishing whether he has re-offended, and in order to determine the type of sentence applicable and the arrangements for enforcing it”.

The purpose of this proposal for a Framework Decision is to attain the objectives set by measure 2 of the programme, by defining the conditions in which a conviction handed down in another Member State can be taken into account in new criminal proceedings concerning different facts. It lays down a series of rules relating to entries in the national judicial record of convictions handed down in another Member State.

Moreover, at national level, the existence of previous convictions can have effects on the pre trial stage of new criminal proceedings, during the trial itself and subsequently, in particular at the execution stage. The proposal defines the conditions in which it must be possible to take account of a conviction handed down in another Member State in new criminal proceedings concerning different facts. It covers those various procedural stages.

The proposal also provides mandatory and optional grounds for disregarding convictions handed down in other Member States, in particular if taking them into account would result in persons convicted in other Member States being treated more severely than if they had been convicted at the national level on identical facts.

Lastly, it lays down a series of rules for entry in a national criminal record of a conviction handed down in another Member State in order to avoid excessive differences of practice which could in some circumstances be detrimental to convicted persons. However, these rules are not binding on Member States.