

Application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union. Framework Decision. Initiative Austria, Finland, Sweden

2005/0805(CNS) - 12/04/2005 - Legislative proposal

PURPOSE : to simplify and make more rapid the existing arrangements for the transfer of prisoners between EU Member States.

PROPOSED ACT : Council Framework Decision.

CONTENT : the draft Framework Decision, which has been proposed by Austria, Finland and Sweden, is intended to simplify and make more rapid the existing arrangements for the transfer of prisoners between EU Member States, whether under the 1983 Council of Europe Convention or the European Arrest Warrant (EAW). Member States would be permitted to continue to apply existing bilateral or multilateral agreements or arrangements in force at the time of adoption of the Framework Decision, but only insofar as they allow the objectives of the Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for the enforcement of sanctions.

The main elements of the proposal are:

- a duty on the executing State to allow nationals, permanent residents and persons with other close links to serve their custodial sentences or detention orders on the territory of that State, Subject to certain grounds for refusal;
- waiver of the double criminality requirement with regard to convictions for certain offences on a list corresponding to that contained in the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, OJ L 190 of 18 July 2002;
- if the sentenced person is in the issuing State, he shall, if possible, be given an opportunity to state his opinion orally or in writing before a European enforcement order is issued;
- the consent of the sentenced person is not required when he is a national of the executing State or when he has his permanent legal residence in that State;
- recognition of the foreign final custodial sentence or detention order and its execution on the basis of a form (so-called European enforcement order);
- time-limits for the decision on the European enforcement order and for the transfer of the sentenced person to the executing State;
- enforcement of the final custodial sentence or detention order imposed by the sentencing State without conversion proceedings;

- the duration of the sentence may be adapted to the maximum level provided for a criminal act under the national law of the executing State only where the sanction is incompatible with fundamental principles of the law of the executing State;

- the nature of the sentence may, if it is incompatible with the law of the executing State, be adapted to the punishment or measure provided for under the national law of the executing State for a criminal offence of the same type.

Some provisions in the proposal also apply to the enforcement of sanctions imposed on nationals of the executing State or on persons resident therein who were surrendered to the issuing State, pursuant to Article 5(3) of the Framework Decision on the European arrest warrant, subject to the

condition that they be returned to the executing State in order to serve the sanction. The same applies where the executing Member State undertakes, pursuant to Article 4(6) of the Framework Decision, to execute the sanction on which the European arrest warrant is based. These sets of circumstances are currently unregulated.