

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

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This document consists of an explanatory memorandum on the draft Council Framework Decision on the European enforcement order and the transfer of sentenced persons between Member States of the EU. The Tampere European Council (1999) took the view that mutual recognition of court decisions should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union. The principle was to apply both to judgments and to other decisions of judicial authorities. At its meeting on 30 November and 1 December 2000 the Council (Justice and Home Affairs) adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters, in which it called for an assessment of the need for modern mechanisms for the mutual recognition of final sentences involving deprivation of liberty (Measure 14) and for extended application of the principle of the transfer of sentenced persons to cover persons resident in a Member State (Measure 16).

The Hague Programme on strengthening freedom, security and justice in the EU requires the Member States to complete the programme of measures, in particular in the field of enforcing final custodial sentences.

The main instrument governing cross-border enforcement of custodial sentences and detention orders in relations between the Member States is currently the Convention on the Transfer of Sentenced Persons of 21 March 1983. Under that Convention, sentenced persons may be transferred to serve the remainder of their sentence only to their State of nationality and only with their consent and that of the States involved.

The Additional Protocol to the Convention, of 18 December 1997, which allows transfer without the person's consent, subject to certain conditions, has not been ratified by all the Member States. Neither instrument imposes any basic obligation to enforce a custodial sentence or a detention order imposed in another Member State or sets any time limits for the decision on the enforcement and for the transfer of the sentenced person to the executing State.

Only a few Member States have ratified the European Convention of 28 May 1970 on the International Validity of Criminal Judgments, which does not require the sentenced person's consent and places a duty on the executing State to accept persons ordinarily resident in that State, subject to certain grounds for refusal.

The abovementioned Council of Europe instruments allow the Parties to choose between continuing to enforce the sentence or converting it. However, allowing the executing State to convert a sentence does not appear compatible with the principle of mutual recognition laid down in the Tampere conclusions and the Hague programme.