

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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The Council examined two questions relating to a proposal for a Framework Decision on the 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:

- the consent of the sentenced person, and
- the consent of the executing State to the forwarding of the judgement.

The main aim of this draft Framework Decision is to establish cases where the consent of the executing State is not necessary and to limit the need for the consent of the person concerned. Without prejudice to observations by some delegations on specific points, a large majority of delegations broadly agreed on the following principles:

- as far as the consent of the sentenced person is concerned, consent is needed for transferring the person to a Member State other than the Member State in which the person has his or her permanent legal residence. This would also apply where the intention is to transfer the person to his or her State of nationality in the case where the person has his or her legal residence in another Member State.
- regarding the consent of the executing State, it would not be needed where the judgment together with the certificate is forwarded to:
 - a) the State of nationality of the sentenced person where he or she lives/resides,
 - b) the State of nationality or the State of permanent legal residence of the sentenced person to which he or she would anyway be deported/expelled as a consequence of the judgment after having served the sentence,
 - c) the State of permanent legal residence of the sentenced person unless he or she has lost or will lose his or her residence permit as a consequence of the judgment.

On this basis, the Council preparatory bodies will continue work on the text of the Framework Decision, in particular regarding the definition of residence, with a view to reaching an agreement as soon as possible.

On 24 January 2005 Austria, Finland and Sweden submitted this proposal with a view to establishing the rules under which a Member State recognises and enforces on its territory a sanction imposed by a court of another Member State irrespective of whether or not enforcement has already been started.

Under the existing arrangements (the 1983 Convention on transfer of sentenced persons and its 1997 Protocol and Articles 67-69 of the Schengen Convention), the consent of the State asked to enforce the sentence is always needed. The consent of the sentenced person is also necessary, except in two cases: where the sentenced person has fled to his or her State of nationality or where the sentenced person will be deported to that State as a consequence of the conviction after having served his or her sentence.