

Application of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention. Framework Decision

2006/0158(CNS) - 29/08/2006 - Legislative proposal

PURPOSE: the establishment of a European supervision order in pre-trial procedures between EU Member States.

PROPOSED ACT: Council Framework Decision.

BACKGROUND: one of the EU's most important objectives is to develop an area of freedom, security and justice, in which the free movement of persons is guaranteed. In addition, and by virtue of Article 6, of the Treaty on European Union, the EU is committed to applying the European Convention for the Protection of Human Rights and Fundamental Freedoms" (ECHR). This Convention states that everyone has the right to liberty and security and anyone charged with a criminal offence shall be presumed innocent until proven guilty according to law. Indeed, the right to liberty and the presumption of innocence are fundamental principles in a democratic society. The ECHR states that, a person suspected of having committed a criminal offence may be deprived of his liberty only in exception circumstances – such as if there is a risk of absconding.

Recent studies highlight that non-resident suspects are more frequently kept in pre-trial detention or are subject to a non-custodial supervision measure in a foreign country, for fear of absconding. Typically, a foreign suspect will be in a more vulnerable position than a person who normally is resident in the country. Firstly, they are cut off from family and friends and secondly, there is a clear risk that a non-resident suspect in such a situation could lose his or her job through travel restrictions. Non-resident suspects are susceptible to receiving unequal treatment between the two categories, which can also be seen as an obstacle to the free movement of persons. Nonetheless, keeping suspects in pre-trial detention has an important cost implication. Further, it can lead to prison overcrowding and can seriously undermine improved detention conditions.

The purpose of this proposed Decision, therefore, is to reinforce the right to liberty and the presumption of innocence in the EU and to promote equal treatment of all citizens in the common area of freedom, security and justice.

CONTENT: the mandate for presenting this proposal is indicated in the "Programme of measures to implement the principle of mutual recognition of decisions in criminal matters", which was agreed to in 2000. In addition, the Tampere European Council in 1999 endorsed the principle of mutual recognition as the cornerstone of judicial co-operation in both civil and criminal matters. This should also apply to pre-trial orders. This proposal should be seen in connection with another Commission proposal for a Framework Decision on procedural rights in criminal proceedings throughout the EU and which contains provisions, amongst others, on the right to legal advice and interpretation. For a summary of this proposal, refer to: CNS/2004/0113.

As far as existing provisions are concerned, there are no international instrument that specifically allow the transfer of pre-trial supervision measures from one Member State to another. The introduction of a mutual recognition scheme for pre-trial supervision measures at EU level must therefore be considered in light of the legal framework that governs pre-trial detention in general.

Concretely speaking, the proposed European supervision order will be issued by a judicial authority in one Member States and that it must then be recognised by a competent authority in another Member State. Judicial authorities will not be obliged to issue a European supervisions order. It “may” do so. A suspect will have no right to it. If issued, a suspect will have to follow one or more obligation in order to reduce the three classical dangers associated with pre-trial detention under national law – i.e. the danger of suppressing evidence; the danger of re-offending and the danger of absconding. The proposed obligations correspond, largely, to recommendations of the Council of Europe on custody pending trial. The obligations that may be imposed by the issuing authority are all optional, other than the following two:

1. the obligation on the suspect to make him/herself available for the purpose of receiving summons for his or her trial;
2. the obligation not to obstruct the course of justice or engage in criminal activity.

The other “optional” obligations refer to travel prohibition, reporting, to the policy, curfew and house arrest.

The Member State of normal residence will be responsible for the supervision of the suspect and will be obliged to report any breaches to the issuing judicial authority. Strict time limits apply. Before a decision is taken, the suspect has the right to be heard by the issuing authority. This may be done through the use of video links between the issuing and the executing States. The transfer procedure will need to be proportionate to the aim of the proposal.

On a final point, the proposal entails no additional operational expenditure to be charged to the budgets of the Member States or to the budget of the European Union.