

Application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions. Framework Decision. Initiative Germany and France

2007/0807(CNS) - 20/04/2007 - Legislative proposal

PURPOSE: to lay down the rules according to which one Member State is to supervise suspended sentences, or alternative sanctions, contained in a judgment given in another Member States.

PROPOSED ACT: an Initiative of the Federal Republic of Germany and of the French Republic with a view to adopting a Council Framework Decision on the recognition and supervision of suspended sentences, alternative sanctions and conditional sentences.

CONTENT: the European Union has set itself the objective of developing an area of freedom, security and justice. One of the cornerstones underpinning the area of freedom, security and justice is the principle of mutual recognition of judicial decisions.

The purpose of this Framework Decision is to lay down the rules according to which one Member State supervises suspended sentences imposed on the basis of a judgment but which was issued in another Member State. The rules will also apply to alternative sanctions contained in such a judgement.

In establishing rules on recognising the supervision of suspended sentences, alternative sanctions and conditional sentences the EU is hoping to enhance the chance of those sentenced being re-integrated into society. Such a measure will enable them to preserve family, linguistic, cultural and other ties. It will also allow for the improved monitoring of those sentenced and, as a result, help to protect victims of crime.

Specifically, the proposed Framework Decision will apply only to:

- suspended sentences;
- alternative sanctions;
- conditional sentences; and
- all other judicial decisions provided for in this Decision.

It will not apply to the execution of judgments in criminal cases imposing custodial sentences or measures involving the deprivation of liberty.

In summary, the other provisions being proposed are as follows:

- each Member State will be responsible for informing the General Secretariat of the Council which judicial authorities are responsible for acting in accordance with this Framework Decision. In turn, the General Secretariat will make this information available to all of the EU's Member States and to the Commission;

- a judgment that contains either a suspended sentence; an alternative sanction; or a conditional sentence may be transferred to another Member State. This is on condition that the sentenced person is lawfully and ordinarily resident in the Member State to which he/she is to be transferred. Those who are to be transferred have a number of obligations, including: informing the competent authorities of any change of residence; not to leave or enter certain localities in the issuing or executing State without permission, and other orders relating to life-style, residence, education and training, professional activity or leisure activities; to report at specified times to the competent authority in the executing State; to avoid contact with persons and objects which could form an incitement to commit further offences; to compensate for the prejudice caused by the offence; to carry out community service; to cooperate with a probation officer and to undergo therapeutic treatment or treatment for addictions;
- procedures are set out detailing how judgements relating to this Framework Decision should be forwarded;
- the competent judicial authorities in the executing State recognise those judgements forwarded in accordance with procedures set out in the Decision;
- the types of offences to which this Decision will apply, include: participating in a criminal organisation; terrorism; trafficking in human beings; sexual exploitation of children and child pornography; illicit trafficking in narcotic drugs and psychotropic substances; illicit trafficking in weapons, munitions and explosives; corruption; fraud; laundering of the proceeds of crime; counterfeiting currency; computer-related crime; environmental crime (including the trafficking in endangered animals and plants; facilitating unauthorised entry and residence; murder grievous bodily harms; illicit trade in human organs and tissue; kidnapping, illegal restraint and hostage taking; racism and xenophobia; organised crime, illicit trafficking in cultural goods; swindling; racketeering and extortion; counterfeiting and piracy of products; forgery; illicit trafficking in nuclear or radioactive materials; rape; arson; crimes within the jurisdiction of the International Criminal Court; unlawful seizure of aircraft/ships; and sabotage;
- the crimes set out above will apply if they are punishable in the issuing State by a custodial sentence or measure involving a maximum period of at least three years;
- the Council may add other categories of offences to the list at any time;
- grounds for refusing to recognise judgements are also set out. They include, for example, incomplete certificates or certificates that obviously do not correspond to the judgement and which have not been completed within a reasonable period set by the competent judicial authority in the executing State;
- on a final point specific provisions have been set out that relate to: time limits; the law governing supervision; responsibility for taking all subsequent decision and the governing law; consultation between judicial authorities; obligation for the authorities in cases where the executing State has jurisdiction for all further decisions; obligations in cases where the issuing State has jurisdiction for all further decisions; amnesty and pardon; the end of jurisdiction of the executing States; and what languages are to be used.