Basic information

2003/0811(CNS) CNS - Consultation procedure Decision	Procedure lapsed or withdrawn
Criminal justice: ne bis in idem principle or prohibition of double jeopardy **Subject** 1.10 Fundamental rights in the EU, Charter 6.10.08 Fundamental freedoms, human rights, democracy in general 7.40.04 Judicial cooperation in criminal matters	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Citizens' Freedoms and Rights, Justice and Home Affairs	TURCO Maurizio (NI)	23/04/2003

Committee for opinion	Rapporteur for opinion	Appointed
JURI Legal Affairs and Internal Market	MACCORMICK Professor Sir Neil (V/ALE)	23/04/2003

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	2600	2004-07-19
Justice and Home Affairs (JHA)	2514	2003-06-05

European Commission

Commission DG	Commissioner
Justice and Consumers	FRATTINI Franco

Key events

Date	Event	Reference	Summary
28/03/2003	Legislative proposal published	07246/2003	Summary
10/04/2003	Committee referral announced in Parliament		
05/06/2003	Debate in Council		Summary
10/07/2003	Vote in committee		
10/07/2003	Committee report tabled for plenary, 1st reading/single reading	A5-0275/2003	
02/09/2003	Decision by Parliament	T5-0354/2003	Summary

19/07/2004	Debate in Council		Summary

Technical information	
Procedure reference	2003/0811(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Decision
Legal basis	EC Treaty (after Amsterdam) EC 029 Treaty on European Union (after Amsterdam) M 034-p2b Treaty on European Union (after Amsterdam) M 039-p1
Stage reached in procedure	Procedure lapsed or withdrawn
Committee dossier	LIBE/5/19434

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0275/2003	10/07/2003	
Text adopted by Parliament, 1st reading/single reading		T5-0354/2003 OJ C 076 25.03.2004, p. 0037-0086 E	02/09/2003	Summary

Council of the EU

Document type	Reference	Date	Summary
Document attached to the procedure	06356/2003	03/03/2003	Summary
Legislative proposal	07246/2003 OJ C 100 26.04.2003, p. 0024-0026	28/03/2003	Summary

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Criminal justice: ne bis in idem principle or prohibition of double jeopardy

2003/0811(CNS) - 03/03/2003 - Document attached to the procedure

This explanatory note presents the clear legal impact of the draft framework decision (Greek initiative) as well as the objectives and the effects of this draft which is fundamental for the development of European legal legislation. The aim of this proposal is to strengthen legal security in the Union with the guarantee that a final judgment handed down by a court in one Member State may not be called into question in another Member State. In addition, it aims to supplement and harmonise the disparate provisions with regard to the "ne bis in idem" principle which exist in various international legal

instruments, including within the legal framework of Schengen, where it repeals the provisions of Articles 54 to 58 of the 1990 Schengen Convention. The "ne bis in idem" principle is an ancient and fundamental legal concept. It is necessary in all legal systems, which would be unable to survive without a specific ban on constant retrial of the same case. The absence of such a principle would result in a substantial shortfall in legal security. The principle is based on the idea that the all-powerful State should not be permitted to continue to prosecute a person repeatedly for an alleged offence, subjecting him to hardship and expense, obliging him to live in a constant state of anxiety and increasing the likelihood that, even if he is innocent, he may be found guilty. The "ne bis in idem" rule means that no person (whether natural or legal) may be prosecuted or condemned twice for a given criminal offence. Thus the principle is bound up with the recognition of the fundamental res judicata status of final criminal judgments, in accordance with the national law of every Member State, and also with the mutual recognition of judgments in criminal cases. It has been recognised as an individual right by all international legal instruments for the protection of human rights. In the framework of judicial cooperation, the "ne bis in idem" principle exists in different forms such as in Article 7 of the Convention on the protection of the European Communities' Financial Interests of 26 July 1995 and in Article 10 of the Convention on the fight against corruption involving officials of the European Communities or officials of the Member States of the European Union of 26 May 1997. It also exists in the context of international criminal law this principle is taken into account in Convention on the International Validity of Criminal Judgments; the Council of Europe Convention on the Transfer of Proceedings in Criminal Matters; the United Nations' Model Treaty on the Transfer of Proceedings in Criminal Matters. The draft Framework Decision intends to prevent the conflicts of competences between Member States. In order to strengthen the "ne bis in idem" principle, it must also be applied to cases pending, i.e. where there are criminal proceedings in respect of the same criminal act in a number of Member States. The observance of the institution of lis pendens strengthens mutual confidence in the operation of criminal proceedings at European level and helps to prevent conflicts of jurisdiction (whether positive or negative). The principle applies only to final judgments, ie. to those which are not subject to ordinary or extraordinary appeal, in accordance with the national law of each Member State. Such casesare said to have the force of res judicata.

Criminal justice: ne bis in idem principle or prohibition of double jeopardy

2003/0811(CNS) - 05/06/2003

The Council took note of the state of play of the draft Framework Decision on the application of the principle "ne bis in idem" and instructed its preparatory instances to further examine the text of the draft Framework Decision. The application of the "ne bis in idem" principle has thus far raised many serious questions as to the interpretation or acceptance of certain substantive provisions or more general rules because of the different provisions governing this principle in the various international legal instruments and the difference in practices in national law.

Criminal justice: ne bis in idem principle or prohibition of double jeopardy

2003/0811(CNS) - 19/07/2004

The Council took note of the current situation in relation to negotiations on the ne bis in idem proposal. The Council highlights the importance of the ne bis in idem principle as presently enshrined in the Schengen acquis.

The Council stressed that further work should continue on ne bis in idem in particular in the light of the publication of the Commission's Communication on Conflicts of Jurisdiction in order to ensure that proven added value could be achieved. The Council instructed the Article 36 Committee to keep the position in this respect under review, in particular following publication of the Commission's Communication and any relevant developments in the case law of the European Court of Justice.

Criminal justice: ne bis in idem principle or prohibition of double jeopardy

2003/0811(CNS) - 02/09/2003 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution drafted by Maurizio TURCO (Ind, Italy) and made some amendments to the Greek initiative: - certain amendments deal with the situation where exceptionally, there is proof of new facts or circumstances which emerged after the judgement and which could not reasonably have been discovered by the prosecuting authorities at the time of the trial; or if there was a fundamental error in the previous procedures which could have affected the outcome of the proceedings, in accordance with the criminal law and the criminal procedure of the Member State of the proceedings. The procedure might be repeated, provided that, according to the law of that Member State, such a fresh procedure would be competent by way of a vertical application of ne bis in idem. In all cases, violation of the rights of the accused will be deemed a fundamental error in the previous procedure; - all proceedings are suspended until the determination of the Member State to be given preference; - if other judgements concerning the same criminal acts are issued in violation of the ne bis in idem principle in other Member States, the "favor rei" principle will apply; - Parliament has deleted the exceptions to the rule; it has also deleted provisions on the accounting principle of penalties and sentences; - instead of "acts", the amendment "acts, facts and behaviour" is applied throughout the draft; - the Commission must submit a report on application three years after the date of entry into force.

Criminal justice: ne bis in idem principle or prohibition of double jeopardy

2003/0811(CNS) - 28/03/2003 - Legislative proposal

PURPOSE : to present a Greek initiative with a view to adopting a Council Framework Decision concerning the application of the "ne bis in idem" principle. CONTENT : the principle "ne bis in idem", or the prohibition of double jeopardy, i.e. that no-one should be prosecuted or tried twice for the same acts and for the same criminal behaviour assumes a special significance at a time when transborder crime is on the increase and problems of jurisdiction in connection with criminal prosecutions are becoming more complicated. The importance of this principle is furthermore apparent in the

areas of asylum, immigration and extradition and within the framework of the European Union and in agreements between the Union or certain Member States and third countries To recall, in the programme of measures to implement the principle of mutual recognition of decisions in criminal matters established by the Council and the Commission the "ne bis in idem" principle is included among the immediate priorities of the Union, in particular as regards the taking into account of final criminal judgments delivered by a court in another Member State. The programme recommended a reconsideration of Articles 54 to 57 of the Convention implementing the Schengen Agreement, which reiterate the corresponding articles of the Convention between the Member States of the European Communities on Double Jeopardy, signed in Brussels on 25 May 1987, with a view to the full application of the principle of mutual recognition, which has, however, not been ratified by the Member States. It should also be highlighted that in the legal systems of a number of States the principle of "ne bis in idem" is recognised only at national level, i.e. vertically, observing the criminal procedure followed in the State in question. The application of the "ne bis in idem" principle has thus far raised many serious questions as to the interpretation or acceptance of certain substantive provisions or more general rules (e.g. the concept of "idem") because of the different provisions governing this principle in the various international legal instruments and the difference in practices in national law. The aim of this proposed Framework Decision is to provide the Member States with common legal rules relating to the "ne bis in idem" principle in order to ensure uniformity in both the interpretation of those rules and their practical implementation. Since the above objectives of the Framework Decision cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity. In accordance with the principle of proportionality, this Framework Decision does not go beyond what is necessary in order to achieve those objectives. This draft Framework Decision sets out a number of definitions of specific terms such as "criminal offences" which shall mean: - acts which constitute crimes under the law of each Member State; - acts which constitute administrative offences or breaches of order that are punished by an administrative authority by a fine, in accordance with the national law of each Member State, provided that they fall within the jurisdiction of the administrative authority and the person concerned is able tobring the matter before a criminal court; - "judgment" shall mean any final judgment delivered by a criminal court in a Member State as the outcome of criminal proceedings, convicting or acquitting the defendant or definitively terminating the prosecution, in accordance with the national law of each Member State, and also any extrajudicial mediated settlement in a criminal matter; any decision which has the status of res judicata under national law shall be considered a final judgment; - "Member State of the proceedings" shall mean a Member State in which the proceedings took place; - "Lis pendens" shall mean a case where, in respect of a criminal offence, a criminal prosecution has already been brought against a person, without a judgment having been delivered and where the case is already pending before a court; - "idem" shall mean a second criminal offence arising solely from the same, or substantially the same, facts, irrespective of its legal character. As regards the right of any person not to be prosecuted or convicted twice for the same criminal offence, the draft framework decision stipulates that whoever, as a result of committing a criminal offence, has been prosecuted and finally judged in a Member State in accordance with the criminal law and the criminal procedure of that State cannot be prosecuted for the same acts in another Member State if he has already been acquitted or, if convicted, the sentence has been served or is being served or can no longer be enforced, in accordance with the law of the Member State of the proceedings. The procedure may be repeated if there is proof of new facts or circumstancess which emerged after the judgment or if there was a fundamental error in the previous procedure which could have affected the outcome of the proceedings, in accordance with the criminal law and the criminal procedure of the Member State of the proceedings. Exceptions are also provided in the application of the principle. A Member State may make a declaration specifying the categories of offence to which the exception may apply. The draft framework decision also provides for an accounting principles. It stipulates that if a new prosecution is brought in a Member State against a person who has been definitively convicted for the same offences in another Member State the period of deprivation of freedom or fine handed down by that State in respect of those offences shall be deducted from the sentence which he would probably receive. As far as allowed by national law, any penalties other than deprivation of freedom which have been imposed, or penalties imposed in the framework of administrative procedures, shall also be included. Lastly, the draft framework decision provides for the exchange of information between competent authorities. If a prosecution has been brought against a person in a Member State and the competent authorities of the latter have reasons to believe that the charge concerns the same acts for which he has been definitively convicted in another Member State, those authorities shall request the relevant information from the competent authorities of the Member State of the proceedings. The requested information shall be provided as soon as possible using all available technical means and shall be taken into account in order to determine whether the procedure is to becontinued.