Basic information

2005/0018(CNS) CNS - Consultation procedure JHA act	Procedure completed
Taking account of convictions in the Member States in the course of new criminal proceedings. Framework Decision **Subject** 7.40.04 Judicial cooperation in criminal matters	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	DEMETRIOU Panayiotis (PPE-DE)	10/05/2005

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	2768	2006-12-04
Justice and Home Affairs (JHA)	2752	2006-10-05
Justice and Home Affairs (JHA)	2887	2008-07-24

European Commission

Commission DG	Commissioner
Justice and Consumers	FRATTINI Franco

Key events

Date	Event	Reference	Summary
17/03/2005	Legislative proposal published	COM(2005)0091	Summary
06/09/2005	Committee referral announced in Parliament		
04/09/2006	Vote in committee		Summary
08/09/2006	Committee report tabled for plenary, 1st reading/single reading	A6-0268/2006	
26/09/2006	Debate in Parliament		
27/09/2006	Decision by Parliament	T6-0373/2006	Summary
27/09/2006	Results of vote in Parliament		
05/10/2006	Debate in Council		

04/12/2006	Debate in Council		
24/07/2008	Act adopted by Council after consultation of Parliament		
24/07/2008	End of procedure in Parliament		
15/08/2008	Final act published in Official Journal		

Technical information

Procedure reference	2005/0018(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	JHA act
Legal basis	Treaty on European Union (after Amsterdam) M 034-p2b Treaty on European Union (after Amsterdam) M 031
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/6/27435

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE376.343	29/06/2006	
Amendments tabled in committee		PE376.627	25/07/2006	
Committee report tabled for plenary, 1st reading/single reading		A6-0268/2006	08/09/2006	
Text adopted by Parliament, 1st reading/single reading		T6-0373/2006	27/09/2006	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2005)0091	17/03/2005	Summary
Commission response to text adopted in plenary	SP(2006)4772	19/10/2006	
Follow-up document	COM(2014)0312	02/06/2014	Summary

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Justice and Home Affairs act 2008/0675
OJ L 220 15.08.2008, p. 0032 Summary

Taking account of convictions in the Member States in the course of new criminal proceedings. Framework Decision

2005/0018(CNS) - 24/07/2008 - Final act

PURPOSE: to determine the conditions under which, in the course of criminal proceedings in a Member State against a person, previous convictions handed down against the same person for different facts in other Member States, are taken into account.

LEGISLATIVE ACT: Council Framework Decision 2008/675/JHA on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings;

BACKGROUND: some Member States attach effects to convictions handed down in other Member States, whereas others take account only of convictions handed down by their own courts. The principle that the Member States should attach to a conviction handed down in other Member States **effects equivalent** to those attached to a conviction handed down by their own courts in accordance with national law should be affirmed, whether those effects be regarded by national law as matters of fact or of procedural or substantive law.

However, this Framework Decision **does not seek to harmonise** the consequences attached by the different national legislations to the existence of previous convictions, and the obligation to take into account previous convictions handed down in other Member States exists only to the extent that previous national convictions are taken into account under national law. It contains no obligation to take into account such previous convictions, for example, in cases where the information obtained under applicable instruments is not sufficient, where a national conviction would not have been possible regarding the act for which the previous conviction had been imposed or where the previously imposed sanction is unknown to the national legal system.

CONTENT: the purpose of this Framework Decision is to establish a **minimum obligation** for Member States to t**ake into account convictions handed down in other Member States**.

Taking into account, in the course of new criminal proceedings, a conviction handed down in another Member State: according to the Decision, each Member State shall ensure that in the course of criminal proceedings against a person, previous convictions handed down against the same person for different facts in other Member States, in respect of which information has been obtained under applicable instruments on mutual legal assistance or on the exchange of information extracted from criminal records, are taken into account to the extent previous national convictions are taken into account, and that equivalent legal effects are attached to them as to previous national convictions, in accordance with national law. This shall apply to the pre-trial stage, at the trial stage itself and at the time of execution of the conviction, in particular with regard to the applicable rules of procedure, including those relating to provisional detention, the definition of the offence, the type and level of the sentence, and the rules governing the execution of the decision.

The taking into account of previous convictions handed down in other Member States shall not have the effect of interfering with, revoking or reviewing previous convictions or any decision relating to their execution by the Member State conducting the new proceedings.

Measures are also laid down in the case where the offence for which the new proceedings being conducted was committed before the previous conviction had been handed down or fully executed.

This Framework Decision respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union.

Report: on the basis of that information the Commission shall, by 15 August 2011, present a report to the European Parliament and the Council on the application of this Framework Decision, accompanied if necessary by legislative proposals.

It should be noted that this Framework Decision shall replace Article 56 of the European Convention of 28 May 1970 on the International Validity of Criminal Judgments as between the Member States parties to that Convention.

ENTRY INTO FORCE: 15/08/2008. It shall apply from 15/08/2010.

Taking account of convictions in the Member States in the course of new criminal proceedings. Framework Decision

2005/0018(CNS) - 02/06/2014 - Follow-up document

The Commission presents this report on the implementation by the Member States of Framework Decision 2008/675/JHA of 24 July 2008 on taking into account of convictions in the Member States of the European Union in the course of new criminal proceedings.

The report recalls the **main objective of the Framework Decision** which is to ensure that similar legal effects are given to domestic convictions and convictions from other Member States. One of the key provisions of the Framework Decision is the **principle of simple assimilation of convictions** and imposes as a matter of principle, that the legal effects of foreign convictions must be equivalent to the legal effect of domestic convictions ("principle of equivalence"), according to national law. This means that there is an obligation to take foreign convictions into account, to be exercised in accordance with national law (the only obligation for Member States would be to take into account a foreign conviction to the extent that a national conviction would be taken into account).

Previous convictions are to be taken into account at the pre-trial stage, during the trial as well as when the conviction is executed. Due consideration should be given to previous convictions especially in relation to the applicable rules of procedure concerning:

- provisional detention;
- definition of the offence;
- type and level of the sentence;
- execution of the decision.

When previous convictions are taken into consideration by the Member State conducting new proceedings, this shall not have the effect of interfering with, revoking or reviewing the previous convictions.

State of play of transposition: at the time of writing, the Commission had received notifications on the national transposition laws from the following 22 Member States: **AT, BG, CY, CZ, DE, DK, EE, EL, FI, FR, HU, HR, IE, LU, LV, NL, PL, RO, SE, SI, SK and UK**. More than 3 years after the implementation date, 6 Member States have not yet notified the measures transposing the obligations of this Framework Decision: **BE, ES, IT, LT, MT and PT**. 4 Member States informed the Commission of the process of preparing relevant transposition measures at national level (**BE, ES, LT, MT**).

The Commission notes that Framework Decisions have to be implemented by Member States as is the case with any other element of the EU acquis. By their nature, Framework Decisions are binding upon the Member States as to the result to be achieved, but it is a matter for the national authorities to choose the form and method of implementation.

The Commission states that while the lack of implementation in one Member State does not have direct consequences for the other Member States, in the interests of justice it remains important that a court in one Member State is able to take account of final criminal judgments rendered by the courts in other Member States. Therefore, the correct application of the principle of equivalence and the need to ensure that, as a matter of principle, the legal effects of foreign convictions are systematically equivalent to the legal effects of domestic convictions, are important in the European area of justice.

Main conclusions: this Framework Decision affirms the principle that Member States should attach to a conviction handed down in other Member States effects equivalent to those attached to a conviction handed down by their own courts in accordance with national law, whether those effects be regarded by national law as matters of facts or of procedural or substantive law.

Mutual trust: the Framework Decision has considerable added value in promoting mutual trust in penal laws and judicial decisions in the European area of justice as it encourages a judicial culture where previous convictions handed down in another Member State are in principle taken into account.

However:

- while recognising the efforts made by the 22 Member States that have transposed this Framework Decision to date, the level of compliance with the letter and spirit of the Framework Decision **varies significantly**;
- the non-transposition or the partial and incomplete transposition of this Framework Decision hampers the effective functioning of the European area of justice. It can moreover undermine the legitimate expectations of EU citizens as they cannot benefit from this instrument aiming at reducing the reoffending of perpetrators of crime;
- late implementation is to be regretted as this Framework Decision has the potential to increase the efficient administration of criminal justice by putting in place legal tools to assess the offender’s criminal past and consequently protect victims.

Next steps: the Commission states that it will continue to closely monitor the Member States' compliance with all requirements of the Framework Decision. Notably the Commission will examine if the Member States duly apply the principle of equivalence and that, as a matter of principle, legal effects of foreign convictions are equivalent to legal effects of domestic convictions, in the Member State’s criminal justice system.

For the Commission, it is of utmost importance for all Member States to take **swift measures to implement this Framework Decision to the fullest extent**. Furthermore, it invites those that have transposed it incorrectly to review and align their national implementation legislation with the provisions of this Framework Decision.

Taking account of convictions in the Member States in the course of new criminal proceedings. Framework Decision

2005/0018(CNS) - 17/03/2005 - Legislative proposal

PURPOSE : to define the conditions in which a conviction handed down in another Member State can be taken into account in new criminal proceedings concerning different facts and to lay down a series of rules relating to entries in the national judicial record of convictions handed down in another Member State.

PROPOSED ACT : Council Framework Decision.

CONTENT : this proposal follows up the White Paper on exchanges of information on convictions and the effect of such convictions in the European Union. That White Paper takes stock of the conditions for circulation and use of information on convictions in Union territory and defines the two focuses of future European Union action: improving the circulation of information and ensuring that it can have an impact outside the convicting State, in particular as a means of preventing further offences and at the time when new convictions are handed down.

The former aspect will be covered by a proposal for a decision establishing a computerised system for exchanging information on criminal convictions, which the Commission is planning to present in the first half of 2005.

This proposal covers the second aspect.

Improving the circulation of information will be of limited usefulness if the Member States are unable to make use of the information that is transmitted. The possibility of using the information that is transmitted, on the other hand, should be a considerable incentive to improving the exchanges.

Presented in the conclusions of the Tampere European Council as the “cornerstone” of judicial cooperation in both civil and criminal matters, the mutual recognition principle is the basis of a programme of measures adopted by the Council in December 2000.

Measure 2 of the programme provides for the “adoption of one or more instruments establishing the principle that a court in one Member State must be able to take account of final criminal judgments rendered by the courts in other Member States for the purposes of assessing the offender's criminal record and establishing whether he has re-offended, and in order to determine the type of sentence applicable and the arrangements for enforcing it”.

The purpose of this proposal for a Framework Decision is to attain the objectives set by measure 2 of the programme, by defining the conditions in which a conviction handed down in another Member State can be taken into account in new criminal proceedings concerning different facts. It lays down a series of rules relating to entries in the national judicial record of convictions handed down in another Member State.

Moreover, at national level, the existence of previous convictions can have effects on the pre trial stage of new criminal proceedings, during the trial itself and subsequently, in particular at the execution stage. The proposal defines the conditions in which it must be possible to take account of a conviction handed down in another Member State in new criminal proceedings concerning different facts. It covers those various procedural stages.

The proposal also provides mandatory and optional grounds for disregarding convictions handed down in other Member States, in particular if taking them into account would result in persons convicted in other Member States being treated more severely than if they had been convicted at the national level on identical facts.

Lastly, it lays down a series of rules for entry in a national criminal record of a conviction handed down in another Member State in order to avoid excessive differences of practice which could in some circumstances be detrimental to convicted persons. However, these rules are not binding on Member States.

Taking account of convictions in the Member States in the course of new criminal proceedings. Framework Decision

2005/0018(CNS) - 27/09/2006 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution drafted by Panayiotis **DEMETRIOU** (EPP-ED, CY) with 543 votes in favour to 41 against with 67 abstentions, and made some amendments to the proposal. (Please see the summary of 04/09/2006.)