

Basic information	
<b>2005/0805(CNS)</b>  CNS - Consultation procedure Decision	Procedure completed
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	
Amended by <a href="#">2008/0803(CNS)</a> Amended by <a href="#">2021/0395(COD)</a>	
<b>Subject</b>  7.40.04 Judicial cooperation in criminal matters	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<span>LIBE</span> Civil Liberties, Justice and Home Affairs	VARVITSIOTIS Ioannis (PPE-DE)	04/07/2005
	<span>LIBE</span> Civil Liberties, Justice and Home Affairs	VARVITSIOTIS Ioannis (PPE-DE)	04/07/2005
Council of the European Union			
	Council configuration	Meetings	Date
	Justice and Home Affairs (JHA)	2752	2006-10-05
	Justice and Home Affairs (JHA)	2781	2007-02-15
	Justice and Home Affairs (JHA)	2725	2006-04-27
	Justice and Home Affairs (JHA)	2768	2006-12-04
	Justice and Home Affairs (JHA)	2908	2008-11-27
	Justice and Home Affairs (JHA)	2732	2006-06-01
European Commission			
	Commission DG	Commissioner	
	Justice and Consumers	FRATTINI Franco	

Key events			
Date	Event	Reference	Summary

12/04/2005	Legislative proposal published	07307/2005	Summary
26/05/2005	Committee referral announced in Parliament		
27/04/2006	Debate in Council		Summary
15/05/2006	Vote in committee		Summary
17/05/2006	Committee report tabled for plenary, 1st reading/single reading	A6-0187/2006	
01/06/2006	Debate in Council		Summary
13/06/2006	Debate in Parliament		
14/06/2006	Decision by Parliament	T6-0256/2006	Summary
14/06/2006	Results of vote in Parliament		
05/10/2006	Debate in Council		Summary
04/12/2006	Debate in Council		
15/02/2007	Debate in Council		Summary
22/05/2007	Amended legislative proposal for reconsultation published	09688/2007	Summary
03/07/2007	Formal reconsultation of Parliament		
03/10/2007	Vote in committee		Summary
08/10/2007	Committee report tabled for plenary, reconsultation	A6-0362/2007	
24/10/2007	Debate in Parliament		
25/10/2007	Decision by Parliament	T6-0476/2007	Summary
25/10/2007	Results of vote in Parliament		
27/11/2008	Act adopted by Council after consultation of Parliament		
27/11/2008	End of procedure in Parliament		
05/12/2008	Final act published in Official Journal		

Technical information	
<b>Procedure reference</b>	2005/0805(CNS)
<b>Procedure type</b>	CNS - Consultation procedure
<b>Procedure subtype</b>	Legislation
<b>Legislative instrument</b>	Decision
<b>Amendments and repeals</b>	Amended by <a href="#">2008/0803(CNS)</a> Amended by <a href="#">2021/0395(COD)</a>
<b>Legal basis</b>	EC Treaty (after Amsterdam) EC 031-p1 Treaty on the European Union (after Amsterdam) M 034-p2b
<b>Stage reached in procedure</b>	Procedure completed
<b>Committee dossier</b>	LIBE/6/51455 LIBE/6/28264

Documentation gateway
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## European Parliament

Document type	Committee	Reference	Date	Summary
Amendments tabled in committee		PE372.161	24/04/2006	
Committee draft report		PE371.769	10/05/2006	
Committee report tabled for plenary, 1st reading/single reading		A6-0187/2006	17/05/2006	
Text adopted by Parliament, 1st reading/single reading		T6-0256/2006	14/06/2006	<a href="#">Summary</a>
Committee draft report		PE393.875	29/08/2007	
Amendments tabled in committee		PE394.028	17/09/2007	
Committee final report tabled for plenary, reconsultation		A6-0362/2007	08/10/2007	
Text adopted by Parliament after reconsultation		T6-0476/2007	25/10/2007	<a href="#">Summary</a>

## Council of the EU

Document type	Reference	Date	Summary
Legislative proposal	07307/2005 OJ C 150 21.06.2005, p. 0001-0016	12/04/2005	<a href="#">Summary</a>
Supplementary legislative basic document	05597/2005	22/04/2005	<a href="#">Summary</a>
Amended legislative proposal for reconsultation	09688/2007	22/05/2007	<a href="#">Summary</a>

## European Commission

Document type	Reference	Date	Summary
Follow-up document	COM(2014)0057 	05/02/2014	<a href="#">Summary</a>
Follow-up document	SWD(2014)0034 	05/02/2014	

## Additional information

Source	Document	Date
European Commission	<a href="#">EUR-Lex</a>	

## Final act

Justice and Home Affairs act 2008/0909 OJ L 327 05.12.2008, p. 0027	<a href="#">Summary</a>
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# **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**

2005/0805(CNS) - 25/10/2007 - Text adopted by Parliament after reconsultation

The European Parliament adopted a resolution drafted by Ioannis **VARVITSIOTIS** (EPP-ED, EL), and approved the draft Council Framework Decision on the application of the principle of mutual recognition to judgements in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the EU.

It made one amendment: a new recital states that procedural rights in criminal proceedings are a crucial element for ensuring mutual confidence among the Member States in judicial cooperation, and despite the efforts of the German Presidency, no agreement has thus far been reached following the presentation of a draft framework decision on procedural rights by the Commission, backed by the European Parliament at first reading.

# **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**

2005/0805(CNS) - 15/02/2007

The Council agreed on a general approach concerning a draft 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 EU.

The agreement reached on this instrument will allow the transfer of sentenced persons to another Member State for the purpose of enforcement of the sentence imposed, taking into account the possibility of social rehabilitation of the sentenced person.

The Council recognised that **Poland** needed more time than the other Member States to face the practical and material consequences of transfer of Polish citizens convicted in other Member States, especially in the light of an increased mobility of Polish citizens within the European Union. For that reason, Poland was granted a **temporary derogation of limited scope for a maximum period of 5 years**.

All Member States have ratified the Council of Europe Convention on the Transfer of Sentenced Persons of 21 March 1983. Under that Convention, sentenced persons may be transferred to serve the remainder of their sentence only to their State of nationality, and only with their consent and that of the States involved. The Additional Protocol to the Convention of 18 December 1997, which allows transfer without the person's consent, subject to certain conditions, has not been ratified by all the Member States. Neither instrument imposes any basic duty to take charge of sentenced persons for enforcement of a sentence or order.

Relations between the Member States, which are characterised by special mutual confidence in other Member States' legal systems, enable recognition by the executing State of decisions taken by the issuing State's authorities. Therefore, this legal instrument envisages further development of the cooperation provided for in the Council of Europe instruments concerning the enforcement of criminal judgments, in particular where EU nationals or other persons legally residing in one Member State have been the subject of a criminal judgment and have been sentenced to a custodial sentence or a measure involving deprivation of liberty in another Member State. Enforcement of the sentence in the executing Member State enhances the possibility of social rehabilitation of the sentenced person, giving him or her the opportunity to maintain family, linguistic, cultural and other links.

# **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**

2005/0805(CNS) - 12/04/2005 - Legislative proposal

**PURPOSE** : to simplify and make more rapid the existing arrangements for the transfer of prisoners between EU Member States.

**PROPOSED ACT** : Council Framework Decision.

CONTENT : the draft Framework Decision, which has been proposed by Austria, Finland and Sweden, is intended to simplify and make more rapid the existing arrangements for the transfer of prisoners between EU Member States, whether under the 1983 Council of Europe Convention or the European Arrest Warrant (EAW). Member States would be permitted to continue to apply existing bilateral or multilateral agreements or arrangements in force at the time of adoption of the Framework Decision, but only insofar as they allow the objectives of the Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for the enforcement of sanctions.

The main elements of the proposal are:

- a duty on the executing State to allow nationals, permanent residents and persons with other close links to serve their custodial sentences or detention orders on the territory of that State, Subject to certain grounds for refusal;
- waiver of the double criminality requirement with regard to convictions for certain offences on a list corresponding to that contained in the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, OJ L 190 of 18 July 2002;
- if the sentenced person is in the issuing State, he shall, if possible, be given an opportunity to state his opinion orally or in writing before a European enforcement order is issued;
- the consent of the sentenced person is not required when he is a national of the executing State or when he has his permanent legal residence in that State;
- recognition of the foreign final custodial sentence or detention order and its execution on the basis of a form (so-called European enforcement order);
- time-limits for the decision on the European enforcement order and for the transfer of the sentenced person to the executing State;
- enforcement of the final custodial sentence or detention order imposed by the sentencing State without conversion proceedings;
- the duration of the sentence may be adapted to the maximum level provided for a criminal act under the national law of the executing State only where the sanction is incompatible with fundamental principles of the law of the executing State;
- the nature of the sentence may, if it is incompatible with the law of the executing State, be adapted to the punishment or measure provided for under the national law of the executing State for a criminal offence of the same type.

Some provisions in the proposal also apply to the enforcement of sanctions imposed on nationals of the executing State or on persons resident therein who were surrendered to the issuing State, pursuant to Article 5(3) of the Framework Decision on the European arrest warrant, subject to the condition that they be returned to the executing State in order to serve the sanction. The same applies where the executing Member State undertakes, pursuant to Article 4(6) of the Framework Decision, to execute the sanction on which the European arrest warrant is based. These sets of circumstances are currently unregulated.

## **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**

2005/0805(CNS) - 14/06/2006 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution drafted by Ioannis VARVITSIOTIS (EPP-ED, EL) and made some amendments to the proposed initiative. The resolution was adopted by 484 votes to 53 against with 9 abstentions. Parliament proposed several amendments, particularly with regard to transfer deadlines and prisoners' rights. The main amendments are as follows:

- in order to reflect two essential aspects of the document produced by the Council's working party, i.e. the mutual recognition and the enforcement of custodial sentences, the title should be amended to "Council Framework Decision on the application of the principle of mutual recognition of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union". MEPs argued that the recognition and enforcement should take place not on the basis of a 'European enforcement order' but rather on the basis of the judgment and a certificate. A series of amendments sought to reflect these changes in the body of the text;
- on the question of whether or not the sentenced person should give consent for the transfer, the committee amended the wording of recital 5 which had said that Member States had "a basic duty" to take charge of nationals or residents sentenced in another country, "irrespective of their consent, unless there are specific reasons for refusal". The amendment stipulated that, "notwithstanding the necessity of providing the sentenced person with adequate safeguards, his or her involvement in the proceedings should no longer be dominant by requiring his or her consent" for demanding the transfer;
- a judgment, together with a certificate as provided, may be forwarded to one of the prescribed list of Member States; Parliament deleted a clause that allowed transfers to be refused if the prisoner is neither a national, permanent resident or 'has close links to' the country to which they are being sent.

- the judgment forwarded to the Member State to which the sentenced person would be transferred may include data in any form concerning that person's prison record;
- a series of amendments were designed to ensure that the receiving Member state can refuse the transfer if the necessary requisites are not met;
- the final decision on the recognition of the judgment and the enforcement of the sentence should be taken within 30 days (or, in some cases, within 60 days) of receipt of the judgment and the certificate (rather than 3 weeks as originally proposed);
- an amnesty or pardon may be granted by the state issuing the sentence only in consultation with the receiving state;
- the victims of the crime shall also be informed of the existence of an application for recognition and transfer of the enforcement of the sentence, and of the outcome of the procedure, including the order to transfer the sentenced person from the issuing State to the executing State;
- transfers should only be possible if the prisoner has at least six months of their sentence still to serve, not four months as proposed;
- Member States through which the prisoner must transit en route to the state of destination should be merely "informed" of the transfer, rather than having to request their permission to transit;
- Finally, the certificate, the standard form of which is set out in the Annex, must be translated into the official language, or one of the official languages, of the executing State.

## **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**

2005/0805(CNS) - 22/04/2005 - Supplementary legislative basic document

This document consists of an explanatory memorandum on the draft Council Framework Decision on the European enforcement order and the transfer of sentenced persons between Member States of the EU. The Tampere European Council (1999) took the view that mutual recognition of court decisions should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union. The principle was to apply both to judgments and to other decisions of judicial authorities. At its meeting on 30 November and 1 December 2000 the Council (Justice and Home Affairs) adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters, in which it called for an assessment of the need for modern mechanisms for the mutual recognition of final sentences involving deprivation of liberty (Measure 14) and for extended application of the principle of the transfer of sentenced persons to cover persons resident in a Member State (Measure 16).

The Hague Programme on strengthening freedom, security and justice in the EU requires the Member States to complete the programme of measures, in particular in the field of enforcing final custodial sentences.

The main instrument governing cross-border enforcement of custodial sentences and detention orders in relations between the Member States is currently the Convention on the Transfer of Sentenced Persons of 21 March 1983. Under that Convention, sentenced persons may be transferred to serve the remainder of their sentence only to their State of nationality and only with their consent and that of the States involved.

The Additional Protocol to the Convention, of 18 December 1997, which allows transfer without the person's consent, subject to certain conditions, has not been ratified by all the Member States. Neither instrument imposes any basic obligation to enforce a custodial sentence or a detention order imposed in another Member State or sets any time limits for the decision on the enforcement and for the transfer of the sentenced person to the executing State.

Only a few Member States have ratified the European Convention of 28 May 1970 on the International Validity of Criminal Judgments, which does not require the sentenced person's consent and places a duty on the executing State to accept persons ordinarily resident in that State, subject to certain grounds for refusal.

The abovementioned Council of Europe instruments allow the Parties to choose between continuing to enforce the sentence or converting it. However, allowing the executing State to convert a sentence does not appear compatible with the principle of mutual recognition laid down in the Tampere conclusions and the Hague programme.

## **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**

2005/0805(CNS) - 27/04/2006

The Council instructed its preparatory bodies to further examine this proposal on the following basis: as a starting point, a derogation from double criminality for 32 offences as in the original proposal will apply. However, Member States may opt out of this principle. The working party will examine whether the possibility to opt out should be absolute or limited, or only be made for specified reasons (e.g. where the derogation from double criminality would be against fundamental principles of law of the executing State or could aggravate the situation for the sentenced person).

On 24 January 2005 Austria, Finland and Sweden submitted 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 purpose is to establish the rules under which a Member State shall recognise and enforce on its territory a sanction imposed by a court of another Member State irrespective of whether or not enforcement has already been started.

The original proposal provided for a derogation from double criminality for 32 offences corresponding to the derogation found in previous instruments on mutual recognition (e.g. the European Arrest Warrant).

## **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**

2005/0805(CNS) - 05/10/2006

The Council examined certain outstanding questions in connection with this legal instrument/

- § the ground for refusal in relation to social rehabilitation;
- § the inclusion of third country nationals in the scope of the instrument.

Regarding **social rehabilitation**, a large majority of delegations favoured the approach by the Presidency which consisted of providing for an obligation for the issuing State to forward a judgment only if this could facilitate the social rehabilitation of the sentenced person, rather than to provide for a ground for refusal for the executing State.

Concerning **third country nationals**, it was generally agreed that they should be included in the scope of the instrument. However, it was recognised that the proposal involved a differentiation between Union citizens and third country nationals. The Presidency proposed to introduce a recital on the issue of third country nationals.

The Council mandated its preparatory bodies to carry out work on this draft Framework Decision with a view to reaching an agreement in December 2006.

## **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**

2005/0805(CNS) - 01/06/2006

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.

## **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**

2005/0805(CNS) - 22/05/2007 - Amended legislative proposal for reconsultation

At its meeting on 15 February 2007 the Justice and Home Affairs Council reached an agreement on a general approach on the 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 Working Party on Cooperation in Criminal Matters and the JHA Counsellors further examined the proposal and finalised the work on the certificate annexed to it, as well as the form for the notification of the person.

The European Parliament is now being reconsulted on the final text resulting from these discussions.

A Council declaration is introduced in relation to the rehabilitation purpose of this Framework Decision: it underlines that the successful rehabilitation of the sentenced person in a State with which he or she has the closest links is the fundamental purpose of this Framework Decision. It underlines that this purpose should be a factor of primary importance for the issuing State each time the decision on the need of the forwarding of the judgment and the certificate to the executing state is being made.

The text of the proposal is subject to parliamentary reservations entered by DK/IE/NL/UK/SE.

## **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**

2005/0805(CNS) - 27/11/2008 - Final act

**PURPOSE:** to provide for the principle of mutual recognition of judgments and the enforcement of sentences in the European Union.

**LEGISLATIVE ACT:** Council Framework Decision 2008/909/JHA 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.

**CONTENT:** the purpose of this Framework Decision is to establish the rules under which a Member State is to recognise a judgment and enforce the sentence on its territory.

The main elements of the Framework Decision can be summarised as follows:

**Recognition of judgments and enforcement of sentences:** the Framework Decision sets the criteria for forwarding a judgment and a certificate to another Member State: for a judgment to be recognised and enforced, the person must have been sentenced in the issuing State or in the executing State. That person must also have given his/her consent, in accordance with specific terms set out in the Framework Decision. A standard form for the certificate is given in Annex I to the Framework Decision.

The forwarding of the judgment and the certificate may take place where the competent authority of the issuing State, after consultations between the competent authorities of the issuing and the executing States, is satisfied that the enforcement of the sentence by the executing State would serve the purpose of **facilitating the social rehabilitation of the sentenced person**. In the context of satisfying itself that the enforcement of the sentence by the executing State will serve that purpose, the competent authority of the issuing State should take into account such elements as, for example, the person's attachment to the executing State, whether he or she considers it the place of family, linguistic, cultural, social or economic and other links to the executing State.

A judgment may be forwarded to: (i) the Member State of nationality of the sentenced person in which he or she lives; (ii) the Member State of nationality to which the sentenced person will be deported, as provided for in the judgment; (iii) any other Member State, the competent authority of which consents to the forwarding of the judgment.

The enforcement of a sentence shall be governed **by the law of the executing State**.

The Framework Decision lays down the procedure to be followed for forwarding judgments together with the certificates.

**Consent and opinion of the sentenced person:** in principle, a judgment together with a certificate may be forwarded to the executing State for the purpose of its recognition and enforcement of the sentence only with the consent of the sentenced person. However, the consent of the sentenced person shall not be required where the judgment together with the certificate is forwarded to the Member State of nationality in which the sentenced person lives or to the Member State to which the sentenced person has fled. In each of these cases, the sentenced persons shall automatically be transferred to the executing State, with the exception of Poland which has a derogation of five years in this respect to enable it to face the practical and material consequences of transfer of Polish citizens convicted in other Member States.

In all cases where the sentenced person is still in the issuing State, he or she shall be given an opportunity to **state his or her opinion orally or in writing**, or via his or her legal representative. The opinion of the sentenced person shall be taken into account when deciding the issue of forwarding the judgement together with the certificate. These opinions may result in the executing State changing its opinion insofar as it considers that the enforcement of a sentence on its territory would not contribute to facilitating the rehabilitation of the sentenced person.

**Timetable for the recognition of a judgment:** in principle, the final decision on the recognition of the judgment and the enforcement of the sentence shall be taken within a period of 90 days of receipt of the judgment and the certificate.

**Double criminality:** the Framework Decision includes provisions to ensure that all serious offences, such as participation in a criminal organisation, terrorism, trafficking in human beings, sexual exploitation of children and child pornography, illicit trafficking in narcotic drugs or weapons, corruption, fraud or laundering of the proceeds of crime, rape, racism, etc., punishable by a sentence of at least three years, give rise to recognition of the judgment and enforcement of the sentence imposed, under the terms of this Framework Decision and **without verification of the double criminality of the act**. The Council may decide to add other categories of offences to the list at any time, acting unanimously after consultation of the European Parliament, in the light of the results of a report that shall be submitted by the Commission.

Each Member State may, on adoption of this Framework Decision or later, by a declaration notified to the General Secretariat of the Council declare that it will not apply this provision.

**Enforcement of sentences following a European arrest warrant:** provisions of this Framework Decision shall apply *mutatis mutandis* to the extent they are compatible with provisions under the [European arrest warrant](#).

**Grounds for non-recognition and non-enforcement:** the Framework Decision provides for the principle of recognition, by the executing State, of judgments forwarded by the issuing State, in accordance with the terms laid down in the Framework Decision. However, the competent authority of the executing State may refuse to recognise the judgment and enforce the sentence, if:

- the certificate is incomplete or manifestly does not correspond to the judgment;
- the criteria set forth are not met;
- enforcement of the sentence would be contrary to the principle of *ne bis in idem* (according to this principle, a person cannot be tried or judged twice for the same offence);
- the enforcement of the sentence is statute-barred according to the law of the executing State;
- there is immunity under the law of the executing State, which makes it impossible to enforce the sentence;
- at the time the judgment was received by the competent authority of the executing State, less than six months of the sentence remain to be served;
- the sentence imposed includes a measure of psychiatric or health care or another measure involving deprivation of liberty, which cannot be executed by the executing State;
- the judgment relates to criminal offences which under the law of the executing State are regarded as having been committed wholly or for a major or essential part within its territory, etc.

The ground for refusal relating to territoriality should be applied only in exceptional cases and with a view to cooperating to the greatest extent possible under the provisions of this Framework Decision. Any decision to apply this ground for refusal should be based on a case-by-case analysis and consultations between the competent authorities of the issuing and executing States.

There are also provisions on the partial recognition or enforcement of certain judgments or on postponement of recognition (in order to correct an incorrect certificate, for example).

**Provisional arrest and transfer of sentenced persons:** where the sentenced person is in the executing State, the executing State may, at the request of the issuing State, before the arrival of the judgment and the certificate, arrest the sentenced person, or take any other measure to ensure that the sentenced person remains in its territory.

However, if the sentenced person is in the issuing State, he or she shall be transferred to the executing State at a time agreed between the competent authorities of the issuing and the executing States, and no later than 30 days after the final decision of the executing State on the recognition of the judgment and enforcement of the sentence has been taken.

**Speciality:** a person transferred to the executing State pursuant to this Framework Decision shall not, unless otherwise provided for, be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed before his or her transfer other than that for which he or she was transferred.

**Exchange of information:** there are also provisions so that the competent authorities of the issuing and executing States inform each other of any decision or measure as a result of which the sentence ceases to be enforceable immediately or within a certain period of time (for example, an amnesty) or of the fact that in practice it is impossible to enforce the sentence or any other type of important information.

**Territorial application:** the Framework Decision shall apply to Gibraltar.

**Transitional provision:** requests received before 5 December 2011 shall continue to be governed in accordance with the existing legal instruments on the transfer of sentenced persons. Requests received after that date shall be governed by the rules adopted by Member States pursuant to this Framework Decision. However, any Member State may make a declaration, to be published in the Official Journal, indicating that it will not apply the provisions of this Framework Decision. In this case, it shall continue to apply the existing legal instruments on the transfer of sentenced persons applicable before 5 December 2011. The declaration may be withdrawn at any time.

**ENTRY INTO FORCE:** 05/12/2008.

**IMPLEMENTATION:** 05/12/2011. As of this date, the Framework Decision shall replace:

- the European Convention on the transfer of sentenced persons of 21 March 1983 and the Additional Protocol thereto of 18 December 1997;
- the European Convention on the International Validity of Criminal Judgements of 28 May 1970;
- Title III, Chapter 5, of the Convention of 19 June 1990 implementing the Schengen Convention of 14 June 1985 on the gradual abolition of checks at common borders;
- the Convention between the Member States of the European Communities on the Enforcement of Foreign Criminal Sentences of 13 November 1991.

By 5 December 2013, the Commission shall establish a report, accompanied by any initiatives it may deem appropriate in order to solve difficulties encountered by Member States in the application of the Framework Decision.

## **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**

2005/0805(CNS) - 05/02/2014

The Commission presented a report on the implementation by the Member States of Council Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments imposing custodial sentences or measures involving deprivation of liberty (Transfer of Prisoners). This Framework Decision had to be implemented by 5 December 2011. On the one hand, it allows a Member State to execute a prison sentence issued by another Member State against a person who remains in the first Member State. On the other hand, it establishes a system for transferring convicted prisoners back to the Member State of nationality or habitual residence (or to another Member State with which they have close ties) to serve their prison sentence.

In a common European area of justice based on mutual trust, the EU has taken action to ensure that non-residents subject to criminal proceedings are not treated differently from residents. This is particularly important in view of the important number of EU citizens who are imprisoned in other Member States.

The assessment of the numerous replies to the [Commission Green Paper of June 2011](#) on the application of EU criminal justice legislation in the field of detention, showed that the proper and timely implementation of the Framework Decisions should have absolute priority.

The report also focuses on two other legislative texts:

- [Council Framework Decision 2009/829/JHA](#) on the application of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention (European Supervision Order);
- [Council Framework Decision 2008/947/JHA](#) on the application of the principle of mutual recognition of probation decisions and alternative sanctions (Probation and Alternative Sanctions).

The purpose of this report is therefore twofold:

1. to assess the state of implementation of the Framework Decisions against the background of the powers of the Commission to start infringement procedures as of 1 December 2014;
2. to provide a preliminary evaluation of the national transposition laws already received by the Commission.

**Background:** each year tens of thousands of EU citizens are prosecuted for alleged crimes or convicted in another Member State of the European Union. Very often, criminal courts order the detention of non-residents because there is a fear that they will not turn up for trial. A suspect who is resident in the country would in a similar situation often benefit from a less coercive supervision measure, such as reporting to the police or a travel prohibition.

The Framework Decisions have to be seen as a package of coherent and complementary legislation that addresses the issue of detention of EU citizens in other Member States and has the potential to lead to a reduction in pre-trial detention or to facilitate social rehabilitation of prisoners in a cross border context.

There are in fact operational links between the three Framework Decisions, but also between the Framework Decisions and the Framework Decision on the [European arrest warrant](#).

**State of play of implementation:** at the time of writing, the Commission had received notifications on the national transposition laws only from the following Member States:

- **Transfer of Prisoners:** from DK, FI, IT, LU and UK by the implementation date and from AT, BE, CZ, FR, HR, HU, LV, MT, NL, PL, RO, SI and SK after the implementation date.
- **Probation and Alternative Sanctions:** from DK and FI by the implementation date and from AT, BE, BG, CZ, HR, HU, LV, NL, PL, RO, SI and SK after the implementation date.
- **European Supervision Order:** from DK, FI, LV and PL by the implementation date and from AT, CZ, HR, HU, NL, RO, SI and SK after the implementation date.

The non-implementation of the Framework Decisions by some Member States is very problematic since those Member States who have properly implemented the Framework Decisions cannot benefit from their co-operation provisions in their relations with those Member States who did not implement them in time. Indeed, the principle of mutual recognition, which is the cornerstone of the judicial area of justice, **requires a reciprocal transposition**; it cannot work if instruments are not implemented correctly in the two Member States concerned. As a consequence, when cooperating with a Member State who did not implement in time, even those Member States who did so will have to continue to apply the corresponding conventions of the Council of Europe when transferring EU prisoners or sentences to other Member States.

**Main conclusions of the report:** this report focuses on the evaluation of the selected Articles that form the core part of the Framework Decisions in the light of their aims. As this is a preliminary evaluation, it is **too early to draw general conclusions on the quality of implementation**. This is also due to the fact that many Member States have not yet complied with their obligation to transpose the Framework Decisions.

The objective of developing an area of freedom, security and justice for all EU citizens as laid down in Article 3 of the Treaty on European Union **cannot be achieved if Member States do not properly implement the instruments they all agreed upon**.

The partial and incomplete transposition of the Framework Decisions hampers the application of the principle of mutual recognition in the area of criminal justice. It moreover **breaches the legitimate expectations of EU citizens** as they lose a precious tool to reduce the negative impact on their lives if they are suspected or accused in another Member State, in particular those citizens who are subject to a European arrest warrant in the pre-trial stage. At the same time the objective of the Framework Decisions to ensure that justice is served while enhancing the social rehabilitation of the suspected or accused person cannot be achieved.

Lastly, late implementation is to be regretted as the Framework Decisions have the potential to lead to a **reduction in prison sentences** imposed by judges to non-residents. This could not only reduce prison overcrowding and thereby improve detention conditions, but also – as a consequence – allow for considerable savings for the budgets spent by Member States on prisons.

**Infringement proceedings:** keeping in mind the power of the Commission to start infringement proceedings as of 1 December 2014, it is of utmost importance for all Member States to consider this Report and to provide all further relevant information to the Commission, in order to fulfil their obligations under the Treaty.

The Commission urges all those Member States that have not yet done so to take swift measures to implement these Framework Decisions to the fullest extent.