Basic information

2006/0158(CNS) CNS - Consultation procedure JHA act	Procedure completed
Application of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention. Framework Decision Amended by 2021/0395(COD) **Subject** 7.40.04 Judicial cooperation in criminal matters	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	VARVITSIOTIS Ioannis (PPE-DE)	13/09/2006

Former committee responsible	Former rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	VARVITSIOTIS Ioannis (PPE-DE)	27/02/2007

Former committee for opinion	Former rapporteur for opinion	Appointed
JURI Legal Affairs	SAKALAS Aloyzas (PSE)	24/10/2006

Council of the European Union

Council configuration	Meetings	Date
General Affairs	2969	2009-10-23
Justice and Home Affairs (JHA)	2908	2008-11-27
Justice and Home Affairs (JHA)	2838	2007-12-06
Justice and Home Affairs (JHA)	2818	2007-09-18

European Commission

Commission DG	Commissioner
Justice and Consumers	BARROT Jacques

Key events

Date	Event	Reference	Summary
29/08/2006	Legislative proposal published	COM(2006)0468	Summary
12/10/2006	Committee referral announced in Parliament		
18/09/2007	Debate in Council		Summary
05/11/2007	Vote in committee		Summary
07/11/2007	Committee report tabled for plenary, 1st reading/single reading	A6-0428/2007	
29/11/2007	Decision by Parliament	T6-0551/2007	Summary
29/11/2007	Results of vote in Parliament		
06/12/2007	Debate in Council		
27/11/2008	Debate in Council		
12/12/2008	Amended legislative proposal for reconsultation published	17002/2008	Summary
08/01/2009	Formal reconsultation of Parliament		
16/03/2009	Vote in committee		Summary
19/03/2009	Committee report tabled for plenary, reconsultation	A6-0147/2009	
02/04/2009	Decision by Parliament	T6-0199/2009	Summary
02/04/2009	Results of vote in Parliament		
23/10/2009	Act adopted by Council after consultation of Parliament		
23/10/2009	End of procedure in Parliament		
11/11/2009	Final act published in Official Journal		

Technical information

Procedure reference	2006/0158(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	JHA act
Amendments and repeals	Amended by 2021/0395(COD)
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/6/71873 LIBE/6/39838

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary

Committee draft report		PE392.373	25/09/2007	
Committee opinion	JURI	PE392.137	05/10/2007	
Amendments tabled in committee		PE396.507	19/10/2007	
Committee report tabled for plenary, 1st reading/single reading		A6-0428/2007	07/11/2007	
Text adopted by Parliament, 1st reading/single reading		T6-0551/2007	29/11/2007	Summary
Committee draft report		PE419.930	03/02/2009	
Amendments tabled in committee		PE421.211	26/02/2009	
Committee final report tabled for plenary, reconsultation		A6-0147/2009	19/03/2009	
Text adopted by Parliament after reconsultation		T6-0199/2009	02/04/2009	Summary

Council of the EU

Document type	Reference	Date	Summary
Amended legislative proposal for reconsultation	17002/2008	12/12/2008	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2006)0468	29/08/2006	Summary
Document attached to the procedure	SEC(2006)1079	29/08/2006	
Document attached to the procedure	SEC(2006)1080	29/08/2006	
Commission response to text adopted in plenary	SP(2009)3507	25/06/2009	
Follow-up document	COM(2014)0057	05/02/2014	Summary
Follow-up document	SWD(2014)0034	05/02/2014	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Justice and Home Affairs act 2009/0829
OJ L 294 11.11.2009, p. 0020 Summary

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

2006/0158(CNS) - 02/04/2009 - Text adopted by Parliament after reconsultation

The European Parliament adopted by 550 votes to 37, with 35 abstentions, in the context of a renewed consultation, the proposal on the draft Council Framework Decision on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention.

The main amendments adopted by the plenary are as follows:

Non residents: for the purpose of this Framework Decision, a person is considered as 'non resident' when his/her lawful and ordinary residence is fixed in a Member State different from the Member States where the proceeding is going on. The purpose of this is to dissuade competent authorities placing in provisional detention (and before their proceeding has taken place), EU non-residents, because of the risk of absconding.

Definitions: a decision on supervision measures may only be taken by a **competent judicial authority**. The Parliament considers that, like the Commission, one of the most important procedural safeguards is that decisions involving personal freedom should be adopted only by judicial authorities. It deleted the provision allowing Member States to designate non-judicial authorities as competent authorities. It inserted definitions for "competent authority in the issuing State" and "competent authority in the executing State".

Personal data: a new article notes that the processing of personal data must comply with at least the basic principles laid down in Framework Decision 2008/977/JHA and in the Council of Europe Convention nr 108 of 28 January 1981 for the Protection of individuals with regard to Automated Processing of their personal data and the subsequent protocols.

Types of supervision measures: the Parliament calls on the Member States to recognize freedom on the basis of a deposit of money as a supervision measure. This specific measure must include an obligation to deposit a certain sum of money or to give another type of security, which may either be provided in a specific number of instalments or in one lump-sum.

Right of the suspect to be informed in a language he understands: the Parliament states that any decision relating to supervision measures must be drawn up by the competent authority of the Member State in which the person is legally resident, in a language he understands.

Adaptation of the supervision measures: the adapted supervision measure shall be of a technical nature only and shall not of itself impose additional obligations on the person concerned. It shall not be more severe than the supervision measure which was originally imposed.

Double criminality: Parliament deleted the provisions on double criminality. It considers that this framework decision aims to apply the least coercive measures to suspects who would otherwise most likely be subject to the application of a prison pre-trial measure. A certain number of other provisions that are related to the deletion of the article on double criminality were deleted from the draft Framework Decision.

Surrender of the person: lastly, the Parliament deleted the provision in the draft Framework Decision stating that each Member State should notify the General Secretariat of the Council, when transposing this Framework Decision or at a later stage, that it will also apply Article 2(1) of the Framework Decision on the European Arrest Warrant in deciding on the surrender of the person concerned to the issuing State.

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

2006/0158(CNS) - 29/11/2007 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a report drawn up by Ioannis **VARVITSIOTIS** (EPP-ED, EL) and made some amendments to the proposal on the European supervision order in pre-trial procedures between Member States of the EU.

The main amendments are as follows:

- the wording regarding the European supervision order is changed slightly to clarify the definition of the residence. It is now described as a judicial decision issued by a competent authority of a Member State in respect of a non-resident suspect for the purpose of the return of that person to the Member State of his current lawful and ordinary residence, or to any other Member State, in cases where the suspect so requests and the Member State concerned has granted its consent;

- Article 3 on the Obligation to execute the European Supervision Order is deleted, since it overlapped with Article 9;

- a new Article clarifies that the costs incurred in the execution of a European supervision order in the territory of the executing Member State shall be borne by that Member State. All other costs shall be borne by the issuing Member State ;

- obstructing the course of justice or engaging in criminal activity shall (rather than “may”) constitute a breach of the European supervision order;

- the suspect is obliged to inform the executing authority of any change of his place of residence in the executing State;

- Parliament deleted the provision obliging the suspect to surrender his passport(s) or other identification papers to the executing authority;

- the suspect will be obliged to avoid contact with specified persons or objects;

- the suspect may undergo specified medical treatment, but subject to the suspect's consent.

- he may be subject to electronic monitoring;

- a new clause states that each Member State shall notify the General Secretariat of the Council, when transposing the Framework Decision, of the obligations, apart from those laid down in paragraphs 1 and 2, that it is prepared to supervise. The General Secretariat of the Council shall make the information received available to all Member States and to the Commission;

- at the request of the suspect, the European supervision order shall be transmitted to any other Member State whose competent authority consents to such transmission. The basic principle of this proposal is that the suspect should be given opportunity to return to his/her country of ordinary residence. However, in situations where the suspect has closer links with any other Member State (i.e. of his nationality), the Framework Decision should provide for an opportunity to go to that country;

- the issuing authority shall inform the suspect of any postponement of the recognition and execution of the European supervision order;

- video links may be used accordance with the procedure provided for in Article 10 of the Convention of 29 May 2000;

- if the issuing authority decides that the suspect must be arrested and transferred to the issuing State, it shall issue a European arrest warrant in accordance with the provisions of Council Framework Decision 2002/584/JHA of 13 June 2002;

Parliament deleted Article 20 (time limits for transfer) and Article 21(transit) stating that they shall be regulated by the provisions of the Council Framework Decision on the European Arrest Warrant;

Lastly, a new Chapter was inserted on data protection. Parliament stated that the Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters is not yet adopted. To avoid lacunae and to ensure appropriate protection of data transmitted it is necessary to include a Chapter on Data protection in this Framework Decision. An article was inserted on the rights of the data subject.

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

2006/0158(CNS) - 12/12/2008 - Amended legislative proposal for reconsultation

At its meeting on 27/28 November 2008, the Justice and Home Affairs Council unanimously reached a **general approach** on the proposal for a Council Framework Decision on the European supervision order in pre-trial procedures between Member States of the European Union. This general approach introduces a certain number of substantial modifications in the text of the initial proposal as proposed by the Commission on 29 August 2006 (see the summary of the initial proposal), thus requiring a **reconsultation of the European Parliament**.

The new draft Framework Decision introduces, inter alia, the following modifications:

(1) the introduction of a draft certificate and a draft form on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention (as given in the Annex to the draft Framework Decision): the **form** aims, in particular, to indicate any breach of a supervision measure, and any other finding which could result in taking any subsequent decision; the **certificate**, which should be forwarded together with the decision on supervision measures to the competent authority of the executing State, should specify the address where the person concerned will stay in the executing State, as well as any other relevant information which might facilitate the monitoring of the supervision measures in the executing State;

(2) the introduction of several new recitals reaffirming that the Framework Decision: (i) aims to **enhance protection of the general public**, through enabling a person resident in one Member State but subject to criminal proceedings in a second Member State, to be supervised by the authorities in the State in which he or she is resident whilst awaiting trial; (ii) aims to **enhance the right to liberty and the presumption of innocence in the European Union** and, in this context, to promote, where appropriate, the use of non-custodial measures as an alternative to provisional detention; (iii) respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected by the Charter of Fundamental Rights of the European Union; (iv) respects the relevant provisions of the future Framework Decision on the **protection of personal data** processed in the framework of police and judicial cooperation in criminal matters;

(3) the introduction of provisions on the **European arrest warrant**: the Framework Decision should cover all crimes and not be restricted to particular types or levels of crime. That is why the majority of the provisions of the Framework Decision on the European Arrest Warrant should also apply, in the situation when the competent authority in the executing State has to decide on the surrender of the person concerned.

Note that a joint declaration by the Council and by the Commission inserted in the minutes of the Council meeting states that “Article 14(4) does not constitute a precedent for future instruments on judicial cooperation in criminal matters within the European Union” (this paragraph relates to the non-implementation, caused by Member States, of certain provisions of the Framework Decision related to the European Arrest Warrant).

At the end of the Council meeting, the DK, IE, FR, NL and SE delegations noted that they still maintain a Parliamentary scrutiny reservation.

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

2006/0158(CNS) - 18/09/2007

The Council debated a proposal for a Framework Decision on the European supervision order, and took note of a progress report in respect of a draft Framework Decision on "probation".

These two draft legal instruments aim at reinforcing the application of the principle of mutual recognition in the common area of freedom, security and justice. Both instruments have as their objective to allow persons to comply in their Member State of residence with a non-custodial supervision or probation measure which has been imposed in another Member State.

The Commission proposal on the European Supervision Order (ESO) addresses the pre-trial phase. The Franco-German initiative on "probation" addresses the post-trial phase. Whereas a lot of work has already been carried out on this latter initiative - which is reflected in the Progress report – work on the proposal on the ESO has yet not started.

The Presidency considered it appropriate to have firstly a policy debate in the Council in respect of this Commission proposal and to revise the text accordingly, before starting the work in the Council preparatory bodies. Following the debate, the Presidency drew the following conclusions:

- all Member States support the objectives of the Commission proposal. However, many Member States have doubts regarding the way in which the Commission proposal is drafted. They feel that various practical aspects of the proposal should be reconsidered. A clear example of this is the mechanism for returning suspects to the issuing Member State;
- almost all Member States support the Presidency's view that work on this proposal should be carried forward, but on the basis of a new, completely revised text.

Such revision of the text should adhere to the following principles: i) the European Supervision Order should be based on the principle of mutual recognition; ii) specific features of the national systems of criminal justice and criminal procedure as regards the criteria and conditions for issuing a European Supervision Order should be respected as much as possible; iii) however, some limits should be set on the discretion of the issuing Member State so as to make for simple, swift and effective cooperation within Member States; iv) coherence should be ensured with the approach taken in other instruments of mutual-recognition, by establishing flexible rules on cross-border recognition and enforcement of a European Supervision Order. Further consideration should also be given to the mechanism for returning suspects to the issuing Member State. In this context, particular attention should be paid to the solutions used in the draft Framework Decision on "probation"; v) although the Commission proposal for a European Supervision Order is to a certain extent linked the draft Framework Decision on "probation", the work on both instruments should, at least for the time being, be kept separate, as they involve specific technical aspects (relating to the pre-trial and post-trial phase) and are at different stages of the negotiation.

On the basis of these principles, the Presidency will make a revision of the text of the proposal, in consultation with Commission services, and will submit the revised text to the Council preparatory bodies.

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

2006/0158(CNS) - 23/10/2009 - Final act

PURPOSE: to establish a European supervision order in pre-trial procedures between EU Member States.

LEGISLATIVE ACT: Council Framework Decision 2009/829/JHA on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention.

CONTENT: as regards the detention of persons subject to criminal proceedings, there is a risk of different treatment between those who are resident in the trial state and those who are not: a non-resident risks being remanded in custody pending trial even where, in similar circumstances, a resident would not.

In a common European area of justice without internal borders, it is necessary to take action to ensure that a person subject to criminal proceedings who is not resident in the trial state is not treated any differently from a person subject to criminal proceedings who is so resident.

This Framework Decision lays down rules according to which one Member State recognises a decision on supervision measures issued in another Member State as an alternative to provisional detention, monitors the supervision measures imposed on a natural person and surrenders the person concerned to the issuing State in case of breach of these measures. This Framework Decision respects fundamental rights and observes the principles recognised, in particular, by Article 6 of the Treaty on European Union and reflected by the Charter of Fundamental Rights of the European Union.

The objectives of this Framework Decision are:

- to ensure the due course of justice and, in particular, that the person concerned will be available to stand trial;
- to promote, where appropriate, the use, in the course of criminal proceedings, of non-custodial measures for persons who are not resident in the Member State where the proceedings are taking place;
- to improve the protection of victims and of the general public;
- to enhance the right to liberty and the presumption of innocence in the European Union and at ensuring cooperation between Member States when a person is subject to obligations or supervision pending a court decision.

The main elements of the Framework Decision are as follows:

Designation of competent authorities: each Member State shall inform the General Secretariat of the Council which judicial authority or authorities under its national law are competent to act according to this Framework Decision in the situation where that Member State is the issuing State or the executing State. Member States may designate non-judicial authorities as the competent authorities for taking decisions under this Framework Decision, provided that such authorities have competence for taking decisions of a similar nature under their national law and procedures.

Types of supervision measures: this Framework Decision shall apply to the following supervision measures:

- an obligation for the person to inform the competent authority in the executing State of any change of residence, in particular for the purpose of receiving a summons to attend a hearing or a trial in the course of criminal proceedings;
- an obligation not to enter certain localities, places or defined areas in the issuing or executing State;
- an obligation to remain at a specified place, where applicable during specified times;
- an obligation containing limitations on leaving the territory of the executing State;
- an obligation to report at specified times to a specific authority;
- an obligation to avoid contact with specific persons in relation with the offence(s) allegedly committed.

Other measures may include in particular: (a) an obligation not to engage in specified activities in relation with the offence(s) allegedly committed, which may include involvement in a specified profession or field of employment; (b) an obligation not to drive a vehicle; (c) an obligation to deposit a certain sum of money or to give another type of guarantee, which may either be provided through a specified number of instalments or entirely at once; (d) an obligation to undergo therapeutic treatment or treatment for addiction.

Criteria relating to the Member State to which the decision on supervision measures may be forwarded: a decision on supervision measures may be forwarded to the competent authority of the Member State in which the person is lawfully and ordinarily residing, in cases where the person, having been informed about the measures concerned, consents to return to that State. The competent authority in the issuing State may, upon request of the person, forward the decision on supervision measures to the competent authority of a Member State other than the Member State in which the person is lawfully and ordinarily residing, on condition that the latter authority has consented to such forwarding.

Procedure:when the competent authority of the issuing State forwards a decision on supervision measures to another Member State, it shall ensure that it is accompanied by a certificate, the standard form of which is set out in Annex I of the Framework Decision. The competent authority in the issuing State shall specify: (a) where applicable, the length of time to which the decision on supervision measures applies and whether a renewal of this decision is possible; and (b) on an indicative basis, the provisional length of time for which the monitoring of the supervision measures is likely to be needed, taking into account all the circumstances of the case that are known when the decision on supervision measures is forwarded.

Certificates shall be translated into the official language or one of the official languages of the executing State.

Decision in the executing State:thecompetent authority in the executing State shall, as soon as possible and in any case within 20 working days of receipt of the decision on supervision measures and certificate, recognise the decision on supervision measures and without delay take all necessary measures for monitoring the supervision measures, unless it decides to invoke one of the grounds for non-recognition referred to in the Framework Decision.

Adaptation of the supervision measures: **i**f the nature of the supervision measures is incompatible with the law of the executing State, the competent authority in that Member State may adapt them in line with the types of supervision measures which apply, under the law of the executing State, to equivalent offences. The adapted supervision measure shall correspond as far as possible to that imposed in the issuing State.The adapted supervision measure shall not be more severe than the supervision measure which was originally imposed.

Double criminality: in accordance with the Framework Decision, a list of 32 offences are set out. If they are punishable in the issuing State by a custodial sentence or a measure involving deprivation of liberty for a maximum period of at least three years, and as they are defined by the law of the issuing State, they shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to recognition of the decision on supervision measures.

Law governing supervision: the monitoring of supervision measures shall be governed by the law of the executing State.

Continuation of the monitoring of supervision measures: when the time period is due to expire and the supervision measures are still needed, the competent authority in the issuing State may request the competent authority in the executing State to extend the monitoring of the supervision measures. The competent authority in the issuing State shall indicate the period of time for which such an extension is likely to be needed.The competent authority in the executing State shall decide on this request in accordance with its national law.

Competence to take all subsequent decisions and governing law:the competent authority in the issuing State shall have jurisdiction to take all subsequent decisions relating to a decision on supervision measures. Such subsequent decisions include notably: (a) renewal, review and withdrawal of the decision on supervision measures; (b) modification of the supervision measures; (c) issuing an arrest warrant or any other enforceable judicial decision having the same effect. The jurisdiction of the competent authority in the issuing State is without prejudice to proceedings that may be initiated in the executing State against the person concerned in relation with criminal offences committed by him/her other than those on which the decision on supervision measures is based.

Information from the executing State: the competent authority in the executing State shall, without delay, inform the competent authority in the issuing State by any means which leaves a written record:

- of any change of residence of the person concerned;
- of the maximum length of time during which the supervision measures can be monitored in the executing State, in case the law of the executing State provides such a maximum;
- of the fact that it is in practice impossible to monitor the supervision measures;
- of the fact that a legal remedy has been introduced against a decision to recognise a decision on supervision measures;
- of the final decision to recognise the decision on supervision measures and take all necessary measures for the monitoring of the supervision measures;
- of any decision to adapt the supervision measures;
- of any decision not to recognise the decision on supervision measures and to assume responsibility for monitoring of the supervision measures, together with the reasons for the decision.

Surrender of the person: if the competent authority of the issuing State has issued an arrest warrant or any other enforceable judicial decision having the same effect, the person shall be surrendered in accordance with the Framework Decision on the European Arrest Warrant.

Costs: costs resulting from the application of this Framework Decision shall be borne by the executing State, except for costs arising exclusively within the territory of the issuing State.

Report: by 1 December 2013, the Commission shall draw up a report on the basis of the information received from Member States.On the basis of this report, the Council shall assess: (a) the extent to which the Member States have taken the necessary measures in order to comply with this Framework Decision; and (b) the application of this Framework Decision.

ENTRY INTO FORCE: 01/12/2009.

IMPLEMENTATION: by 1 December 2012 at the latest.

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.

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

2006/0158(CNS) - 05/02/2014

The Commission presented a report on the implementation by the Member States of 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)*. This Framework Decision had to be implemented by 1 December 2012. It concerns provisional release in the pretrial stage. It will enable a non-custodial supervision (e.g. an obligation to remain at a specified place or an obligation to report at specified times to a specific authority) to be transferred from the Member State where the non-resident is suspected of having committed an offence to the Member State where he is normally resident. This will allow a suspected person to be subject to a supervision measure in his home Member State until the trial takes place in another Member State, instead of being placed into pre-trial detention.

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 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;
- 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 of 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.