Basic information

2007/0807(CNS) CNS - Consultation procedure Decision	Procedure completed
Application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions. Framework Decision. Initiative Germany and France Amended by 2008/0803(CNS) 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	ESTEVES Maria da Assunção (PPE-DE)	21/05/2007

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	2827	2007-11-08
Justice and Home Affairs (JHA)	2807	2007-06-12
Justice and Home Affairs (JHA)	2838	2007-12-06
Justice and Home Affairs (JHA)	2908	2008-11-27

European Commission

Commission DG	Commissioner
Justice and Consumers	FRATTINI Franco

Key events

Date	Event	Reference	Summary
20/04/2007	Legislative proposal published	06480/2007	Summary
24/05/2007	Committee referral announced in Parliament		
12/06/2007	Debate in Council		Summary
03/10/2007	Vote in committee		Summary
05/10/2007	Committee report tabled for plenary, 1st reading/single reading	A6-0356/2007	
24/10/2007	Debate in Parliament		

25/10/2007	Decision by Parliament	T6-0475/2007	Summary
25/10/2007	Results of vote in Parliament		
08/11/2007	Debate in Council		Summary
06/12/2007	Debate in Council		Summary
27/11/2008	Act adopted by Council after consultation of Parliament		
27/11/2008	End of procedure in Parliament		
16/12/2008	Final act published in Official Journal		

Technical information

Procedure reference	2007/0807(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Decision
Amendments and repeals	Amended by 2008/0803(CNS) Amended by 2021/0395(COD)
Legal basis	Treaty on European Union (after Amsterdam) M 031-p1-aa Treaty on European Union (after Amsterdam) M 032 Treaty on European Union (after Amsterdam) M 030-p1 Treaty on European Union (after Amsterdam) M 034-p2b
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/6/49578

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE391.992	30/08/2007	
Amendments tabled in committee		PE393.975	18/09/2007	
Committee report tabled for plenary, 1st reading/single reading		A6-0356/2007	05/10/2007	
Text adopted by Parliament, 1st reading/single reading		T6-0475/2007	25/10/2007	Summary

Council of the EU

Document type	Reference	Date	Summary
Legislative proposal	06480/2007	20/04/2007	Summary

European Commission

Document type	Reference	Date	Summary
	COM(2014)0057		

Follow-up document		05/02/2014	Summary
Follow-up document	SWD(2014)0034	05/02/2014	

Additional information		
Source	**Document**	**Date**
European Commission	EUR-Lex	

Final act	
Justice and Home Affairs act 2008/0947 OJ L 337 16.12.2008, p. 0102	Summary

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

2007/0807(CNS) - 27/11/2008 - Final act

PURPOSE: to lay down the rules according to which one Member State is to supervise suspended sentences, or alternative sanctions, contained in a judgment given in another Member States (an Initiative of the Federal Republic of Germany and of the French Republic).

LEGISLATIVE ACT: Council Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions.

CONTENT: based on the principle of mutual recognition, the Framework Decision aims at facilitating the social rehabilitation of sentenced persons, improving the protection of victims and of the general public, and fostering the application of suitable probation measures and alternative sanctions in the case of offenders who do not live in the State of conviction.

In order to reach those objectives, the Framework Decision sets rules under which a Member State, other than the Member State in which the person concerned has been sentenced, recognises judgments and, where applicable, probation decisions and supervises probation measures imposed on the basis of a judgment, or alternative sanctions contained in such a judgment, and takes- unless otherwise provided in the Framework Decision - all other decisions relating to that judgment.

The main elements of the text are as follows:

Types of measures concerned: pursuant to the Framework Decision, a judgment that contains either a suspended sentence or an alternative sanction may be transferred to another Member State in which the sentenced person is lawfully and ordinarily resident, for the purposes of recognition and supervision of these measures and sentences:

- an obligation for the sentenced person to inform a specific authority of any change of residence or working place;
- an obligation not to enter certain localities, places or defined areas in the issuing or executing State;
- an obligation containing limitations on leaving the territory of the executing State;
- instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity;
- an obligation to report at specified times to a specific authority;
- an obligation to avoid contact with specific persons;
- an obligation to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence;
- an obligation to compensate financially for the prejudice caused by the offence and/or an obligation to provide proof of compliance with such an obligation;
- an obligation to carry out community service;

- an obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons;
- an obligation to undergo therapeutic treatment or treatment for addiction.

Procedure: when the competent authority of the issuing State forwards a judgment and, where applicable, a probation decision to another Member State, it shall ensure that it is accompanied by a **certificate**, the standard form for which is set out in Annex I of the Framework Decision. The certificate shall contain the essential elements of the judgment which shall be translated into the official language or one of the official languages of the executing State.

Double criminality: the Framework Decision lists a number of offences (as defined by the law of the issuing State) which, 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**, shall, without verification of the double criminality of the act, give rise to recognition of the judgment and to supervision of probation measures and alternative sanctions (for example: participation in a criminal organisation; terrorism; trafficking in human beings; sexual exploitation of children and child pornography; illicit trafficking in weapons and narcotic drugs; laundering of the proceeds of crime; counterfeiting currency; computer-related crime; environmental crime; murder; rape; illicit trade in human organs and tissue; illicit trafficking in nuclear or radioactive materials, etc.). The Council may decide to add other categories of offences to the list at any time, acting unanimously after consultation of the European Parliament.

Time limit: the competent authority of the executing State shall decide as soon as possible, and **within 60 days** of receipt of the judgment and, where applicable, the probation decision, whether or not to recognise the judgment and, where applicable, the probation decision and assume responsibility for supervising the probation measures or alternative sanctions. The supervision and application of probation measures and alternative sanctions shall be governed by the law of the executing State.

Adaptation: if the nature or duration of the relevant probation measure or alternative sanction, or the duration of the probation period, are incompatible with the law of the executing State, the competent authority of that State may adapt them in line with the nature and duration of the probation measures and alternative sanctions, or duration of the probation period, which apply, under the law of the executing State, to equivalent offences.

Grounds for refusal: the competent authority of the executing State may refuse to recognise a judgment if, inter alia: (i) the certificate is incomplete; (ii) under the law of the executing State, the sentenced person cannot, owing to his or her age, be held criminally liable for the acts in respect of which the judgment was issued; (iii) the judgment was rendered in absentia or issued against a person who has not been found guilty (such as in the case of a mentally ill person) and the judgment or, where applicable, the probation decision provides for medical/therapeutic treatment which the executing State cannot supervise in respect of such persons under its national law.

Jurisdiction to take all subsequent decisions: the competent authority of the executing State shall have jurisdiction to take all subsequent decisions relating to a suspended sentence, conditional release, conditional sentence and alternative sanction, in particular in case of non-compliance with a probation measure or alternative sanction or if the sentenced person commits a new criminal offence. Such subsequent decisions include notably: (i) the modification of obligations or instructions contained in the probation measure or alternative sanction, or the modification of the duration of the probation period; (ii) the revocation of the suspension of the execution of the judgment or the revocation of the decision on conditional release; (iii) the imposition of a custodial sentence or measure involving deprivation of liberty in case of an alternative sanction or conditional sentence. The law of the executing State shall apply to decisions.

Review: by 6 December 2014, the Commission shall draw up a report on the basis of the information received from Member States. This report shall be assessed by the Council and shall be accompanied, if necessary, by legislative proposals.

ENTRY INTO FORCE: 16/12/2008.

IMPLEMENTATION: by 06/12/2011.

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

2007/0807(CNS) - 05/02/2014 - Follow-up document

The Commission presented a report on the implementation by the Member States of Framework Decision 2008/947/JHA on the application of the principle of mutual recognition of probation decisions and alternative sanctions (Probation and Alternative Sanctions). This Council Framework Decision had to be implemented by 6 December 2011. It applies to many alternatives to custody and to measures facilitating early release (e.g. an obligation not to enter certain localities, to carry out community service or instructions relating to residence or training or professional activities).

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 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).

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.

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

2007/0807(CNS) - 08/11/2007

The Council reached a general approach on the proposed Framework Decision concerning the recognition and supervision of suspended sentences, alternative sanctions and conditional sentences.

This German and French initiative seeks to establish harmonised rules whereby a Member State, other than the Member State in which the person concerned has been sentenced, supervises probation measures.

Based on the principle of mutual recognition, the draft Framework Decision seeks to facilitate the social re-integration of sentenced persons, improving the protection of victims and of the general public, and fostering the application of suitable probation measures and alternative sanctions in the case of offenders who do not live in the State of conviction.

Portugal, during its Presidency prioritised this initiative. Building on the preparatory work carried out by the German Presidency, the Portuguese Presidency was able to achieve a general approach on the Framework Decision within just 11 months of it being proposed.

Certain Member States, as well as the Commission, regretted that some concessions had to be made, (on, for example, dual criminality). Nevertheless there was general approval that an agreement had been found and overall acknowledgement that the current package constitutes a balanced text.

The Council bodies will be invited to examine and finalise the recitals, as well as the certificate and the form.

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

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

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

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

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

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

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

Specifically, the proposed Framework Decision will apply only to:

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

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

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

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

- a judgment that contains either a suspended sentence; an alternative sanction; or a conditional sentence may be transferred to another Member State. This is on condition that the sentenced person is lawfully and ordinarily resident in the Member State to which he/she is to be transferred. Those who are to be transferred have a number of obligations, including: informing the competent authorities of any change of residence; not to leave or enter certain localities in the issuing or executing State without permission, and other orders relating to life-style, residence, education and training, professional activity or leisure activities; to report at specified times to the competent authority in the executing State; to avoid contact with persons and objects which could form an incitement to commit further offences; to compensate for the prejudice caused by the offence; to carry out community service; to cooperate with a probation officer and to undergo therapeutic treatment or treatment for addictions;

- procedures are set out detailing how judgements relating to this Framework Decision should be forwarded;

- the competent judicial authorities in the executing State recognise those judgements forwarded in accordance with procedures set out in the Decision;

- the types of offences to which this Decision will apply, include: participating in a criminal organisation; terrorism; trafficking in human beings; sexual exploitation of children and child pornography; illicit trafficking in narcotic drugs and psychotropic substances; illicit trafficking in weapons, munitions and explosives; corruption; fraud; laundering of the proceeds of crime; counterfeiting currency; computer-related crime; environmental crime (including the trafficking in endangered animals and plants; facilitating unauthorised entry and residence; murder grievous bodily harms; illicit trade in human organs and tissue; kidnapping, illegal restraint and hostage taking; racism and xenophobia; organised crime, illicit trafficking in cultural goods; swindling; racketeering and extortion; counterfeiting and piracy of products; forgery; illicit trafficking in nuclear or radioactive materials; rape; arson; crimes within the jurisdiction of the International Criminal Court; unlawful seizure of aircraft/ships; and sabotage;

- the crimes set out above will apply if they are punishable in the issuing State by a custodial sentence or measure involving a maximum period of at least three years;

- the Council may add other categories of offences to the list at any time;

- grounds for refusing to recognise judgements are also set out. They include, for example, incomplete certificates or certificates that obviously do not correspond to the judgement and which have not been completed within a reasonable period set by the competent judicial authority in the executing State;

- on a final point specific provisions have been set out that relate to: time limits; the law governing supervision; responsibility for taking all subsequent decision and the governing law; consultation between judicial authorities; obligation for the authorities in cases where the executing State has jurisdiction for all further decisions; obligations in cases where the issuing State has jurisdiction for all further decisions; amnesty and pardon; the end of jurisdiction of the executing States; and what languages are to be used.

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

2007/0807(CNS) - 06/12/2007

The Council reached a general approach on a draft Framework Decision on the recognition and supervision of suspended sentences, alternative sanctions and conditional sentences.

Portugal had designated the work on the draft Framework Decision as one of the main objectives of its Presidency in the field of judicial cooperation in criminal matters.

Building on the preparatory work carried out by the German Presidency, the Portuguese Presidency, making considerable efforts, was able to achieve a general approach on the Framework Decision within only 11 months from the start of negotiations.

At the Council some Member States and the Commission regretted the concessions that had to be made on certain issues, such as on the issue of dual criminality, in order to reach agreement. It was however generally acknowledged that the current package constituted a balanced text which was carefully drafted so as to enable all Member States to agree to the text.

The Council bodies will be invited to examine and finalise the recitals, as well as the certificate and the form.

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

2007/0807(CNS) - 25/10/2007 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution drafted by Maria da Assunção **ESTEVES** (EPP-ED, and made some amendments to the text presented by Germany and France with a view to adopting a Council Framework Decision on the recognition and supervision of suspended sentences, alternative sanctions and conditional sentences.

The main amendments were as follows:

- Parliament clarified that the Framework Decision seeks to facilitate the social re-integration of sentenced persons, to improve the protection of victims and society and to facilitate the application of appropriate suspended sentences, alternative sanctions and conditional sentences in the case of offenders who are not resident in the sentencing State. With a view to achieving these objectives, the Framework Decision lays down rules pursuant to which the Member State in which the sentenced person has his lawful and ordinary residence must recognise the judgments passed in another Member State and supervise and execute suspended sentences, alternative sanctions and conditional sentences.

- the Framework Decision will apply only to the recognition of judgments and the transfer of responsibility for the supervision and execution of suspended sentences, alternative sanctions and conditional sentences, and all other subsequent decisions provided for in the Framework Decision;

- Parliament inserted a definition of 'lawful and ordinary residence', which shall mean the place in which the individual concerned has established the permanent centre of his interests, which must be determined on the basis of all the relevant facts;

- the framework decision must not have the effect of modifying the duty to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union and in the Member States' constitutions;

- the list of competent authorities must be published in the Official Journal of the EU;

- the certificate may, for supervision purposes, include one or more of the suspensory measures, obligations or instructions contained in a judgment;

- among the types of suspensory measures and alternative sanctions covered by Article 5, Parliament added a) the obligation for the sentenced person to inform the competent authority in the executing State of any change place of work or study; b) the obligation to compensate for the prejudice caused by the offence and to notify the executing State's competent authority that this obligation has been complied with;

- a new clause states that for the purposes of the Framework Decision, the person standing trial must be heard before the judgment or the decision granting conditional release is transmitted;

- the certificate, the standard form for which is set out in Annex I, together with the judgment (or a certified copy thereof) and, where relevant, the decision granting conditional release, shall be forwarded by the competent judicial authority in the issuing State directly to the competent judicial authority in the executing State;

- should suspensory measures or alternative sanctions be adapted pursuant to the terms of the Framework Decision, the competent judicial authority in the executing State shall notify the competent judicial authority in the issuing State of that decision without delay. Following receipt of such a notification the competent judicial authority in the issuing State may decide to withdraw the certificate and the judgment (and also, if appropriate, the decision granting conditional release). In such cases, the person sentenced shall be guaranteed the right to a hearing;

- the competent judicial authority in the executing State shall decide, within 30 days (rather than 10) after receipt of the judgment and the certificate, whether to recognise the judgment and assume responsibility for supervising the suspensory measures and alternative sanctions;

- when adopting the Framework Decision or subsequently at the time of transposition and by means of a statement lodged with the General Secretariat of the Council, each Member State may indicate that, as executing State and in the categories of cases to be specified by that Member State, it refuses to assume responsibility provided for. In these cases, the decision shall be taken (and reasons given) and notification effected in accordance with the procedure laid down. This shall not affect the obligation laid down in Article 7(1). That statement by a Member State may be withdrawn at any time. The statements or the withdrawal thereof shall be published in the Official Journal of the EU;

- Parliament inserted into the list of grounds which might be used by the competent judicial authority in the executing State to refuse to recognise the judgment (or, if appropriate, the decision granting conditional release) and to assume responsibility for supervising suspensory measures and alternative sanctions the following: that the certificate or judgment includes measures which are not listed or accepted under Article 5 of the Framework Decision;

- Article 13 (consultations between the competent judicial authorities) is deleted to prevent an excessive amount of consultation which would undermine the effectiveness of the Framework Decision;

- in cases where suspended sentences, conditional sentences or alternative sanctions are revoked, the executing State shall be responsible for executing the custodial sentence imposed in the judgment, except in the cases provided for in Article 12(2) and (3).

- a person must be heard by the judicial authorities before being sentenced in the case of a conditional sentence or if the suspension of the sentence is revoked, in order to ensure that the fundamental principle that defendants must be heard is upheld;

- similarly, before a decision is taken on sentencing in the case of a conditional sentence or on the revocation of the suspension of a sentence, the sentenced person must be heard by the judicial authorities in order to ensure that the fundamental principle that defendants must be heard is upheld;

- any modification of a suspensory measure or of the obligations or instructions which constitute alternative sanctions by the issuing State's competent judicial authority must be carried out with due regard to Article 5. In the event of a modification, the executing State's competent authority may opt to take a fresh decision pursuant to Article 7(2) or Article 9(1)(i);

- in the event of the imposition of a sentence or the revocation of the suspension of a sentence, the competent judicial authority of the issuing State shall at the same time inform the competent judicial authority of the executing State that there is no longer any need for supervision of the suspensory measures.

- only the issuing State can take a decision regarding requests for review of judgments involving suspended sentences, alternative sanctions and conditional sentences, the supervision and execution of which are covered by the Framework Decision;

- the transfer of jurisdiction must also take place if the issuing State issues a request to that effect to the competent judicial authority of the executing State on the grounds that further criminal proceedings against the person are taking place in the issuing State.

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

2007/0807(CNS) - 12/06/2007

The Council reached a common understanding on certain "key elements" of a draft Framework Decision on the recognition and supervision of suspended sentences, alternative sanctions and conditional sentences:

1) Aim of the Framework Decision:

- as regards the sentenced person, the objective is that it allows a sentenced person to return to his/her place of habitual residence during the period of probation, which facilitates the social reintegration of the person concerned. In this respect, the initiative favours the free movement of persons within the European Union;
- as regards the victim, the benefit is that it allows sentenced persons to be subject to obligations with a view to victim protection also at their place of habitual residence and subsequent decisions to be taken in case of breach of such obligations. In this respect, the initiative also helps to maintain public order and protect society;
- as regards justice in general, the benefit of the initiative is that it allows the judiciary to apply the most adequate solution in a particular case and contributes to the application of non-custodial measures to 'non-resident' offenders;
- in respect of the EU Member States that are party to the Council of Europe Convention of 30 November 1964 on the Supervision of Conditionally Sentenced or Conditionally Released Offenders in the relationship between EU Member States, the draft Framework Decision is to replace that Convention and further expand on it.

2) Scope of its application:

- the scope of the draft Framework Decision relates to the supervision by a Member State of "suspensory measures", which are imposed on the basis of, or contained in, a "suspended sentence","conditional sentence" or a decision on "conditional release";
- the basis for the imposition of "suspensory measures" will always be a judgment by a court, which establishes that the person has committed a criminal offence. A substantial number of delegations would advocate that, on the basis of such a decision, the concrete "suspensory measures" could also be imposed by an authority other than a court, in accordance with the relevant rules of national law. However, this issue is still open and needs to be further examined. These definitions may need to be further refined;
- subject to further discussion of the political aspects, and in line with the wishes of a very large majority of delegations, “alternative sanctions” that are decided by a court should in general terms also be included in the scope of the Framework Decision. It should however be examined whether certain limitations would be required for such inclusion. In this context, it needs to be further discussed whether the scope of the Framework Decision should be extended to "alternative sanctions" that are decided by a public prosecutor rather than by a court.

3) Types of suspensory measures and alternative sanctions:

- there will be a list of types of suspensory measures and alternative sanctions, which the Member State, in which the sentenced person is lawfully and ordinarily resident, is obliged to supervise if so requested by the issuing State and in conformity with all other provisions of the Framework Decision and without prejudice to the grounds for refusal;

- Member States will each be required to ensure that as an executing Member State their authorities can supervise such suspensory measures or alternative sanctions irrespective of whether or not the same type of measure or sanction is currently provided for in their own legislations in the case of their own criminal proceedings;
- given the possibility that the specific suspensory measure or alternative sanction imposed by the court [or other competent authority in an issuing State], even if it falls under the categories of measures/sanctions to be set out in the Framework Decision, may not exist in identical terms in the executing State, the Framework Decision will provide for the possibility for the executing authority to adapt the specific measure or sanction as it has been determined by the issuing authority and bring it in line with the type of measure/sanction, which exists in the executing State for similar offences;
- each Member State has the possibility of deciding that in addition it is prepared to supervise suspensory measures and alternative sanctions other than those set out on the list mentioned above. In such a case, the Member State concerned will notify the General Secretariat of the Council which will make the information received available to all Member States and to the Commission. This will allow the court or other authority in the issuing State to determine which other types of measures or sanctions can be supervised in a specific other Member State without prior consultation.

4) Division of competences between the issuing State and executing State:

- while the executing State will primarily have the role of ensuring that the person complies with the suspensory measures or alternative sanctions, the Framework Decision will also need to address the possibility that the person does not comply with the measures/sanctions;
- the competent [judicial] authority in the executing State will in general have jurisdiction to take all subsequent decisions relating to the judgment, i.e. in particular any decision which is required in view of non-compliance by the sentenced person with suspensory measures or alternative sanctions imposed. However, it may be necessary to make provision for certain exceptions to this rule in the case of "conditional sentences" and "alternative sanctions". In both cases, if the person has not complied with the measures/sanctions, the decision to finally impose a custodial sentence or other measure involving the deprivation of liberty may need to be taken by the judicial authorities of the issuing State which had jurisdiction of the case when the conditional sentence or alternative sanction was first imposed;
- it may also be necessary to allow the executing State, in certain cases and notwithstanding its obligation to supervise the measures/sanctions imposed, to refuse to assume responsibility for taking such subsequent decisions and thus leave that responsibility with the authorities of the issuing State. Depending on which State will have jurisdiction over such subsequent decisions, the Framework Decision will need to set out certain information requirements to ensure proper cooperation between the authorities in both States.

It should be noted that the common understanding does not commit delegations to specific wording of the Articles, which still need to be further discussed. Furthermore, this common understanding may need to be modified in the light of the work that has still to be carried out on other aspects of the draft Framework Decision, which are not covered by the key elements concerned.

The Council instructed its preparatory bodies to continue the work on this draft Framework Decision on the basis of the common understanding. The Council also discussed the issue of double criminality and decided to come back to this issue at a later session.