Basic information

2008/0803(CNS) CNS - Consultation procedure Decision	Procedure completed
Judicial cooperation: procedural rights of persons and the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial. Initiative Slovenia, France, Czech Republic, Sweden, Slovakia, United Kingdom, Germany. Framework Decision Amending JHA act 2002/584/JHA 2001/0215(CNS) Amending JHA act 2005/214/JHA 2001/0825(CNS) Amending JHA act 2006/783/JHA 2002/0816(CNS) Amending JHA act 2008/909/JHA 2005/0805(CNS) Amending JHA act 2008/947/JHA 2007/0807(CNS) **Subject** 7.40.04 Judicial cooperation in criminal matters	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	FRANÇA Armando (PSE)	27/02/2008

Committee for opinion	Rapporteur for opinion	Appointed
JURI Legal Affairs	GILL Neena (PSE)	05/03/2008

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	2863	2008-04-18
Justice and Home Affairs (JHA)	2908	2008-11-27
Justice and Home Affairs (JHA)	2783	2008-06-05

European Commission

Commission DG	Commissioner
Legal Service	BARROSO José Manuel

Key events

Date	Event	Reference	Summary
13/02/2008	Legislative proposal published	05598/2008	Summary

21/02/2008	Committee referral announced in Parliament		
18/04/2008	Debate in Council		
05/06/2008	Debate in Council		
24/06/2008	Vote in committee		Summary
02/07/2008	Committee report tabled for plenary, 1st reading/single reading	A6-0285/2008	
01/09/2008	Debate in Parliament		
02/09/2008	Decision by Parliament	T6-0381/2008	Summary
02/09/2008	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

Procedure reference	2008/0803(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Decision
Amendments and repeals	Amending JHA act 2002/584/JHA 2001/0215(CNS) Amending JHA act 2005/214/JHA 2001/0825(CNS) Amending JHA act 2006/783/JHA 2002/0816(CNS) Amending JHA act 2008/909/JHA 2005/0805(CNS) Amending JHA act 2008/947/JHA 2007/0807(CNS)
Legal basis	Treaty on European Union (after Amsterdam) M 034-p2b Treaty on European Union (after Amsterdam) M 031-p1-aa
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/6/59595

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE404.491	07/04/2008	
Amendments tabled in committee		PE405.951	08/05/2008	
Committee opinion	JURI	PE404.601	20/05/2008	
Committee report tabled for plenary, 1st reading/single reading		A6-0285/2008	02/07/2008	
Text adopted by Parliament, 1st reading/single reading		T6-0381/2008	02/09/2008	Summary

Council of the EU

Document type	Reference	Date	Summary
Legislative proposal	05598/2008	13/02/2008	Summary

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

Final act	
Justice and Home Affairs act 2009/0299 OJ L 081 27.03.2009, p. 0024	Summary

Judicial cooperation: procedural rights of persons and the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial. Initiative Slovenia, France, Czech Republic, Sweden, Slovakia, United Kingdom, Germany. Framework Decision

2008/0803(CNS) - 26/02/2009 - Final act

PURPOSE: to enhance the procedural rights of persons by fostering the application of the principle of mutual recognition in respect of decisions rendered in the absence of the person concerned at the trial (trials "in absentia").

LEGISLATIVE ACT: Council Framework Decision 2009/299/JHA amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial.

CONTENT; in accordance with a certain number of texts already adopted at European level, the Member States are required to enforce each others' judgments, with a certain number of safeguards. The relevant texts are as follows:

- Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States;
- Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties;
- Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders;
- 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;
- 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.

However, these different texts do not deal consistently with the issue of decisions rendered**in the absence of the person concerned at the trial** ("in absentia"), which results in a certain **degree of legal uncertainty** as well as delays in implementing judicial decisions. This diversity complicates the work of the practitioner and hampers judicial cooperation.

In order to address these problems, this Framework Decision amends the existing instruments so as to establish precise and consistent **grounds for non-recognition** by the State of execution of decisions rendered in absentia. Therefore, the recognition and execution of a decision rendered following a trial at which the person concerned did not appear in person should not be refused if:

(a) **either he or she was summoned in person and thereby informed of the scheduled date and place of the trial** which resulted in the decision, or if he or she actually received, by other means, official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial. The person should have received such information ‘in due time', meaning sufficiently in time to allow him or her to participate in the trial and to effectively exercise his or her right of defence;

(b) the person concerned, being aware of the scheduled trial, was **defended at the trial by a legal counsellor to** whom he or she had given a mandate to do so, ensuring that legal assistance is practical and effective (it should not matter whether the legal counsellor was chosen, appointed and paid by the person concerned, or whether this legal counsellor was appointed and paid by the State);

(c) **the person concerned was aware of his or her right to a retrial or an appeal**, enabling his or her case to be re-examined, taking account of fresh evidence and providing the possibility for the original decision to be reversed.

The amending provisions are designed to set the conditions under which the recognition and execution of a decision rendered in absentia cannot be refused. They are not designed to regulate the forms and methods, including procedural requirements, that are used to achieve the results specified in this Framework Decision (which are a matter for the national laws of the Member States). Technically, the issuing authority (at the origin of the judicial decision) shall complete the document that assures mutual recognition of a judicial decision (the corresponding document of the European arrest warrant or of the relevant certificate under the other Framework Decisions) to indicate to the executing authority that the requirements for the execution of a judicial decision have been met - or will be met -, even if the person concerned was not present at the trial.

Review: by 28 March 2014, the Commission shall draw up a report on the basis of the information received from the Member States. On the basis of the report, the Council shall assess the extent to which Member States have taken the necessary measures in order to comply with this Framework Decision and the application of this Framework Decision. The report shall be accompanied, where necessary, by legislative proposals.

Territorial application: this Framework Decision shall apply to Gibraltar.

ENTRY INTO FORCE: this Framework Decision shall enter into force on 28/03/2009.

TRANSPOSITION BY THE MEMBER STATES: 28/03/2011. However, if a Member State has declared, on the adoption of this Framework Decision, to have serious reasons to assume that it will not be able to comply with the provisions of this Framework Decision by this date, this Framework Decision shall apply as from 1 January 2014 at the latest.

Judicial cooperation: procedural rights of persons and the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial. Initiative Slovenia, France, Czech Republic, Sweden, Slovakia, United Kingdom, Germany. Framework Decision

2008/0803(CNS) - 13/02/2008 - Legislative proposal

PURPOSE: initiative of Slovenia, France, the Czech Republic, Sweden, the Slovak Republic, the United Kingdom and Germany on the enforcement of decisions rendered in absentia and amending related legislation.

PROPOSED ACT: Council Framework Decision.

BACKGROUND: the aim of this proposal is to establish common rules for the recognition and/or execution of judicial decisions in one Member State (the executing Member State) issued by another Member State (the issuing Member State) following proceedings where the person was not present, according to the provisions laid down in the following:

1) Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States (see CNS/2001/0215);

2) Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties (see CNS/2001/0825);

3) Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders (see CNS/2002/0816);

4) Framework Decision 2008/…/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 (not yet adopted, see CNS/2005/0805).

The reason for this initiative is that the various Framework Decisions implementing the principle of mutual recognition of final judicial decisions do not deal consistently with the issue of decisions rendered in absentia. This diversity complicates the work of the practitioner and hampers judicial cooperation.

Solutions provided by these Framework Decisions are not satisfactory as regards cases where the person could not be informed of the proceedings. Framework Decisions 2005/214/JHA and 2006/783/JHA allow the executing authority to refuse the execution of such judgments.

Framework Decision 2002/584/JHA allows the executing authority to require the issuing authority to give an assurance deemed adequate to guarantee the person who is the subject of the European arrest warrant that he or she will have an opportunity to apply for a retrial of the case in the issuing Member State and to be present at the judgment. The adequacy of such guarantee is a matter to be decided by the executing authority and it is therefore difficult to know exactly when execution may be refused.

Accordingly, it is deemed necessary to provide clear and common solutions which define the grounds for refusal and the discretion left to the executing authority.

CONTENT:

Grounds for refusal: the proposed Framework Decision is limited to the definition of grounds for refusal in instruments implementing the principle of mutual recognition. Therefore, provisions such as the definition of the concept of decision rendered in absentia or rules on the right to a retrial have a scope which is limited to the definition of these grounds for refusal. They are not designed to harmonise national legislation.

The main amendments are as follows:

- the definition of a “decision rendered in absentia” which shall mean a custodial sentence or a detention order when the person did not personally appear in the proceedings resulting in that decision;

- executing judicial authority may refuse to execute the European arrest warrant;

- the executing judicial authority may also refuse to execute the European arrest warrant issued for the purpose of executing a custodial sentence or a detention order, if the decision was rendered in absentia, unless the European arrest warrant conforms to specified conditions;

- the pro forma doe the European arrested warrant is amended;

- amendments are also proposed to Framework Decision 2005/214/JHA and Framework Decision 2006/783/JHA with regard to the provisions on certificates, and to the standard form of the certificates on service and confiscation orders;

- implementation will be 18 months after entry into force.

It should be noted that this Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty, and any obligations incumbent upon judicial authorities in this respect shall remain unaffected.

Judicial cooperation: procedural rights of persons and the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial. Initiative Slovenia, France, Czech Republic, Sweden, Slovakia, United Kingdom, Germany. Framework Decision

2008/0803(CNS) - 02/09/2008 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 609 votes to 60, with 14 abstentions, the initiative of several Member States to amend a series of Framework Decisions (2002/584/JHA on the European arrest warrant, 2005/214/JHA on the application of the principle of mutual recognition to financial penalties, 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders and 2008/…/JHA on the application of the principle of mutual recognition to judgments in criminal matters) for the purpose of the enforcement of decisions rendered in absentia.

The report had been tabled for consideration in plenary by Armando **FRANÇA** (PES, PT) on behalf of the Committee on Civil Liberties, Justice and Home Affairs.

Above all, the legislative resolution calls on both the Council and the Commission to give priority to dealing with any future proposal to amend this text by urgent procedure, as set out in the Lisbon Treaty and once this treaty enters into force.

In concrete, the Parliament strengthened the ‘rights of persons judged in absentia’ section of the initiative by proposing a series of procedural safeguards. It also sought to eliminate the different approaches towards ‘grounds for non-recognition’.

The main amendments can be summarised as follows (note that the same framework of amendments is envisaged for each of the amended Framework Decisions):

Overall objective and amendment to the title: to ensure comprehension of the text, the Parliament specified the overall objective of the Framework Decision, which is to strengthen citizens' rights by promoting the application of the principle of mutual recognition in respect of decisions rendered following a trial at which the person concerned did not appear in person. It also added a text to the list of those already established by the initiative: Framework Decision 2008/…/JHA on the recognition and supervision of suspended sentences, alternative sanctions and conditional sentences (see CNS/2007/0807).

Procedural safeguards: the Parliament asks that adequate procedural guarantees be established to ensure the recognition of judgments in criminal matters. It recalls, in this respect, that a Framework Decision on procedural rights in criminal proceedings is essential. In the meantime, the Parliament considers it necessary to provide **clear and common solutions which define the grounds for refusal of the execution of the decision rendered following a trial at which the person concerned did not appear in person** as well as the discretion left to the executing authority. The Parliament clearly specifies these common grounds for refusal and establishes a series of new provisions to complete, on a strictly technical level, either the relevant section of the European arrest warrant or the certificate in the annex to the other Framework Decisions, so that the issuing authority gives an assurance that the requirements have been or will be met.

Recognition and execution of decisions: the Parliament considers that the recognition and execution of a decision rendered following a trial at which the defendant did not appear in person should not be refused:

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if, on the basis of the information provided by the issuing State, it is satisfactorily established that the defendant was summoned in person, or by other means actually received official information of the scheduled date and place of the trial. In this context, it is understood that the person should have received such information in good time, i.e. sufficiently in advance to allow him or her to participate in the trial and to effectively exercise his/her right of defence. All information should be provided in a language which the defendant understands;

- where the person concerned, being aware of the scheduled trial, was defended at the trial by a legal counsellor to whom he/she had given an explicit mandate to do so, thus ensuring that the legal assistance was practical and effective. In this context, it should be immaterial whether the legal counsellor was chosen, appointed and paid by the person concerned, or was appointed and paid by the State in accordance with its national law applicable to the rights of the defence, it being understood that the person concerned would have chosen to be represented by a legal counsellor instead of appearing him- or herself at the trial.

Grounds for non-recognition of a decision: the Parliament considers that the common solutions on grounds for non-recognition should take into account the diversity of situations with regard to the right of the person concerned to **a retrial** or to **an appeal**. Such a retrial, which aims to safeguard the rights of the defence, is characterised by the following elements: the person concerned has the right to participate in the retrial; the merits of the case, including fresh evidence, will be (re)examined, and the proceedings may result in the original decision being quashed.

Defence of the rights of persons judged in absentia: the Parliament considers that at a retrial following a conviction resulting from a trial at which the person concerned did not appear in person, the defendant should be in the same position as someone standing trial for **the first time**. Therefore the person concerned should have the right to be present at the retrial, the merits of the case, including fresh evidence, should be (re)examined, the retrial could result in the original decision being quashed and the defendant may appeal against the new decision.

Technical amendments: in addition to the above amendments that cover the texts of each of the Framework Decisions, technical amendments specific to each Framework Decision are set out by the Parliament. In terms of Framework Decision 2002/584/JHA on the **European arrest warrant**, the Parliament specifies the procedure to follow to inform a person concerned by a European arrest warrant but who has not been 'officially' informed. In this case, this person may request a copy of the judgment before being surrendered to the competent authority. If the judgment is rendered in a language which the person concerned does not understand, the issuing judicial authority shall provide an extract of the judgment in a language which the person concerned understands. In this case, the provision of the judgment or an extract of the judgment to the person concerned shall be for information purposes only; it shall not be construed as constituting formal service of the judgment nor shall it activate any time-limits applicable for requesting a retrial or appeal. Other similar amendments were made to the annexes of the different Framework Decisions concerned.