

Procedure file

Basic information	
CNS - Consultation procedure Decision	2009/0811(CNS) Procedure lapsed or withdrawn
Judicial cooperation: transfer of proceedings in criminal matters	
Subject 7.40.04 Judicial cooperation in criminal matters	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	LIBE Civil Liberties, Justice and Home Affairs	S&D BEŇOVÁ Monika	06/10/2009
Council of the European Union	Council configuration	Meeting	Date
	Justice and Home Affairs (JHA)	2969	23/10/2009
European Commission	Commission DG	Commissioner	
	Justice and Consumers	BARROT Jacques	

Key events			
30/06/2009	Legislative proposal published	11119/2009	Summary
14/09/2009	Committee referral announced in Parliament		
23/10/2009	Debate in Council	2969	Summary

Technical information	
Procedure reference	2009/0811(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Decision
Legal basis	Treaty on the European Union (after Amsterdam) M 031-p1-aa; Treaty on the European Union (after Amsterdam) M 034-p2b
Stage reached in procedure	Procedure lapsed or withdrawn
Committee dossier	LIBE/7/00533

Documentation gateway					
Legislative proposal		11119/2009	30/06/2009	CSL	Summary

Judicial cooperation: transfer of proceedings in criminal matters

PURPOSE: to establish common rules facilitating the transfer of criminal proceedings between Member States

PROPOSED ACT: JHA Council Framework Decision.

BACKGROUND: this draft Framework Decision is presented due to the fact that no uniform procedure has hitherto been applied to cooperation between Member States regarding transfer of proceedings. The Council [Framework Decision](#) on prevention and settlement of conflicts of jurisdiction in criminal proceedings addresses the adverse consequences of several Member States having criminal jurisdiction to conduct criminal proceedings in respect of the same facts relating to the same person. That Framework Decision establishes a procedure for exchange of information and direct consultations, aimed at preventing infringements of the ne bis in idem principle. Further development of judicial cooperation between Member States is needed to increase the efficiency of investigations and prosecutions. Common rules between the Member States regarding the transfer of proceedings are essential in order to address cross-border crimes. They help to prevent infringements of the ne bis in idem principle and support the work of Eurojust. Furthermore, in an area of freedom, security and justice there should be a common legal framework for the transfer of proceedings between Member States. An agreement between the Member States of the European Communities on the transfer of proceedings in criminal matters was signed in 1990, but did not enter into force due to a lack of ratifications.

Several Council Framework Decisions have been adopted on the application of the principle of mutual recognition to judgments in criminal matters for enforcement of sentences in other Member States, in particular:

- [Framework Decision 2005/214/JHA](#) on the application of the principle of mutual recognition to financial penalties;
- [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.

This Framework Decision should supplement the provisions of those Framework Decisions and should not be interpreted as precluding their application.

CONTENT: the purpose of this Framework Decision is to increase efficiency in criminal proceedings and to improve the proper administration of justice within the area of freedom, security and justice by establishing common rules facilitating the transfer of criminal proceedings between competent authorities of the Member States, taking into account the legitimate interests of suspects and victims.

For the purpose of applying the Framework Decision, any Member State will have competence to prosecute, under its national law, any offence to which the law of another Member State is applicable. This competence may be exercised only pursuant to a request for transfer of proceedings. Any Member State having competence under its national law to prosecute an offence may waive or desist from proceedings against a suspected person, in order to allow for the transfer of proceedings in respect of that offence to another Member State.

The draft Framework Decision makes provision for the following, inter alia:

- designation of competent authorities to act as transferring authority and receiving authority;
- criteria for requesting transfer of proceedings e.g. where the offence has been committed wholly or partly in the territory of the other Member State, or the suspected person is ordinarily resident in the other Member State;
- the rights of the victim: before a request for transfer is made the transferring authority shall give due consideration to the interests of the victim of the offence and see to it that their rights under national law are fully respected. This includes, in particular, a right for the victim to be informed of the intended transfer;
- double criminality: a request for transfer of proceedings can be complied with only if the act underlying the request for transfer constitutes an offence under the law of the Member State of the receiving authority;
- grounds for refusal: the receiving authority may refuse transfer only under certain specified circumstances e.g. if the act does not constitute an offence under the law of that Member State or if taking proceedings would be contrary to the ne bis in idem principle;
- procedure for requesting transfer of proceedings: a standard form for transfer of criminal proceedings is annexed to the draft Framework Decision;
- consultations between the transferring and receiving authorities;
- cooperation with Eurojust and the European Judicial Network;
- costs resulting from the application of the Framework Decision will be borne by the Member State of the receiving authority, except for costs arising exclusively in the territory of the other Member State.

Lastly, it should be noted that the proposed Framework Decision shall not have the effect of modifying the obligations to respect the fundamental rights and principles recognised by Article 6 of the Treaty on European Union.

Judicial cooperation: transfer of proceedings in criminal matters

Ministers reviewed the progress made on a draft framework decision on transfer of proceedings in criminal matters.

It is recalled that by letters received by the General Secretariat in June and July 2009, Belgium, Bulgaria, the Czech Republic, Denmark, Estonia, Greece, Spain, France, Lithuania, Latvia, Hungary, the Netherlands, Romania, Slovenia, the Slovak Republic and Sweden presented an Initiative for a Council Framework Decision on transfer of proceedings in criminal matters.

By the letter of 28 July 2009, Coreper invited the European Parliament to deliver its opinion on the proposal by 17 December 2009.

Denmark, Ireland, France, Malta, Poland, Sweden and the United Kingdom entered parliamentary scrutiny reservations on the proposal and the United Kingdom has a general scrutiny reservation on the text.

Some of the issues tabled for discussion by ministers were as follows:

- the procedure for requesting transfer of proceedings;
- the decision of the receiving authority;
- consultations between the requesting and receiving authorities, and
- cooperation with Eurojust and the European Judicial Network.