

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.