

**European supervision order in pre-trial procedures \***

**European Parliament legislative resolution of 29 November 2007 on the proposal for a Council framework decision on the European supervision order in pre-trial procedures between Member States of the European Union (COM(2006)0468 – C6-0328/2006 – 2006/0158(CNS))**

**(Consultation procedure)**

*The European Parliament,*

- having regard to the Commission proposal (COM(2006)0468),
  - having regard to Article 31(1)(a) and (c), and Article 34(2)(b) of the EU Treaty,
  - having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted Parliament (C6-0328/2006),
  - having regard to Rules 93 and 51 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Legal Affairs (A6-0428/2007),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
  3. Draws the Commission's attention to the need to adapt the arrest and surrender procedure of the European arrest warrant to cover all cases where a suspect must be transferred back to the trial State following a breach of the European supervision order;
  4. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
  5. Calls on the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
  6. Instructs its President to forward its position to the Council and the Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1  
Recital 5

(5) In order to avoid unnecessary costs and difficulties in relation to the transport of

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the suspect for the purposes of preliminary hearings or the trial, Member States should be allowed to use *video links*.

the suspect for the purposes of preliminary hearings or the trial, Member States should be allowed to use *the procedure provided for in Article 10 of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union*<sup>1</sup>.

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<sup>1</sup>OJ C 197, 12.7.2000, p.1.

Amendment 2  
Recital 6 a (new)

*(6a) In the event of a breach of a European supervision order, the issuing authority may decide to issue a European arrest warrant for the purpose of transferring the suspect to the issuing State. In such circumstances, which should be strictly limited to the application of this Framework Decision, Framework Decision 2002/584/JHA covers all offences in relation to which a European supervision order may be issued.*

Amendment 3  
Article 1, paragraph 1

This Framework Decision establishes a European supervision order *and the pre-trial transfer procedures between Member States*.

This Framework Decision establishes a European supervision order.

Amendment 4  
Article 1, paragraph 2

A European supervision order is 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 *his* Member State of residence under the condition that he complies with supervision measures, in order to ensure the due course of justice and, in particular, to ensure that the person will be available to stand trial in the issuing Member State.

A European supervision order is 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*, under the condition that he complies with supervision measures, in order to ensure the due course of justice and, in particular,

to ensure that the person will be available to stand trial in the issuing Member State.

Amendment 5  
Article 3

*Article 3*

***Obligation to execute the European  
Supervision Order***

***deleted***

***Member States shall execute any  
European supervision order on the basis  
of the principle of mutual recognition and  
in accordance with the provisions of this  
Framework Decision.***

Amendment 6  
Article 4 a (new)

***Article 4a***

***Costs***

***1. The costs incurred in the execution of a  
European supervision order in the territory  
of the executing State shall be borne by that  
Member State.***

***2. All other costs shall be borne by the  
issuing State.***

Amendment 7  
Article 5, paragraph 1

***1. A European supervision order may be  
issued by the issuing authority after having  
informed the suspect of any obligations to  
be imposed pursuant to Article 6 and of the  
consequences, in particular of those set out  
in Articles 17 and 18.***

***1. After issuing a European supervision  
order, the issuing authority shall inform  
the suspect in a language which he  
understands of any obligations imposed  
pursuant to Article 6 and of the  
consequences, in particular of those set out  
in Articles 17 and 18.***

Amendment 8  
Article 6, paragraph 1, subparagraph 2

***Obstructing the course of justice or  
engaging in criminal activity may  
constitute a breach of the European  
supervision order.***

***Obstructing the course of justice or  
engaging in criminal activity shall  
constitute a breach of the European  
supervision order.***

Amendment 9  
Article 6, paragraph 1, subparagraph 3

The issuing authority may impose one or more of the following obligations on the suspect:

(a) to attend preliminary hearings relating to the offence(s) with which he has been charged or

(b) not to *enter* specified places in the issuing State without authorisation; *or*

*(c) to reimburse the costs for transferring him to a preliminary hearing or trial.*

The issuing authority may impose one or more of the following obligations on the suspect:

(a) to attend preliminary hearings relating to the offence(s) with which he has been charged or

(b) not to *frequent* specified places in, *or parts of the territory of*, the issuing State *or the executing State* without authorisation.

Amendment 10  
Article 6, paragraph 1, subparagraph 3, point (c a) new

*(ca) to inform the executing authority of any change of his place of residence in the executing State.*

Amendment 11  
Article 6, paragraph 2, point (c)

*(c) to surrender his passport(s) or other identification papers to the executing authority;*

*deleted*

Amendment 12  
Article 6, paragraph 2, point (e)

(e) to be at his specified place of work in the executing State at specified times;

(e) to be at his specified place of work, *service, etc.* in the executing State at specified times;

Amendment 13  
Article 6, paragraph 2, point (g a) (new)

*(ga) to avoid contact with specified persons or objects;*

Amendment 14  
Article 6, paragraph 2, point (h)

(h) to undergo specified medical treatment.

(h) to undergo specified medical treatment  
***subject to the suspect's consent;***

Amendment 15

Article 6, paragraph 2, point (h a) (new)

***(ha) to be subject to electronic monitoring.***

Amendment 16

Article 6, paragraph 2 a (new)

***2a. Each Member State shall notify the General Secretariat of the Council, when transposing this 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.***

Amendment 17

Article 6, paragraph 3

3. Any obligations imposed by the issuing authority in accordance with paragraphs 1, 2 ***and 3 of this Article*** shall be recorded in the European supervision order.

3. Any obligations imposed by the issuing authority in accordance with paragraphs 1 ***and 2*** shall be recorded in the European supervision order.

Amendment 19

Article 6, paragraph 4, subparagraph 1 a (new)

***The modifications referred to in subparagraph 1 shall be of a technical nature only and shall not of themselves impose additional obligations on the suspect.***

Amendment 20

Article 8, paragraph 1 a (new)

***1a. 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.***

Amendment 21  
Article 10, paragraph 1

1. ***A court, a judge, an investigating magistrate or a public prosecutor***, in the requested State shall refuse to recognise and execute a European supervision order if it is clear that criminal proceedings for the offence in respect of which that order has been issued would infringe the *ne bis in idem* principle.

1. ***The competent authority*** in the requested State shall refuse to recognise and execute a European supervision order if it is clear that criminal proceedings for the offence in respect of which that order has been issued would infringe the *ne bis in idem* principle.

Amendment 22  
Article 10, paragraph 2, introductory part

2. ***A court, a judge, an investigating magistrate or a public prosecutor***, in the requested State may refuse to recognise and execute a European supervision order on one or more of the following grounds:

2. ***The competent authority*** in the requested State may refuse to recognise and execute a European supervision order on one or more of the following grounds:

Amendment 23  
Article 12, paragraph 1

1. ***A court, a judge, an investigating magistrate or a public prosecutor***, in the requested State shall, as soon as possible and in any case within 5 days of receipt of the European supervision order, decide whether to recognise and execute it or to invoke grounds for non-recognition and non-execution. The competent authority in the requested State shall inform the issuing authority of that decision by any means capable of producing a written record.

1. ***The competent authority*** in the requested State shall, as soon as possible and in any case within 5 days of receipt of the European supervision order, decide whether to recognise and execute it or to invoke grounds for non-recognition and non-execution. The competent authority in the requested State shall inform the issuing authority of that decision by any means capable of producing a written record.

Amendment 24  
Article 12, paragraph 3

3. Where the European supervision order is incomplete, the ***court, the judge, the investigating magistrate or the public prosecutor*** in the requested State may postpone its decision on the recognition and execution of the order until it has been completed by the issuing authority.

3. Where the European supervision order is incomplete, the ***competent authority*** in the requested State may postpone its decision on the recognition and execution of the order until it has been completed by the issuing authority.

Amendment 25  
Article 12, paragraph 4

4. If, in accordance with paragraph 3, the recognition and execution of the European supervision order is postponed, the ***court, the judge, the investigating magistrate or the public prosecutor*** in the requested State shall forthwith communicate a report detailing the grounds for postponement directly to the issuing authority by any means capable of producing a written record.

4. If, in accordance with paragraph 3, the recognition and execution of the European supervision order is postponed, the ***competent authority*** in the requested State shall forthwith communicate a report detailing the grounds for postponement directly to the issuing authority by any means capable of producing a written record.

Amendment 26  
Article 12, paragraph 4 a (new)

***4a. The issuing authority shall inform the suspect of any postponement of the recognition and execution of the European supervision order.***

Amendment 27  
Article 13, paragraph 4

4. The suspect shall have the right to be heard by the issuing authority, in accordance with the law of the issuing State. This requirement may be ***satisfied through the use of appropriate video or telephone links with the issuing authority (hearing by video or telephone conference)***. The issuing authority shall also consult the executing authority on the review of the European supervision order.

4. The suspect shall have the right to be heard by the issuing authority, in accordance with the law of the issuing State. This requirement may be ***met in accordance with the procedure provided for in Article 10 of the Convention of 29 May 2000 between the executing and the issuing authority***. The issuing authority shall also consult the executing authority on the review of the European supervision order.

Amendment 28  
Article 17, paragraph 4

4. Before the decision under paragraph 1 is taken, the suspect shall have the right to be heard by the issuing authority, in accordance with the law of the issuing State. This requirement may be ***satisfied through the use of appropriate video or telephone links*** between the executing and the issuing authority ***(hearing by video or***

4. Before the decision under paragraph 1 is taken, the suspect shall have the right to be heard by the issuing authority, in accordance with the law of the issuing State. This requirement may be ***met in accordance with the procedure provided for in Article 10 of the Convention of 29 May 2000*** between the executing and the

*telephone conference*). The issuing authority shall also consult the executing authority.

issuing authority. The issuing authority shall also consult the executing authority.

Amendment 29  
Article 18

**Conditions for** arrest and transfer of the suspect

1. If the issuing authority decides that the suspect must be arrested and transferred to the issuing State, *the suspect shall be heard by a judicial authority of the Member State on whose territory he is arrested.*

2. *If the suspect consents to his transfer the Member State on whose territory the suspect is arrested shall forthwith transfer him to the issuing State.*

3. *If the suspect does not consent to his transfer the Member State on whose territory he is arrested shall forthwith transfer him to the issuing State. It may refuse the arrest and transfer only*

*- if it is clear that criminal proceedings for the offence in respect of which that order has been issued would meanwhile infringe the ne bis in idem principle;*

*- if the suspect is being prosecuted in the executing Member State for the same facts as those on which the European supervision order is based;*

*- if the criminal prosecution or punishment of the suspect is statute-barred according to the law of the executing Member State and the acts fall within the jurisdiction of that Member State under its own criminal law;*

*- if the decision to arrest and transfer concerns new facts not covered by the European supervision order.*

4. *A Member State other than the executing State may also refuse to arrest and transfer the suspect on the basis of one or more of*

Arrest and transfer of the suspect

1. 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 Framework Decision 2002/584/JHA.*

2. *Notwithstanding Article 2 (1) of that Framework Decision, a European arrest warrant may, in such a case, be issued and the suspect be transferred to the issuing State in connection with all the offences for which a European supervision order may be issued.*



*the grounds set out in Article 10.*

Amendment 30  
Article 20

**Article 20**  
***Time limits for transfer***

***deleted***

***1. The suspect shall be transferred to the issuing State pursuant to Article 18 on a date mutually agreed between member States concerned and in any event no later than 3 days following the arrest.***

***2. The transfer of a suspect may exceptionally be temporarily postponed for serious humanitarian reasons, for example, if there are reasonable grounds for believing that transfer would manifestly endanger the suspect's life or health. The issuing authority shall immediately be informed of any such postponement and of the reasons thereof. The transfer of the suspect shall take place as soon as these grounds have ceased to exist on a date agreed between the Member States concerned.***

Amendment 31  
Article 21

**Article 21**  
***Transit***

***deleted***

***1. Each Member State shall permit the transit through its territory of a suspect who is being transferred pursuant to the provisions of this Framework Decision provided that it has been informed of:***

***(a) the identity and nationality of the person subject to the European supervision order;***

***(b) the existence of a European supervision order;***

***(c) the nature and legal classification of the offence;***

***(d) the circumstances of the offence, including the date and place.***

***2. Each Member State shall designate an authority responsible for receiving transit requests and the necessary documents, as well as any other official correspondence relating to transit requests. Member States shall communicate this designation to the Council.***

***3. The transit request and the information provided for in paragraph 1 may be addressed to the authority designated pursuant to paragraph 2 by any means capable of producing a written record. The Member State of transit shall notify its decision by the same procedure.***

***4. This Framework Decision does not apply in the case of transport by air without a scheduled stopover. However, if an unscheduled landing occurs, the issuing State shall provide the authority designated pursuant to paragraph 2 with the information provided for in paragraph 1.***

Amendment 32  
Article 22, paragraph 1 a (new)

***Paragraph 1 shall also apply where, for the purposes of Article 6(2)(d), the suspect has been forbidden under the European supervision order to leave his place of residence or any other dwelling-place for the entire period laid down in the order.***

Amendment 33  
Title, below Article 22, Chapter 5a (new)

## ***CHAPTER 5 a - DATA PROTECTION***

Amendment 34  
Article 22 a (new)

### ***Article 22a***

#### ***Data protection***

***The processing of personal data for the purpose of this Framework Decision shall comply with at least the following basic***

*principles:*

*a) data processing shall only be undertaken insofar as it is permitted by law and is necessary and proportionate for the purpose of collection and/or further processing;*

*b) data shall be collected only for specified and legitimate purposes and further processed in a way compatible with those purposes;*

*c) data shall be accurate and updated;*

*d) special categories of data concerning racial or ethnic origin, political opinions, religious or philosophical beliefs, party or trade union membership, sexual orientation or health shall be processed only if absolutely necessary for the purpose of a specific case and in accordance with appropriate safeguards.*

Amendment 35  
Article 22 b (new)

#### *Article 22b*

##### *Rights of the data subject*

*1. All data subjects shall be informed of the fact that personal data concerning them are being processed.*

*The provision of that information may be delayed where necessary in order not to hamper the purposes for which the data are being processed.*

*2. A data subject shall have the right to obtain, without undue delay, information as to which data are being processed in a language which he or she understands, as well as to rectify and, where appropriate, erase data processed in breach of the principles referred to in Article 22a.*

*3. The provision of information under paragraphs 1 or 2 may be refused or delayed, where strictly necessary:*

*(a) to protect security and public order;*

*(b) to prevent a crime;*

*(c) so as not to hamper the investigation  
and prosecution of criminal offences;*

*(d) to protect the rights of third parties.*