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Committee on Civil Liberties, Justice and Home Affairs

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DRAFT REPORT

on the proposal for a Council Framework Decision on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings
(COM(2005)0091 – C6-0235/2005 – 2005/0018(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Panayiotis Demetriou

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council Framework Decision on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings (COM(2005)0091 – C6-0235/2005 – 2005/0018(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal (COM(2005)0091)¹,
 - having regard to 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 (C6-0235/2005),
 - 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 (A&-0000/2006),
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. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Calls on the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1 Article 1, paragraph 1

1. The purpose of this Framework Decision is to determine the conditions in which a Member State takes into account, in the course of **new** criminal proceedings against **the same** person, convictions handed down in another Member State for different facts

1. The purpose of this Framework Decision is to determine the conditions in which a Member State takes into account, in the course of criminal proceedings against **a** person, **previous** convictions handed down in another Member State **against the same**

¹ Not yet published in OJ.

or enters such convictions in the criminal record. *person* for different facts.

Justification

Provisions concerning the national criminal records should be removed from this Framework Decision and this matter should be addressed in the context of the draft Framework Decision on the organisation and content of the exchange of information extracted from criminal records between Member States (Diaz de Mera report) (COM(2005)690) .

The wording is redrafted to be in accordance with the wording of the Article 3 paragraph 1.

Amendment 2
Article 1, paragraph 2

2. This Framework Decision may not have the effect *the effect* of amending the obligation to respect the fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty.

2. This Framework Decision may not have the effect of amending the obligation to respect the fundamental rights and fundamental legal principles as enshrined in Article 6 of the *EU* Treaty.

Justification

This is a correction of what is obviously a typing mistake and a clarification of the name of the legal document.

Amendment 3
Article 2, point (a)

a) “conviction” means any final decision *of a criminal court or of an administrative authority whose decision can be appealed against in the criminal courts* establishing guilt *of a criminal offence or an act punishable in accordance with national law as an offence against the law;*

a) “conviction” means any final *court* decision establishing *in criminal proceedings* guilt *of a criminal offence under national law;*

Justification

The definition proposed by the Commission does not seem to correspond to judicial systems of all the Member States, especially as regards decisions of an administrative authority, and

may create confusion.

Amendment 4
Article 2, point (b)

**b) “criminal record”: the national register ~~deleted~~
or registers recording convictions in
accordance with national law.**

Justification

Provisions concerning the national criminal records should be removed from this Framework Decision and this matter should be addressed in the context of the draft Framework Decision on the organisation and content of the exchange of information extracted from criminal records between Member States (Diaz de Mera report) (COM(2005)690) .

Amendment 5
Article 3, paragraph 1

1. Each Member State shall, in the course of **new** criminal proceedings **for different facts, attach to** convictions handed down in **the other** Member States in accordance with **rules determined by them** legal effects **that are equivalent to those they attach to national convictions.**

1. Each Member State shall **ensure that**, in the course of criminal proceedings **against a person, its competent national authorities take into account previous** convictions handed down in **other** Member States **against the same person for different facts** in accordance with **their national law and attach to them the same** legal effects **as they attach to previous national convictions.**

Justification

An obligation to ensure appropriate conditions for taking into account foreign convictions is imposed on the Member States and not directly on their competent national authorities. Member States are the ones who will be obliged to transpose this Framework Decision into their national systems.

It should be explicitly stated that the only obligation for the Member States would be to take into account a foreign convictions to the extent that a national convictions would be taken into account. Thus making a national law as the only criteria for deciding if and what kind of legal effects should be attached to the previous foreign conviction. Convictions handed down in another Member States should be taken into account at the various stages of criminal proceedings.

Amendment 6
Article 3, paragraph 2

2. Paragraph 1 shall apply at the pre-trial stage, at the trial stage itself and at the time of execution of the conviction, in particular with regard to the applicable rules *of procedure*, including those relating to provisional detention, the definition of the offence, the type and level of the sentence, and the rules governing the execution of the decision.

2. Paragraph 1 shall apply at the pre-trial stage, at the trial stage itself and at the time of execution of the conviction, in particular with regard to the applicable rules, including those relating to provisional detention, the definition of the offence, the type and level of the sentence, and the rules governing the execution of the decision.

Justification

The rapporteur considers that the provision should not be limited only to the rules of procedure.

Amendment 7
Article 4, point (d a) (new)

da) where the underlying facts do not constitute an offence against the criminal law of the Member State.

Justification

It should be explicitly stated that, in the course of criminal proceedings in a Member State, account must not be taken of a foreign conviction related to acts not punishable in that Member State.

Amendment 8
Article 5, paragraph 1

***Convictions handed down in another Member State may be disregarded where the underlying facts do not constitute an offence against the criminal law of the Member State.
The first subparagraph shall not apply to***

deleted

the following categories of offences:

- *participation in a criminal organisation;*
- *terrorism;*
- *trafficking in human beings;*
- *sexual exploitation of children and child pornography;*
- *trafficking in narcotic drugs and psychotropic substances;*
- *trafficking in weapons, munitions and explosives;*
- *corruption;*
- *fraud, including fraud affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests;*
- *laundering the proceeds of crime;*
- *counterfeiting currency, including the euro;*
- *computer-related crime;*
- *environmental crime, including trafficking in endangered animal species and in endangered plant species and varieties;*
- *facilitation of unauthorised entry and residence;*
- *murder, grievous bodily harm;*
- *illicit trade in human organs and tissue;*
- *kidnapping, illegal restraint and hostage-taking;*
- *racism and xenophobia;*
- *organised or armed robbery;*
- *illicit trafficking in cultural goods, including antiques and works of art;*
- *swindling;*
- *racketeering and extortion;*
- *counterfeiting and piracy of products;*
- *forgery of administrative documents and trafficking therein;*
- *forgery of means of payment;*
- *trafficking in hormonal substances and other growth promoters;*
- *trafficking in nuclear or radioactive materials;*
- *trafficking in stolen vehicles;*
- *rape;*
- *arson;*
- *crimes within the jurisdiction of the*

International Criminal Court;
- unlawful seizure of aircraft/ships;
- sabotage;
- conduct which infringes road traffic regulations, including breaches of regulations pertaining to driving hours and rest periods and regulations on hazardous goods;
- smuggling of goods;
- infringements of intellectual property rights;
- threats and acts of violence against persons, including during sports events;
- criminal damage;
- theft;
- offences established by the convicting State and serving the purpose of implementing obligations arising from instruments adopted under the Treaty establishing the European Community or under Title VI of the Treaty on European Union.

Justification

Taking into account changes proposed in the Article 3 paragraph 1, there is no need for the optional grounds for not taking into account the previous foreign conviction. According to the wording of the new Article 3, that is the discretion of competent national authorities according to their national law to decide if and to what extent previous convictions should be taken into account.

Amendment 9 Article 6, paragraph 1

1. Where a Member State enters convictions handed down in another Member State in its criminal record, the amount of the penalty entered shall correspond to that of the sentence actually passed, unless the amount of the penalty has been actually reviewed when the penalty was executed in the registering Member State. ***deleted***

Justification

Provisions concerning the national criminal records should be removed from this Framework Decision and this matter should be addressed in the context of the draft Framework Decision on the organisation and content of the exchange of information extracted from criminal records between Member States (Diaz de Mera report) (COM(2005)690).

Amendment 10
Article 6, paragraph 2

2. If, under national legislation, convictions handed down in the other Member States against nationals or residents are entered in the national criminal record, the rules governing entry in the record, modifications or deletion of the information entered may under no circumstances have the effect of causing the person to be treated more unfavourably than if he/she had been convicted by a national court. *deleted*

Justification

See the justification for amendment article 6, paragraph 1

Amendment 11
Article 6, paragraph 3

3. Any modification or deletion of an entry in the convicting Member State shall entail an equivalent deletion or modification in the Member State of nationality or residence if it made an entry in the record and is informed of the modification or deletion, unless the legislation of the latter State provides for more favourable treatment for the convicted person. *deleted*

Justification

See the justification for amendment article 6, paragraph 1

Amendment 12

Article 7

1. Without prejudice to its application in relations between the Member States and third countries, this Framework Decision replaces Article 56 of the Hague Convention of 28 May 1970 on the International Validity of Criminal Judgments as between the Member States.

This Framework Decision shall apply between the Member States without prejudice to Article 56 of the Hague Convention of 28 May 1970 on the International Validity of Criminal Matters with regard to the relations between Member States and third countries.

Justification

It is very doubtful that a provision of an international convention may be replaced by an article of a Framework decision. The rapporteur therefore suggests the application of this framework decision amongst the Member States without prejudice to the provisions of the relevant international convention.

Amendment 13

Article 8, paragraph 1

1. Member States shall adopt the measures necessary to comply with the provisions of this Framework Decision **no later than 31 December 2006.**

1. Member States shall adopt the measures necessary to comply with the provisions of this Framework Decision **within one year of its adoption.**

Justification

The time limits which were originally recommended are not realistic currently.

Amendment 14

Article 8, paragraph 3

3. On the basis of that information the Commission shall, **no later than**

3. On the basis of that information the Commission shall **no later than two years**

31 December 2007 present a report to the European Parliament and the Council on the application of this Framework Decision, accompanied if necessary by legislative proposals.

after the adoption of this Framework Decision present a report to the European Parliament and the Council on the application of this Framework Decision, accompanied if necessary by legislative proposals.

Justification

To comply with the amendment for the Article 7 paragraph 1.

EXPLANATORY STATEMENT

The object of the proposed framework decision is to lay down the basis for a conviction handed down in one Member State to be taken into account in new criminal proceedings concerning different facts in another Member State. This proposal is made in furtherance of the Tampere Conclusions in the field of freedom, security and justice.

The conclusions of the Tampere European Council presented the mutual recognition principle as the cornerstone of judicial cooperation in both civil and criminal matters. The proposal under consideration falls within the context of the White Paper on exchange of information on convictions and the effect of such convictions in the European Union. That White Paper defines the two objectives of future European Union action: improving the circulation and the use of information and ensuring that it can have an impact outside the convicting State, in particular as a means of preventing further offences.

There is a long way to go until justice is procedurally, evidentially and substantially administered in a more or less similar way in all the Member States of the European Union. Despite however the present diversities of the national systems of justice, the mutual recognition of judgements between Member States has to be pushed forward as much as possible. This is, of course, the one side of the coin which will be effective when the other side, that is to say, the recording and exchanging of information, is regulated. It is, therefore, the rapporteur's view that this framework decision is better to become in force when a similar decision is taken regulating the registration and circulation of information on convictions in the territory of the Union.

This proposal is closely linked to the proposal for a Council Framework decision on the organisation and content of the exchange of information extracted from the criminal records between Member States (COM(2005)690). The purpose of this proposal therefore is to lay down the situations in which convictions against a person which are taken in one Member State can or may be taken into account in course of new criminal proceeding against the same person for different facts. The basis for the taking into account is the principle of assimilation.

With regard to the definition of the term "conviction" the rapporteur believes that the use of the phrase "appealed against in criminal courts" does not seem to correspond to the judicial systems of the member states and may create confusion. The rapporteur further feels that at these first stages of establishment of this system of cooperation, administrative decisions should not be included, as it is unnecessary.

In relation to Articles 3, 4 and 5 the rapporteur is in favour of the principle of the simple assimilation together with some elements of harmonisation. In this regard, the rapporteur proposes to redraft the wording of the Article 3 paragraph 1 to explicitly state that the only criteria for deciding if and to what extent legal effects should be attached to the previous foreign conviction is a national law. However, the basic principles such as *ne bis in idem*, statutory limitation, amnesty as well as deletion of a reference to the conviction in the national criminal record should be observed throughout the European Union and, the Article 4, therefore, should be kept. Furthermore, it should be explicitly stated that, in the course of

criminal proceedings in a Member State, account must not be taken of a foreign conviction related to acts not punishable in that Member State.

Further, according to the rapporteur, the provisions of Article 6 best belong in the proposal for a Council Framework Decision on the organisation and content of the exchange of information extracted from the criminal records between Member States (COM(2005)690).

In relation to the proposed wording of Article 7, the rapporteur feels that it needs to be amended because it does not seem valid under international law that signatories of a Convention effect amendments or replacements of its Articles unilaterally. The text proposed in substitution of Article 7 is more in line with international law.