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REPORT

on an initiative of the United Kingdom, the French Republic and the Kingdom of Sweden for the adoption of a Council Framework Decision on the application of the principle of mutual recognition to financial penalties (11178/2001 – C5-0443/2001 – 2001/0825(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Carmen Cerdeira Morterero

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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PROCEDURAL PAGE

By letter of 25 September 2001 the Council consulted Parliament, pursuant to Article 39(1) of the EU Treaty, on an initiative of the United Kingdom, the French Republic and the Kingdom of Sweden for the adoption of a Council Framework Decision on the application of the principle of mutual recognition to financial penalties (11178/2001 – 2001/0825(CNS)).

At the sitting of 1 October 2001 the President of Parliament announced that she had referred this proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible (C5-0443/2001).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Carmen Cerdeira Morterero rapporteur at its meeting of 10 October 2001.

The committee considered the Commission proposal and the draft report at its meetings of 20 November and 4 December 2001.

At the latter meeting it adopted the draft legislative resolution by 16 votes to 2, with no abstentions.

The following were present for the vote: Graham R. Watson, chairman; Mary Elizabeth Banotti, Marco Cappato, Michael Cashman, Charlotte Cederschiöld, Ozan Ceyhun, Carlos Coelho, Pernille Frahm, Jorge Salvador Hernández Mollar, Margot Keßler, Timothy Kirkhope, Alain Krivine (for Giuseppe Di Lello Finuoli), Baroness Sarah Ludford, Elena Ornella Paciotti, Paolo Pastorelli, Hubert Pirker, Martine Roure (for Adeline Hazan), Ilka Schröder (for Alima Boumediene-Thiery, pursuant to Rule 153(2)), Joke Swiebel, Anna Terrón i Cusí and Maurizio Turco (for Frank Vanhecke)

The report was tabled on 4 December 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

**Initiative of the United Kingdom, the French Republic and the Kingdom of Sweden for the adoption of a Council Framework Decision on the application of the principle of mutual recognition to financial penalties
(11178/2001 – C5-0443/2001 – 2001/0825(CNS))**

The initiative is amended as follows:

Text proposed by the governments of the
United Kingdom, the French Republic and the
Kingdom of Sweden¹

Amendments by Parliament

Amendment 1 Recital 1a (new)

1a. The establishment of a genuine legal area depends on the mutual recognition of legal judgments. This requires a knowledge of the legal systems of other Member States and mutual trust in the operation of the legal system.

Justification

A European legal area has to be based on the principle of mutual recognition; simply harmonising national legal systems is not enough.

Amendment 2 Recital 2

(2) The principle of mutual recognition should apply to financial penalties imposed by judicial or administrative authorities.

(2) The principle of mutual recognition should apply to financial penalties imposed by judicial or administrative authorities ***in order to simplify enforcement in a State which did not pronounce the penalty.***

¹ OJ C 278, 2.10.2001, p. 4.

Justification

To justify the application of the principle of mutual recognition in this field.

Amendment 3

Recital 4

(4) Decisions requiring financial penalties to be paid have to be taken in accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950,

(4) Decisions requiring financial penalties to be paid have to be taken in accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, ***and the Charter of Fundamental Rights of the European Union, signed and proclaimed by the European Parliament, the Council and the Commission on 7 December 2000.***

Justification

For the first time in the history of the European Union, the Charter of Fundamental Rights in the European Union brings together all civil, political, economic and social rights of European citizens and all persons living on the territory of the Union in one text. All legal acts of the European Union must henceforth comply with it.

Amendment 4

Article 2, paragraph 5

5. If the competent authority in the Executing State is not known to the competent authority in the Issuing State, the latter shall make ***all necessary*** inquiries, ***including*** via the contact points of the European judicial network, in order to obtain the information from the Executing State.

5. If the competent authority in the Executing State is not known to the competent authority in the Issuing State, the latter shall make inquiries via the contact points of the European judicial network, in order to obtain the information from the Executing State. ***If a Member State has several contact points of the European judicial network on its territory, it shall nominate one of them to perform this coordinating role.***

Justification

The European judicial network was set up in September 1998 and now makes a substantial contribution to simplifying cross-border requests for legal assistance. Rather than setting up new contact points as provided for in Article 2(6), the existing contact points in the network should be used.

Amendment 5
Article 2, paragraph 6

6. Each Member State shall designate a central contact point for inquiries made under paragraph 5 and shall notify the General Secretariat of the Council of the contact point so designated. Deleted

Justification

See justification to Article 2(5).

Amendment 6
Article 4, paragraph –1 (new)

-1. The competent authority in the Executing State shall enforce the judgment only if the penalty is at least EUR 40.

Justification

The expense of transmission and enforcement in a State other than the Issuing State is not justifiable for small amounts. A threshold must therefore be set.

Amendment 7
Article 4, paragraph 2(a)

- (a) judgement against the sentenced person in respect of the same acts has been delivered
- ***in the Executing State or***
- in another Member State or a third State, and that judgement has been enforced; or

- (a) judgment against the sentenced person in respect of the same acts has been delivered in another Member State or a third State, and that judgment has been enforced; or

Justification

It is not obvious why there has to be any distinction between the Executing State and any other Member State in this context. It is obvious that the words 'another Member State' include the Executing State.

Amendment 8
Article 5, paragraph 1

1. The competent authority of the ***Executing*** State shall, ***if necessary, convert*** the penalty ***into the currency of the Executing State*** at the rate of exchange obtaining at the time when the penalty was imposed.

1. The competent authority of the ***Issuing*** State shall ***determine*** the penalty ***in euros***. ***If the Executing State has not introduced the euro, the amount in euros shall be converted into the appropriate currency*** at the rate of exchange obtaining at the time when the penalty was imposed.

Justification

The text should reflect the fact that from 2002 the EU will have a single currency and conversion will then be the exception.

Amendment 9
Article 7, first sentence

Where it is not possible to enforce a judgment, either totally or in part, an alternative custodial sanction may be applied by the Executing State if its laws, and those of the Issuing State, so provide in such cases.

Where it is not possible to enforce a judgment ***imposing a penalty for a criminal offence***, either totally or in part, an alternative custodial sanction may be applied by the Executing State if its laws, and those of the Issuing State, so provide in such cases.

Justification

To make clear that imprisonment as an alternative would be disproportionate in cases of breaches of administrative regulations or administrative offences within the meaning of Annex I of this framework decision.

Amendment 10
Article 7, paragraph 2 (new)

The alternative custodial sanction may not be applied in respect of an amount not corresponding to a full day in custody.

Justification

Self-explanatory.

Amendment 11
Article 13, first sentence

Documents to be produced shall be translated into ***the official language or one of*** the official languages of the Executing State.

Documents to be produced shall be translated into ***all*** the official languages of the Executing State.

Justification

The sentenced person, who may even face imprisonment, must be able to understand the documents.

Amendment 12
Article 15

This Framework Decision shall not affect the application of *more favourable* provisions *concerning* the enforcement of financial penalties *in* bilateral or multilateral agreements *or arrangements between Member States*.

This Framework Decision shall not affect the application of provisions *making* the enforcement of financial penalties *between Member States on the basis of* bilateral or multilateral agreements *simpler than under the provisions laid down in this Framework Decision*.

Justification

To clarify the ambiguity of 'more favourable'.

DRAFT LEGISLATIVE RESOLUTION

Legislative resolution of the European Parliament on an initiative of the United Kingdom, the French Republic and the Kingdom of Sweden for the adoption of a Council Framework Decision on the application of the principle of mutual recognition to financial penalties

(11178/2001 – C5-0443/2001 – 2001/0825(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the initiative of the United Kingdom, the French Republic and the Kingdom of Sweden (1178/2001¹),
 - having regard to Article 31(a) and Article 34(2)(b) of the EU Treaty,
 - having been consulted by the Council pursuant to Article 39(1) of the EU Treaty (C5-0443/2001),
 - having regard to Rules 106 and 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0444/2001),
1. Approves the initiative of the United Kingdom, the French Republic and the Kingdom of Sweden as amended;
 2. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 3. Asks to be consulted again if the Council intends to amend substantially the initiative of the United Kingdom, the French Republic and the Kingdom of Sweden;
 4. Instructs its President to forward its position to the Council and Commission, and the governments of the United Kingdom, the French Republic and the Kingdom of Sweden.

¹ OJ C 278, 2.10.2001, p. 4.

EXPLANATORY STATEMENT

1. Mutual recognition

To put it simply, mutual recognition means that judgments are accepted and enforced without further verification by the authorities of a State other than the Issuing State even if those authorities would have given a different judgment in the case.

In view of the widely differing penal systems in the European Union mutual recognition above all requires confidence in the laws of the other Member State and their proper application. A minimum of harmonisation of national criminal law is therefore essential and usually precedes mutual recognition. While the traditional and often time-consuming request method has to be used where legal systems have been no more than approximated, mutual recognition offers the advantage that judgments can apply as if they have been issued in the same Member State. The latter is required if there is to be a working legal area.

At its Tampere Summit (15 and 16 October 1999) the European Council called for the principle of mutual recognition to be made the cornerstone of judicial cooperation in both civil and criminal matters within the Union. While there are already a number of legal acts in the area of civil law, the far more sensitive area of criminal law has been approached with greater caution; at present only the decision on the execution of orders freezing assets or evidence (OJ C 75, 7 March 2001, p. 3) has been based on the principle of mutual recognition.

In July 2000 the Commission published a communication on mutual recognition of final decisions in criminal matters, which identifies the numerous problems arising in the event of mutual recognition of final decisions such as those relating to different scales of penalties in the Member States, execution and criminal records.

II. The initiative

In view of these problems the United Kingdom, France and Sweden have put forward an initiative initially confined in scope to financial penalties. It is much easier to apply the principle here as national laws are relatively similar.

Mutual recognition in this area is especially desirable as the traditional forms of enforcement often exceed the amount of the actual fine, while failure to enforce judgements would give the wrong signal in a State subject to the rule of law.

At present the cross-border enforcement of fines is governed by two European agreements, the 1970 Hague Convention on the International Validity of Criminal Judgments and the Convention on the Enforcement of Foreign Criminal Sentences of 1991. The 1970 Convention has entered into force but been ratified by only five Member States while the 1991 Convention has not yet come into force.

To avoid the complications and delays of the ratification procedure, the present initiative opts for the framework decision as laid down in Article 34(2)(b) as its instrument. Like the conventions mentioned above, it is based on the principle of dual criminality, the absence of which is one of the grounds for non-enforcement (Article 4(2)).

The initiative proposes that a certificate (Article 2(2)) by the competent authority should

guarantee the legality of the judgment and hence replace examination of the substance of the case. The difficult problem of how to divide up the proceeds between the two States concerned is resolved (Article 10) by allotting compensation payments and orders to pay court costs to the Issuing State and all other monies to the Executing State.

III. Opinion of the rapporteur

The rapporteur welcomes the initiative and largely concurs with it. She considers that a legal area as called for in Tampere requires the unbureaucratic transmission and enforcement of judgments in criminal cases and that this initiative is a first step towards a comprehensive application of the principle of mutual recognition.

She particularly endorses the provisions relating to the law to be applied, alternative custodial penalties and the amnesty, pardon or commutation of financial penalties, and the scope for the Executing State to reduce the penalty if the judgment related to acts carried out on its territory or that of a Member State other than the Issuing State (Article 5(2)).

She would however like to insert a threshold which, as in the agreement implementing the Schengen Convention of 14 June 1985, should be €40, and would like to emphasise that conversion of the amount of the penalties would be the exception as the currency in the Issuing and the Executing State would normally be the euro.

Where the competent authority in the Executing State is not known, the rapporteur considers that contact points of the European judicial network should be used rather than having additional central contact points designated pursuant to this decision. The European judicial network, which has been in existence since 1998, is now making a substantial contribution to simplifying requests for legal assistance and is ideally placed to take over this role in respect of mutual recognition of financial penalties. Countries having more than one contact point should however nominate one of them to perform this task for the sake of simplicity.

The rapporteur would finally criticise the failure to have documents to be transmitted translated into all official languages of the Executing State. If the person liable to pay the fine or even go to prison knows only one of the official languages of the executing country he would not be able to read these documents affecting him, which would be an infringement of his rights; although national laws governing execution normally entitle the person concerned access to the documents in his mother tongue, this should be written in at the framework decision stage.

The rapporteur is taking an increasing interest in criminal law, as witness her report on the initiative of the Portuguese Republic with a view to adopting a Council Framework Decision on the standing of victims in criminal procedure (A5-0355/2000), in which she laid special emphasis on comprehensive and rigorous protection for the victims of criminal acts.