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## **REPORT**

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))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Ioannis Varvitsiotis

### ***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 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 Articles 31(a) and (c), and 34(2)(b) of the EU Treaty,
  - having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted the 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

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

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.

#### *Justification*

*To ensure that uniform procedure for video links is used.*

#### 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, Council Framework Decision 2002/584/JHA of 13 June 2002 covers all offences in relation to which a European supervision order may be issued.***

#### *Justification*

*It is important to clarify and emphasize that the EAW covers all offences only in cases implementing ESO (a breach of ESO). The scope of the EAW shall not be generally expanded.*

#### 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.

### *Justification*

*Creation of special pre-trial transfer procedures endangers to complicate the system of surrender. Moreover, there is a risk that this fast-track system would not be able to ensure adequate procedural safeguards to protect the rights of the suspect.*

*The rapporteur proposes to use the EAW surrender procedures which are already being used and are gaining more trust among practitioners. However, taking into account the aim of this proposal, the EAW procedures should be adjusted in order to cover all offences (without setting a threshold).*

### 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.

### *Justification*

*It is necessary to clarify the definition of the residence.*

*One of the aims of the Framework Decision is to enhance the principle of liberty and to let a person who is suspected of committing a crime in a foreign Member State to return to a country where he/she currently lives and where his/her stay is legal. The Amendment proposes to broaden the scope of the proposal and to provide a possibility for a person to be returned to other country than the country of his/her permanent residence, i.e., it could be a country of his/her nationality.*

### Amendment 5 Article 3

**Article 3**

**deleted**

***Obligation to execute the European***

### *Supervision Order*

*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.*

#### *Justification*

*The Article overlaps with Article 9.*

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

#### *Justification*

*That is a linguistic clarification.*

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.

#### *Justification*

*Amendments 6 and 7 are merged for the sake of clarity.*



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.

*Justification*

*According to the Commission's Explanatory Memorandum this obligation is not one of "optional" obligations. Therefore, if according to national law the competent authority establishes that the suspect has obstructed the course of justice or has engaged in criminal activities, it should be an obligation of this competent authority to treat that as a breach of ESO and to take all necessary further actions.*

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.*

*Justification*

*One of the preconditions of issuing of the ESO is to be sure that the suspect has a permanent residence in another Member State. If after the ESO is issued the suspect changes his/her residence, it is of utmost importance to inform the competent authorities about that fact.*

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

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

*Justification*

*This obligation infringes basic rights of a person. The aim of the proposal is to let the suspect to go back to his/her country of residence and to live normal life there, while observing obligations imposed on him/her. If the suspect should surrender his/her passport, it could seriously limit full and effective enjoyment of his/her rights and freedoms.*

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;***

*Justification*

*In some situations it could be important to oblige the suspect not to meet with witnesses, victims or other suspects in order not to obstruct the course of justice. Moreover, in situations where a person is suspected in offences related, for example, to guns, it is important to oblige this person not to carry or hold a gun.*

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.***

*Justification*

*In order to remain in their domicile, in their habitual environment close to their families, the suspects may be supervised by the " electronic monitoring" in the Member States where this system is already introduced. The electronic monitoring is an effective way of supervision and give the opportunity to the suspects to continue their family life and professional activities.*

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.***

*Justification*

*It is difficult to identify a list of obligations which could be common for all Member States. The requirement to find an agreement between the issuing State and the executing State could complicate and prolong adoption of ESO. Therefore, this Amendment proposes to give a possibility for Member States to notify which obligations (apart from those listed in paragraph 1) they are ready to supervise. In this case the issuing State automatically can impose those obligations without getting in touch with the executing State.*

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 of this Article shall be recorded in the European supervision order.

Amendment 18  
Article 6, paragraph 4

**4. In addition to the obligations provided for in the European supervision order, the** executing authority may, in accordance with the law of the executing State, modify the obligations contained in the European supervision order as is strictly necessary for the purpose of executing the European supervision order.

4. The executing authority may, in accordance with the law of the executing State, modify the obligations contained in the European supervision order as is strictly necessary for the purpose of executing the European supervision order.

*Justification*

*It should be made clear that the executing authority cannot add any obligations to ones which are imposed by the issuing authority. The executing authority can make only technical adjustments to the ESO.*

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.***

*Justification*

*It should be made clear that the executing authority cannot add any obligations to ones which are imposed by the issuing authority. The executing authority can make only technical adjustments to the ESO.*

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.***

*Justification*

*The basic principle of the proposal is that the suspect should be given opportunity to return to*

*his/her country of ordinary residence. However, in situations where the suspect has closer links with any other Member State (i.e. of his nationality), the Framework Decision should provide for an opportunity to go to that country. However, to avoid abuse of that, the Member State concerned should consent to that.*

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

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.***

*Justification*

*The suspect shall have the right to be informed about any developments of his/her proceeding.*

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.

*Justification*

*To ensure that uniform procedure of video links is used.*

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

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

*Justification*

*To ensure that uniform procedure of video links is used.*

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***

***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***

*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 the grounds set out in Article 10.*

*arrest warrant in accordance with the provisions of Council Framework Decision 2002/584/JHA of 13 June 2002.*

*2. Notwithstanding Article 2 (1) of Council Framework Decision 2002/584/JHA, 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.*

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.*

*Justification*

*Shall be regulated by the provisions of the Council Framework Decision on the EAW.*

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.*

#### *Justification*

*Shall be regulated by the provisions of the Council Framework Decision on the EAW.*

#### Amendment 32

Article 22, paragraph 1 a (new)

*1a. 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**

#### *Justification*

*The Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters is not yet adopted. To avoid lacunae and*

*to ensure appropriate protection of data transmitted it is necessary to include a Chapter on Data protection in this Framework Decision.*

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.***

*Justification*

*The Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters is not yet adopted. To avoid lacunae and to ensure appropriate protection of data transmitted it is necessary to include a Chapter on Data protection in this Framework Decision.*

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.***

### ***Justification***

***The Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters is not yet adopted. To avoid lacunae and to ensure appropriate protection of data transmitted it is necessary to include a Chapter on Data protection in this Framework Decision.***

## EXPLANATORY STATEMENT

Pre-trial detention shall be regarded as an exceptional measure which must be strictly tested against the right to liberty, the presumption of innocence<sup>1</sup>. It shall never be compulsory nor be used for punitive reasons<sup>2</sup>. Consequently, in the pre-trial stage the widest possible use should be made of non-custodial supervision measures.

The supervisory measures regarding the alternatives to pre-trial detention in principle only aim to eliminate the three classical dangers that allow deprivation of liberty (danger of flight, danger of suppression of evidence and danger of repetition of offences).

In a common European area of justice without internal borders, it is necessary to ensure that a suspect who is not resident in the trial state is not treated any differently from a suspect who is so resident.

However, currently the different alternatives to pre-trial detention cannot be transposed or transferred across borders as there is no mutual recognition of those measures and there are not international instruments that specifically allow it. This absence of mutual recognition obstructs the judicial protection of individual rights.

There is a clear risk of unequal treatment between the two categories - EU citizens who are not residents in the territory of the Member State where they are suspected of having committed a criminal offence and EU citizens who are residents. Furthermore, that could also be seen as an obstacle to the free movement of persons.

Taking into account the above-mentioned, the rapporteur strongly supports the necessity of this proposal which will allow a mutual recognition of pre-trial supervision orders. This instrument would encourage competent national authorities not to detain EU non-residents in pre-trial process due to the danger of absconding but let them return to the Member State of their current lawful and ordinary residence.

In the opinion of the rapporteur it is important to clarify the definition of the residence. In the light of the aim of the proposal, it is vital not to restrict the meaning of the residence to the `permanent` residence which is already well-accepted Community terminology. However, it should be clarified that the stay of the person in a respective Member State should be lawful and ordinary. The fact if the residence is lawful and ordinary should be determined by *de*

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<sup>1</sup>Article 6(2) TEU provides that the Union shall respect fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, 1950) and as they result from constitutional traditions common to the Member States, as general principles of Community law. The basic rights or fundamental freedoms that govern pre-trial detention and alternatives to such detention and that are determined by the ECHR are as follows:

- Art. 5(1) "everyone has the right to liberty and security of person";
- Art. 6(2) " everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law";
- Art. 5(1)c "the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so"

<sup>2</sup> Recommendation of the Council of Europe, Rec(2006)13.

*facto* circumstances.

Moreover, the rapporteur proposes to widen the scope of the Framework Decision and to include a possibility of a suspect to request the issuing competent authority to return to other Member State than his or her ordinary and lawful Member State. Mostly, it could be the Member State of his/her nationality in situations when a person works in another Member State.

In opinion of the rapporteur the Commission's proposal to create a specific separate transfer mechanism of persons who breach the European supervision order (ESO) could endanger and complicate current system of surrender/transfer. The efficacy of the parallel system to EAW is questionable. At the moment there are surrender procedures provided for in the Council Framework Decision on the European arrest warrant and the surrender procedures between Member States<sup>1</sup> (EAW). The implementation of the EAW is completed and it is already being used by practitioners. EAW gains more and more trust among practitioners. One should not underestimate the element of trust in applying instruments of mutual recognition. In this regard the rapporteur proposes to adjust the procedures of the EAW to the ESO in situations when there is a breach of the ESO.

At the moment the EAW covers such acts which are punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months. However, taking into account the aim of the proposal on the ESO, all offences should be covered (without setting a threshold). Therefore, when applying the ESO, the EAW should be extended to cover all offences.

Before introducing detailed amendments to the ESO with regard to extension of the EAW to all offences, in-depth analyses and consultation should be done. Therefore, the rapporteur calls on the European Commission, which has all necessary resources, to revise the proposal on ESO and to introduce necessary changes in order to provide for an opportunity to apply the surrender procedures of the EAW. If the European Commission considers it necessary, the rapporteur calls on it to submit needed changes to EAW.

Instruments of mutual recognition always involve a high level of exchange of sensitive and private information. Therefore, it is important to provide for data protection. The rapporteur calls on the Council to adopt the Framework Decision on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters<sup>2</sup>. However, current absence of the above-mentioned Framework Decision should not reduce and endanger appropriate level of the protection of data. Thus the rapporteur proposes to insert in the proposal specific articles on data protection.

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<sup>1</sup> OJ L 190, 18.7.2002, p.1

<sup>2</sup> COM(2005)04751 - CNS 2005/0202

5.10.2007

## **OPINION OF THE COMMITTEE ON LEGAL AFFAIRS**

for the Committee on Civil Liberties, Justice and Home Affairs

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))

Draftsman: Aloyzas Sakalas

### **SHORT JUSTIFICATION**

The Framework Decision on the supervision order in pre-trial procedures is a very significant legislative proposal, aimed not only at ensuring more efficient legal cooperation within the legislative area of the European Union but also at creating the legislative background for reducing the scope of the application of arrest – a non-custodial supervision measure (especially in cases of minor offences). In your Draftsman's opinion, it can be unambiguously stated that this legislative proposal is not only important but absolutely necessary. There are, however, several matters of principle that have to be agreed upon in advance in order to assess the provisions of this legislative proposal from a legal point of view:

- The suggested type of cooperation is very similar to a unitary State and should be discussed, because at present it means 'opening the door to nowhere' (from a legal aspect, of course). It is undoubtedly a political issue, yet as its resolution will have a serious legislative impact, the legal wording of the legislative proposal must therefore be clear and unambiguous. In your Draftsman's opinion, the text unfortunately raises more questions than it answers and it would therefore be preferable to opt for a classical method of cooperation and legal regulation (as in the case of the European arrest warrant, for example);
- The proposed legislative proposal needs to define clearly whether it unifies or coordinates State laws (prescribing to what extent States can expand on the legal regulation of issues within their national laws). In your Draftsman's opinion, the legislative proposal has a considerable number of legal gaps, which could have grave legal consequences for guaranteeing the protection of human rights and freedoms, e.g. it is not clear which State is responsible for damage caused through illegal supervision; also certain procedural aspects, e.g. the suspect's right to appeal against the European supervision order etc., are not completely clear.

Your Draftsman's comments on Mr Varvitsiotis's working document are made according to the following logic: aspects that are: a) mentioned in both the legislative proposal and the Varvitsiotis working document; b) mentioned in the Varvitsiotis working document only; and c) not mentioned, but are legally necessary in your Draftsman's opinion:

1. Traditionally the main issue concerning legislative proposals aimed at legal cooperation is the rule of double crime (according to which Member States cooperate only when an act is deemed criminal in both States). The European Commission keeps trying to reject this rule or at least limit its scope. In your Draftsman's opinion, this legislative proposal envisages to fully reject the rule (Article 10), whereas the Varvitsiotis working document (page 5) makes allowance for it (to a certain extent), but only in the event of an arrest. Both attitudes are to be considered as 'dangerous' in several respects, because constitutional problems could arise in Lithuania (at least) if limitations on human rights and freedoms are imposed for acts that are not deemed criminal according to the Criminal Code of Lithuania. On the other hand, if only more serious crimes are covered, the task of reducing the application of arrest will not be fulfilled. In view of the above, it would be preferable to provide, among other grounds for refusing the European supervision order, the following: an act in a State that is asked to carry out supervision shall not be deemed criminal (this model might be like the European arrest warrant). As far as Lithuania is concerned, it is a key point related to constitutional obligations.

2. Your Draftsman fully agrees with points 2 and 3 of the Varvitsiotis working document.

3. In your Draftsman's opinion, point 1 in the Varvitsiotis working document should be supplemented by the following: a) according to Article 6 of the legislative proposal, supervision may be imposed during court proceedings only, but this possibility should also be ensured during the pre-trial investigation process (especially leaving the State conducting the investigation the right to decide at its own discretion); b) the provisions of Article 6(4) of the legislative proposal are correct and are indeed necessary, but they are unclear, because the meaning of '... modify the obligations' is not clear: does it imply a type of non-custodial measure (e.g. working document seizure as part of cash bail) or does it relate only to the scope of the non-custodial measure itself? This aspect is important because severe sanctions are envisaged for a breach of the supervision order (Chapter 5 of the legislative proposal). Moreover, the provisions of Article 6(4) of the legislative proposal do not correspond with Article 13 of the same act, which provides for review of the European supervision order (it is doubtful whether the issuing State can thus modify obligations that have been changed by the executing State).

4. In your Draftsman's opinion, the obligation provided for in Article 6(1)(c) of the legislative proposal permits breaching of the obligations in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

5. In Article 6(2)(e) of the legislative proposal the word 'work' should be followed by 'service etc.', and the wording of (h) (at least with reference to the Lithuanian version) raises suspicions that compulsory treatment is implied; the following wording would therefore be preferable: 'to undergo specified medical treatment with the voluntary compliance of the suspect'.



6. In Article 10(2)(a) of the legislative proposal the word ‘acts’ should be followed by the words ‘or omission of acts’.

7. The possibility provided for in Article 17 of the legislative proposal to exchange milder custodial measures for arrest in the case of a breach of the obligations is not possible, at least not in Lithuania, because arrest can be imposed only if all grounds and warrants provided for in the Code of Criminal Procedure are present and the set procedures are followed. In this respect, national law is more ‘severe’ than the legislative proposal, and it is therefore doubtful that the provisions of the legislative proposal regarding arrest for breaching the obligations of custodial measures are acceptable for Lithuania.

8. The following issues must be regulated by the legislative proposal:

- The suspect’s right to appeal against the European supervision order and instances of amendment and revision;
- Establishing which State is to be held responsible for compensating for damage resulting from an illegal European supervision order.

## AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission

Amendments by Parliament

### Amendment 1 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 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 2 Article 6, paragraph 1, subparagraph 3

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

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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.*

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 3

##### 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 4

##### Article 6, paragraph 2, point (h)

(h) to undergo specified medical treatment.

(h) to undergo specified medical treatment *with the voluntary compliance of the suspect.*

#### Amendment 5

##### Article 6, paragraph 4

4. In addition to the obligations provided for in the European supervision order, the executing authority may, in accordance with the law of the executing State, modify the obligations contained in the European supervision order as is strictly necessary for the purpose of executing the European supervision order.

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Amendment 6  
Article 6, paragraph 4a (new)

***4a. Member States may also decide to apply the provisions of this Article to the pre-trial investigation process.***

Amendment 7  
Article 10

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.***

***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:***

(a) if, under the law of the requested State, the suspect may not, owing to his age, be held criminally responsible for the acts on which the European supervision order is based;

(b) ***if there is an immunity or privilege under the law of the requested State which would prevent the execution of the European supervision order;***

(c) ***if the offence to which the European supervision order relates is covered by an amnesty in the requested State, where that State had jurisdiction to prosecute the offence under its own criminal law.***

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 ***where the situation existing between the Member States corresponds to one of the cases referred to in Articles 3 and 4 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States<sup>1</sup>.***

***2. Paragraph 1 shall apply in particular:***

(a) if, under the law of the requested State, the suspect may not, owing to his age, be held criminally responsible for the acts ***or omissions*** on which the European supervision order is based;

(b) ***if the act on which the European supervision order is based does not***

*constitute an offence under the law of the executing Member State; however, in relation to taxes or duties, customs and exchange, execution of the European supervision order shall not be refused on the ground that the law of the executing Member State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing Member State.*

<sup>1</sup> OJ L 190, 18.7.2002, p. 1.

Amendment 8  
Article 17

1. In the event of a breach of the European supervision order, the issuing authority may, in accordance with the law of the issuing State, take the decision:

(a) to revoke the European supervision order;

(b) to amend or revoke one or more of the obligations contained in the European supervision order;

(c) to arrest **and transfer** the suspect, if the European supervision order was issued in respect of an offence for which pre-trial detention is justified under the law of the issuing State, in particular **when it is necessary in order to attend a preliminary hearing or trial;**

**(d) to arrest and transfer the suspect, in the following circumstances:**

(i) if the European supervision order was issued in respect of an offence for which pre-trial detention was initially not justified under the law of the issuing State; and

(ii) if the European supervision order contains limitations of his freedoms of a degree comparable to deprivation of liberty; and

(iii) if the arrest **and transfer** is necessary to

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(a) to revoke the European supervision order;

(b) to amend or revoke one or more of the obligations contained in the European supervision order;

(c) to arrest the suspect, if the European supervision order was issued in respect of an offence for which pre-trial detention is justified under the law of the issuing State, in particular:

(i) if the European supervision order was issued in respect of an offence for which pre-trial detention was initially not justified under the law of the issuing State; and

(ii) if the European supervision order contains limitations of his freedoms of a degree comparable to deprivation of liberty; and

(iii) if the arrest is necessary to attend a

attend a preliminary hearing or trial.

2. Before deciding on arrest *and transfer*, the issuing authority shall consider all relevant circumstances, including the specific penalty envisaged, the consequences of the breach and, in particular, the willingness of the suspect to come back voluntarily to the issuing State.

3. *If the issuing authority decides that the suspect must be arrested and transferred and, at the time of that decision, the suspect is in the territory of another Member State, that State shall arrest and transfer the suspect under the conditions of article 18.*

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

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2. Before deciding on arrest, the issuing authority shall consider all relevant circumstances, including the specific penalty envisaged, the consequences of the breach and, in particular, the willingness of the suspect to come back voluntarily to the issuing State.

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#### Amendment 9 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*

Conditions for arrest of the suspect

1. If the issuing authority decides that the suspect must be arrested, 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. *The Member State on whose territory the suspect is arrested may refuse the arrest and transfer only:*

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 the grounds set out in Article 10.

– 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 concerns new facts not covered by the European supervision order.

4. A Member State other than the executing State may also refuse to arrest the suspect on the basis of one or more of the grounds set out in Article 10.

Amendment 10  
Article 20

*Article 20*

*deleted*

*Time limits for transfer*

***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 11  
Article 22, paragraph 1 a (new)

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

## PROCEDURE

<b>Title</b>	European supervision order in pre-trial procedures between Member States of the European Union
<b>References</b>	COM(2006)0468 - C6-0328/2006 - 2006/0158(CNS)
<b>Committee responsible</b>	LIBE
<b>Opinion by</b> Date announced in plenary	JURI 12.10.2006
<b>Drafts(wo)man</b> Date appointed	Aloyzas Sakalas 24.10.2006
<b>Discussed in committee</b>	11.9.2007                      3.10.2007
<b>Date adopted</b>	4.10.2007
<b>Result of final vote</b>	+:                      24 -:                      0 0:                      0
<b>Members present for the final vote</b>	Carlo Casini, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Katalin Lévai, Hans-Peter Mayer, Manuel Medina Ortega, Aloyzas Sakalas, Francesco Enrico Speroni, Gary Titley, Diana Wallis, Rainer Wieland, Jaroslav Zvěřina, Tadeusz Zwiefka
<b>Substitute(s) present for the final vote</b>	Charlotte Cederschiöld, Kurt Lechner, Eva Lichtenberger, Marie Panayotopoulos-Cassiotou, József Szájer, Jacques Toubon
<b>Substitute(s) under Rule 178(2) present for the final vote</b>	Genowefa Grabowska, Iles Braghetto, Michael Cashman, Lily Jacobs



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<b>Rapporteur(s)</b> Date appointed	Ioannis Varvitsiotis 27.2.2007		
<b>Previous rapporteur(s)</b>	Timothy Kirkhope		
<b>Discussed in committee</b>	11.6.2007	2.10.2007	5.11.2007
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<b>Members present for the final vote</b>	Alexander Alvaro, Philip Bradbourn, Jean-Marie Cavada, Carlos Coelho, Elly de Groen-Kouwenhoven, Esther De Lange, Bárbara Dührkop Dührkop, Claudio Fava, Kinga Gál, Roland Gewalt, Lilli Gruber, Magda Kósáné Kovács, Barbara Kudrycka, Inger Segelström, Károly Ferenc Szabó, Søren Bo Søndergaard, Ioannis Varvitsiotis, Manfred Weber		
<b>Substitute(s) present for the final vote</b>	Edit Bauer, Gérard Deprez, Sophia in 't Veld, Metin Kazak, Marian-Jean Marinescu, Jan Zahradil		