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Committee on Legal Affairs

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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

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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 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 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.

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. ***This provision shall only apply to the scope of the non-custodial measure adopted and in no case may any modification of the obligations in question prejudice the review of the European supervision order pursuant to Article 13 of this Framework Decision.***

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.***

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***

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.*

between Member States¹.

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.*

¹ 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;

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 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.

(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 preliminary hearing or trial.

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.

3. 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.

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 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.

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:
 - 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

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

Title	European supervision order in pre-trial procedures between Member States of the European Union
References	COM(2006)0468 - C6-0328/2006 - 2006/0158(CNS)
Committee responsible	LIBE
Opinion by Date announced in plenary	JURI 12.10.2006
Drafts(wo)man Date appointed	Aloyzas Sakalas 24.10.2006
Discussed in committee	11.9.2007 3.10.2007
Date adopted	4.10.2007
Result of final vote	+: 24 -: 0 0: 0
Members present for the final vote	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
Substitute(s) present for the final vote	Charlotte Cederschiöld, Kurt Lechner, Eva Lichtenberger, Marie Panayotopoulos-Cassiotou, József Szájer, Jacques Toubon
Substitute(s) under Rule 178(2) present for the final vote	Genowefa Grabowska, Iles Braghetto, Michael Cashman, Lily Jacobs