

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.8.2006
COM(2006) 468 final

2006/0158 (CNS)

Proposal for a

COUNCIL FRAMEWORK DECISION

on the European supervision order in pre-trial procedures between Member States of the European Union

{SEC(2006)1079}
{SEC(2006)1080}

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. Context of the proposal

Grounds for and objectives of the proposal

One of the most important objectives of the European Union is to develop the Union as an area of freedom, security and justice in which the free movement of persons is assured.

According to both the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and general principles of law, pre-trial detention shall be regarded as an exceptional measure and the widest possible use should be made of non-custodial supervision measures.

At present, however, EU citizens, who are not residents in the territory of the Member State where they are suspected of having committed a criminal offence are sometimes – mainly owing to the lack of community ties and the risk of flight - kept in pre-trial detention or perhaps subject to a long-term non custodial supervision measure in a (for them) foreign environment. A suspect who is resident in the country where he or she is suspected of having committed an offence would in a similar situation often benefit from a less coercive supervision measure, such as reporting to the police or travel prohibition.

Typically a foreign suspect will be in a more vulnerable position than a person who normally is resident in the country. Apart from being more or less cut off from contacts with family and friends, there is a clear risk that a non-resident suspect in such a situation could lose his or her job as a coercive measure (*e.g.* travel prohibition) that the judicial authority of the trial State has imposed on the suspect would stop this person from going back to his or her country of normal residence. Generally speaking, there is a clear risk of unequal treatment between the two categories which can also be seen as an obstacle to the free movement of persons in the Union.

There are not only costs to the suspect involved. Keeping persons in pre-trial detention has also an important cost implication for the public authorities involved. Moreover, the excessive or unnecessary use and length of pre-trial detention contribute to the phenomenon of prison overcrowding, which continues to blight penitentiary systems across Europe and seriously undermines improvements in conditions of detention.

The problem is that the different alternatives to pre-trial detention and other pre-trial supervision measures (*e.g.* reporting to the police) cannot presently be transposed or transferred across borders as States do not recognise foreign judicial decisions in these matters. This means that the implementation of the right to liberty and the presumption of innocence in the European Union seen as a whole still must be considered as incomplete.

The mandate for presenting this proposal for a Framework Decision on the European supervision order in pre-trial procedures between Member States of the European Union is clearly indicated in the "Programme of measures to implement the principle of mutual recognition of decisions in criminal matters (the "mutual recognition programme")" of November 2000 (measure 10).[1] The Tampere European Council (1999) had declared that enhanced mutual recognition of judicial decisions would facilitate co-operation between

[1] OJ C 12, 15.1.2001, p. 10.

authorities and the judicial protection of individual rights. It therefore endorsed the principle of mutual recognition as the cornerstone of judicial cooperation in both civil and criminal matters, which should also apply to pre-trial orders. A proposal on mutual recognition of non-custodial pre-trial supervision measures is in the work programme of the Commission for 2005 (2005/JLS/035) and set as a priority in the Commission communication[2] on the Hague Programme (2004) as well as the Council and Commission Action Plan implementing the Hague Programme on strengthening freedom, security and justice in the European Union (2005).[3]

General context

The mutual recognition programme mentioned that certain aspects of mutual recognition had not yet been addressed in an international context and in particular those concerning pre-trial orders. This is still true as regards mutual recognition of pre-trial supervision measures.

However, several studies point out serious problems with pre-trial detention in the European Union. In its Report on the situation of fundamental rights in the European Union and its Member States in 2002, the EU network of independent experts in fundamental rights referred to statistics of the Council of Europe that show high numbers of pre-trial detainees in several Member States. Moreover, the replies to a questionnaire on statistical data on the prison population, including pre-trial detention that the Commission drew up in 2003 at the request of the Italian Presidency, show that there are considerable differences between the EU Member States both as regards the rate of pre-trial detention per 100 000 inhabitants and the proportion of own nationals in relation to foreign detainees. There was an increasing general tendency regarding the use of pre-trial detention.

In this context, it should also be noted that the European Parliament in its Resolutions on the situation concerning basic rights in the European Union urged the Commission to take action regarding various issues in the area of pre-trial detention and alternatives to such detention. In 2001, the European Parliament required Member States to step up their efforts in this area by restricting detention as far as possible and completely avoiding taking children into custody save in absolutely exceptional cases. The European Parliament called on the Council to adopt a framework decision on common standards for procedural law, for instance on rules covering pre-trial orders, so as to guarantee a common level of fundamental rights protection throughout the EU. This demand was reiterated the following year. In its resolution of 2002, the European Parliament considered it essential that Member States examined detention procedures in order to ensure that human rights are not violated, that detention periods are not unnecessarily long and that grounds for detention are reviewed regularly.

In its publication "The CPT standards" (2003), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the CPT Committee) of the Council of Europe underlined that prison overcrowding is often particularly acute in pre-trial detention establishments. In such circumstances, the CPT Committee noted that throwing increasing amounts of money at the prison estate does not offer a solution. Instead, current law and practice in relation to custody pending trial needed to be reviewed. The problem was sufficiently serious as to call for cooperation at European level.

Existing provisions in the area of the proposal

---

2 COM(2005) 184 final, p. 27.

3 OJ C 198, 12.8.2005, p. 1 (p. 18, paragraph g).

As already mentioned, there are presently no international instruments that specifically allow the transfer of pre-trial supervision measures from one Member State to another.

However, the introduction of a mutual recognition scheme for pre-trial supervision measures at European Union level must evidently be considered in the light of the legal framework that governs pre-trial detention in general. This follows also from the requirements of Article 6 of the Treaty on European Union (TEU).

All the EU Member States have ratified both the ECHR and the International Covenant on Civil and Political Rights (ICCPR). As such, they must respect the right to liberty, the presumption of innocence, the legal grounds for detention for which those instruments make provision, the types of authorities entitled to take decisions on detention, the right to challenge the legality of detention before a court and the approximate time limits applying to the various stages of pre-trial proceedings.

These international instruments also provide that a person may be deprived of his or her liberty on a reasonable suspicion of having committed a criminal offence and that there must be one or several special grounds for detention relating to the dangers of re-offending, suppression of evidence and flight. In addition, release from pre-trial detention may be conditioned by guarantees to appear for trial.

However, it should be noted that the international instruments do not contain any provisions on the threshold for pre-trial detention linked to the punishment available for the offence in question. This threshold follows the national law of the Member States, which means that it varies from Member State to Member State. In some Member States the penalty for the offence in question is not a factor that is taken into account when making remand decisions. Some Member States allow pre-trial detention irrespective of the penalty for the offence when the suspect has no fixed abode in the territory and there is a risk that this person will abscond, even though the general threshold for pre-trial detention might be much higher.

In some Member States, the threshold for non-custodial pre-trial supervision measures is lower than for pre-trial detention. However, the same general principles apply to non-custodial measures as to pre-trial detention. The principle of proportionality implies, *e.g.*, that coercive measures only should be used when this is absolutely necessary and only for as long as required.

It can finally be noted that the ECHR does not contain many provisions that even indirectly concern extradition and other cross-border issues. An example is Article 5(1) f ECHR, which provides that a person may be arrested with a view to deportation or extradition. An explanation for this is that the ECHR was not drafted in order to create a *common* judicial area for the Member States of the Council of Europe, but rather to set minimum standards applicable to each of the national legal systems.

Consistency with other policies and objectives of the Union

The general aim of this proposal for a Council Framework Decision is to reinforce the right to liberty and the presumption of innocence in the European Union seen as a whole and promote equal treatment of all citizens in the *common* area of freedom, security and justice.

This aim is consistent with The Hague Programme on strengthening freedom, security and

justice in the European Union, approved by the European Council on 5 November 2004. The Hague Programme mentions, *i.a.*, that freedom and justice should henceforth be considered indivisible within the Union as a whole.

It should be underlined that the present proposal for a Framework Decision is a part of the mutual recognition programme in criminal matters, which according to the Hague Programme, should be completed. The mutual recognition programme lists a number of specific recognition measures. The measures of this programme cannot be separated from one another, but are designed to interact with one another. In particular, the present proposal should be seen in connection with the Commission proposal for a Council Framework Decision on certain procedural rights in criminal proceedings throughout the European Union (2004)[4], which, *i.a.*, contains provisions on the right to legal advice and interpretation.

2. Consultation of interested parties and impact assessment

Consultation of interested parties

The first step in the consultation process was to draw up a questionnaire in order to identify possible obstacles to cooperation between Member States in the area of pre-trial detention and alternatives to such detention. The questions concerned the legitimate grounds for pre-trial detention - *i.a.*, the threshold for remanding a suspect in custody (linked to the penalty for the offence); whether there were any maximum time limits for pre-trial detention; the grounds for pre-trial detention (degree of suspicion and the "special grounds"); whether there was a presumption in favour of remanding suspects into custody for serious offences; the different "alternative" measures to pre-trial detention; whether a breach of an obligation under a pre-trial supervision measure constituted a criminal offence; the competent legal authorities in this area; and special categories and treatment of detainees. All the then 15 EU Member States submitted replies to the questionnaire. The replies were compiled in a document that was distributed to the Member States.

On the basis of the replies to the questionnaire the Commission wrote a Discussion Paper. This Paper, which was sent to a number of experts in this area in the EU Member States (and the then acceding countries), proposes, *i.a.*, the introduction of a so-called "European order to report to an authority" as a non-custodial pre-trial supervision measure at European Union level. The Discussion Paper further considers the limits and possibilities for taking action in the field of pre-trial detention in general.

In order to explore the scope of a future instrument, a first experts' meeting was held in Brussels on 12 May 2003. Several experts, including representatives of NGOs, had been invited on an individual basis, while other experts represented their Member States. Eurojust was also represented. At this meeting, different aspects of pre-trial detention and alternatives to such detention were discussed, in particular the Commission's thinking on the European order to report. The outcome of the meeting and the discussions which followed was that work should focus on mutual recognition of non-custodial pre-trial supervision measures and leave out questions related to procedural safeguards – covered by a separate Green Paper – and detention conditions.

On 17 August 2004, the Commission adopted the Green Paper on mutual recognition of non-

[4] COM(2004) 328 final.

custodial pre-trial supervision measures[5] and the associated Commission Staff Working Paper[6], which take fully account of the outcome of the first (preparatory) experts' meeting as well as the information provided in the replies to the first questionnaire (mentioned above). A summary of the replies concerning, *i.a.*, supervision measures (alternatives to pre-trial detention) and applicable penalties in the event of non-compliance (as required under measure 9 of the mutual recognition programme) is in annex 2 to the Commission Staff Working Paper associated with the Green Paper. Annex 3 of the Commission Staff Working Paper also contains a summary of the replies of the Member States and the then 10 candidate countries to a questionnaire on statistical data on the prison population, including pre-trial detention, which the Commission drew up in 2003 at the request of the Italian Presidency (mentioned above).

When drafting the Green Paper, the Commission also had access to documents of the Committee of Experts on remand in custody and its implications for the management of penal institutions (PC-DP) of the Council of Europe (where the Commission participated as an observer), in particular a questionnaire on the law and practice of Member States regarding remand in custody, including an analysis of the replies to this questionnaire.

The questions posed in the Green Paper were discussed in a second experts' meeting on 4 – 5 November 2004. After having considered the written responses[7] to the Green Paper, the Commission organised a third experts' meeting on 8 April 2005. In order to take matters forward, the Commission services had prepared a working document, which the participants of the meeting (representatives of the Member States, NGOs, international organisations, judicial practitioners) discussed. Most Member States welcomed the idea of applying the mutual recognition principle to non-custodial pre-trial supervision measures. Different opinions were expressed as regards the scope of the instrument (whether it should extend to less serious offences not covered by the Framework Decision on the European arrest warrant etc.), the grounds for refusal, whether the issuing or the executing Member State should have the main influence on the supervision of the person and on the pre-trial transfer procedure of the person back to the trial State (whether the European arrest warrant should be used or a specific mechanism for the envisaged instrument should be introduced).

However, a small number of Member States questioned the added value of a new instrument on this issue at European level. They were of the opinion that such an instrument only would apply to a very restricted number of persons.

Impact assessment

It was therefore decided to consult an external contractor in order to provide the Commission with further statistical data for its assessment of the question whether a Framework Decision in this area would constitute an added value. These data are available in the Impact Assessment, annexed to this proposal (http://europa.eu.int/comm/dgs/justice_home/evaluation/dg_coordination_evaluation_annexe_en.htm).

In addition, the following five policy options (identified by the Commission services) were assessed by the external contractor in line with the Commission's guidelines and the handbook

[5] COM(2004) 562 final.
[6] SEC(2004) 1046.
[7] Available at http://europa.eu.int/comm/justice_home/news/consulting_public/news_consulting_public_en.htm

on impact assessment:

1. Do nothing (Status quo): Since, at present, Member States do not recognise foreign judicial decisions in respect of supervision measures, reliance on the *status quo* would only regulate (and even then to a limited extent only) the return of an accused person to the trial State *via* a European arrest warrant. No supervision of the person would take place. The scope and the grounds for refusal of the Framework Decision on the European arrest warrant would apply.

2. New legislative instrument for mutual recognition of pre-trial supervision measures: Member States would mutually recognise pre-trial supervision measures and the suspect would be subject to such a measure in his or her habitual Member State of residence in stead of being in pre-trial detention or subject to a less severe coercive measure in the trial State. The scope of the instrument could be extended to cover also less serious offences (below the threshold of one year in the European arrest warrant). The grounds for refusal could be more limited than in the European arrest warrant. In addition this instrument would contain a specific return mechanism to bring an uncooperative person to the trial State (in case an *in absentia* judgment is not possible). Time limits for return would be very short.

3. New legislative instrument for mutual recognition of pre-trial supervision measures and extension of the European arrest warrant to cover all offences: This option would contain the same elements as option 2. The only difference would be that it would not contain a specific return mechanism. An uncooperative person would have to be transferred back to the trial State in accordance with the provisions of the European arrest warrant. In order to cover less serious offences (below the above-mentioned threshold of the European arrest warrant), a new category of "enforceable offence" would have to be created ("fugitive from Justice", *e.g.* breach of an obligation under a supervision measure or refusal not to come to the trial if this is required).

4. Co-operation programme: A limited number of Member States would run a pilot cooperation programme in the area of pre-trial procedures.

5. Eurobail: This model is based on a division of functions between the trial court and the court of the suspect's country of residence. The trial court makes a preliminary assessment whether the offence is "bailable". If the answer is yes, the suspect is sent back to his or her country of residence, where the court makes the final decision on the provisional release. The State of residence is responsible for sending the person back to the trial State (if required).

The preferred policy option is nr 2): "new legislative instrument for mutual recognition of pre-trial supervision measures" (incorporating a specific return mechanism). This option would ensure that EU non-residents are not discriminated against in the pre-trial process in the trial State. It would extend the right to liberty and the presumption of innocence to the Union seen as a whole, be compatible with the general principles in the area, in particular the principle of proportionality, and would reduce costs for detention.

For further details, see the report of the external contractor and the Impact Assessment:

http://europa.eu.int/comm/dgs/justice_home/evaluation/dg_coordination_evaluation_annexe_e

n.htm.

3. Legal elements of the proposal

Summary of the proposed action

The European supervision order is a decision issued by a judicial authority (*i.e.* a court, a judge, an investigating magistrate or a public prosecutor) in one Member State that must be recognised by a competent authority in another Member State. The aim is to let the suspect benefit from a pre-trial supervision measure in his or her natural environment (residence). As regards the threshold, the European supervision order is an option whenever there is a possibility under the national law of the issuing Member State to order that a suspect be remanded in custody, irrespective of the fact that the thresholds vary between Member States. However, the European supervision order is not only an alternative to pre-trial detention. It may also be issued in relation to an offence for which only less severe coercive measures (*e.g.* travel prohibition) than pre-trial detention are allowed, *i.e.* where the threshold may be lower than for remand in custody.

The proposal for a Framework Decision does not oblige the judicial authority to issue a European supervision order. It "may" do so. This wording indicates that it is for the issuing authority to decide whether it wants to make use of this possibility. Although the suspect may request that a European supervision order be issued, he or she has strictly speaking no "right" to it. However, the issuing authority must always, as a general principle, assess the elements of the case in the light of the right to liberty, the presumption of innocence and the principle of proportionality. Benefiting from a pre-trial supervision in one's State of normal residence is probably often seen as less cumbersome than being subject to a supervision measure in the State where the alleged offence was committed, not to speak of being in pre-trial detention in that State.

The European supervision order would impose one or more obligations on the suspect aimed at reducing the three "classical" dangers that allow pre-trial detention under national law, *i.e.* the dangers of suppression of evidence and re-offending and, in particular, the danger of flight. The obligations correspond to a certain extent to the recommendations of the Council of Europe concerning custody pending trial. The obligations that may be imposed by the issuing authority are all "optional", except (i) the obligation on the suspect to make himself or herself available for the purpose of receiving summons for his or her trial (however, where a judgment *in absentia* under the law of the issuing State is possible, the suspect may not be required to attend the trial) and (ii) the obligation not to obstruct the course of justice or engage in criminal activity. The other ("optional") obligations correspond too the recommendations of the Council of Europe and national law (*e.g.* travel prohibition, reporting to the police, curfew and house arrest).

The Member State of normal residence of the suspect is responsible for the supervision of the suspect and is obliged to report any breaches to the issuing judicial authority, which can decide on the arrest and transfer of the suspect to the issuing State if this is considered necessary. Strict time limits apply. Before such a decision is taken, the suspect has the right to be heard by the issuing authority. This requirement may be satisfied through the use of video links[8] between

[8] Article 10 of the Convention on mutual assistance in criminal matters between Member States (OJ C 197, 12.7.2000, p. 3) already provides for the hearing of evidence by videoconferencing means.

the issuing and the executing States. The transfer procedure is proportionate to the aim of the proposal, *i.e.* to reduce pre-trial detention as far as possible and is therefore compatible with the requirements of Article 5(1) ECHR (in particular paragraph b).

The proposal is in principle based on an obligation for the State of normal residence of the suspect to execute a European supervision order issued by the trial State. There are, however, some, although limited grounds for refusal that may be invoked by the executing State.

The proposal is further based on direct contacts between the issuing and executing authorities.

Legal basis

Article 31(1)(a) and (c) and Article 34(2)(b) TEU

Subsidiarity and proportionality principles

Member States do not, at present, recognise foreign judicial decisions in respect of non-custodial pre-trial supervision measures. Therefore, in the absence of any common action and in order for there to be any progress made in terms of mutual recognition, Member States would have to act unilaterally to make provision in their national law to recognise such measures. It is considered that this approach would be unlikely to succeed since it would require uniformity of national provisions across 25 Member States acting separately. Such uniformity (in terms of both substance and temporal application) would be more readily achievable by common action in the form of a Council Framework Decision. This Framework Decision does not go beyond what is necessary to achieve that objective. It is also without prejudice to Article 33 TEU.

Choice of instrument

A Framework Decision based on Article 34(2)(b) TEU.

4. Budgetary implication

The implementation of the proposed Framework Decision would entail no additional operational expenditure to be charged to the budgets of the Member States or to the budget of the European Union.

2006/0158 (CNS)

Proposal for a

COUNCIL FRAMEWORK DECISION

on the European supervision order in pre-trial procedures between Member States of the European Union

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 31(1)(a) and (c) and Article 34(2)(b) thereof,

Having regard to the proposal from the Commission[9],

Having regard to the opinion of the European Parliament[10],

Whereas:

(1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice.

(2) According to the Conclusions of the Tampere European Council of 15 and 16 October 1999, and in particular point 36 thereof, the principle of mutual recognition should apply to pre-trial orders. The programme of measures to implement the principle of mutual recognition in criminal matters addresses mutual recognition of supervision measures in its measure 10.

(3) The measures provided for in this Framework Decision should aim in particular at enhancing the right to liberty and the presumption of innocence in the European Union seen as a whole and at ensuring cooperation between Member States when a person is subject to obligations or supervision pending a court decision.

(4) In the area of pre-trial detention, there is a risk of different treatment between suspects who are resident in the trial state and those who are not: a non-resident risks being remanded in custody pending trial even where, in similar circumstances, a resident would not. This is due to the perception that the former, by reason of his non-residence in the trial-state, might flee to his home state thereby obstructing the course of justice. In a common European area of justice without internal borders, it is necessary to take action 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.

(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

---

9 OJ C XXX E, 00.00.0000, p. 000.

10 Opinion delivered on x xxxxx 0000 (not yet published in the Official Journal).

allowed to use video links.

(6) This Framework Decision should apply without prejudice to Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States[11] or to requests for extradition presented by third counties or to the Statute of the International Criminal Court. It should further not prevent the executing Member State from initiating or pursuing criminal proceedings of its own.

(7) Since mutual recognition of pre-trial supervision measures cannot be sufficiently achieved by the Member States acting unilaterally and can therefore, by reason of its scale and effects, be better achieved at Union level, the Council may adopt measures in accordance with the principle of subsidiarity as referred to in Article 2 of the Treaty on European Union and Article 5 of the Treaty establishing the European Community. In accordance with the principle of proportionality, as set out in the latter Article, this Framework Decision does not go beyond what is necessary in order to achieve that objective.

(8) This Framework Decision respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected by the Charter of Fundamental Rights of the European Union,

HAS ADOPTED THIS FRAMEWORK DECISION:

CHAPTER 1 - GENERAL PRINCIPLES

Article 1
Subject matter and scope

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

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.

Article 2
Definitions

For the purposes of this Framework Decision:

(a) "issuing State" means the Member State in whose territory the European supervision order is issued;

(b) "executing State" means the Member State in whose territory the European supervision order is executed;

[11] OJ L 190 of 18.7.2002, p. 1.

(c) "issuing authority" means a court, a judge, an investigating magistrate or a public prosecutor, with competence under national law to issue a European supervision order;

(d) "executing authority" means a court, a judge, an investigating magistrate or a public prosecutor, with competence under national law to execute a European supervision order.

Article 3
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.

Article 4
Determination of competent authorities

Each Member State shall inform the Council as to which authorities are competent under its national law to issue and to execute a European supervision order.

The General Secretariat of the Council shall make the information received available to all Member States and the Commission and publish it in the Official Journal of the European Union.

CHAPTER 2 - THE EUROPEAN SUPERVISION ORDER

Article 5
Information of the suspect

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.

2. The issuing authority shall record the information given to the suspect in accordance with the procedure laid down by the national law of the issuing State.

Article 6
Imposition of pre-trial supervision measures and obligations of the suspect

1. The issuing authority shall impose an obligation on the suspect to make himself available for the purpose of receiving summons for his trial and to attend the trial when summoned to do so.

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

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.

2. Subject to agreement between the issuing authority and the executing authority, the issuing authority may impose one or more other obligations on the suspect which may include, but are not limited to, the following:

(a) to travel at a particular time and on a particular date to a specified address in the executing State;

(b) to report to the executing authority at a specified place or places at specified times;

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

(d) to be at his specified place of residence, which may include a bail hostel or a specialised institution for young offenders in the executing State, at specified times;

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

(f) not to leave or enter specified places or districts in the executing State without authorisation;

(g) not to engage in specified activities, which may include involvement in a specified profession or field of employment;

(h) to undergo specified medical treatment.

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.

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.

Article 7
Form and content of the European supervision order

1. The European supervision order shall be as set out in Form A in the Annex. It shall be completed and signed and its content certified as accurate, by the issuing authority. A written record of the information mentioned in Article 5(2) shall be annexed to the European supervision order.

2. The issuing State shall translate the European supervision order into the official language or one of the official languages of the executing State.

3. Any Member State may state in a declaration deposited with the General Secretariat of the Council that it will accept a translation of a European supervision order in one or more other official languages of the Institutions of the European Communities.

CHAPTER 3 - PROCEDURE

Article 8
Transmission

1. The issuing authority shall transmit the European supervision order directly to the executing authority by any means capable of producing a written record under conditions allowing the executing State to establish authenticity.

2. If the executing authority is unknown, the issuing authority shall make all necessary inquiries, including via the contact points of the European Judicial Network, in order to obtain the details of the executing authority from the executing State.

3. If the authority in the executing State which receives the European supervision order is not the competent executing authority under Article 4, it shall automatically transmit the European supervision order to the competent authority for execution and shall inform the issuing authority accordingly.

Article 9
Recognition and execution

Except as otherwise provided for in this Framework Decision, the executing authority shall recognise a European supervision order, transmitted in accordance with Article 8, without any further formality being required, and shall forthwith take the necessary measures for its execution.

Article 10
Grounds for non-recognition and non-execution

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.

Article 11
Guarantees to be given by the issuing State in particular cases

Where a person who is the subject of a European supervision order is a national or resident of the executing State, the execution of the order may be subject to the condition that the person, after being tried, is transferred to the executing State in order to serve there custodial sentence or detention order passed against him in the issuing State.

Article 12
Decision on enforcement

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.

2. Where in exceptional cases it is not possible to take a decision on the recognition and execution of the European supervision order within the period laid down in paragraph 1, the competent authority in the requested State shall without delay, inform the issuing authority thereof, of the reasons therefore and of the number of days required to take the decision.

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.

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.

5. As soon as the grounds for postponement have ceased to exist, the competent authority shall forthwith take the necessary measures for the execution of the European supervision order.

Article 13
Requests for review

1. The suspect shall, in accordance with the law of the issuing State, be afforded the same rights with respect to review of the European supervision order as if the obligations contained therein were imposed on him as pre-trial supervision measures to be executed in the issuing State. However, the suspect shall have the right to request the issuing authority to review the European supervision order no later than 60 days after it has been issued or last reviewed.

2. The executing authority may request the issuing authority to review the European supervision order 60 days after it has been issued or last reviewed.

3. Upon a request for review in accordance with paragraphs 1 or 2, the issuing authority shall, as soon as possible and in any case within 15 days of receipt of the request, review the European supervision order in accordance with the law of the issuing State.

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.

5. The executing State may assign a person designated in accordance with the law of that Member State to take part in the hearing of the suspect.

6. The issuing authority may, in accordance with the law of the issuing State, decide:

   (a) to uphold the European supervision order in the form in which it was first issued;

   (b) to uphold the European supervision order but, subject to Articles 5 and 6, amend one or more of the obligations contained therein;

   (c) to uphold the European supervision order but revoke one or more of the obligations contained therein; or

   (d) to revoke the European supervision order in its entirety.

7. The issuing authority shall forthwith communicate its decision to the suspect and the executing authority.

8. When the European supervision order is reviewed pursuant to this article, the suspect shall have the right to interpretation and legal advice.

Article 14
Revocation

1. In accordance with the law of the issuing State, the issuing authority:

   (a) may at any point in time, ex officio, decide to revoke the European supervision order to the benefit of the suspect;

(b) shall revoke the European supervision order once the suspect has fulfilled all of the obligations contained therein.

2. The issuing authority shall forthwith communicate any decision to revoke a European supervision order to the suspect and the executing authority.

CHAPTER 4 - SPECIFIC SITUATIONS

Article 15
Competing obligations to surrender or extradite on the part of the executing State

The existence of a European supervision order shall be without prejudice to the executing Member State's obligations under:

(a) a European arrest warrant under Council Framework Decision 2002/584/JHA;

(b) a request for extradition presented by a third country;

(c) the Statute of the International Criminal Court.

It shall not prevent the executing Member State from initiating or pursuing criminal proceedings of its own.

CHAPTER 5 - BREACH OF A EUROPEAN SUPERVISION ORDER

Article 16
Obligation to report any breach

1. The executing authority shall, without delay, report to the issuing authority any breach of the obligations contained in a European supervision order of which it becomes aware. The report shall be made using Form B as set out in the Annex. The form shall be signed, and its contents certified as accurate, by the executing authority.

2. The report shall be transmitted by the executing authority directly to the issuing authority by any means capable of producing a written record under conditions allowing the issuing State to establish authenticity. A copy of Form A (the European supervision order), as issued by the issuing authority in accordance with Article 7, shall be annexed to the report.

Article 17
Consequences of breach

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.

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.

Article 19
Notification of decisions

The issuing authority shall immediately notify the executing authority of all decisions taken under Article 17.

Article 20
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.

Article 21
Transit

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.

Article 22
Deduction of the period of deprivation of liberty

The issuing State shall deduct all periods of deprivation of liberty arising from the apprehension and transfer of the suspect under Articles 17 and 18 from the total period of detention to be served in the issuing State as a result of a custodial sentence or detention order being passed.

To that end, all information concerning the duration of the detention of the suspect on the basis of the provisions in this Chapter shall be transmitted by the Member State on whose territory the suspect was arrested to the issuing authority at the time of the transfer.

CHAPTER 6 - GENERAL AND FINAL PROVISIONS

Article 23
Monitoring the effectiveness of the Framework Decision

1. A Member State which has experienced repeated problems on the part of another Member State in the execution of European supervision orders shall inform the Council with a view to evaluating the implementation of this Framework Decision at Member State level.

2. The Council shall conduct a review, in particular of the practical application of the provisions of this Framework Decision by the Member States.

Article 24
Relation to other agreements and arrangements

1. In so far as such agreements or arrangements allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the mutual recognition of pre-trial transfer procedures, Member States may:

(a) continue to apply bilateral or multilateral agreements or arrangements in force

when this Framework Decision comes into force.

(b) conclude bilateral or multilateral agreements or arrangements after this Framework Decision has come into force.

2. The agreements and arrangements referred to in paragraph 1 shall in no case affect relations with Member States which are not parties to them.

3. Member States shall, within three months from the entry into force of this Framework Decision, notify the Council and the Commission of the existing agreements and arrangements referred to in paragraph 1(a) which they wish to continue applying.

Member States shall also notify the Council and the Commission of any new agreement or arrangement as referred to in paragraph 1(b), within three months of signing any such arrangement or agreement.

Article 25
Implementation

Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 0 Month 0000.

By the same date Member States shall transmit to the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision and a correlation table between these provisions and the Framework Decision.

Article 26
Report

The Commission shall, by 0 Month 0000, submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Framework Decision, accompanied, if necessary, by legislative proposals.

Article 27
Entry into force

This Framework Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Luxembourg/Brussels, 0 Month 0000

For the Council
The President
N.N.

ANNEX

Form A

EUROPEAN SUPERVISION ORDER[12]

This order has been issued by an issuing authority. I request that the person mentioned in Part A of this order be made subject to the pre-trial supervision measures listed in Part D of this order.

SIGNED: ……...

DATE: ……...

[12] This order must be written in or translated into the official language or one of the official languages of the executing Member State, or any other languages accepted by that State.

PART A

Information regarding the identity of the person to be made subject to pre-trial supervision measures

Surname:……...

Name:……

Maiden name (where applicable):…….

Alias (where applicable):……..

Sex:……

Nationality:……

Date of birth:…….

Place of birth:……

Residence and / or known address:……...

Language(s) understood:……...

Distinctive marks / physical description:…….....

……...

……...

……..

Photograph and fingerprints, if available and capable of transmission, or contact details of the relevant individual from whom such information may be obtained or a DNA profile (where this evidence can be supplied but has not been included):

PART B

Information regarding the issuing authority

Official name of issuing authority:……..

……...

Name of contact person:……...

Position held (grade / title):……..

Address:……

……...

Tel: (country code) (area / city code):……..

Fax: (country code) (area / city code):……..

E-mail address:……

File Reference:…….

PART C

Offence on which the European supervision order is based

Maximum length of custodial sentence or detention order which may be imposed for the offence(s) to which this order relates:

……..... .

……...

Description of the circumstances in which the offence(s) to which this order relates was (were) committed, including the time, place and degree of participation in the offence(s) by the person mentioned in Part A above:

……...

……...

……...

……...

Nature and legal classification of the offence(s) to which this order relates and the applicable statutory provision/code:

……...

……...

……...

……...

Please give a full description of the offences(s) to which this order relates:

. . . . . .

. . . . . .

. . . . . .

. . . . . .

PART D

Pre-trial supervision measures

The following obligations constitute the pre-trial supervision measures to which the person mentioned in Part A of this order is to be subject.

The person mentioned in Part A above shall:

make himself or herself available for the purpose of receiving summons for his or her trial and shall attend the trial when summoned to do so;

not obstruct the course of justice or engage in criminal activity; and

(tick and complete as appropriate):

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

□ not enter the following place(s) in the issuing State without authorisation during the times and dates specified:

……

……

……

□ not leave the following place(s) in the issuing State without authorisation during the times and dates specified:

……

……

……

□ reimburse the costs of for bringing him or her by force to a preliminary hearing or to the trial.

□ travel to the following address in the executing Member State on the time and date specified:

……

……

……

□ report to the executing authority at the following place(s) at the times and dates specified:

……

……

……

□ surrender his or her passport(s) or other identification papers to the executing authority;

□ reside at the following address at the times and dates specified;

PART E

Information

The person mentioned in Part A above has been informed about the European supervision order in accordance with Article 5. A written record of this is attached to this document.

ANNEX

Form B

REPORT OF BREACH OR NON-COMPLIANCE WITH EUROPEAN SUPERVISION ORDER[13]

This report has been issued by an executing authority.

I hereby report that the person mentioned in Part A of this report has breached the pre-trial supervision measures listed in Part C below.

A copy of the European supervision order to which this report relates is attached.

SIGNED: ……...

DATE: ……...

PART A

Information regarding the identity of the person subject to a European supervision order (for full details, please refer to the annexed European supervision order)

Surname:……...

Name:……

Maiden name (where applicable):…….

Sex:……

Nationality:……

[13] This report must be written in or translated into the official language or one of the official languages of the executing Member State, or any other languages accepted by that State.

PART B

Information regarding the executing authority

Official name of executing authority:……

……...

Name of contact person: ……...

Position held (grade / title): ……..

Address:……

……...

Tel: (country code) (area / city code):……...

Fax: (country code) (area / city code):……..

E-mail address:……

File Reference:…….

PART C

Pre-trial supervision measures

The person mentioned in Part A above has breached the following obligations to which he or she was subject by virtue of the attached European supervision order:

□ to make himself or herself available for the purpose of receiving summons for his or her trial and shall attend the trial when summoned to do so;

□ not to obstruct the course of justice or engage in criminal activity;

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

□ reimburse the costs of for bringing him or her by force to a preliminary hearing or to the trial.

□ travel to a specified address in the executing State at a specified time and date;

□ to report to the executing authority at specified place(s) at specified times and dates;

□ to surrender his or her passport(s) or other identification papers to the executing authority;

□ to be at specified place(s) of residence and/or work in the executing State during specified times and dates;

□ not to leave or enter specified places or districts in the executing State without authorisation;

□ not to engage in specified activities;

□ to undergo specified medical treatment;

□ other

……...

……...

……...

……...

……...

Details of the circumstances (including date and location) in which the breach(es) took place:

……...

……...

……...

……..

……

……..