# EUROPEAN PARLIAMENT

*2004* *2009*

*Committee on Civil Liberties, Justice and Home Affairs*

PROVISIONAL
**2005/0805(CNS)**

16.3.2006

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# DRAFT REPORT

on the initiative by the Republic of Austria, the Republic of Finland and the Kingdom of Sweden for adoption of a Council framework decision on the European enforcement order and the transfer of sentenced persons between Member States of the European Union
(7307/2005 – C6-0139/2005 – 2005/0805(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Ioannis Varvitsiotis

### *Symbols for procedures*

| | |
|---|---|
| * | Consultation procedure<br>*majority of the votes cast* |
| **I | Cooperation procedure (first reading)<br>*majority of the votes cast* |
| **II | Cooperation procedure (second reading)<br>*majority of the votes cast, to approve the common position*<br>*majority of Parliament's component Members, to reject or amend the common position* |
| *** | Assent procedure<br>*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)<br>*majority of the votes cast* |
| ***II | Codecision procedure (second reading)<br>*majority of the votes cast, to approve the common position*<br>*majority of Parliament's component Members, to reject or amend the common position* |
| ***III | Codecision procedure (third reading)<br>*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 initiative by the Republic of Austria, the Republic of Finland and the Kingdom of Sweden for adoption of a Council framework decision on the European enforcement order and the transfer of sentenced persons between Member States of the European Union**
**(7307/2005 – C6-0139/2005 – 2005/0805(CNS))**

**(Consultation procedure)**

*The European Parliament*,

– having regard to the the initiative by the Republic of Austria, the Republic of Finland and the Kingdom of Sweden (7307/2005)[1],

– having regard to Article 34 (2) (b) of the EU Treaty,

– having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted Parliament (C6-0139/2005),

– having regard to Rules 93 and 51 of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0000/2006)

1. Approves the initiative by the Republic of Austria, the Republic of Finland and the Kingdom of Sweden as amended;

2. Calls on the Council to amend the text accordingly;

3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

4. Calls on the Council to consult Parliament again if it intends to amend the initiative by the Republic of Austria, the Republic of Finland and the Kingdom of Sweden substantially;

5. Instructs its President to forward its position to the Council and Commission and the government of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

| Text proposed by the the Republic of Austria, the Republic of Finland and the Kingdom of Sweden | Amendments by Parliament |
|---|---|

Amendment 1
Title

[1] OJ C 150, 21.6.2005, p.1.

| | |
|---|---|
| on the proposal of a Council Framework Decision ***on the European enforcement order and the transfer of sentenced persons between Member States*** | on the proposal of a Council Framework Decision ***on the application of the principle of Mutual Recognition of judgements in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union*** |

*Justification*

*The title of the Framework Decision is amended following the changes in the Council Working Group and in order to put the emphasis on two essential aspects of the document: the mutual recognition and the enforcement of custodial sentences. The recognition and enforcement should not take place on the basis of a 'European enforcement order' but on the basis of the judgement and a certificate.*

Amendment 2
Recital 5

| | |
|---|---|
| (5) Relations between the Member States, which are characterised by special mutual confidence in other Member States' legal systems, should go further than the existing Council of Europe instruments on transfer for enforcement purposes. ***It should be established that there is a basic duty on the executing State to take charge of those of its nationals and those persons permanently legally resident in its territory who have been given a final custodial sentence or a detention order in another Member State, irrespective of their consent, unless there are specific reasons for refusal.*** | (5) Relations between the Member States, which are characterised by special mutual confidence in other Member States' legal systems, should go further than the existing Council of Europe instruments on transfer for enforcement purposes ***and enable recognition by the executing State of decisions taken by the issuing State's authorities. Notwithstanding the necessity of providing the sentenced person with adequate safeguards, his or her involvement in the proceedings should no longer be dominant by requiring his or her consent to the forwarding of a judgment to another Member State for the purpose of its recognition and enforcement of the sentence imposed.*** |

*Justification*

*To further the development of the cooperation concerning the enforcement of criminal judgment. In accordance with the 1997 Additional Protocol to the 1983 Convention of the Council of Europe which restricts the scope of the sentences person's consent.*

Amendment 3
Recital 5 a (new)

| | |
|---|---|
| | ***(5a) The mutual trust in the European area of freedom, security and justice in criminal matters must be reinforced by means of measures at European level, for a better harmonisation and mutual recognition of the penal judicial decisions, and envisage some European penal laws and practices;*** |

*Justification*

*Based on the idea of promoting a European Criminal Law.*

Amendment 4
Recital 6

| | |
|---|---|
| (6) The transfer of sentenced persons to the State of nationality, ***the State of legal residence or the State with which the persons have other close links*** to serve their sentence helps with their social rehabilitation. | (6) The transfer of sentenced persons to the State of nationality ***or the State of permanent legal residence*** to serve their sentence ***will facilitate*** their social rehabilitation. |

*Justification*

*The term 'close links' is not clear and would require extensive definition.*

Amendment 5
Article 1, point (a)

| | |
|---|---|
| (a) ***"European enforcement order" shall mean a decision delivered by a competent authority of the issuing State for the purpose of enforcing a final sentence imposed on a natural person by a court of that State;*** | (a) ***"Judgment" shall mean a final decision or order of a court of the issuing State imposing a sentence on a natural person;*** |

*Justification*

*This amendment reflects the changes that have occurred during the discussions in the Council working group.*

Amendment 6
Article 1, point (b)

| | |
|---|---|
| (b) "sentence" shall mean any custodial sentence or ***detention order for a limited or unlimited period of time imposed by a court on the basis of criminal proceedings on account of a criminal offence***; | (b) "sentence" shall mean any custodial sentence or ***any measure involving deprivation of liberty1 imposed for a limited or unlimited period of time on account of a criminal offence on the basis of criminal proceedings***; |

*Justification*

*This amendment reflects the changes that have occurred during the discussions in the Council working group.*

Amendment 7
Article 1, point (c)

| | |
|---|---|
| (c) "issuing State" shall mean the Member State ***in which a European enforcement order was delivered;*** | (c) "issuing State" shall mean the Member State ***in which a judgment within the meaning of this Framework Decision was delivered;*** |

*Justification*

*This amendment reflects the changes that have occurred during the discussions in the Council working group.*

Amendment 8
Article 1, point (d)

| | |
|---|---|
| (d) "executing State" shall mean the Member State to which a ***European enforcement order*** has been forwarded for the purpose of its ***enforcement.*** | (d) "executing State" shall mean the Member State to which a ***judgment*** has been forwarded for the purpose of its ***recognition and enforcement of the sentence imposed.*** |

*Justification*

*This amendment reflects the changes that have occurred during the discussions in the Council working group.*

Amendment 9
Article 2, paragraph 2

| | |
|---|---|
| ***2. Notwithstanding Article 4, each Member State may designate, if it is necessary as a result of the organisation of its internal system, one or more central authorities responsible for the administrative transmission and reception of the European enforcement order and to assist the competent authorities.*** | ***deleted*** |

*Justification*

*In order to make the measure more efficient and less bureaucratic.*

Amendment 10
Article 2, paragraph 3

| | |
|---|---|
| 3. The General Secretariat of the Council shall make the information received available to all Member States ***and the Commission***. | 3. The General Secretariat of the Council shall make the information received available to the Member States ***concerned***. |

*Justification*

*In order to make the measure more efficient and less bureaucratic.*

Amendment 11
Article 3, paragraph 1

| | |
|---|---|
| 1. The purpose of this Framework Decision is to establish the rules under which a Member State shall recognise ***and enforce on its territory a sentence imposed by a court of another Member State in accordance with Article 1(b)*** irrespective of whether or not enforcement has already ***been*** started. | 1. The purpose of this Framework Decision is to establish the rules under which a Member State shall recognise ***a judgment and enforce the sentence imposed*** irrespective of whether or not enforcement has already started. |

*Justification*

*Following the changes in the Council Working Group and in order to put the emphasis on two essential aspects of the document: the mutual recognition and the enforcement of custodial sentences. The recognition and enforcement should not take place on the basis of a 'European*

*enforcement order' but on the basis of the judgement and a certificate.*

Amendment 12
Article 3, paragraph 1 a (new)

***(1a) This Framework Decision only applies to the recognition of judgments and the enforcement of sentences within the meaning of the Framework Decision. The fact that, in addition to the sentence, a fine and/or a confiscation order has been imposed, which has not yet been paid, recovered or enforced, shall not prevent a judgment from being forwarded. The recognition and enforcement of such fines and confiscation orders in another Member State shall be based on the instruments applicable between the Member States, in particular the Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties and on the Council Framework Decision 2005/ xxx/JHA of xx.xx.2005 on the application of the principle of mutual recognition to confiscation orders.***

*Justification*

*The provision was originally included in Article 4 of the proposal. In order to align with the definition of the sentence set out in Article 1 and in line with paragraph 1 of this Article.*

Amendment 13
Article 3, paragraph 3, point (a), introductory part

| | |
|---|---|
| (a) The following Articles of this Framework Decision shall also apply to the enforcement of sentences where, pursuant to a requirement of Article 5(3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between | (a) The following Articles of this Framework Decision shall also apply to the enforcement of sentences where, pursuant to a requirement of Article 5(3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures |

| | |
|---|---|
| Member States , the person is returned to the executing State in order to serve ***there the custodial sentence or detention order*** passed against him or her in the issuing State: | between Member States, the person is returned to the executing State in order to serve ***the sentence*** passed against him or her in the issuing State: |

*Justification*

*In accordance with Amendment of Article 1 point (b).*

Amendment 14
Article 3, paragraph 3, point (a), indent 3

| | |
|---|---|
| – ***Article 4(3)-(6);*** Forwarding of the ***European enforcement order***, | ***– Article 4(1), (3a), (4), (5) and (6);*** Forwarding of the ***judgment and the certificate***, |

Amendment 15
Article 3, paragraph 3, point (a), indent 5

| | |
|---|---|
| – Article 8; Recognition and enforcement of ***a European enforcement order,*** | – Article 8; Recognition and enforcement of ***the judgment***; |

*Justification*

*Following the changes in the Council Working Group.*

Amendment 16
Article 3, paragraph 3, point (b), indent 2,

| | |
|---|---|
| – Article 8; Recognition and enforcement of ***a European enforcement order***, | – Article 8; Recognition and enforcement of ***the judgment***; |

*Justification*

*Following the changes in the Council Working Group.*

Amendment 17
Article 3, paragraph 3, point (b), sentence 2

| | |
|---|---|
| The State that issued the European arrest warrant shall supply the executing State with ***the information contained in a European enforcement order***. The | The State that issued the European arrest warrant shall supply the executing State with ***the judgment together with a certificate as provided for in Article 4.*** The |

| | |
|---|---|
| competent authorities shall communicate directly in matters relating to this paragraph. | competent authorities shall communicate directly in matters relating to this paragraph. |

*Justification*

*Following the changes in the Council Working Group.*

Amendment 18
Article 4, title

| | |
|---|---|
| Forwarding of ***the European enforcement order*** | Forwarding of ***the judgment and the certificate*** |

*Justification*

*Following the changes in the Council Working Group.*

Amendment 19
Article 4, paragraph - 1 (new)

| | |
|---|---|
| | ***-1. (a) A judgment, together with a certificate as provided for in this Article, may be forwarded to one of the following Member States:*** |
| | ***(i) the State of nationality of the sentenced person or in which he or she has his or her permanent legal residence;*** |
| | ***(ii) the State of nationality of the sentenced person and to which he or she will be deported once he or she is released from prison as a consequence of the judgment or an administrative decision consequential to the judgment;*** |
| | ***(iii) the State of nationality or permanent legal residence of the sentenced person and which has surrendered him or her to the issuing State on the basis of a European Arrest Warrant subject to the condition that the person, after being heard, is returned to the executing State in order to serve there the sentence passed against him or her in the issuing State;*** |

***(iv) the State where the sentenced person is staying in, or is a national, or a permanent legal resident of and which consents to the recognition and enforcement of the sentence;***

***(v) the State, in which the person has his or her permanent legal residence, unless he or she has lost or will lose the residence permit as a consequence of the judgment or an administrative decision consequential to the judgment; or***

***(vi) the State, which consents to the forwarding of the judgment together with the certificate for the purpose of its recognition and enforcement of the sentence imposed.***

***(b) Before forwarding the judgment, the competent authority of the issuing State shall give specific consideration to consulting, by any appropriate means, the competent authority of the executing State. Consultation is obligatory where, in accordance with the criteria laid down in paragraph 1, the judgment could be forwarded to two or more Member States.***

***(c) The executing State may, on its own initiative, request the issuing State to forward the judgment together with the certificate.***

*Justification*

*Definition in a more objective way of the criteria for forwarding a judgment to another Member-State.*

Amendment 20
Article 4, paragraph 1

| | |
|---|---|
| 1. ***A European enforcement order in respect of a sentence within the meaning of Article 1(b) may be forwarded to the authorities referred to in Article 2(1) of a Member State of which the natural person on whom the sentence has been imposed is a national, in which that person has his*** | 1. ***For the purpose of its recognition and enforcement of the sentence imposed, the judgment or a certified copy of it, together with the certificate, shall be forwarded in accordance with Article 3 a, by the competent authority in the issuing State directly to the competent authority in the*** |

| | |
|---|---|
| ***or her permanent legal residence or with which that person has other close links.*** | ***executing State by any means which leaves a written record under conditions allowing the executing State to establish its authenticity. The original of the judgment, or a certified copy of it, and the original of the certificate, shall be sent to the executing State if it so requires. All official communications shall also be made directly between the said competent authorities.*** |

*Justification*

*The same applies to other similar judicial measures.*

Amendment 21
Article 4, paragraph 2

| | |
|---|---|
| ***2. A European enforcement order shall not be forwarded if the person on whom the sentence has been imposed has his permanent legal residence in the issuing State, unless the sentenced person consents to the transfer or unless the decision or an administrative decision consequential to that decision includes an expulsion or deportation order or any other measure as a result of which that person will no longer be allowed to remain in the territory of the issuing State after serving a sentence.*** | ***deleted*** |

*Justification*

*The aim behind this paragraph is covered by Article 3bis.*

Amendment 22
Article 4, paragraph 3

| | |
|---|---|
| ***3. The fact that, in addition to the sentence within the meaning of Article 1(b) in respect of the act forming the basis of the European enforcement order, a fine was also imposed which has not yet been paid by the sentenced person shall not prevent a European enforcement order*** | ***deleted*** |

| | |
|---|---|
| ***from being forwarded. The enforcement of the fine in another Member State shall be based on the relevant provisions in this field applicable between the Member States.*** | |

*Justification*

*Following the changes in the Council Working Group.*

Amendment 23
Article 4, paragraph 3 a (new)

| | |
|---|---|
| | ***3a. The certificate, the standard form for which is given in Annex A, must be signed, and its content certified as accurate, by the competent authority in the issuing State.*** |

*Justification*

*Following the changes in the Council Working Group.*

Amendment 24
Article 4, paragraph 5

| | |
|---|---|
| 5. The issuing State shall forward ***the European enforcement order relating to a person*** only to one executing State at any one time | 5. The issuing State shall forward ***the judgment together with the certificate*** only to one executing State at any one time. |

*Justification*

*Following the changes in the Council Working Group.*

Amendment 25
Article 4, paragraph 6

| | |
|---|---|
| 6. If the competent authority in the executing State is not known to the competent authority in the issuing State, the latter shall make all necessary inquiries, | 6. If the competent authority in the executing State is not known to the competent authority in the issuing State, the latter shall make all necessary inquiries, |

| | |
|---|---|
| ***including*** via the Contact points of the European Judicial Network set up by Council Joint Action 98/428/JHA, in order to obtain the information from the executing State. | via the Contact points of the European Judicial Network set up by Council Joint Action 98/428/JHA***,*** in order to obtain the information from the executing State. |

*Justification*

*Following the changes in the Council Working Group.*

Amendment 26
Article 4, paragraph 7

| | |
|---|---|
| ***7. When an authority in the executing State which receives a European enforcement order has no competence to recognise it and take the necessary measures for its enforcement, it shall, ex officio, forward the European enforcement order to the competent authority and shall inform the competent authority in the issuing State accordingly.*** | ***deleted*** |

*Justification*

*The contacts have to be made via the competent authorities.*

Amendment 27
Article 5, title

| | |
|---|---|
| ***Opinion and*** notification of the sentenced person | Notification of the sentenced person ***and of the victim(s)*** |

*Justification*

*The term 'opinion' is omitted since it does not specify the practical consequence of taking the opinion into account in terms of transfer and choice of State. In accordance with the 1997 Additional Protocol to the 1983 Convention of the Council of Europe which restricts the scope of the sentenced person's consent.*

Amendment 28
Article 5, paragraph 1

| | |
|---|---|
| 1. When the sentenced person is in the issuing State, ***he shall, if possible, be given*** | 1. When the sentenced person is in the issuing State, ***he or she shall be notified*** |

| | |
|---|---|
| ***an opportunity to state his opinion orally or in writing before a European enforcement order is issued. Subject to Article 4(1), second sentence, his consent shall not be required for the forwarding of the European enforcement order. However, his opinion shall be taken into consideration when deciding whether the European enforcement order shall be issued and, if so to which executing State it shall be forwarded.*** | ***for his or her transfer to the executing State by the competent authorities.*** |

Amendment 29
Article 5, paragraph 1 a (new)

| | |
|---|---|
| | ***1a. The victims of the sentenced person should also be notified for his or her transfer from the issuing State to the executing State.*** |

*Justification*

*The victim(s) of the sentenced person should also be given the opportunity of being informed about the order to transfer that person to another Member State, in accordance with the provisions of Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings.*

Amendment 30
Article 6

| | |
|---|---|
| ***Form and content of the European enforcement order***<br>***1. The European enforcement order shall contain the information mentioned in the form in the Annex. The competent authority of the issuing State shall verify the accuracy of the information and sign it.***<br>***2. The European enforcement order shall be translated into the official language or one of the official languages of the executing State. Any Member State may, either when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General*** | ***deleted*** |

***Secretariat of the Council that it will accept a translation in one or more other official languages of the Union.***

*Justification*

*It is amended following the changes in the Council Working Group and in order to put the emphasis on two essential aspects of the document: the mutual recognition and the enforcement of custodial sentences. The recognition and enforcement should not take place on the basis of a 'European enforcement order' but on the basis of the judgement and a certificate.*

Amendment 31
Article 7

| | |
|---|---|
| ***Scope*** | ***deleted*** |
| ***1. The following offences, if they are punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least three years, and as they are defined by the law of the issuing State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to recognition and enforcement of a European enforcement order:*** | |
| ***– participation in a criminal organisation,*** | |
| ***– terrorism,*** | |
| ***– trafficking in human beings,*** | |
| ***– sexual exploitation of children and child pornography,*** | |
| ***– illicit trafficking in narcotic drugs and psychotropic substances,*** | |
| ***– illicit trafficking in weapons, munitions and explosives,*** | |
| ***– corruption,*** | |
| ***– fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests 1,*** | |
| ***– laundering of the proceeds of crime,*** | |
| ***– counterfeiting currency, including of the euro,*** | |

***– computer-related crime,***
***– environmental crime, including illicit trafficking in endangered animal species and in***
***endangered plant species and varieties,***
***– facilitation of unauthorised entry and residence,***
***– murder, grievous bodily injury,***
***– illicit trade in human organs and tissue,***
***– kidnapping, illegal restraint and hostage-taking,***
***– racism and xenophobia,***
***– organised or armed robbery,***
***– illicit trafficking in cultural goods, including antiques and works of art,***
***– swindling,***
***– racketeering and extortion,***
***– counterfeiting and piracy of products,***
***– forgery of administrative documents and trafficking therein,***
***– forgery of means of payment,***
***– illicit trafficking in hormonal substances and other growth promoters,***
***– illicit trafficking in nuclear or radioactive materials,***
***– trafficking in stolen vehicles,***
***– rape,***
***– arson,***
***– crimes within the jurisdiction of the International Criminal Court,***
***– unlawful seizure of aircraft/ships,***
***– sabotage.***
***2. The Council may decide to add other categories of offences to the list in paragraph 1 at any time, acting unanimously after consultation of the European Parliament under the conditions laid down in Article 39(1) of the Treaty. The Council shall examine, in the light of the report submitted to it pursuant to Article 21(4) of this Framework Decision, whether the list should be extended or amended.***
***3. For offences other than those covered by paragraph 1, the executing State may make the recognition and enforcement of a European enforcement order subject to the condition that the order relates to acts which also constitute an offence under***

***the law of the executing State, whatever the constituent elements or however it is described.***

*Justification*

*There are numerous reservations about the need to include the specific list of offences. Verifying the existence of dual criminality prevents transfers to serve a sentence for an act which the country of transfer does not define as a crime.*

Amendment 32
Article 8, title

| | |
|---|---|
| Recognition and enforcement of ***a European enforcement order*** | Recognition ***of the judgement*** and enforcement of ***the sentence*** |

*Justification*

*In order to be coherent with the change in the title of the Framework Decision.*

Amendment 33
Article 8, paragraph 1

| | |
|---|---|
| 1. The competent authority of the executing State shall recognise ***a European enforcement order*** which has been forwarded in accordance with Article 4 without any further formality being required, and shall forthwith take all the necessary measures for its enforcement, unless the competent authority decides to invoke one of the grounds for non-recognition and non-enforcement provided for in Article 9. | 1 The competent authority of the executing State shall recognise ***the judgment*** which has been forwarded in accordance with Article 4 without any further formality being required, and shall forthwith take all the necessary measures for the enforcement of the sentence unless the competent authority decides to invoke one of the grounds for non-recognition and non-enforcement provided for in Article 9. |

*Justification*

*In order to be coherent with the change in the title of the Framework Decision.*

Amendment 34
Article 8, paragraph 2

| | |
|---|---|
| 2. Where the sentence is incompatible with | 2. Where the sentence is incompatible with |

| | |
|---|---|
| ***fundamental principles of*** the law of the executing State in terms of its duration, the competent authority of the executing State may decide to ***adapt*** the sentence to the maximum level provided for ***a criminal act*** under the national law of that State. | the law of the executing State in terms of its duration, the competent authority of the executing State may decide to ***enforce*** the sentence ***up*** to the maximum level provided for ***the offence*** under the national law of that State. |

*Justification*

*The executing State will bring the sentence down to the highest level of punishment for the corresponding crime category in question under the law of that executing State.*

Amendment 35
Article 8, paragraph 3

| | |
|---|---|
| 3. Where the sentence is incompatible with the law of the executing State in terms of its nature, ***the competent authority of that State may adapt it to*** the punishment or measure provided for under its own law for a criminal offence of the same type by means of a court or administrative ruling. Such a punishment or measure must correspond as closely as possible to the sentence imposed in the issuing State; this means that the sentence cannot be converted into a pecuniary punishment. It must not increase the sentence imposed in the issuing State. | 3. Where the sentence is incompatible with the law of the executing State in terms of its nature, the punishment or measure must correspond as closely as possible to the sentence imposed in the issuing State; this means that the sentence cannot be converted into a pecuniary punishment. It must not increase ***nor decrease*** the sentence imposed in the issuing State. |

*Justification*

*The penalty provided to the law of the executing State should be treated with particular caution owing to the differences in the penalties prescribed between the Member States.*

Amendment 36
Article 8, paragraph 4

| | |
|---|---|
| ***4. If the European enforcement order has also been issued in respect of acts which are not covered by Article 7(1), and the executing State refuses to recognise and enforce the European enforcement order on account of such acts pursuant to*** | ***deleted*** |

| | |
|---|---|
| ***Article 9(1)(b), that State has to request the issuing State to be notified which part of the sentence relates to the acts in question. After having received that information, the executing State may reduce the sentence by the portion thereof which is notified by the issuing State.*** | |

*Justification*

*To correspond with changes in Article 7.*

Amendment 37
Article 9, paragraph 1, introductory part

| | |
|---|---|
| 1. The competent authorities in the executing State may refuse to recognise ***and enforce the European enforcement order if***: | 1. The competent authority of the executing State may refuse to recognise ***the judgment and enforce the sentence if***: |

Amendment 38
Article 9, paragraph 1, point (a)

| | |
|---|---|
| (a) ***a decision against the person concerned in respect of the same acts has been delivered in the executing State or in any State other than the issuing or the executing State, provided that in the latter case the decision has been executed, is currently being executed or may no longer be executed under the law of the sentencing State;*** | (a) ***the certificate provided for in Article 4 is incomplete or manifestly does not correspond to the judgment;*** |

*Justification*

*(a) According to Article 15(2)(f) of the draft Framework Decision.*

Amendment 39
Article 9, paragraph 1, point (a a) (new)

| | |
|---|---|
| | ***(aa) the criteria set forth in Article 4 paragraph -1 are not met;*** |

*Justification*

*(-a) (new) to ensure consistency with Article 3 (bis).*

Amendment 40
Article 9, paragraph 1, point (a b) (new)

***(ab) enforcement of the sentence would be contrary to the principle of ne bis in idem;***

*Justification*

*grounds for non-recognition and non-enforcement of the order in case of infringement of the principle 'ne bis in idem'.*

Amendment 41
Article 9, paragraph 1, point (b)

| | |
|---|---|
| (b) in a case referred to in Article 7(3), the ***enforcement order*** relates to acts which would not constitute an offence under the law of the executing State; however, in relation to taxes or duties, customs and exchange, execution of a ***European enforcement order*** may not be refused on the ground that the law of the executing 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 State; | (b) in a case referred to in Article 7(3), the ***judgment*** relates to acts which would not constitute an offence under the law of the executing State; however, in relation to taxes or duties, customs and exchange, execution of a ***judgment*** may not be refused on the ground that the law of the executing 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 State; |

*Justification*

*In order to be coherent with the change in the title of the Framework Decision.*

Amendment 42
Article 9, paragraph 1, point (c)

| | |
|---|---|
| (c) the enforcement of the ***decision*** is statute-barred according to the law of the executing State, ***insofar as the European enforcement order*** relates to acts which fall within the jurisdiction of the executing | (c) the enforcement of the ***sentence*** is statute-barred according to the law of the executing State ***and it*** relates to acts which fall within the jurisdiction of the executing State under its own law; |

State under its own law;

Amendment 43
Article 9, paragraph 1, point (c a) (new)

***(ca) there is immunity under the law of the executing State, which makes it impossible to enforce the sentence;***

Amendment 44
Article 9, paragraph 1, point (d)

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|---|---|
| (d) ***the European enforcement order has been issued in respect of a natural person who***, under the law of the executing State, owing to his or her age, could not yet have been held criminally liable for the acts in respect of which ***the European enforcement order*** was issued; | (d) ***the sentence has been imposed on a person who***, under the law of the executing State, owing to his or her age, could not yet have been held criminally liable for the acts in respect of which ***the judgment*** was issued; |

Amendment 45
Article 9, paragraph 1, point (e)

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|---|---|
| (e) at the time the ***European enforcement order*** was received by the competent authority ***pursuant to Article 4(1), less than four months*** of the sentence have still to be served; | (e) at the time the ***judgment*** was received by the competent authority ***of the executing State***, ***less than six months*** of the sentence have still to be served; |

*Justification*

*In accordance with Article 7. A minimum of six months to be served in the executing State supports the idea of rehabilitation .*

Amendment 46
Article 9, paragraph 1, point (f)

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| (f) ***the person concerned does not agree to the European enforcement order being forwarded and the order has been issued for the purposes of enforcing a sentence*** | (f) ***the judgment was rendered in absentia, unless the certificate states that the person was summoned personally or informed via a representative, competent according to*** |

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| ***imposed by a decision rendered in absentia, insofar as the person was not summoned personally or informed in some other way of the time and place of the proceedings which resulted in the decision rendered in absentia, or if the person has not indicated to a competent authority that he or she does not contest the case;*** | ***national law, of the time and place of the proceedings which resulted in the judgment being rendered in absentia;*** |

Amendment 47
Article 9, paragraph 1, point (g)

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|---|---|
| ***(g) the natural person in respect of whom the European enforcement order has been issued neither possesses the nationality of the executing State, nor is legally and permanently resident in, nor yet has any close links with that State.*** | ***deleted*** |

Amendment 48
Article 9, paragraph 2

| | |
|---|---|
| 2. In the cases referred to in paragraph ***1(a), (f) and (g),*** before deciding not to recognise ***and enforce a European enforcement order***, the competent authority in the executing State shall consult the competent authority in the issuing State, by any appropriate means, and shall, where appropriate, ask it to supply any necessary additional information without delay. | 2. In the cases referred to in paragraph ***1(a), (aa), (- ab) and (f)***, before deciding not to recognise ***the judgment and enforce the sentence***, the competent authority in the executing State shall consult the competent authority in the issuing State, by any appropriate means, and shall, where appropriate, ask it to supply any necessary additional information without delay. |

Amendment 49
Article 9, paragraph 2 a (new)

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|---|---|
| | ***2a. The recognition of the judgment may be postponed in the executing State where the certificate provided for in Article 4 is incomplete or manifestly does not correspond to the judgment.*** |

*Justification*

*Based on Article 18 of the Framework Decision of the European Enforcement Warrant.*

Amendment 50
Article 10, paragraph 1

| | |
|---|---|
| 1. The competent authority in the executing State shall, as quickly as possible ***and in any case within a maximum of three weeks of receipt of the European enforcement order, decide whether to enforce it.*** | 1. The competent authority in the executing State shall decide as quickly as possible ***whether to recognise the judgment and enforce the sentence and shall inform the issuing State thereof, including of any decision regarding the sentence in accordance with Article 8 paragraphs 2 and 3.*** |

*Justification*

*Time limits need to be brief but realistic.*

Amendment 51
Article 10, paragraph 1 a (new)

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|---|---|
| | ***1a. Unless a ground for postponement under Article 9, paragraph 2a exists, the final decision on the recognition of the judgment and the enforcement of the sentence shall be taken within a period of 30 days of receipt of the judgment and the certificate.*** |

Amendment 52
Article 10, paragraph 1 b (new)

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|---|---|
| | ***1b. In other cases and unless a ground for postponement under Article 9, paragraph 2a exists, the final decision on the recognition of the judgment and the enforcement of the sentence shall be taken within a period of 60 days of receipt of the judgment and the certificate.*** |

Amendment 53
Article 10, paragraph 2 a (new)

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|---|---|
| | ***2a. Where in specific cases it is not possible to take a decision on the recognition of the judgment and enforcement of the sentence within the time limits laid down in paragraphs 1a and 1b, the competent authority of the executing State shall inform the competent authority of the issuing State thereof and of the reasons without delay. In such a case, the time limits may be extended by a further 30 days.*** |

*Justification*

*Time limits need to be brief but realistic.*

Amendment 54
Article 11, paragraph 1

| | |
|---|---|
| 1. If a ***person in respect of whom a European enforcement order has been issued*** is in the issuing State, the person shall be transferred to the executing State ***as quickly as possible at a time agreed between the competent authorities of the issuing and the executing State.*** | 1. If a ***sentenced person*** is in the issuing State, the person shall be transferred to the executing State ***and no later than 30 days after the final decision of the executing State on the recognition of the judgment and enforcement of the sentence has been taken.*** |

*Justification*

*Time limits need to be brief but realistic.*

Amendment 55
Article 11, paragraph 2

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|---|---|
| ***2. The person shall be transferred no later than two weeks after the final decision on the enforcement of the European enforcement order has been taken.*** | ***deleted*** |

Amendment 56
Article 11, paragraph 3

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|---|---|
| 3. If the transfer of the person within the period laid down in ***paragraph 2*** is prevented by unforeseeable circumstances, the competent authorities of the issuing and executing States shall immediately contact each other ***and agree on a new transfer date.*** | 3. If the transfer of the person within the period laid down in ***paragraph 1*** is prevented by unforeseen circumstances, the competent authorities of the issuing and executing States shall immediately contact each other***. Transfer shall take place as soon as these circumstances have ceased to exist. The competent authority of the issuing State shall immediately inform the competent authority of the executing State and agree on a new transfer date. In that event, transfer shall take place within 10 days of the new date thus agreed***. |

*Justification*

*In accordance with Article 23 paragraph 4 of the Framework decision of the European Arrest Warrant.*

Amendment 57
Article 11, paragraph 4

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|---|---|
| ***4. The transfer may exceptionally be temporarily postponed for serious humanitarian reasons, in particular if there are substantial grounds for believing that it would manifestly endanger the life or health of the person concerned. The transfer shall take place as soon as these grounds have ceased to exist. The competent authority of the issuing State shall immediately inform the competent authority of the executing State and both shall agree on a new transfer date.*** | ***deleted*** |

Amendment 58
Article 12, paragraph 1

| | |
|---|---|
| 1. Each Member State shall ***permit*** the transit through its territory of a sentenced person who is being transferred to the executing State ***provided that it has been given information on***: | 1. Each Member State concerned shall ***be informed of*** the transit through its territory of a sentenced person who is being transferred to the executing State ***and should be provided with a copy of the certificate by the issuing state.*** |

***(a) the identity and nationality of the person who is the subject of the European enforcement order;***
***(b) the existence of a European enforcement order;***
***(c) the nature and legal classification of the offence underlying the European enforcement order;***
***(d) the description of the circumstances of the offence, including date and place.***

*Justification*

*Information and not permission of the transit would make things less bureaucratic.*

Amendment 59
Article 12, paragraph 2 a (new)

***2a. The Member State of transit may hold the sentenced person in custody only for such time what is necessary for a transit through its territory.***

Amendment 60
Article 12, paragraph 3

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|---|---|
| 3. A transit ***request*** is not required in the case of transport by air without a scheduled stopover. However, if an unscheduled landing occurs, the issuing State shall provide the information provided for in paragraph 1. | 3. A transit ***information*** is not required in the case of transport by air without a scheduled stopover. However, if an unscheduled landing occurs, the issuing State shall provide the information provided for in paragraph 1 ***within 48 hours***. |

Amendment 61
Article 13, paragraph 1

| | |
|---|---|
| 1. The enforcement of a ***European enforcement order*** shall be governed by the law of the executing State ***in the same way as sentences imposed by that State.*** The authorities of the executing State alone shall, subject to paragraphs 2 and 3, be competent to decide on the procedures for enforcement and to determine all the | 1. The enforcement of a ***sentence*** shall be governed by the law of the executing State. The authorities of the executing State alone shall, subject to paragraphs 2, and 3 be competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the |

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| measures relating thereto, including the grounds for conditional release. | grounds for early or conditional release. |

Amendment 62
Article 13, paragraph 2

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|---|---|
| 2. The competent authority of the executing State shall deduct ***any*** period of deprivation of liberty served ***in the issuing State or in another State*** in connection with the sentence in respect of which ***the European enforcement order*** is issued from the total duration of the deprivation of liberty to be served in the executing State. | 2. The competent authority of the executing State shall deduct ***the full*** period of deprivation of liberty already served ***by the sentenced person*** in connection with the sentence in respect of which ***the judgment*** is issued from the total duration of the deprivation of liberty to be served in the executing State. |

Amendment 63
Article 13, paragraph 3

| | |
|---|---|
| ***3. Unless otherwise agreed between the issuing and the executing States, conditional release may only be granted if the sentenced person has served a total of at least half the sentence in the issuing and executing States.*** | ***deleted*** |

Amendment 64
Article 14, paragraph 1 a (new)

| | |
|---|---|
| | ***1a. Paragraph 1 applies to transferred persons when they pass through transit Member States.*** |

*Justification*

*The specialty rule must be incuded in order to provide for a protection of the rights of the sentenced persons since his concent is eliminated.*

Amendment 65
Article 15, paragraph 1

| | |
|---|---|
| 1. An amnesty or pardon may be granted by the issuing State ***and also*** by the executing State. | 1. An amnesty or pardon may be granted by the issuing State ***in consultation with the executing State, or*** by the executing State***.*** |

*Justification*

*It is not acceptable for the issuing State to have the right to amnesty or pardon if the sentenced person has been transferred to the executing State and the law of that State then applies.*

Amendment 66
Article 17, point (b)

| | |
|---|---|
| (b) of any decision not to recognise and enforce ***a European enforcement order*** in accordance with Article 9, together with the reasons for the decision; | (b) of any decision not to recognise ***the judgment*** and enforce ***the sentence*** in accordance with Article 9, ***either in whole or in part***, together with the reasons for the decision; |

Amendment 67
Article 17, point (c)

| | |
|---|---|
| (c) of ***the adaptation of*** the sentence in accordance with Article 8(2) or (3), together with the reasons for the decision; | (c) of ***any decision regarding*** the sentence in accordance with Article 8(2) or (3), together with the reasons for the decision, ***and taking into account the differences in the law of the Member States concerned***; |

*Justification*

*Particular caution is required regarding the differences in the penalties prescribed between Member States*

Amendment 68
Article 17, point (d)

| | |
|---|---|
| (d) of the total or partial non-enforcement of the ***order*** for the reasons referred to in Articles ***8(4),*** 13(1) and *15(1) – together* with the reasons for the decision ***– and, in the event of partial non-enforcement for the reason referred to in Article 8(4), a request to be notified which part of the sentence relates to the acts in question;*** | (d) of the total or partial non-enforcement of the ***sentence*** for the reasons referred to in Articles 13(1) and *15(1) together* with the reasons for the decision; |

Amendment 69
Article 17, point (e)

| | |
|---|---|
| ***(e) of the fact that the person concerned has not started serving the sentence without reason;*** | ***deleted*** |

Amendment 70
Article 17, point (g a) (new)

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| | ***(ga) once the judgement has been recognised and accepted.*** |

Amendment 71
Article 17 a (new)

| | |
|---|---|
| | ***Article 17a***<br>***Languages*** |
| | ***The certificate, the standard form which is set in the Annex, must be translated into the official language or one of the official languages of the executing State. Any Member State may, either when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Union.*** |

## EXPLANATORY STATEMENT

### 1. Introduction

This is an initiative by Austria, Finland and Sweden aimed at speeding up the process of transferring sentenced persons to a particular State with which that person is linked in some way and where it is thought likely that optimum social rehabilitation can be achieved. The Framework Decision provides for a fast-track mechanism for the recognition and enforcement by a Member State of which that person is a national, where he is legally resident or has close links, of sentences involving deprivation of freedom or security measures (in the case of insanity or diminished responsibility) which have been imposed on that person by a court of another Member State.

The initiative takes account of the Tampere conclusions and, in particular, the strengthening of mutual recognition of decisions in criminal matters, the encouragement of mutual confidence between the national judicial authorities, the development by the Union of a cohesive policy in criminal matters in order to combat effectively serious crime in all its forms, particularly in laying down minimum sentences.

Under the Council of Europe Convention on the Transfer of Sentenced Persons of 21 March 1983, which all the Member States have ratified, sentenced persons may be transferred to serve the remainder of their sentence only to their State of nationality and only with their consent and that of the States involved. The Additional Protocol to the Convention of 18 December 1997, which, it should be noted, not all Member States have ratified, restricts the scope of the sentenced person's consent.

A first exchange of views took place within the Committee on Civil Liberties, Justice and Home Affairs on the ... and a working document was distributed.

### 2. Aim of the proposal

The original text (7307/05 COPEN 54) has already been amended by the responsible Council working party, producing the following key points in the document:

- the system used is a certificate (standard form) which is forwarded for enforcement together with the order imposing the sentence, along the lines of Article 7, paragraph 1 of the Framework Decision on mutual recognition of financial penalties (OJ L 76, 22 March 2005) instead of the European arrest warrant, to which the original working document referred;

- the criteria for transferring a sentenced person from one Member State to another in order for him to serve the rest of his sentence there are: (a) nationality together with legal residence, (b) permanent legal residence, and (c) the State to which the sentenced person consents to be transferred and with which he has close links. In the process of forwarding the order to the executing State, provision is made for oral or written submission of the sentenced person's views if he does not have the right of appeal;

- a list of 32 offences, identical to that contained in Framework Decision 2002/584/JHA on the European arrest warrant, for which no verification of the double criminality of

the act is required in order to recognise and enforce a sentence involving deprivation of liberty;

- a procedure for adapting, under certain circumstances, the sanction to another penalty compatible with the law of the executing State, if that sanction is incompatible in terms of its duration or nature. At all events, the proposal must be consistent with the provisions of Article 10, paragraph 2, of the Council of Europe Convention on the Transfer of Sentenced Persons of 21 March 1983 which applies the principle of 'continued enforcement' and not that of "adapting the sanction", which is contrary to the principle of mutual recognition. There are no circumstances under which the sanction can be converted into a financial penalty and nor is it possible for the sanction to be more severe than the penalty imposed in the issuing State;

- grounds for non-recognition and non-enforcement of the order include: (a) failure to fill in the certificate, (b) failure to meet the criteria on which the transfer of the sentenced person is based, (c) infringement of the principle of "*ne bis in ide*", (d) conviction of an offence not listed in Article 7, (e) statute-barring, (f) the existence of asylum or privilege, (g) absence of criminal liability of the person, and (h) remainder of the sentence to serve less than four months.

**3. View of the Rapporteur**

1. There is a need for clarification of the term "with which the person has other close links", in the event of which the order is forwarded only with the consent of the sentenced person. There should also be a clear distinction between the criteria "nationality" and "permanent residence".

2. The term "opinion" (the opinion of the sentenced person orally or in writing) could be reviewed since it does not specify the practical consequence of taking that opinion into account in terms of the transfer and the choice of State.

3. The victim(s) of the sentenced person should also be given the opportunity of being informed about the order to transfer that person to another Member State, in accordance with the provisions of Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings. Particular account should be taken of the vulnerable position of the victims, possible compensation proceedings and their right to be informed of the outcome of the proceedings and to take part in person, which is removed in the event of the sentenced person being transferred elsewhere. Thus, they would be guaranteed equal treatment, respect for their dignity, and their rights and legal interests in the process would be secured.

4. There are numerous reservations about the need to include the specific list of offences. Three years should be set as the minimum sentence and no higher, and it should be also ensured that there is at least a period of six months to serve in the executing State. Verifying the existence of double criminality prevents transfers to serve a sentence for an act which the country of transfer does not define as a crime.

5. Adapting the penalty provided to the law of the executing State should be treated with particular caution owing to the differences in the penalties prescribed between the Member States.

6. The data required during the transit procedure is excessive, e.g. "the nature and legal classification of the offence", "description of the circumstances of the offence". The entire procedure is excessively bureaucratic and formal. In addition, your rapporteur has reservations about reference to a Member State of the EU "permitting" another the transit through its territory of a sentenced person, as we are referring to a single area in which there is freedom of movement of individuals and where borders have been abolished. (Perhaps the principle of speciality should be extended to include those Member States through which the sentenced person passes in transit).

7. In particular, since a restriction of the scope of the sentenced person's consent is being sought, the principle of speciality should be safeguarded in order to ensure that the sentenced person is not tried for acts other than that for which he is serving his sentence.

8. It is not acceptable for the issuing State to have the right of amnesty, pardon or review if the sentenced person has been transferred to the executing State and the law of that State then applies. Possibly after consultation with the issuing State.

9. Topic for debate: the idea of promoting European Criminal Law.