# EUROPEAN PARLIAMENT

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*Committee on Civil Liberties, Justice and Home Affairs*

PROVISIONAL
**2007/0807(CNS)**

30.8.2007

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# DRAFT REPORT

on the initiative by the Federal Republic of Germany and of the French Republic with a view to adopting a Council Framework Decision on the recognition and supervision of suspended sentences, alternative sanctions and conditional sentences
(6840/2007 – C6-0129/2007 – 2007/0807(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Maria da Assunção Esteves,

## *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 Federal Republic of Germany and the French Republic with a view to adopting a Council Framework Decision on the recognition and supervision of suspended sentences, alternative sanctions and conditional sentences (6840/2007 – C6-0129/2007 – 2007/0807(CNS))**

**(Consultation procedure)**

*The European Parliament*,

– having regard to the initiative by the Federal Republic of Germany and of the French Republic (6840/2007)[1],

– having regard to Article 31(1)(a) and 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 (C6-0129/2007),

– 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 (A6-0000/2007),

1. Approves the initiative by the Federal Republic of Germany and of the French Republic 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 if it intends to amend the initiative by the Federal Republic of Germany and of the French Republic;

5. Instructs its President to forward its position to the Council and Commission, and the governments of the Federal Republic of Germany and of the French Republic.

| Text proposed by the Federal Republic of Germany and of the French Republic | Amendments by Parliament |
|---|---|
| Amendment 1<br>Title | |
| Initiative of the Federal Republic of | Initiative of the Federal Republic of |

[1] OJ C ... / Not yet published in OJ.

| | |
|---|---|
| Germany and of the French Republic with a view to adopting a Council Framework Decision on the recognition ***and*** supervision of suspended sentences, alternative sanctions and conditional sentences | Germany and of the French Republic with a view to adopting a Council Framework Decision on the recognition**,** supervision ***and execution*** of suspended sentences, alternative sanctions and conditional sentences |

*Justification*

*The scope of the Framework Decision covers the supervision of suspensory measures and alternative sanctions and also other decisions relating to the **execution** of suspended sentences, alternative sanctions and conditional sentences - an idea which is accurately summarised by the proposed wording 'supervision and execution'.*

Amendment 2
Recital 5

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|---|---|
| 5. This Framework Decision respects fundamental rights and adheres to the principles recognised in Article 6 of the Treaty on European Union, which are also expressed in the Charter of Fundamental Rights of the European Union, especially in Chapter VI thereof. No provision of this Framework Decision should be interpreted as prohibiting refusal to recognise a judgment and/or supervise a suspensory measure or alternative sanction if there are objective indications that the suspensory measure or alternative sanction was imposed ***to punish a person because of his or her sex, race, religion, ethnic origin, nationality, language, political convictions or sexual orientation or that this person might be disadvantaged for one of these reasons***. | 5. This Framework Decision respects fundamental rights and adheres to the principles recognised in Article 6 of the Treaty on European Union, which are also expressed in the Charter of Fundamental Rights of the European Union, especially in Chapter VI thereof. No provision of this Framework Decision should be interpreted as prohibiting refusal to recognise a judgment and/or supervise a suspensory measure or alternative sanction if there are objective indications that the suspensory measure or alternative sanction was imposed ***in clear and unacceptable infringement of the fundamental rights laid down in the European Union treaties or in the Member States' constitutions***. |

*Justification*

*Trust is essential if the principle of mutual recognition is to be upheld. However, a number of Member States have been found guilty at the European Court of Human Rights of infringing the European Convention in which basic penal procedures and safeguards are laid down. Hence there may be justification for a clause concerning non-compliance with recognition obligations and the infringement of fundamental rights - though of <u>all</u> fundamental rights. There is no hierarchy of fundamental rights, as Recital 5 appears to suggest.*

Amendment 3
Recital 6

| | |
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| 6. This Framework Decision should not prevent any Member State from applying its constitutional rules relating to entitlement to due process, freedom of association, freedom of the press and freedom of expression in other media. | 6. This Framework Decision should not prevent any Member State from applying its constitutional rules relating to entitlement to due process, freedom of association, freedom of the press and freedom of expression in other media***, and in general any constitutional rules relating to fundamental rights whose scope is not incompatible with the way in which measures are implemented***. |

Amendment 4
Recital 8

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|---|---|
| 8. The aim of mutual recognition and supervision of suspended sentences, alternative sanctions and conditional sentences in the executing State is to enhance the prospects of the sentenced person's being re-integrated into society, by enabling him to preserve family, linguistic, cultural and other ties, but also to improve monitoring of compliance with suspensory measures and alternative sanctions, with a view to preventing recidivism, thus paying due regard to the protection of victims. | 8. The aim of mutual recognition and supervision of suspended sentences, alternative sanctions and conditional sentences in the executing State is to enhance the prospects of the sentenced person's being re-integrated into society, by enabling him to preserve family, linguistic, cultural and other ties, but also to improve monitoring of compliance with suspensory measures and alternative sanctions, with a view to preventing recidivism, thus paying due regard to the protection of victims ***and the defence of society in general***. |

*Justification*

*The reference to the aim of preventing recidivism in order to pay due regard to the protection of victims omits a crucial concept - namely, the protection (or defence) of society. This is undoubtedly a concept which has a key role to play in the creation of an area of freedom, security and justice.*

Amendment 5
Recital 9

| | |
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| 9. To ensure the effective exchange of information concerning all circumstances relevant to the suspension of sentences, Member States are encouraged to include | 9. To ensure the effective exchange of information concerning all circumstances relevant to the suspension of sentences, Member States are encouraged to include |

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| provisions in their national legislation enabling them to assume the responsibility for the supervision of suspensory measures ***and*** alternative sanctions to be documented in their national registers. | provisions in their national legislation enabling them to assume the responsibility for the supervision of suspensory measures***,*** alternative sanctions ***and conditional sentences***. |

*Justification*

*The inclusion of conditional sentences is in accordance with the general scope of the Framework Decision.*

Amendment 6
Article 1, paragraph 1

| | |
|---|---|
| 1. ***The objective of t***his Framework Decision ***is, with a view*** to facilitat***ing*** the social re-integration of sentenced persons ***and*** improv***ing*** the protection of victims***, to lay down the rules according to which one Member State supervises suspensory measures imposed on the basis of a judgment which was issued in another Member State, or alternative sanctions contained in such a judgment and takes all other decisions relating to the execution of that judgment, insofar as this falls within its competence.*** | 1. ***T***his Framework Decision ***seeks*** to facilitat***e*** the social re-integration of sentenced persons***, to*** improv***e*** the protection of victims ***and society and to facilitate the application of appropriate suspended sentences, alternative sanctions and conditional sentences in the case of offenders who are not resident in the sentencing State. With a view to achieving the above objectives, this Framework Decision shall lay down rules pursuant to which the Member State in which the sentenced person has his lawful and ordinary residence (in cases in which he has returned or intends to return to that State) shall recognise the judgments passed in another Member State and shall supervise and execute suspended sentences, alternative sanctions and conditional sentences***. |

*Justification*

*(a) The objectives laid down in the Framework Decision must clearly support a penal policy which promotes alternatives to imprisonment (alternative sanctions, suspended sentences and conditional sentences as non-prison 'punishments'); (b) reference must be made to the rules governing recognition, since supervision presupposes mutual recognition; (c) under this Framework Decision a sentenced person must merely be granted the right to a hearing, which obviously constitutes a legal right and not a fundamental right.*

Amendment 7

Article 1, paragraph 2

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|---|---|
| 2. This Framework Decision shall apply only to the recognition of judgments and the transfer of responsibility for the supervision of ***suspensory measures and*** alternative sanctions and all other ***judicial*** decisions provided for in this Framework Decision. This Framework Decision shall not apply to the execution of judgments in criminal cases imposing custodial sentences or measures involving deprivation of liberty which fall within the scope of Council Framework Decision 2007/…/JHA. Recognition and execution of financial penalties and confiscation orders are governed by the legal instruments applicable between Member States, in particular Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties and Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders. | 2. This Framework Decision shall apply only to the recognition of judgments and the transfer of responsibility for the supervision ***and execution*** of ***suspended sentences,*** alternative sanctions ***and conditional sentences,*** and ***for*** all other ***subsequent*** decisions provided for in this Framework Decision. This Framework Decision shall not apply to the execution of judgments in criminal cases imposing custodial sentences or measures involving deprivation of liberty which fall within the scope of Council Framework Decision 2007/…/JHA. Recognition and execution of financial penalties and confiscation orders are governed by the legal instruments applicable between Member States, in particular Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties and Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders. |

*Justification*

*(a) 'Suspensory measures' are not 'sentences': as is stated in Article 2(e) they are obligations and instructions imposed in connection with a suspended sentence or a conditional sentence; (b) the replacement of 'all other judicial decisions' by 'all other subsequent decisions' is justified on the grounds of terminological consistency (see Articles 12, 14 and 15).*

Amendment 8
Article 2, (b) (ii)

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| (ii) after part of the custodial sentence or measure involving deprivation of liberty has been served (conditional release/parole); | (ii) after part of the custodial sentence or measure involving deprivation of liberty has been served (conditional release/parole ***decision***); ***with the imposition of one or more suspensory measures;*** |

Amendment 9

Article 2(c)

| | |
|---|---|
| (c) 'alternative sanction' shall mean an obligation or instruction, imposed as an ***independent*** sanction, ***which is not a custodial sentence, a measure involving deprivation of liberty or a financial penalty;*** | (c) 'alternative sanction' shall mean an obligation or instruction, imposed as an ***autonomous*** sanction, ***which does not constitute a deprivation of liberty or involve the payment of a sum of money;*** |

*Justification*

*The expression 'autonomous sanction' better conveys the nature of alternative sanctions which are 'sentences' (laid down in a judgment) which may be applied only by a judge.*

Amendment 10
Article 2(d)

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| (d) 'conditional sentence' shall mean a decision by a court in which the imposition of a sentence has been conditionally suspended ***by imposing*** one or more suspensory measures; | (d) 'conditional sentence' shall mean a decision by a court in which the imposition of a sentence has been conditionally suspended***, with the imposition of*** one or more suspensory measures; |

Amendment 11
Article 2(g)

| | |
|---|---|
| (g) 'executing State' shall mean the Member State in which the suspensory measures and alternative sanctions are supervised and in which all other decisions relating to the execution of ***the judgment*** are taken, ***insofar as it has assumed competence to do so.*** | (g) 'executing State' shall mean the Member State in which the suspensory measures and alternative sanctions are supervised and in which all other decisions relating to the execution of ***suspended sentences, alternative sanctions and conditional sentences*** are taken, ***following a decision pursuant to Article 7.*** |

Amendment 12
Article 2(g)(a) (new)

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| | ***(ga) 'lawful and ordinary residence' shall mean the place in which the individual concerned has established the permanent centre of his interests, which must be determined on the basis of all relevant de*** |

***facto circumstances.***

*Justification*

*The concept of 'residence' is a Community concept which cannot be entrusted to the various national systems. Hence a definition of the concept (the one which features in ECJ case-law) must be included in this Framework Decision.*

Amendment 13
Article 3

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|---|---|
| This Framework Decision shall not have the effect of modifying the ***obligation*** to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union. | This Framework Decision shall not have the effect of modifying the ***duty*** to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union ***and in the Member States' constitutions***. |

*Justification*

*The values contained in the EU Treaties are essentially also values laid down in the Member States' constitutions. The lists of fundamental rights are open ones.*

Amendment 14
Article 4, paragraph 1

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| 1. Each Member State shall inform the General Secretariat of the Council which ***judicial*** authority or authorities, under its national legislation, are competent to act according to this Framework Decision in the situation where that Member State is the issuing State or the executing State. | 1. Each Member State shall inform the General Secretariat of the Council which authority or authorities, under its national legislation, are competent to act according to this Framework Decision in the situation where that Member State is the issuing State or the executing State. ***The list of competent authorities shall be published in the Official Journal of the European Communities.*** |

*Justification*

*The Framework Decision contains provisions concerning the role of other authorities in addition to judicial ones or ones which perform the tasks of a judicial authority (for example: police authorities or administrative bodies which have no judicial-authority tasks). This*

*justifies replacing 'judicial authorities' with 'competent authorities' in Article 4 but not necessarily throughout the Framework Decision (see Justification to Articles 6(1) and 7(1)). The nature of the authorities involved is determined by the section of the Framework Decision which is being invoked.*

Amendment 15
Article 5, paragraph 1

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|---|---|
| 1. A judgment that contains one or more of the following suspensory measures or ***alternative sanctions*** may be transferred to another Member State, in which the sentenced person is lawfully and ordinarily resident, for the purpose of recognition and supervision of those measures and ***sanctions***: | 1. A judgment ***or conditional-release decision*** that contains one or more of the following suspensory measures or ***obligations or instructions*** may be transferred to another Member State, in which the sentenced person is lawfully and ordinarily resident, for the purpose of recognition and supervision of those measures and ***obligations or instructions. The certificate referred to in Article 6 may for supervision purposes state one or more of the suspensory measures or of the obligations or instructions contained in a judgment***: |

*Justification*

*This is a necessary clarification in cases where the issuing State does not wish to request supervision of all the measures stated in the judgment.*

Amendment 16
Article 5, paragraph 1, point (a)

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|---|---|
| (a) an obligation for the sentenced person to inform the competent authority in the executing State of any change of residence; | (a) an obligation for the sentenced person to inform the competent authority in the executing State of any change of residence ***or place of work or study***; |

Amendment 17
Article 5, paragraph 1, point (b)

| | |
|---|---|
| (b) an obligation not to ***leave or*** enter certain localities in the issuing or executing State without permission, and other orders relating to life-style, residence, education and training, professional activity or leisure | (b) an obligation not to enter certain localities in the issuing or executing State without permission, and other orders relating to life-style, residence, education and training, professional activity or leisure |

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| activities; | activities; |

Amendment 18
Article 5, paragraph 1, point (e)

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| (e) an obligation to compensate for the prejudice caused by the offence; | (e) an obligation to compensate for the prejudice caused by the offence ***and to notify the executing State's competent authority that this obligation has been complied with***; |

Amendment 19
Article 5, paragraph 1a (new)

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| | ***1a. For the purposes of this Framework Decision, the person standing trial must be heard before the judgment or the conditional-release decision is forwarded.*** |

*Justification*

*Transfer of a sentenced person must not be dependent upon his consent. Under the Framework Decision, only the right to a hearing must be conferred on a sentenced person - such a right obviously being a legal one and not a fundamental one. The transfer decision will be considered by a judge in the light of the purposes of the Framework Decision.*

Amendment 20
Article 5, paragraph 3

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| 3. Apart from the measures and sanctions referred to in paragraph 1, the certificate referred to in Article 6 shall include only such measures or ***sanctions*** as notified by the executing State concerned in accordance with paragraph 2. | 3. Apart from the measures and sanctions referred to in paragraph 1, the certificate referred to in Article 6 shall include only such ***suspensory*** measures or ***obligations or instructions*** as notified by the executing State concerned in accordance with paragraph 2. |

Amendment 21
Article 6, paragraph 1

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| 3. The ***judgment or a certified copy of it, together with a*** certificate, the standard | 3. The certificate, the standard form for which is set out in Annex I, ***together with*** |

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| form for which is set out in Annex I, shall be forwarded by the competent judicial authority in the issuing State directly to the competent judicial authority in the executing State by any means which leaves a written record under conditions allowing the executing State to establish their 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 judicial authorities. | ***the judgment (or a certified copy of it) and possibly the conditional-release decision,*** shall be forwarded by the competent judicial authority in the issuing State directly to the competent judicial authority in the executing State by any means which leaves a written record under conditions allowing the executing State to establish their 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 judicial authorities. |

*Justification*

*The expression 'judicial authority' is retained here, since what is involved is the forwarding of the 'judgment' (which is always pronounced by a judge) and of the 'conditional-release decision' (which may or may not be taken by a judge). Since there is no 'organic' definition of 'competent judicial authority', a 'functional' definition must be adopted, which means accepting that the competent judicial authority may be the judge, a public ministry or an administration which performs the tasks of a competent judicial authority.*

Amendment 22
Article 6, paragraph 3

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|---|---|
| 3. The competent judicial authority in the issuing State shall forward the judgment together with the certificate only to one executing State at any one time. | 3. The competent judicial authority in the issuing State shall forward the judgment together with the certificate ***(and possibly the conditional-release decision)*** only to one executing State at any one time. |

Amendment 23
Article 6, paragraph 5

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| 5. When a judicial authority in the executing State which receives a judgment together with a certificate has no competence to recognise it, it shall, ex officio, forward the judgment together with the certificate to the competent judicial authority. That competent judicial authority in the executing State shall immediately | 5. When a judicial authority in the executing State which receives a judgment together with a certificate ***(and possibly the conditional-release decision)*** has no competence to recognise it, it shall, ex officio, forward the judgment together with the certificate to the competent judicial authority. That competent judicial authority |

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| inform the competent judicial authority in the issuing State, by any means which leaves a written record, that the judgment and the certificate have been forwarded to it. | in the executing State shall immediately inform the competent judicial authority in the issuing State, by any means which leaves a written record, that the judgment and the certificate have been forwarded to it. |

Amendment 24
Article 7, paragraph 1

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|---|---|
| 1. The competent judicial authority in the executing State shall recognise the judgment forwarded in accordance with the procedure laid down in Article 6 and immediately take all necessary measures for the supervision of the suspensory measures ***and*** alternative sanction***s***, unless it decides to invoke one of the grounds for refusing to recognise and ***take over supervision of*** the judgment referred to in Article 9. | 1. The competent judicial authority in the executing State shall recognise the judgment forwarded in accordance with the procedure laid down in Article 6 and immediately take all necessary measures for the supervision of the suspensory measures ***and the obligations and instructions which constitute the*** alternative sanction, unless it decides to invoke one of the grounds for refusing to recognise and ***supervise*** the judgment referred to in Article 9. |

*Justification*

*The expression 'judicial authority' is retained here, since the Member States' 'judicial authorities' must communicate with one another. Thereafter (pursuant to Article 4) each Member State informs the General Secretariat of the Council which judicial authorities are – under its national legislation – responsible for the supervision and execution of sentences (authorities which, once again, may not necessarily be judicial authorities). As is apparent, the suitability of this expression in the text of the Framework Decision must be assessed in each individual case (see Justification to Articles 4(1) and 6(1)).*

Amendment 25
Article 7, paragraph 2

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|---|---|
| 2. If the ***nature or*** duration of the suspensory measures or alternative sanctions ***are*** incompatible with the statutory provisions of the executing State, the competent judicial authority in that State may adapt them in line with the suspensory measures and alternative sanctions which are provided for, under the | 2. If the duration of the suspensory measures or alternative sanctions ***is*** incompatible with the statutory provisions of the executing State, the competent judicial authority in that State may adapt them in line with the suspensory measures and ***the obligations and instructions that constitute the existing*** alternative sanctions |

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| law of the executing State, for offences ***of the same kind***. The adapted suspensory measure or alternative sanction shall correspond as far as possible to that imposed in the issuing State. | which are provided for, under the law of the executing State, for ***similar*** offences. The adapted suspensory measure or alternative sanction shall correspond as far as possible to that imposed in the issuing State. |

*Justification*

*The incompatibility of measures or sanctions can be assessed only as regards their duration and not as regards their nature. Only this makes sense in terms of penal legality – and only thus does Article 7(3) make sense. In practice it would be very difficult to assess the severity of the measures or sanctions adapted if they were of differing natures.*

Amendment 26
Article 7, paragraph 3 a (new)

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| | ***3a. Should suspensory measures or alternative sanctions be adapted pursuant to paragraph 2 above, the competent judicial authority in the executing State shall without delay inform the competent judicial authority in the issuing State of that decision. Following receipt of such information the competent judicial authority in the issuing State may decide to withdraw the certificate and the judgment (and also, if appropriate, the conditional-release decision).*** |

Amendment 27
Article 9, paragraph 1

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|---|---|
| 1. The competent judicial authority in the executing State may refuse to recognise the judgment and to assume responsibility for supervising suspensory measures and alternative sanctions if: | 1. The competent judicial authority in the executing State may refuse to recognise the judgment ***(or, if appropriate, the conditional-release decision)*** and to assume responsibility for supervising suspensory measures and alternative sanctions if: |

Amendment 28
Article 9, paragraph 1, point (a)

| | |
|---|---|
| (a) the certificate referred to in Article 6 is incomplete or obviously does not correspond to the judgment and is not completed or corrected within a reasonable period set by the competent judicial authority in the executing State; | (a) the certificate referred to in Article 6 is incomplete or obviously does not correspond to the judgment ***or the conditional-release decision*** and is not completed or corrected within a reasonable period set by the competent judicial authority in the executing State; |

Amendment 29
Article 9, paragraph 1, point (b)

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| (b) the criteria laid down in Article 5 are not met; | (b) the criteria laid down in Article 5 are not met ***(including – although not restricted to – the requirement for lawful and ordinary residence in the executing State)***; |

*Justification*

*The executing State must be the State 'on whose territory the person sentenced has his lawful and ordinary residence' and hence residence should also be a 'criterion' to be taken into account by the 'requested' State for refusing to recognise and to assume responsibility for supervision.*

Amendment 30
Article 9, paragraph 1, point (e)

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| (e) ***prosecution, or the execution of a sentence***, is already statute-barred under the law of the executing State ***and relates to an act which falls within the competence of the executing State under its national law***; | (e) ***the sentence*** is already statute-barred under the law of the executing State; |

*Justification*

*(a) This deletes the reference to the barring of prosecution, since what is involved is not so much prosecution as sentences which have already been applied; (b) strictly speaking, one should refer to 'barring the sentence' and not to barring the execution of a sentence, since if a sentence is to be executed it does not lapse (or, rather, the execution thereof does not lapse) if the time-limit for barring the sentence has been reached.*

Amendment 31
Article 9, paragraph 1, point (i)

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| (i) the judgment provides for medical/therapeutic treatment which, notwithstanding the provisions of Article 7(2), the executing State is unable to supervise in view of its ***legal or*** healthcare system; or | (i) the judgment ***or possibly the conditional-release decision*** provides for medical/therapeutic treatment which, notwithstanding the provisions of Article 7(2), the executing State is unable to supervise in view of its healthcare system; or |

*Justification*

*It makes no sense to mention the legal system as a reason for non-execution: pursuant to Article 11, '...supervision ...shall be governed by the law of the executing State'. Hence the meaning of Article 11 should be (unless the practical effects which the adoption of this Framework Decision is intended to achieve – i.e. the effective execution of judgments of this kind, with a view to achieving certain objectives – are to be nullified) that the executing State (which is obliged and which has undertaken to supervise the measures and sanctions provided for in Article 5(1) and (2)) is required to adopt internal laws for the purpose of performing such supervision if such laws are not already in place.*

Amendment 32
Article 9, paragraph 1, point (j)

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| ***(j) in the case referred to in Article 13(1), no agreement can be reached on adaptation of suspensory measures or alternative sanctions.*** | ***Deleted*** |

*Justification*

*Deletion of this subparagraph is linked to the deletion of Article 13, which would result in an excessive amount of consultation and make the Framework Decision highly ineffective.*

Amendment 33
Article 9, paragraph 1, point (j a) (new)

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| | ***(ja) the certificate or judgment includes measures which are not listed or accepted under Article 5(1) and (2) of this Framework Decision.*** |

Amendment 34
Article 9, paragraph 2

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| 2. Before the competent judicial authority in the executing State decides, in the cases referred to in paragraph 1, ***to refuse*** to recognise the judgment and to assume responsibility for supervising suspensory measures and alternative sanctions, it shall communicate, by appropriate means, with the competent judicial authority in the issuing State and, as necessary, request the latter immediately to supply all additional information required. | 2. Before the competent judicial authority in the executing State decides, in the cases referred to in paragraph 1***(a), (b), (c), (h) and (i)***, ***not*** to recognise the judgment (***or if appropriate the conditional-release decision)*** and to assume responsibility for supervising suspensory measures and alternative sanctions, it shall communicate, by appropriate means, with the competent judicial authority in the issuing State and, as necessary, request the latter immediately to supply all additional information required. |

Amendment 35
Article 10, paragraph 1

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|---|---|
| 1. The competent judicial authority in the executing State shall decide, within ***10*** days after receipt of the judgment and the certificate, whether to recognise the judgment and assume responsibility for supervising the suspensory measures and alternative sanctions. It shall immediately inform the competent judicial authority in the issuing State, by any means which leaves a written record, of its decision. Reasons must be given for refusing to recognise the judgment and for refusing to assume responsibility for supervision. | 1. The competent judicial authority in the executing State shall decide, within ***30*** days after receipt of the judgment and the certificate, whether to recognise the judgment and assume responsibility for supervising the suspensory measures and alternative sanctions. It shall immediately inform the competent judicial authority in the issuing State, by any means which leaves a written record, of its decision. Reasons must be given for refusing to recognise the judgment and for refusing to assume responsibility for supervision. |

*Justification*

*This is a reasonable time-limit.*

Amendment 36
Article 10, paragraph 2

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| 2. If it is not possible, in a ***specific*** case, for the competent judicial authority in the executing State to comply with the time-limit laid down in paragraph 1, it shall immediately inform the competent judicial | 2. If it is not possible, in a***n exceptional*** case, for the competent judicial authority in the executing State to comply with the time-limit laid down in paragraph 1, it shall immediately inform the competent judicial |

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| authority in the issuing State, by any means of its choosing, giving reasons for the delay and indicating how long it expects to take to issue a final decision. | authority in the issuing State, by any means of its choosing, giving reasons for the delay and indicating how long it expects to take to issue a final decision. |

*Justification*

*Consistency with Article 10 of the Framework Decision 'on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or other measures involving deprivation of liberty for the purpose of their enforcement in the European Union'. Lengthening the time-limit to 30 days means that such cases will always be regarded as exceptional.*

Amendment 37
Article 11

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|---|---|
| The supervision of suspensory measures and alternative sanctions shall be governed by the law of the executing State. | The supervision of suspensory measures and ***of the obligations and instructions which constitute*** alternative sanctions shall be governed by the law of the executing State. |

Amendment 38
Article 12, paragraph 1

| | |
|---|---|
| 1. The competent ***judicial*** authority in the executing State shall have jurisdiction to take all subsequent decisions relating to the suspended sentence, alternative sanction ***or*** conditional sentence, such as the modification of suspensory measures, the revocation of suspension, sentencing in the case of a conditional sentence, or ***remission***. The law of the executing State shall apply to the aforementioned decisions and to all subsequent consequences of the judgment. | 1. The competent authority in the executing State shall have jurisdiction to take all subsequent decisions relating to the suspended sentence, alternative sanction***,*** conditional sentence ***or conditional release***, such as the modification of suspensory measures, the revocation of suspension, sentencing in the case of a conditional sentence ***or the revocation thereof***, or ***lapse***. The law of the executing State shall apply to the aforementioned decisions and to all subsequent consequences of the judgment. |

*Justification*

*(a) In this article the reference should be solely to 'competent authority': in certain Member States the 'subsequent decisions ' mentioned here may not be taken by 'judicial authorities' (for example, decisions relating to modifications to suspensory measures); (b) sentencing in the case of a conditional sentence requires prior revocation of the conditional sentence; (c) the word 'lapse' is preferable to the word 'remission' on the grounds of linguistic uniformity (see Article 14(1)(d)).*

Amendment 39
Article 12, paragraph 2

| | |
|---|---|
| 2. The competent ***judicial*** authority in the issuing State may reserve competence to take all subsequent decisions relating to conditional sentences. In this case the law of the issuing State shall apply to all subsequent consequences of the judgment. | 2. The competent authority in the issuing State may reserve competence to take all subsequent decisions relating to conditional sentences. In this case the law of the issuing State shall apply to ***all the abovementioned decisions and to*** all subsequent consequences of the judgment. |

*Justification*

*The law-enforcing issuing or executing State enforces its own law.*

Amendment 40
Article 12, paragraph 3

| | |
|---|---|
| 3. When ***transposing*** this Framework Decision***, any Member State may indicate that as executing State it may, in individual cases, refuse*** to assume responsibility provided for in paragraph 1. In these cases, the decision shall be taken and notification effected in accordance with the procedure laid down in Article 10. This shall not affect the obligation laid down in Article 7(1). | 3. When ***adopting*** this Framework Decision ***or subsequently at the time of transposition and by means of a statement lodged with the Council General Secretariat, each Member State may indicate that, as executing State and in the categories of cases to be specified by that Member State, it refuses*** to assume responsibility provided for in paragraph 1. In these cases, the decision shall be taken ***(with reasons given)*** and notification effected in accordance with the procedure laid down in Article 10. This shall not affect the obligation laid down in Article |

| | |
|---|---|
| | 7(1). ***That statement by a Member State may be withdrawn at any time. The statements or the withdrawal thereof shall be published in the Official Journal of the European Union.*** |

*Justification*

*The principle is that refusal is the exception - otherwise the Framework Decision would become less effective and hence less meaningful.*

Amendment 41
Article 13, paragraph 1

| | |
|---|---|
| ***1. If the competent judicial authority in the executing State intends to make adaptations as provided for in Article 7(2) and (3), it shall first consult the competent judicial authority in the issuing State on the adapted suspensory measures or alternative sanction.*** | ***Deleted*** |

*Justification*

*Article 13 is deleted in order to prevent an excessive amount of consultation which would undermine the effectiveness of the Framework Decision. It should, however, be noted that in accordance with the new paragraph 4 added to paragraph 7, the certificate may be withdrawn by the issuing State if the adaptation referred to in Article 7 is unacceptable.*

Amendment 42
Article 13, paragraph 2

| | |
|---|---|
| ***2. When forwarding the judgment and the certificate as provided for in Article 6, the competent judicial authority in the issuing State may waive the consultations referred to in paragraph 1. In that case, any adaptations made by the competent judicial authority in the executing State in accordance with Article 7(2) and (3) shall subsequently be notified to the competent*** | ***Deleted*** |

***judicial authority of the issuing State.***

Amendment 43
Article 14, title

| | |
|---|---|
| Obligations of the authorities involved where the executing State has jurisdiction for all ***further*** decisions | Obligations of the authorities involved where the executing State has jurisdiction for all ***subsequent*** decisions |

*Justification*

*Uniform terminology (see Article 12(1)).*

Amendment 44
Article 14, paragraph 1, point (a)

| | |
|---|---|
| (a) modification of the suspensory measures ***or alternative sanction***; | (a) ***Alternative sanctions and*** modification of the suspensory measures; |

Amendment 45
Article 14, paragraph 1, point (b)

| | |
|---|---|
| (b) revocation of the ***suspension of the sentence***; | (b) revocation of the ***suspended sentence and the conditional sentence***; |

Amendment 46
Article 14, paragraph 1, point (c)

| | |
|---|---|
| (c) ***imposition of a sentence*** in the case of a conditional sentence; | (c) ***sentencing*** in the case of a conditional sentence; |

*Justification*

*Uniform terminology (see Article 12(1)).*

Amendment 47
Article 14, paragraph 1, point (d)

| | |
|---|---|
| (d) lapsing of the ***suspensory measures*** or alternative sanction. | (d) lapsing of the ***suspended sentences, conditional sentences*** or alternative sanction. |

Amendment 48
Article 14, paragraph 1 a (new)

| | |
|---|---|
| | ***(1a) In cases where suspended sentences, conditional sentences and alternative sanctions are revoked, the executing State shall be responsible for executing the custodial sentence imposed in the judgment, except in the cases provided for in Article 12(2) and (3).*** |

Amendment 49
Article 14, paragraph 2

| | |
|---|---|
| 2. The competent judicial authority in the issuing State shall immediately inform the competent judicial authority in the executing State, by any means which leaves a written record, of any circumstances or findings which, in its opinion, could entail revocation of the suspension of the sentence or modification of the suspensory measures or alternative sanction. | 2. The competent judicial authority in the issuing State shall immediately inform the competent judicial authority in the executing State, by any means which leaves a written record, of any circumstances or findings which, in its opinion, could entail revocation of the suspension of the sentence ***or the conditional sentence*** or modification of the suspensory measures or ***the obligations or instructions which constitute*** alternative sanction. |

Amendment 50
Article 14, paragraph 2a (new)

| | |
|---|---|
| | ***2a. A person must be heard by the judicial authorities before being sentenced in the case of a conditional sentence or if the*** |

| | |
|---|---|
| | ***suspension of the sentence is revoked, in order to ensure that the fundamental principle of the hearing of defendants is upheld.*** |

*Justification*

*This situation must mirror the situation provided for in Article 15(2). The principle of the hearing of defendants constitutes an essential part of criminal proceedings in such cases.*

Amendment 51
Article 15, title

| | |
|---|---|
| Obligations of the authorities involved where the issuing State has jurisdiction for all ***further*** decisions | Obligations of the authorities involved where the issuing State has jurisdiction for all ***subsequent*** decisions |

Amendment 52
Article 15, paragraph 1

| | |
|---|---|
| 1. If the competent judicial authority in the issuing State has jurisdiction for all ***further*** decisions in accordance with Article 12(2) and (3), the competent judicial authority in the executing State shall immediately notify it of: | 1. If the competent judicial authority in the issuing State has jurisdiction for all ***subsequent*** decisions in accordance with Article 12(2) and (3), the competent judicial authority in the executing State shall immediately notify it of: |

Amendment 53
Article 15, paragraph 1, point (a)

| | |
|---|---|
| (a) ***any*** breach of a suspensory measure or alternative sanction; and | (a) ***a*** breach of a suspensory measure or ***the obligations and instructions which constitute*** alternative sanction; and |

Amendment 54
Article 15, paragraph 1, point (b), point (i)

| | |
|---|---|
| (i) is liable to entail modification of the suspensory measures or alternative sanction, | (i) is liable to entail modification of the suspensory measures or ***the obligations or instructions which constitute*** alternative sanction, |

Amendment 55
Article 15, paragraph 1, point (b), point (ii)

| | |
|---|---|
| (ii) is relevant to ***the imposition of a sentence*** in the case of a conditional sentence, or | (ii) is relevant to ***sentencing*** in the case of a conditional sentence, or |

Amendment 56
Article 15, paragraph 1, point (b), point (iii)

| | |
|---|---|
| (iii) could result in revocation of the suspension of the sentence. | (iii) could result in revocation of the suspension of the sentence ***and the conditional sentence***. |

Amendment 57
Article 15, paragraph 3

| | |
|---|---|
| 3. Before a decision is taken on ***the imposition of a sentence*** in the case of a conditional sentence or on the revocation of the suspension of a sentence, the sentenced person must be ***given a judicial hearing***. ***If appropriate, this requirement may be met according to the procedure provided for in Article 10 of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union .*** | 3. Before a decision is taken on ***sentencing*** in the case of a conditional sentence or on the revocation of the suspension of a sentence, the sentenced person must be ***heard by the judicial authorities in order to ensure that the fundamental principle of the hearing of defendants is upheld***. |
| ***----------*** | |
| ***[1]OJ C 197, 12.7. 2000, p. 3.*** | |

Amendment 58
Article 15, paragraph 4, point (a)

| | |
|---|---|
| (a) modification of the suspensory measures or alternative sanction; | (a) modification of the suspensory measures or ***of the obligations or instructions which constitute*** alternative sanction; |

Amendment 59
Article 15, paragraph 4, point (b)

| | |
|---|---|
| (b) revocation of the suspension of sentence; | b) revocation of the suspension of sentence ***and of the conditional sentence***; |

Amendment 60
Article 15, paragraph 4, point (c)

| | |
|---|---|
| (c) ***imposition of a sentence*** in the case of a conditional sentence; | (c) ***sentencing*** in the case of a conditional sentence; |

Amendment 61
Article 15, paragraph 4, point (d)

| | |
|---|---|
| (d) lapsing of the ***suspensory measures*** or alternative sanction. | d) lapsing of the ***suspended sentence, conditional sentence*** or alternative sanction. |

Amendment 62
Article 15, paragraph 4 a (new)

| | |
|---|---|
| | ***4a. Any modification of a suspensory measure or of the obligations or instructions which constitute alternative sanctions by the issuing State's competent judicial authority must be carried out with due regard to Article 5. In the event of a modification the executing State's competent authority may opt to take a fresh decision pursuant to Article 7(2) or Article 9(1)(i).*** |

Amendment 63
Article 15, paragraph 5

| | |
|---|---|
| 5. In the event of the imposition of a sentence or the revocation of the suspension of a sentence, the competent judicial authority of the issuing State shall at the same time inform the competent judicial authority of the executing State ***whether it intends to forward to the executing State***: | 5. In the event of the imposition of a sentence or the revocation of the suspension of a sentence, the competent judicial authority of the issuing State shall at the same time inform the competent judicial authority of the executing State ***that there is no longer any need for suspensory measures to be supervised.*** |

Amendment 64
Article 15, paragraph 5, point (a)

| | |
|---|---|
| ***(a) a judgment and certificate as provided for in Council Framework Decision 2007/…/JHA* for the purpose of taking over responsibility for enforcement of the measure involving deprivation of liberty; or*** | ***Deleted*** |
| ***----------*** | |
| ****. OJ: please add number of Framework Decision referred to in Recital 3.*** | |

Amendment 65
Article 15, paragraph 5, point (b)

| | |
|---|---|
| ***(b) a European arrest warrant for the purpose of surrender of the sentenced person in accordance with Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States*** | ***Deleted*** |
| ***.----------*** | |
| ***[1] JO L 190 de 18.7.2002, p. 1.*** | |

Amendment 66
Article 15, paragraph 6

| | |
|---|---|
| 6. ***If the obligation to execute suspensory measures or alternative sanctions has lapsed***, the competent authority of the executing State shall end ***the measures ordered as soon as it has been duly notified by the competent authority of the issuing State***. | 6. ***When it is notified of the fact by the competent authority of the issuing State pursuant to paragraph 5 above***, the competent authority of the executing State shall end ***supervision and execution of suspensory measures.*** |

Amendment 67
Article 16, title

| | |
|---|---|
| Amnesty and pardon | Amnesty***,*** pardon ***and judgment review*** |

Amendment 68
Article 16, paragraph 1 a (new)

| | |
|---|---|
| | ***Only the issuing State can take a decision regarding requests for a review of judgments involving suspended sentences, conditional sentences and alternative sanctions, the supervision and execution of which are covered by this Framework Decision.*** |

Amendment 69
Article 17

| | |
|---|---|
| If the sentenced person leaves the executing State ***and establishes his or her lawful and ordinary residence in another Member State***, the competent judicial authority of the executing State shall transfer jurisdiction in respect of the supervision of the suspensory measures and alternative sanctions and in respect of all further decisions relating to the execution of the judgment to the competent judicial authority of the issuing State. | ***1.*** If the sentenced person leaves the executing State ***or ceases to have a lawful and ordinary residence in the executing State***, the competent judicial authority of the executing State shall transfer jurisdiction in respect of the supervision of the suspensory measures and ***the obligations or instructions which constitute*** alternative sanctions and in respect of all further decisions relating to the execution of the judgment ***(or if appropriate the conditional-release*** |

***decision)*** to the competent judicial authority of the issuing State.

*Justification*

*The executing State is no longer able to exercise supervision over the sentenced person, hence responsibility for supervision passes to the issuing State. Such a transfer of responsibility should be regarded as an 'obligation' and not as a 'power'.*

Amendment 70
Article 17, paragraph 1 a (new)

***1a. The transfer of jurisdiction referred to in paragraph 1 must also take place if the issuing State issues a request to that effect to the competent judicial authority of the executing State on the grounds that further criminal proceedings against the person are taking place in the issuing State.***

## EXPLANATORY STATEMENT

1. It is now quite some time since the European Union ceased to be merely a common economic area and began to adopt shared values as well. It is progressing towards its aim of establishing a political community pursuing the illuminist ideal of the sublime dignity of man and it is gradually instituting political power-sharing amongst its Member States, cooperation amongst institutions and a legal system which is both cosmopolitan and people-centred.

What is genuinely fascinating about the European Union is this journey towards the individual and towards a legal system applicable to all peoples and all generations.

Within the area of freedom, security and justice, the free movement of persons is matched by the movement of judicial decisions through mutual recognition and also through police and judicial cooperation. The various fields of law (including criminal law) are increasingly being released from 'feudalisation' within the individual Member States in order to secure the common ideal of justice for all. The European Union is an extraordinary example of a political organisation which has learned to converge the particular interests of each Member State with the moral aims of an embryonic legal system.

Criminal law is included in this gradual move towards mutual cooperation amongst the EU Member States. The purpose of the Framework Decision under consideration here is to *facilitate a sentenced person's reintegration into society, to provide better protection for victims and society as a whole and to facilitate the enforcement of appropriate suspended sentences, alternative sanctions and conditional sentences in the case of offenders who are not resident in the State in which they were sentenced.* The value of this initiative is above all that it encourages the Member States' judicial authorities to incorporate sanctions other than custodial sentences into their criminal law. We are all aware that if the political agenda does not offer conditions for the establishment of alternative sanctions, judges tend not to apply them. Facilitating alternative sanctions serves to promote humanitarian attitudes to criminal law and to sentences and hence promotes European law in general. It resolves the fallacy of setting a sentenced person's right to social reintegration against society's interest in reintegrating him. The truth of the matter is that there is no opposition here. The status of sentenced persons is even a barometer enabling the degree of civilisation and the calibre of the justice system of any political community to be assessed. Promoting the application of suspensory measures as an alternative to a custodial sentence is an objective to be achieved as a matter of urgency in the field of EU criminal law. European politics must strive to establish a link between criminal law and a culture of rights in all its dimensions: as regards the devising and execution of sentences and the relationship between sentenced persons and society in general.

2. At times the effectiveness of mutual recognition is restricted by the fact that the Member States' criminal laws are still in the early stages of harmonisation. An example of this is provided by the Framework Decision under consideration. The procedure for cooperation in the supervision and execution of alternative sanctions would be much simpler and more efficient (and also much less problematic) if the Member States adopted the same types of sentence or had similar judicial structures or even substantive and procedural criminal laws with a greater degree of equivalence [see the problem of adapting the 'different measures' or

of the 'instability of jurisdictions' when a suspended sentence is revoked or a sentence is imposed in the case of a conditional sentence].

The need for the Member States' substantive criminal laws to be progressively harmonised is a background condition for the completion of the European area of freedom, security and justice. Furthermore, increasing harmonisation of the Member States' criminal laws can be advocated on the basis of the common values referred to in Article 6 of the Treaty on European Union: after all, those values are to a large extent underpinned by laws which punish criminal behaviour.

3. In the meantime the procedural rules laid down in the Framework Decision will have to be organised on the basis of the current state of affairs. Hence it has been decided that for reasons of legality, clarity and legal certainty, the distribution of powers and responsibilities between the issuing State and the executing State will be governed by the rule that the State which exercises a given power or responsibility will apply its own laws thereto (*see Article 12(2)*).

Along with this arrangement a decision has been taken to stipulate the principle of the hearing of defendants as a principle which must be applied in cases involving the revocation of a suspended sentence or the imposition of a conditional sentence [*see Article 14(2)a (new)*]. Similarly, the reference to the Member States' constitutions in conjunction with a reference to the Treaty values (*see Article 3*) has been deemed useful. Fundamental rights set a standard on the basis of which the inventories of EU and Member-State fundamental rights are to be read as open ones which complement each other.

In this connection a contribution to the question of consent in initiating the transfer of responsibility for supervision and execution has also been sought (*see Article 5(1)a*). The transfer option is not a sentenced person's fundamental right [precisely because that person already has 'sentenced' status and the clarification of timing and role is also a question of judicial legitimacy]. Hence the transfer is not subject to consent. What should exist here is decisive judicial consideration geared to the purposes of the Framework Decision and the granting to the sentenced person of the right to be heard, since a hearing has an essential role to play in such consideration.

It is, furthermore, in the interests of such effectiveness that it is being proposed here that a 'rule on the exceptional nature of refusal' by the executing State be enshrined (*see Article 12(3)*).

A decision has also been taken to include a definition of 'lawful and ordinary residence' which corresponds to the definition found in European Court of Justice case-law [*see Article 2(ga) (new)*].

As has already been said, the opinion provides comprehensive clarification of the definition/distribution of powers and responsibilities between the issuing State and the executing State. Clarity underpins the legal certainty and the legality which are essential to criminal law. For this reason the adaptation of measures by the executing State as regards the nature thereof (*see Article 7(2*) has been rejected. Only adaptation as regards duration and possibly the form of execution is compatible with the typification required by the principle of

strict legality in criminal law.

4. Lastly, it should be pointed out that the Franco-German initiative relating to this Framework Decision sends out a very positive signal within the European area of freedom, security and justice. It shows that the European dimension is now understood in the light of the idea of intensive EU political and legal integration. It also shows how the humanisation of criminal law infuses the European legal system: a legal system based on the irreducible value of humanity, in which each individual - even a sentenced one - is regarded as an end in himself, as a unique and unrepeatable being.