EUROPEAN PARLIAMENT

2004 *2009*

Committee on Civil Liberties, Justice and Home Affairs

PROVISIONAL
2005/0805(CNS)

29.8.2007

*

DRAFT REPORT

on the draft Council Framework Decision on the application of the principle of mutual recognition to judgements in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union
(9688/2007 - C6-0209/2007 – 2005/0805(CNS))

(Renewed consultation)

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Ioannis Varvitsiotis

Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

CONTENTS

Page

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION 5

EXPLANATORY STATEMENT.....6

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the draft Council Framework Decision on the application of the principle of mutual recognition to judgements in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union
(9688/2007 - C6-0209/2007 – 2005/0805(CNS))

(Consultation procedure - renewed consultation)

The European Parliament,

– having regard to the Council draft (9688/2007)[1],

– having regard to the initiative by the Republic of Austria, the Republic of Finland and the Kingdom of Sweden (7307/2005)[2],

– having regard to its position of 14 June 2006[3],

– having regard to Articles 31(1)(a) and 34(2)(b) of the EC Treaty of the European Union,

– having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted Parliament (C6-0209/2007)),

– having regard to Rules 93, 51 and 55(3) 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 Council draft;

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

3. Calls on the Council to consult Parliament again if it intends to amend the draft substantially;

4. Instructs its President to forward its position to the Council and the Commission.

[1] Not yet published in OJ.
[2] OJ C 150, 21.6.2005, p. 1.
[3] Texts Adopted, P6_TA(2006)0256.

EXPLANATORY STATEMENT

The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition, which should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union.

On 29 November 2000 the Council, in accordance with the Tampere conclusions, adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters, in which it called for an assessment of the need for modern mechanisms for the mutual recognition of final sentences involving deprivation of liberty and for extended application of the principle of the transfer of sentenced persons to cover persons resident in a Member State.

The Hague Programme on strengthening freedom, security and justice in the European Union requires the Member States to complete the programme of measures, in particular in the field of enforcing final custodial sentences.

Relations between the Member States, which are characterised by special mutual confidence in other Member States' legal systems, 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 in all cases 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.

This Framework decision should be implemented and applied in a manner which allows for respecting general principles of equality, fairness and reasonableness.

This Framework Decision should also, mutatis mutandis, apply to the enforcement of sentences in the cases under Articles 4(6) und 5(3) of the Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States. This inter alia means, that without prejudice to the Council Framework Decision 2002/584/JHA, the executing Member State could verify the existence of grounds for refusal as provided for in Article 9, including checking of dual criminality to the extent the executing State has made a declaration under Article 7(4), as a condition to recognise and enforce the judgment with a view to consider whether to surrender the person or to enforce the sentence in cases pursuant to Article 4(6) of the said Framework Decision.

This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty and reflected by the Charter of Fundamental Rights of the European Union, in particular Chapter VI thereof. Nothing in this Framework Decision should be interpreted as prohibiting refusal to execute a decision when there are objective reasons to believe that the sentence was imposed for the purpose of punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced on anyone of those grounds.

The provisions of this Framework Decision should be applied in conformity with applicable

EC law, including in particular Directive 2004/38/EC, Directive 2003/109/EC and Directive 2003/86/EC.

The issues raised by the European parliament which was already consulted on this file on 17 May 2006 were largely taken into consideration and thus the rapporteur recommends to have it approved as amended by the Council.