



**COUNCIL OF  
THE EUROPEAN UNION**

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**NOTE**

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from : Presidency  
to : Working Party on Cooperation in Criminal Matters

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Subject : Proposal for a Council Framework Decision on prevention and settlement of  
conflicts of jurisdiction in criminal proceedings  
- Revised text of Articles

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Further to the discussions in CATS on 11 February 2009 and in the Working Party on 12/13 February 2009, the Presidency presented in 6637/09 a revised draft text of the proposed Framework Decision, asking Member States to submit comments on this draft by 27 February 2009.

Further to this call, the Presidency received comments from various delegations, for which the Presidency is most grateful. In the light of these comments, the Presidency has revised the text of the Framework Decision. This revised text is set out in the Annex. Modifications have been indicated by underlining.

Proposal for a

**COUNCIL FRAMEWORK DECISION 2009/.../JHA**

**of**

**on prevention and settlement of conflicts of jurisdiction**

**in criminal proceedings**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the initiative of the Czech Republic, the Republic of Poland, the Republic of Slovenia, the Slovak Republic and of the Kingdom of Sweden,

Having regard to the Opinion of the European Parliament <sup>1</sup>,

Whereas:

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

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<sup>1</sup> Opinion of ... (not yet published in the Official Journal).

- (2) The Hague Programme on strengthening freedom, security and justice in the European Union requires Member States to consider legislation on conflicts of jurisdiction, with a view to increasing the efficiency of prosecutions while guaranteeing the proper administration of justice, so as to complete the comprehensive programme of measures to implement the principle of mutual recognition of judicial decisions in criminal matters.
- (3) The measures provided for in this Framework Decision should aim to prevent situations where the same person is subject to parallel criminal proceedings in different Member States in respect of the same facts, which might lead to the final disposal of those proceedings in two or more Member States. The Framework Decision therefore seeks to promote the application of the "ne-bis-in-idem" principle, as set out in Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ L 239, 22.9.2000, p. 19) as interpreted by the European Court of Justice.
- (3a) Direct consultations should lead to consensus on any effective solution aimed at avoiding the adverse consequences arising from parallel proceedings. Such effective solution, which could notably consist in the concentration of the criminal proceedings in one Member State (for example through the transfer of criminal proceedings) or in any other efficient and reasonable allocation in time of those proceedings (where for example a referral of the case to Eurojust should also be considered as an effective solution, when competent authorities are not able to reach consensus), should avoid waste of time and resources of the competent authorities concerned. In this respect, specific attention should be paid to the issue of gathering the evidence which can be influenced by the parallel proceedings being conducted.

- (3b) For the purposes of this Framework Decision "criminal proceedings" is meant to include both the pre-trial phase and the trial phase (before a court), in accordance with national law.
- (4) (deleted)
- (5) (deleted)
- (5a) When a competent authority in a Member State considers that reasonable grounds exist to believe that parallel criminal proceedings are being conducted in another Member State in respect of the same facts involving the same person(s), which could lead to the final disposal of those proceedings in two or more Member States, it should contact the competent authority of that other Member State. The question whether or not reasonable grounds exist is examined solely by the competent authority of the requesting state. Reasonable grounds could, inter alia, include cases where the suspected or accused person invokes, supported by relevant elements of proof, that he/she is subject to parallel criminal proceedings in respect of the same facts in another Member State, or in case a relevant request for mutual legal assistance by a competent authority in another Member State reveals the possible existence of such parallel criminal proceedings, or in case police authorities provide information to this effect.
- (5b) The process of contact and response between competent authorities should be based upon the obligatory exchange of a specific minimum set of information, which should always be provided. The information concerned should notably facilitate the process of ensuring the proper identification of the persons concerned and the nature/stage of the respective parallel proceedings.

- (5c) A competent authority of a requested State should have a general obligation to reply to a request submitted by a competent authority of a requesting State. A competent authority of a requesting State is encouraged to set a deadline within which the competent authority of the requested State should respond, if possible. The specific situation of the persons deprived from liberty should be fully taken into account by the competent authorities throughout the procedure of taking contact.
- (5d) Direct contact between competent authorities should be the leading principle of cooperation established under the Framework Decision. Member States should have discretion to decide which authorities should be competent to act in accordance with this Framework Decision, in compliance with the principle of national procedural autonomy. Member States should be entitled to decide that police authorities, which are competent under their national law to exercise judicial powers, [including powers to make decisions leading to the final disposal of the proceedings], should be competent to act in accordance with this Framework Decision, in full compliance with the legal basis provided in Article 31 TEU on judicial cooperation in criminal matters.
- (6) The criteria set out in Article 15 are not to be considered to be ranked in any order of priority with respect to the fact that each case is unique and all its facts and merits must be taken into account. The criteria were inspired by the Guidelines which were published in the Eurojust Annual Report 2003 and which were drawn up for the needs of practitioners, as well as by the criteria set out in the European Convention on the Transfer of Proceedings, 1972.

- (7) No Member State concerned should be obliged to surrender or to exercise jurisdiction unless it wishes to do so. If consensus cannot be reached the Member States should retain their right to initiate or continue criminal proceedings for any criminal offence which falls within their national jurisdiction.
- (8) This Framework Decision does not affect the legality principle and opportunity principle as governed by the national law of the Member States. Nevertheless, as the very aim of this Framework Decision is to prevent unnecessary parallel criminal proceedings, its application should not give rise to a conflict of jurisdiction which would not occur otherwise.
- (9) (deleted)
- (10) This Framework Decision is without prejudice to proceedings under the European Convention on the Transfer of Proceedings in Criminal Matters, signed in Strasbourg on 15 May 1972, as well as any other arrangements concerning the transfer of proceedings in criminal matters between the Member States.
- (11) (deleted)
- (12) (deleted)
- (13) (deleted)
- (14) (deleted)

- (15) In the situation where competent authorities become aware that the facts which are the subject of ongoing criminal proceedings in one Member State were the subject of proceedings which have been finally disposed of in another Member State (ne bis in idem situation which prevents further proceedings in first Member State), an exchange of information to enable the authorities of each Member State to consider the position in relation to its proceedings should be encouraged. The purpose of that exchange of information should be to provide the competent authorities of the Member State where the proceedings have been finally disposed of with information and evidence enabling them to possibly reopen the proceedings in accordance with their national law.
- (16) This Framework Decision should not lead to undue bureaucracy in cases where for the problems addressed more suitable options are readily available. Thus in situations where more flexible instruments or arrangements are in place between Member States, those should prevail over this Framework Decision.
- (17) [deleted]
- (18) Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters<sup>1</sup> should apply to the protection of personal data provided under this Framework Decision.
- (19) This Framework Decision respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected by the Charter of Fundamental Rights of the European Union,

HAS ADOPTED THIS FRAMEWORK DECISION:

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<sup>1</sup> OJ L 350, 30.12.2008, p. 60.

# CHAPTER 1

## GENERAL PRINCIPLES

Article 1 (ex 1, split in two - see also Article 2)

Objective

1. The objective of this Framework Decision is to promote a closer cooperation between the competent authorities of two or more Member States conducting criminal proceedings, with a view to improving the efficient and proper administration of justice.
2. Such closer cooperation aims to:
  - a) prevent situations where the same person is subject to parallel criminal proceedings in different Member States in respect of the same facts, which might lead to the final disposal of the proceedings in two or more Member States ("ne-bis-in-idem" <sup>1</sup>); <sup>2</sup> and
  - (b) reach consensus on any effective solution aimed at avoiding the adverse consequences arising from such parallel proceedings.

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<sup>1</sup> See recital 3 on "ne bis in idem".

<sup>2</sup> See point 7 in document for Coreper/Council (6417/1/09 REV 1 COPEN 32) and the possibility of the future inclusion of optional situations at a later stage of the negotiations.

Article 2 (ex 1, split)

Subject matter and scope

1. With a view to achieving the objective set out in Article 1, this Framework Decision establishes a framework
  - a) on a procedure for establishing contact between the competent authorities of Member States, with a view to confirming the existence of parallel criminal proceedings in respect of the same facts involving the same person(s),
  - b) on the exchange of information, through direct consultations, between the competent authorities of two or more Member States conducting parallel criminal proceedings in respect of the same facts involving the same person(s), in case they already have knowledge of the existence of parallel criminal proceedings, with a view to reaching consensus on any effective solution aimed at avoiding the adverse consequences arising from such parallel proceedings.
2. [This Framework Decision shall not apply to any proceedings brought against undertakings if such proceedings have as their object the application of European Community Competition Law.]
3. [This Framework Decision does not confer any rights on a person to be invoked before the national authorities. This does not prevent the Member States from introducing any such rights vis-à-vis their national authorities when implementing this Framework Decision in their national law.]

## Article 3 (ex 2)

### Definitions

For the purposes of this Framework Decision:

- [(a) "requesting State" shall mean the Member State, of which a competent authority submits a request to a competent authority in another Member State (the responding State) with a view to confirm the existence of parallel criminal proceedings being conducted in respect of the same facts involving the same person(s) in the two or more Member States concerned;
- (b) "responding State" shall mean the Member State, of which a competent authority is requested by the competent authority of another Member State (the requesting State) to confirm the existence of parallel criminal proceedings being conducted in respect of the same facts involving the same person(s) in the two or more Member States concerned; ]<sup>1</sup>
- (c) "parallel proceedings" shall mean criminal proceedings being conducted in two or more Member States concerning the same facts involving the same person(s)<sup>2</sup>
- (d) "competent authority" shall mean an authority which, under the law of the Member State to which it belongs, is fully competent to carry out the acts envisaged by Article 2(1) of this Framework Decision.

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<sup>1</sup> These definitions could probably be deleted. It has to be examined whether definitions of "requesting authority" and "responding authority" have to be inserted.

<sup>2</sup> This newly proposed definition is meant to simplify the text. If this new definition is taken on board, consequential modifications have to be made in the text.

## Article 4 (ex 3)

### Determination of competent authorities <sup>1</sup>

1. The competent authorities should be determined so as to be able to act on the basis of direct contacts, which should be the leading principle of cooperation established under this Framework Decision.
2. Each Member State shall inform the General Secretariat of the Council which authorities under its national law are competent to act in accordance with this Framework Decision.
3. Notwithstanding paragraph 1 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 requests for information according to Article 5 and/or for the purpose of assisting the competent authorities in the consultation process. Member States wishing to make use of the possibility to designate a central authority or authorities shall communicate this information to the General Secretariat of the Council.
4. The General Secretariat of the Council shall make the information received under this Article available to all Member States and to the Commission.

[ex Article 4 has been deleted]

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<sup>1</sup> See recital 5e on “competent authorities”.

## CHAPTER 2

### EXCHANGE OF INFORMATION

#### Article 5

#### Obligation to contact

1. When a competent authority of a requesting State has reasonable grounds to believe that parallel criminal proceedings are being conducted in responding State in respect of the same facts involving the same person(s), it shall contact the competent authority of that responding State and, if the latter authority confirms the existence of such parallel proceedings, initiate direct consultations as provided in Article [12].
2. If the competent authority in the requesting State does not know the identity of the competent authority of the responding State, it shall make all necessary inquiries, including via the contact points of the European Judicial Network, in order to obtain the details of the competent authority in the responding State.
3. The obligations set out in paragraph 1 and in Articles 5a and 5b do not apply when the competent authorities in the Member States conducting parallel criminal proceedings in respect of the same facts involving the same person(s) have already exchanged the information indicated in Articles 6 and 7 by any other means.

## Article 5a

### Obligation to reply

1. The competent authority of the responding State which has been contacted in accordance with Article 5(1), shall reply within the reasonable deadline indicated by the competent authority of the requesting State <sup>1</sup>, or, if no deadline has been indicated, without undue delay <sup>2</sup>, and inform the competent authority of the requesting State whether criminal proceedings are taking place in its Member State in respect of the same facts involving the same person(s). In cases where the competent authority of the requesting State has informed the competent authority of the responding State that the suspected or accused person is held in provisional detention, the latter authority shall treat the request as a matter of urgency.
2. The obligation to provide a specific requested information as a consequence of the obligation set out in paragraph 1, as further specified in Article 7, shall not apply, if [this would harm essential national security interests or would jeopardise the safety of individuals]. In such case, the competent authority of the requested State shall, within the deadline set or without (undue) delay, if no deadline was indicated, state in its reply that such exceptional reasons apply in respect of the specific requested information concerned.
3. If the competent authority of the responding State cannot provide a reply within the deadline set by the competent authority of the requesting State, it shall promptly inform the competent authority of the requesting State of the reasons thereof and indicate the deadline within which it shall provide the requested information.
4. If the authority in the responding State which is contacted by a competent authority of the requesting State is not the competent authority under Article 4, it shall without undue delay transmit the request for information to the competent authority and shall inform the competent authority of the requesting State accordingly.

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<sup>1</sup> See new recital 5c on the "obligation to respond".

<sup>2</sup> See new recital 5c on the "cases where the suspected or accused person is held in provisional detention".

## Article 5b

### Means of communication

The competent authorities of the requesting and responding States shall communicate by any means whereby a written record can be produced.

[ex Articles 6 and 7 have been deleted]

## Article 6 (ex 8)

### Minimum information to be provided in the request

1. A competent authority, when contacting a competent authority in another Member State in accordance with Article 5, shall provide [at least] the following information:
  - (a) contact details of the competent authority;
  - (b) a description of the facts and circumstances that are the subject of the criminal proceedings concerned;
  - (c) name and, when appropriate other relevant details about the identity of the suspected or accused person, and about the victims, if applicable;
  - (d) the stage that has been reached in the criminal proceedings;
  - (e) [a brief indication of the “reasonable grounds” which has led the authority mentioned under (a) to believe that parallel criminal proceedings are being conducted in the responding State in respect of the same facts involving the same person(s);] and
  - (f) information about provisional detention of the suspected or accused person, if applicable.

2. The competent authority may provide relevant additional information relating to the criminal proceedings that are being conducted in the requesting State, e.g. relating to any difficulties which are being encountered in that State.

Article 7 (ex 9)

Minimum information to be provided in the response

1. The response by the competent authority which has been contacted in accordance with Article 6 shall at least contain the following information:
  - (a) whether in the responding State criminal proceedings are being or have been conducted in respect of some or all of the same facts as those which are subject of the criminal proceedings referred to in the request for information submitted by the competent authority of the requesting State, and whether the same persons(s), or at least some of them, are involved;  
  
in case of a positive answer under (a):
    - (b) contact details of the competent authority;
    - (c) the stage of these proceedings, or, where appropriate, the nature of the final decision.
2. The competent authority of the responding State may provide relevant additional information relating to the criminal proceedings that are being or have been conducted in the responding State, in particular concerning any related facts which are the subject of the criminal proceedings in the responding State.

[ex Articles 10 and 11 have been deleted]

## CHAPTER 3

### DIRECT CONSULTATIONS

#### Article 12

##### Obligation to enter into direct consultations

1. When it is established that parallel criminal proceedings are being conducted in two or more Member States in respect of the same facts involving the same person(s), the competent authorities of the requesting State and of the requested State shall enter into direct consultations in order to reach consensus on any effective solution aimed at avoiding the adverse consequences arising from such parallel proceedings.
2. Such consultations may, where appropriate, lead to the concentration of the criminal proceedings in one Member State, or to any effective solution aimed at avoiding the adverse consequences arising from such parallel proceedings..
3. [Authorities need not continue the direct consultations when the case is referred to Eurojust.]

#### Article 13

##### Providing information on important procedural acts or measures

As long as the direct consultations are being conducted, the competent authorities concerned shall inform each other of any important procedural measures which they take in the proceedings before them.

#### Article 14

[deleted]

## Article 15

### Criteria for reaching consensus

When the competent authorities of Member States enter into direct consultations on a case in order to reach consensus in accordance with Article 12, they shall consider the facts and merits of the case and all the factors which they consider to be relevant. Such factors may include, but are not limited to, the following, which are not ranked in any order of priority:

- place where the major part of the criminality occurred
- place where most damage or loss occurred;
- location of the suspected or accused person or persons after an arrest and [missing] possibilities for securing their surrender or extradition to the other possible jurisdictions,
- nationality or residence of the suspected or accused person(s),
- significant interests of victims and witnesses, [such as their availability, ability to travel, possibility to claim compensation or possibility to secure their protection],
- significant interests of the suspected or accused person(s),
- location of important evidence or their admissibility in the courts of Member States,
- stage that the proceedings have reached and any delay that may occur,
- existence of ongoing related proceedings,
- economy of the proceedings [such as cost of prosecuting case in any particular Member State];
- vital interests of the State, [...]

## Article 16

### Cooperation with Eurojust

1. This Framework Decision shall be complementary and without prejudice to Council Decision 2009/.../JHA <sup>1</sup> of ... on the strengthening of Eurojust and amending Decision 2002/187/JHA ("Eurojust Decision").
2. Where it has not been possible to reach consensus in accordance with Article 12, the matter shall be referred to Eurojust, by any competent authority of the Member States involved if Eurojust is competent to act under Article 4(1 ) of the Eurojust Decision. The referral and the procedure within Eurojust shall be governed by the Articles 6 and 7 of the Eurojust Decision.

## Article 17

### Providing information about the outcome of the proceedings

If during the course of consultations in accordance with Article 12 consensus has been reached on the concentration of the criminal proceedings in one Member State, the competent authority of that Member State shall inform the competent authority of the other Member State about the outcome of the proceedings.

## Article 18

(deleted)

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<sup>1</sup> OJ: insert number, date and publication references of Decision set out in doc.14927/08.

## **CHAPTER 4 (ex 6)**

### **GENERAL AND FINAL PROVISIONS**

#### Article 19

##### Languages

Each Member State shall state in a declaration deposited with the General Secretariat of the Council which languages, among the official languages of the institutions of the European Union, may be used for contacting its competent authorities in application of Article 5. These languages should at least include one language [which is commonly used in the European Union] other than the official language(s) of the Member State concerned. The competent authorities may agree to use a common language in the course of their direct consultations.

#### Article 20

##### Relation to legal instruments and other arrangements

1. Insofar as other legal instruments or arrangements allow the objectives of this Framework Decision to be extended or help to simplify or facilitate the procedure under which national authorities exchange information about their criminal proceedings, enter into direct consultations and try to reach consensus on any effective solution aimed at avoiding adverse consequences arising from the parallel proceedings, the Member States may:
  - (a) continue to apply bilateral or multilateral agreements or arrangements in force when this Framework Decision comes into force;
  - (b) conclude bilateral or multilateral agreements or arrangements after this Framework Decision has come into force.
2. The agreements and arrangements referred to in paragraph 1 shall in no case affect relations with Member States which are not parties to them.

## Article 21

### Implementation

Member States shall take the necessary measures to comply with the provisions of this Framework Decision by ..... [24 months after publication of the FD in the OJ].

By the same date Member States shall transmit to the General Secretariat of Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. <sup>1</sup>

## Article 22

### Report

The Commission shall, by ..... [36 months after publication of the FD in the OJ] , submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Framework Decision, accompanied, if necessary, by legislative proposals.

## Article 23

### Entry into force

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

Done at Brussels,

*For the Council*

*The President*

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<sup>1</sup> The issue was raised whether the Member States should be obliged to provide a correlation table. Various Member States strongly opposed this idea.