

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE VI OF THE EU TREATY

COUNCIL FRAMEWORK DECISION 2009/948/JHA

of 30 November 2009

on prevention and settlement of conflicts of exercise 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,

Whereas:

- (1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice.
- (2) The Hague Programme⁽¹⁾ on strengthening freedom, security and justice in the European Union, which was approved by the European Council at its meeting on 4 and 5 November 2004, 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 prevent an infringement of the principle of '*ne bis in idem*', 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⁽²⁾ as interpreted by the Court of Justice of the European Communities.

- (4) There should be direct consultations between competent authorities of the Member States with the aim of achieving a consensus on any effective solution aimed at avoiding the adverse consequences arising from parallel proceedings and avoiding waste of time and resources of the competent authorities concerned. Such effective solution could notably consist in the concentration of the criminal proceedings in one Member State, for example through the transfer of criminal proceedings. It could also consist in any other step allowing efficient and reasonable handling of those proceedings, including concerning the allocation in time, for example through a referral of the case to Eurojust when the competent authorities are not able to reach consensus. 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.
- (5) When a competent authority in a Member State has reasonable grounds to believe that parallel criminal proceedings are being conducted in another Member State in respect of the same facts involving the same person, 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 should be examined solely by the contacting authority. Reasonable grounds could, *inter alia*, include cases where a suspected or accused person invokes, while giving details, that he 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 a police authority provides information to this effect.

⁽¹⁾ OJ C 53, 3.3.2005, p. 1.

⁽²⁾ OJ L 239, 22.9.2000, p. 19.

- (6) The process of exchange of information 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 person concerned and the nature and stage of the respective parallel proceedings.
- (7) A competent authority which has been contacted by a competent authority of another Member State should have a general obligation to reply to the request submitted. The contacting authority is encouraged to set a deadline within which the contacted authority should respond, if possible. The specific situation of a person deprived of liberty should be fully taken into account by the competent authorities throughout the procedure of taking contact.
- (8) Direct contact between competent authorities should be the leading principle of cooperation established under this Framework Decision. Member States should have discretion to decide which authorities are competent to act in accordance with this Framework Decision, in compliance with the principle of national procedural autonomy, provided that such authorities have competence to intervene and decide accordingly with its provisions.
- (9) When striving to reach consensus on any effective solution aimed at avoiding the adverse consequences arising from parallel proceedings being conducted in two or more Member States, the competent authorities should take into account that each case is specific and give consideration to all its facts and merits. In order to reach consensus, the competent authorities should consider relevant criteria, which may include those set out in the Guidelines which were published in the Eurojust Annual Report 2003 and which were drawn up for the needs of practitioners, and take into account for example the place where the major part of the criminality occurred, the place where the majority of the loss was sustained, the location of the suspected or accused person and possibilities for securing its surrender or extradition to other jurisdictions, the nationality or residence of the suspected or accused person, significant interests of the suspected or accused person, significant interests of victims and witnesses, the admissibility of evidence or any delays that may occur.
- (10) The obligation for competent authorities to enter into direct consultations in order to reach consensus in the context of this Framework Decision should not exclude the possibility that such direct consultations be conducted with the assistance of Eurojust.
- (11) No Member State should be obliged to waive or to exercise jurisdiction unless it wishes to do so. As long as consensus on the concentration of criminal proceedings has not been reached, the competent authorities of the Member States should be able to continue criminal proceedings for any criminal offence which falls within their national jurisdiction.
- (12) Since the very aim of this Framework Decision is to prevent unnecessary parallel criminal proceedings which could result in an infringement of the principle of *ne bis in idem*, its application should not give rise to a conflict of exercise of jurisdiction which would not occur otherwise. In the common area of freedom, security and justice, the principle of mandatory prosecution, governing the law of procedure in several Member States, should be understood and applied in a way that it is deemed to be fulfilled when any Member State ensures the criminal prosecution of a particular criminal offence.
- (13) Where consensus has been reached on the concentration of criminal proceedings in one Member State, the competent authorities in the other Member State should act in a way that is compatible with that consensus.
- (14) As Eurojust is particularly well suited to provide assistance in resolving conflicts of jurisdiction, the referral of a case to Eurojust should be a usual step, when it has not been possible to reach consensus. It should be noted that, in accordance with Article 13(7)(a) of Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime⁽¹⁾ (the 'Eurojust Decision'), as modified, most recently by Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust⁽²⁾, Eurojust has to be informed of any case where conflicts of jurisdiction have arisen or are likely to arise and that a case can be referred to Eurojust at any moment if at least one competent authority involved in the direct consultations deems it appropriate.
- (15) 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.
- (16) This Framework Decision should not lead to an undue administrative burden 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.

⁽¹⁾ OJ L 63, 6.3.2002, p. 1.

⁽²⁾ OJ L 138, 4.6.2009, p. 14.

- (17) This Framework Decision is limited to establishing provisions on the exchange of information and direct consultations between the competent authorities of the Member States and therefore does not affect any right of individuals to argue that they should be prosecuted in their own or in another jurisdiction, if such right exists under national law.
- (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 ⁽¹⁾ should apply to the processing of personal data exchanged under this Framework Decision.
- (19) When making a declaration concerning the language regime, Member States are encouraged to include at least one language which is commonly used in the European Union other than their official language.
- (20) This Framework Decision respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected by the Charter of Fundamental Rights of the European Union,

HAS ADOPTED THIS FRAMEWORK DECISION:

CHAPTER 1
GENERAL PRINCIPLES

Article 1

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 thereby constituting an infringement of the principle of '*ne bis in idem*'; and
 - (b) reach consensus on any effective solution aimed at avoiding the adverse consequences arising from such parallel proceedings.

Article 2

Subject matter and scope

1. With a view to achieving the objective set out in Article 1, this Framework Decision establishes a framework on:
 - (a) 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;
 - (b) 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, 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 proceedings which are covered by the terms of Articles 5 and 13 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty ⁽²⁾.

Article 3

Definitions

For the purposes of this Framework Decision:

- (a) 'parallel proceedings' means criminal proceedings, including both the pre-trial and the trial phases, which are conducted in two or more Member States concerning the same facts involving the same person;
- (b) 'competent authority' means a judicial authority or another authority, which is competent, under the law of its Member State, to carry out the acts envisaged by Article 2(1) of this Framework Decision;
- (c) 'contacting authority' means a competent authority of a Member State, which contacts a competent authority of another Member State to confirm the existence of parallel proceedings;
- (d) 'contacted authority' means the competent authority which is asked by a contacting authority to confirm the existence of parallel criminal proceedings.

⁽¹⁾ OJ L 350, 30.12.2008, p. 60.

⁽²⁾ OJ L 1, 4.1.2003, p. 1.

*Article 4***Determination of competent authorities**

1. Member States shall determine the competent authorities in a way that promotes the principle of direct contact between authorities.

2. In accordance with paragraph 1, 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 paragraphs 1 and 2, 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 paragraphs 2 and 3 available to all Member States and to the Commission.

*CHAPTER 2***EXCHANGE OF INFORMATION***Article 5***Obligation to contact**

1. When a competent authority of a Member State has reasonable grounds to believe that parallel proceedings are being conducted in another Member State, it shall contact the competent authority of that other Member State to confirm the existence of such parallel proceedings, with a view to initiating direct consultations as provided for in Article 10.

2. If the contacting authority does not know the identity of the competent authority to be contacted, it shall make all necessary inquiries, including via the contact points of the European Judicial Network, in order to obtain the details of that competent authority.

3. The procedure of contacting shall not apply when the competent authorities conducting parallel proceedings have already been informed of the existence of these proceedings by any other means.

*Article 6***Obligation to reply**

1. The contacted authority shall reply to a request submitted in accordance with Article 5(1) within any reasonable deadline

indicated by the contacting authority, or, if no deadline has been indicated, without undue delay, and inform the contacting authority whether parallel proceedings are taking place in its Member State. In cases where the contacting authority has informed the contacted authority that the suspected or accused person is held in provisional detention or custody, the latter authority shall treat the request as a matter of urgency.

2. If the contacted authority cannot provide a reply within any deadline set by the contacting authority, it shall promptly inform the contacting authority of the reasons thereof and indicate the deadline within which it shall provide the requested information.

3. If the authority which has been contacted by a contacting authority 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 contacting authority accordingly.

*Article 7***Means of communication**

The contacting and contacted authorities shall communicate by any means whereby a written record can be produced.

*Article 8***Minimum information to be provided in the request**

1. When submitting a request in accordance with Article 5, the contacting authority shall provide the following information:

- (a) the contact details of the competent authority;
- (b) a description of the facts and circumstances that are the subject of the criminal proceedings concerned;
- (c) all 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; and
- (e) information about provisional detention or custody of the suspected or accused person, if applicable.

2. The contacting authority may provide relevant additional information relating to the criminal proceedings that are being conducted in its Member State, for example relating to any difficulties which are being encountered in that State.

*Article 9***Minimum information to be provided in the response**

1. The response by the contacted authority in accordance with Article 6 shall contain the following information:

- (a) whether criminal proceedings are being or were 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 contacting authority, and whether the same persons are involved;

in case of a positive answer under (a):

- (b) the contact details of the competent authority; and
- (c) the stage of these proceedings, or, where a final decision has been reached, the nature of that final decision.

2. The contacted authority may provide relevant additional information relating to the criminal proceedings that are being or were conducted in its Member State, in particular concerning any related facts which are the subject of the criminal proceedings in that State.

CHAPTER 3

DIRECT CONSULTATIONS*Article 10***Obligation to enter into direct consultations**

1. When it is established that parallel proceedings exist, the competent authorities of the Member States concerned 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, which may, where appropriate, lead to the concentration of the criminal proceedings in one Member State.

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

3. In the course of the direct consultations, competent authorities involved in those consultations shall whenever reasonably possible reply to requests for information emanating from other competent authorities that are involved in those consultations. However, when a competent authority is requested by another competent authority to provide specific information which could harm essential national security

interests or could jeopardise the safety of individuals, it shall not be required to provide that information.

*Article 11***Procedure of 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 10, they shall consider the facts and merits of the case and all the factors which they consider to be relevant.

*Article 12***Cooperation with Eurojust**

1. This Framework Decision shall be complementary and without prejudice to the Eurojust Decision.

2. Where it has not been possible to reach consensus in accordance with Article 10, the matter shall, where appropriate, 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.

*Article 13***Providing information about the outcome of the proceedings**

If during the course of the direct consultations in accordance with Article 10 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 respective competent authority (authorities) of the other Member State(s) about the outcome of the proceedings.

CHAPTER 4

GENERAL AND FINAL PROVISIONS*Article 14***Languages**

1. Each Member State shall state in a declaration to be deposited with the General Secretariat of the Council which languages, among the official languages of the institutions of the Union, may be used in the procedure of taking contact in accordance with Chapter 2.

2. The competent authorities may agree to use any language in the course of their direct consultations in accordance with Article 10.

*Article 15***Relation to other legal instruments and other arrangements**

1. In so far 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 16***Implementation**

Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 15 June 2012.

By 15 June 2012 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.

*Article 17***Report**

The Commission shall, by 15 December 2012, submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have complied with this Framework Decision, accompanied, if necessary, by legislative proposals.

*Article 18***Entry into force**

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

Done at Brussels, 30 November 2009.

For the Council

The President

B. ASK
