



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 28 September 2007

11895/07

**Interinstitutional File:
2007/0807 (CNS)**

COPEN 111

NOTE

from : General Secretariat
to : Working Party on Cooperation in Criminal Matters

No. prev. doc. : 10891/07 COPEN 96

Subject : Initiative presented by the Federal Republic of Germany and the French Republic with a view to the adoption by the Council of a Framework Decision on the recognition and supervision of suspended sentences and alternative sanctions
- Answers to questionnaire on 'competent authorities' (10891/07 COPEN 96)

In order to facilitate the work on the above draft Framework Decision, the Presidency submitted on 15 June 2007 a questionnaire to delegations (10891/07 COPEN 96), containing in Part A and Part B questions to which delegations were kindly requested to respond. The questionnaire is reproduced in Annex I to this note.

The General Secretariat received answers by 24 delegations, which are set out in Annex II to this note. A summary of these answers by the General Secretariat is set out in doc. 12410/07 COPEN 122.

QUESTIONS TO DELEGATIONS

**respect of the proposal for a Framework Decision on the Initiative presented
by the Federal Republic of Germany and the French Republic with a view to
the adoption by the Council of a Framework Decision on the recognition and supervision of
suspended sentences and alternative sanctions**

Part A: Member State acting as executing State

Please indicate which (kind of) authority would be responsible for acting in the below-mentioned situations under the draft Framework Decision. Please also indicate whether or not under the law of your Member State such authority would be considered to be an "judicial authority".

- 1) Which authority in your Member State would be competent to recognise a judgment (or, where applicable, a probation decision) issued in another Member State and to assume responsibility for supervising suspensory measures and alternative sanctions? [Article 7(1), Article 10(1)] Is the same authority also competent to refuse to recognise a judgment? [Article 9(1)]
- 2) Which authority in your Member State would be competent to adapt suspensory measures and alternative sanctions? [Article 7(2)]
- 3) Which authority in your Member State would have jurisdiction to take all subsequent decisions relating to the suspended sentence, conditional release or alternative sanction, such as the modification of suspensory measures and the revocation of suspension? [Article 12(1)] Is the same authority also competent to inform the issuing State of all decisions relating to the modification of the suspensory measures or alternative sanction, revocation of the suspension of the sentence, or lapsing of the suspensory measures or alternative sanction? [Article 14(1)]
- 4) Which authority in your Member State would be competent to inform the issuing State of all further decisions taken in accordance with Article 12? [Article 15(1)]

- 5) Which authority in your Member State would be competent to 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 issuing State? [Article 17(1)]

Part B: Member State acting as issuing State

In the above 5 situations, where would you as issuing Member State require a "judicial authority" to act in the executing State?

TABLE OF CONTENT**REPLY BY (DELEGATION):**

BELGIUM	6
BULGARIA	9
CZECH REPUBLIC.....	10
DENMARK.....	13
DEUTSCHLAND / GERMANY.....	15
ELLAS / GREECE.....	17
ESPANA / SPAIN.....	18
ESTONIA.....	20
FRANCE	21
HUNGARY	24
IRELAND	27
ITALY.....	29
KYPROS / CYPRUS.....	31
LATVIA	32
LITHUANIA.....	35
LUXEMBOURG	37
MALTA.....	40
NETHERLANDS	41
ÖSTERREICH / AUSTRIA.....	44
POLAND.....	46
PORTUGAL.....	47
ROMANIA.....	49

SLOVENIA..... 52
SLOVAK REPUBLIC 55
SUOMI / FINLAND..... 58
SWEDEN 60
UNITED KINGDOM..... 62

BELGIUM

Part A: Member State acting as executing State

1) Which authority in your Member State would be competent to recognise a judgment (or, where applicable, a probation decision) issued in another Member State and to assume responsibility for supervising suspensory measures and alternative sanctions? [Article 7(1), Article 10(1)] Is the same authority also competent to refuse to recognise a judgment? [Article 9(1)]

Measure	BE as executing state
Suspensory measures	Recognition/refusal of the judgement The public prosecutors' office (<i>Procureur du Roi</i>) Responsible for supervision of measures Probation Commission
Alternative sanctions	Recognition/refusal of the judgement The public prosecutors' office (<i>Procureur du Roi</i>) Responsible for supervision of measures Probation Commission
Conditional release	Recognition/refusal of the judgement The public prosecutors' office (<i>Procureur du Roi</i>) Responsible for supervision of measures <i>Tribunaux de l'application des peines</i> (TAP) (Tribunals for the execution of penalties)

2) Which authority in your Member State would be competent to adapt suspensory measures and alternative sanctions? [Article 7(2)]

Measure	BE as executing state
Suspensory measures	Court of First Instance
Alternative sanctions	Court of First Instance
Conditional release	The TAP

**3) Which authority in your Member State would have jurisdiction to take all subsequent decisions relating to the suspended sentence, conditional release or alternative sanction, such as the modification of suspensory measures and the revocation of suspension? [Article 12(1)]
Is the same authority also competent to inform the issuing State of all decisions relating to the modification of the suspensory measures or alternative sanction, revocation of the suspension of the sentence, or lapsing of the suspensory measures or alternative sanction? [Article 14(1)]**

Measure	BE as executing state
Suspensory measures	All subsequent decisions Court of First Instance (public prosecutors' office decides to bring the charges before the judge who then decides) To inform The public prosecutors' office (<i>Procureur du Roi</i>)
Alternative sanctions	All subsequent decisions The public prosecutors' office unless the punishment provided for in the judgment needs to be adapted to Belgian Law – in that case it is the Court of First Instance To inform The public prosecutors' office (<i>Procureur du Roi</i>)
Conditional release	All subsequent decisions The TAP. To inform The public prosecutors' office (<i>Procureur du Roi</i>)

4) Which authority in your Member State would be competent to inform the issuing State of all further decisions taken in accordance with Article 12? [Article 15(1)] (only supervision)

Measure	BE as executing state
Suspensory measures	The public prosecutors' office (<i>Procureur du Roi</i>)
Alternative sanctions	The public prosecutors' office (<i>Procureur du Roi</i>)
Conditional release	The public prosecutors' office (<i>Procureur du Roi</i>)

5) Which authority in your Member State would be competent to 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 issuing State? [Article 17(1)]

Measure	BE as executing state
Suspensory measures	The public prosecutors' office (<i>Procureur du Roi</i>)
Alternative sanctions	The public prosecutors' office (<i>Procureur du Roi</i>)
Conditional release	The public prosecutors' office (<i>Procureur du Roi</i>)

Part B: Member State acting as issuing State

In the above 5 situations, where would you as issuing Member State require a "judicial authority" to act in the executing State?

Answer:

This ought to be the competent authority for the execution of the penalty according to the national law of the State of execution.

BULGARIA

No answer received.

CZECH REPUBLIC

Part A: Member State acting as executing State

1) Which authority in your Member State would be competent to recognize a judgment (or, where applicable, a probation decision) issued in another Member State and to assume responsibility for supervising suspensory measures and alternative sanctions? [Article 7(1), Article 10(1)] Is the same authority also competent to refuse to recognize a judgment? [Article 9(1)]

An authority competent to recognize a judgment or to refuse the recognition should be a court, a judicial authority. Supervision of suspensory measures or alternative sanctions would then be executed by Probation and Mediation Service, an administrative authority.

2) Which authority in your Member State would be competent to adapt suspensory measures and alternative sanctions? [Article 7(2)]

The adaptation of suspensory measures and alternative sanctions, if applicable in an individual case, should be carried out by a court, a judicial authority.

Probation and Mediation Service, which is not a judicial, but an administrative authority, subsequently states more precisely the imposed suspensory measures and alternative sanctions in respect to its execution (it determines the probation program in the sense of supervision plan, i.e. number of visits of a sentenced person at the Probation and Mediation Service centre, the way of execution of imposed duties or restrictions, conditions and manner of how the execution shall be supervised etc.). However, these are not adaptations as determined in Article 7(2) but only specification of the imposed, or, where applicable, adapted suspensory measures or alternative sanctions.

**3) Which authority in your Member State would have jurisdiction to take all subsequent decisions relating to the suspended sentence, conditional release or alternative sanction, such as the modification of suspensory measures and the revocation of suspension? [Article 12(1)]
Is the same authority also competent to inform the issuing State of all decisions relating to the modification of the suspensory measures or alternative sanction, revocation of the suspension of the sentence, or lapsing of the suspensory measures or alternative sanction? [Article 14(1)]**

Competent to take all subsequent decision shall be the court, a judicial authority. It is also the court, which will provide information of all decisions (it seems logical, that the authority, which takes the decision, will also provide the information).

4) Which authority in your Member State would be competent to inform the issuing State of all further decisions taken in accordance with Article 12? [Article 15(1)]

We suppose that competent to provide the information to the issuing state would be a court, a judicial authority. The court will receive this information from the Probation and Mediation Service.

5) Which authority in your Member State would be competent to 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 issuing State? [Article 17(1)]

Considering, that the present wording of Article 17 regulates the transfer of jurisdiction, it is necessary, that the decision is taken by a court, a judicial authority.

Part B: Member State acting as issuing State

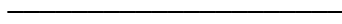
ad 1) The Czech Republic considers desirable, that the Czech decisions would be in the other member states recognized, or the recognition refused, by a judicial authority (a court) competent according to the legislation of the executing state.

ad 2) The Czech Republic may accept that the adaptation of the imposed suspensory measures and alternative sanction would be carried out by an authority competent according to the legislation of the executing state (regardless whether judicial or administrative).

ad 3) The Czech Republic considers desirable, that all subsequent decisions would be taken and information in accordance with Article 14 provided by a judicial authority competent according to the legislation of the executing state. However, it would be acceptable, if the information was provided by a competent administrative authority.

ad 4) The Czech Republic may accept, that the information according to Article 15 would be provided by an administrative authority competent according to the legislation of the execution state.

ad 5) Competent to the transfer of jurisdiction should be a judicial authority.



DENMARK

Part A

General comments

In the opinion of Denmark, the Framework Decision should allow the Member States to maintain their different judicial and administrative systems. In accordance with the principle of mutual recognition, the different organization of these systems in the Member States should be respected.

The use of the term “judicial authority” in the Framework Decision excludes the possibility for the Member States to maintain a system where an administrative authority, which is not considered to be judicial, is responsible for the supervision of suspended sentences etc. Therefore, Denmark strongly suggests that “judicial authority” is substituted with “competent authority” throughout the text of the Framework Decision.

In relation to the questions regarding which authorities will be appointed as competent authorities in Denmark according to the Framework Decision, Denmark can inform, that this issue will be dealt with in the process of implementing the Framework decision during the parliamentary process. At present, it is therefore not possible to state which authorities Denmark (finally) will appoint as competent under the Framework Decision.

The Danish Prison and Probation Service, which belong under the Ministry of Justice and consists of the Department of Prisons and Probation, a number of prisons and local probation districts, are although currently responsible for the supervision of suspended sentences etc (both in relation to suspended sentences, alternative sanction and measures relating to a probation decision).

It should be noted, that the competence to take subsequent decisions is divided between the Prison and Probation Service and the courts. Only in cases of minor infringement of the terms, the Prison and Probation Service can give the person in question a warning. If the person in question seriously neglects his or her obligations according to the specified measures, the matter has to be brought before a Court, in order for the Court to decide, if the suspended sentence shall be repealed or modified.

Part B

Denmark would not as an issuing State require a judicial authority to act in the executing State in any of the above five mentioned situations. In the opinion of Denmark, the important thing is that the basis of the suspended sentence etc. to be supervised by the executing State is a judgment.

DEUTSCHLAND / GERMANY

Part A: Member State acting as executing State

Please indicate which (kind of) authority would be responsible for acting in the below-mentioned situations under the draft Framework Decision. Please also indicate whether or not under the law of your Member State such authority would be considered to be an "judicial authority".

1) Which authority in your Member State would be competent to recognise a judgment (or, where applicable, a probation decision) issued in another Member State and to assume responsibility for supervising suspensory measures and alternative sanctions? [Article 7(1), Article 10(1)]

The local court.

Is the same authority also competent to refuse to recognise a judgment? [Article 9(1)]

Yes.

2) Which authority in your Member State would be competent to adapt suspensory measures and alternative sanctions? [Article 7(2)]

The local court.

3) Which authority in your Member State would have jurisdiction to take all subsequent decisions relating to the suspended sentence, conditional release or alternative sanction, such as the modification of suspensory measures and the revocation of suspension? [Article 12(1)]

The local court.

Is the same authority also competent to inform the issuing State of all decisions relating to the modification of the suspensory measures or alternative sanction, revocation of the suspension of the sentence, or lapsing of the suspensory measures or alternative sanction? [Article 14(1)]

Yes.

4) Which authority in your Member State would be competent to inform the issuing State of all further decisions taken in accordance with Article 12? [Article 15(1)]

The local court.

5) Which authority in your Member State would be competent to 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 issuing State? [Article 17(1)]

The local court.

Part B: Member State acting as issuing State

In the above 5 situations, where would you as issuing Member State require a "judicial authority" to act in the executing State?

We would require a judicial authority for

- the recognition of the judgment
- the refusal to recognise a judgment
- all subsequent decisions in accordance with art. 12 (1)
- the decision to transfer jurisdiction to the issuing state (art. 17 (1))

ELLAS / GREECE

Part A: Member State acting as executing State

Questions 1 to 5

The reply to all of the above questions is that the sole authorities competent in Greece are the judicial authorities.

Part B: Member State acting as issuing State

The reply to the above question is that for the present, while reserving our final position, we consider that the judicial authorities should be competent in all cases. However, we are flexible on this issue and will await the replies of the other Member States, particularly as regards the provisions in their own legislation, before adopting a definitive position

Part A: Member State acting as executing State

Please indicate which (kind of) authority would be responsible for acting in the below-mentioned situations under the draft Framework Decision. Please also indicate whether or not under the law of your Member State such authority would be considered to be a "judicial authority".

1) Which authority in your Member State would be competent to recognise a judgment (or, where applicable, a probation decision) issued in another Member State and to assume responsibility for supervising suspensory measures and alternative sanctions? [Article 7(1), Article 10(1)] Is the same authority also competent to refuse to recognise a judgment? [Article 9(1)]

Under the Spanish legal system both the recognition of a judgement and the responsibility to execute it would correspond to a judicial authority (Sentencing Judge or Court/ Parole Board Judge) Yes, the same authority is also competent to refuse to recognise a judgment.

2) Which authority in your Member State would be competent to adapt suspensory measures and alternative sanctions? [Article 7(2)]

Answered in section 3

3) Which authority in your Member State would have jurisdiction to take all subsequent decisions relating to the suspended sentence, conditional release or alternative sanction, such as the modification of suspensory measures and the revocation of suspension? [Article 12(1)] Is the same authority also competent to inform the issuing State of all decisions relating to the modification of the suspensory measures or alternative sanction, revocation of the suspension of the sentence, or lapsing of the suspensory measures or alternative sanction? [Article 14(1)]

Answer to sections 2 and 3: The jurisdiction to take decisions relating to suspensory measures and alternative sanctions, conditional release, as well as all subsequent decisions such as the modification of suspensory measures and the revocation of suspension would correspond, under our legal system, to a judicial authority.

The judicial authority adopting them would also be competent to inform the issuing State on the subsequent decisions taken relating to modification or revocation.

4) Which authority in your Member State would be competent to inform the issuing State of all further decisions taken in accordance with Article 12? [Article 15(1)]

The information would correspond to the judicial authority adopting the decision as any further decision should be adopted by a judicial authority..

5) Which authority in your Member State would be competent to 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 issuing State? [Article 17(1)]

The judicial authority would be competent to transfer jurisdiction .

Part B: Member State acting as issuing State

In the above 5 situations, where would you as issuing Member State require a "judicial authority" to act in the executing State?

In principle yes, as mutual recognition should implies a direct relation between competent authorities of the same nature.

ESTONIA

No answer received.

FRANCE

The French delegation would first like to point out that at this stage the replies given are subject to how the text might develop in the course of negotiation. The choices that might be made when the Framework Decision is transposed after its adoption must not therefore be pre-empted.

Part A: Member State acting as executing State

In France only a judicial authority can be competent to recognise a decision imposing a sentence and guarantee its enforcement. It appears particularly important that this should be the case in the context of a decision dealing with the principle of mutual recognition, which involves, for example, weighing the available grounds for refusal and the possibility or otherwise of applying them.

This authority may be either the public prosecutor's office, which has general responsibility for the enforcement of sentences, pursuant to Article 707-1 of the Code of Criminal Procedure, or a court responsible for the enforcement of sentences, more particularly the penalty enforcement judge responsible for setting the enforcement conditions, such as the granting of parole.

Given the general nature of this conferral of powers, there is no need to give more specific replies in relation to the five situations set out by the Presidency in this questionnaire.

Part B: Member State acting as issuing State

As stated above, in France the enforcement of sentences is the exclusive preserve of the judicial authorities. Hence for each of the situations mentioned in this questionnaire only a judicial authority, whether it be the public prosecutor's office or an ordinary court, will be able to issue a decision that can be transmitted for enforcement to another Member State. At present this judicial authority cannot be more precisely defined.

On the other hand, the public prosecutor's office should be responsible for transmitting decisions to the competent authorities of other Member States.

The French delegation wishes make the following additions to the response forwarded by note dated 13 July 2007, and in particular to point **B (Member State acting as issuing State)**.

As regards the nature of the authorities called on to intervene *in the executing State* to apply the Framework Decision, the French delegation notes that, according to the discussions within the Working Party, some Member States assign competence to administrative authorities to monitor and enforce the sanctions covered by the draft instrument.

On this point, the view of our delegation is that it would be inappropriate to require those Member States to change their entire system in order to entrust that competence exclusively to judicial authorities, merely for the purpose of implementing the instrument.

On the other hand, it would go against the spirit of the principle of mutual recognition for a decision issued in another Member State to be treated differently from a decision of the same kind issued domestically.

The French delegation would consequently accept Member States nominating non-judicial authorities as enforcing authorities for the application of the Framework Decision, but *only where, under their domestic legislation, such authorities already have competence for enforcing national decisions with the same purpose.*

It seems, however, that this rule as it stands must be qualified in two respects:

- consideration of grounds for refusal (Article 9): the application of Article 9 of the draft Framework Decision requires a legal assessment, which by its nature falls within the scope of the judicial authority. In addition, the consideration of grounds for refusal is linked to recognition of the foreign decision and may have no equivalent in the current legal systems of Member States. There is therefore no reason why provision should not be made, in the transposition of the Framework Decision, to reserve the exercise of those responsibilities to judicial authorities.

- direct transmission of decisions between territorially competent authorities, which facilitates the flow of exchanges, is one of the achievements of mutual recognition. That is why instruments applying the principle generally limit the central authority's intervention to the reception and transmission of the decisions ¹. The only exception to this rule, in the context of the draft Framework Decision on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (Article 2) was justified during negotiations by the specific characteristics of that kind of cooperation: placing a sentenced person in a detention facility requires an assessment of a range of criteria, such as prison occupancy rates and types of penal institution, which has to be carried out centrally. No comparable justification has been put forward during discussions on the text presently under consideration. The French delegation therefore requests at this stage, subject to any explanations that Member States might adduce on this point, that a provision restricting the scope of intervention by central authorities be added to the text.

¹ See Article 7 of the Framework Decision on the European arrest warrant and the surrender procedures between Member States, Article 4(2) of the Framework Decision on the execution in the European Union of orders freezing property or evidence, Article 4(7) of the Framework Decision on the application of the principle of mutual recognition to financial penalties and Article 3(2) of the Framework Decision on the application of the principle of mutual recognition to confiscation orders.

HUNGARY

Question A/1. Which authority in your Member State would be competent to recognise a judgment (or, where applicable, a probation decision) issued in another Member State and to assume responsibility for supervising suspensory measures and alternative sanctions? Is the same authority also competent to refuse to recognise a judgment?

According to the second sentence of section 46 (1) of the Act XXXVIII of 1996 on the international legal assistance in criminal matters (hereinafter: Nbjt.), the Metropolitan Court has jurisdiction to recognize the judgment of a foreign court and to examine whether the legal conditions of the execution of a custodial sentence, a measure involving deprivation of liberty, a forfeiture of property or a confiscation exist or not.

Therefore, it is also reasonable to establish the jurisdiction of the Metropolitan Court to the case when it has to be decided whether the conditions of the execution of a suspended sentence, a conditional release or an alternative sanction imposed in the judgment of a foreign court exist or not.

It is also the Metropolitan Court which is competent to refuse the recognition of the judgment of a foreign court.

Question A/2. Which authority in your Member State would be competent to adapt suspensory measures and alternative sanctions?

According to section 48 (2) of Nbjt., if the punishment or measure imposed by a foreign court is incompatible with the Hungarian law, the Hungarian court shall establish the punishment or measure applied in accordance with the Hungarian law in a way that it conforms to the punishment or measure that imposed by a foreign court in the greatest extent possible and shall order the execution of this punishment or measure in the case the execution is demanded. (Here the court means the Metropolitan Court.)

Question A/3. Which authority in your Member State would have jurisdiction to take all subsequent decisions relating to the suspended sentence, conditional release or alternative sanction, such as the modification of suspensory measures and the revocation of suspension? Is the same authority also competent to inform the issuing State of all decisions relating to the modification of the suspensory measures or alternative sanction, revocation of the suspension of the sentence, or lapsing of the suspensory measures or alternative sanction?

These decisions come under the jurisdiction of a court. In our opinion, currently there is no need to determine exactly the Hungarian judicial authorities acting in the future. It is still controversial, whether the Metropolitan Court has jurisdiction to take all subsequent decisions, and that whether for example the contribution of the Ministry of Justice and Law Enforcement is needed for the communication with the judicial authority of a foreign state. (The Metropolitan Court has special professional knowledge, practice and organizational background which may guarantee the appropriate conduct of the proceedings based on the Framework Decision.)

It is reasonable, that the authority taking all subsequent decisions would be competent to inform the issuing state of these decisions.

Question A/4. Which authority in your Member State would be competent to inform the issuing State of all further decisions taken in accordance with Article 12?

See question A/3 above. Further reconciliation is needed in this question too, but regarding question A/3, it is reasonable to establish the jurisdiction of the Metropolitan Court.

Question A/5. Which authority in your Member State would be competent to 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 issuing State?

See question A/4 above.

Part B.

In the above 5 situations, where would you as issuing Member State require a "judicial authority" to act in the executing State?

If Hungary designates a court for the recognition of a foreign judgment, and for the supervision of alternative sanctions, suspended sentences and conditional sentences imposed by a foreign court, then it is reasonable that a court would act in the executing state in connection with the recognition of the Hungarian judgment, the supervision of alternative sanctions, suspended sentences or conditional sentences imposed by a Hungarian court.

IRELAND

Part A: Member State acting as executing State

1. The judgements dealt with by the draft Framework Decision relate to court decisions. It would be necessary, for the purpose of implementation of the draft FD, to establish a Central Authority in Ireland which would receive judgements from issuing States and would forward them to the relevant court, i.e. court exercising criminal jurisdiction where the offender will reside, for recognition.

The Probation Service is the Authority in Ireland with responsibility for supervising offenders in the community and implementing the measures detailed in community (i.e. alternative) sanctions. Once the court recognises the judgement, the Probation Service will undertake the required supervision.

The Central Authority would be competent to examine the judgements received in the light of Art. 9 and make decisions to refuse to recognise.

2. The Central Authority would be the appropriate body to examine judgements received and make any adaptations necessary before forwarding on as described above.

3. In respect of alternative sanctions and suspended sentences, the court recognising the judgement would be the competent authority to take all subsequent decisions. The same Authority would have the responsibility to inform the issuing State of these decisions. In respect of conditional release, the Probation Service would propose any modifications of the measures to the Central Authority who would decide on the issue. Revocation of release would be a matter for the Irish Prison Service, in consultation with the Probation Service. The Central Authority would inform the issuing State of these decisions.

4. The Central Authority would be competent to inform the competent authority in the issuing State of any breach or finding arrived at in the executing State. However it should be noted that Ireland and Sweden are currently preparing proposals on Art. 12(1a) & (2) at the Presidency's invitation. These proposals, if accepted, will bring consequential changes to Art. 15(1).

5. Where the sentenced person absconds, the court or Probation Service, as appropriate, would transfer jurisdiction back to the executing State via the Central Authority.

Part B: Member State acting as issuing State.

1-5. Where decisions are taken by Irish courts, and the sentenced person is returning to their home State, these decisions should be transmitted to the appropriate authority(ies) under the law of the executing State that has (have) responsibility for recognition and/or implementation of the judgements.

1-6. Similarly for releases from custody, these decisions would be transmitted to the appropriate authority(ies) for ordering and/or supervising such releases under the law of the executing State.

ITALY

Part A: Member State acting as executing State

Please indicate which (kind of) authority would be responsible for acting in the following situations under the draft Framework Decision. Please also indicate whether or not under the law of your Member State such authority would be considered to be a "judicial authority".

1) Which authority in your Member State would be competent to recognise a judgment (or, where applicable, a probation decision) issued in another Member State and to assume responsibility for supervising suspensory measures and alternative sanctions? [Article 7(1), Article 10(1)]. Is the same authority also competent to refuse to recognise a judgment? [Article 9(1)]

In Italy, the sole authority competent to recognise a judgment (including a probation decision) issued in another Member State is the judicial authority. The same judicial authority is also competent to examine whether there are grounds for refusing to recognise a judgment.

2) Which authority in your Member State would be competent to adapt suspensory measures and alternative sanctions? [Article 7(2)]

Under Italian law the authority competent to apply suspension of a sentence and alternative sanctions is the judicial authority.

At the stage when the case is being examined, the judge in the proceedings may, when handing down a custodial sentence and where provided for under the law, order that the sentence be suspended.

At the stage when the sentence is being executed, alternative sanctions may be applied, where provided for under the law. In that case, competence lies with the supervisory judiciary. The supervisory judiciary consists of two judicial bodies: the Supervisory Magistrate, a single-person body, and the Supervisory Court, a collegiate body.

- 3) **Which authority in your Member State would have jurisdiction to take all subsequent decisions relating to the suspended sentence, conditional release or alternative sanction, such as the modification of suspensory measures and the revocation of suspension? [Article 12(1)] Is the same authority also competent to inform the issuing State of all decisions relating to the modification of the suspensory measures or alternative sanction, revocation of the suspension of the sentence, or lapsing of the suspensory measures or alternative sanction? [Article 14(1)]**

In Italy only judicial authorities are competent to adopt measures relating to the suspended sentence, conditional release or alternative sanctions. Depending on the case, this could be the judge (court) responsible for the examination proceedings or the supervisory magistrate (see reply to (2)).

- 4) **Which authority in your Member State would be competent to inform the issuing State of all further decisions taken in accordance with Article 12? [Article 15(1)]**

It is possible to reply to this question only in hypothetical terms: it could be the judicial authority itself or the Minister for Justice acting as a central authority, depending on what is laid down in the rules implementing the framework decision.

- 5) **Which authority in your Member State would be competent to 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 issuing State? [Article 17(1)]**

See reply to (4).

Part B: Member State acting as issuing State

In the above 5 situations, where would you as issuing Member State require a "judicial authority" to act in the executing State?

In the situations indicated in points 1, 2 and 3.

KYPROS / CYPRUS

Part A: Member State acting as executing State

Questions 1 to 5

With regard to the above questions, the competent authorities in Cyprus are the judicial authorities.

Part B: Member State acting as issuing State

In relation to the above questions, we consider that in all cases the judicial authorities should be competent, in order to ensure the impartiality and independence which is guaranteed by the judiciary.

However, we are prepared to be flexible and in a spirit of cooperation, we could enter into discussions on a compromise text based on what has been said by the other delegations and taking into account their current national legislation.

LATVIA

With reference to Council document No. 10891/07 COPEN 96 the Latvian delegation forwards the answers to the questionnaire as regards the authorities that should be competent to act in accordance with the Framework Decision on the recognition and supervision of suspended sentences and alternative sanctions.

Part A: Member State acting as executing State

Please indicate which (kind of) authority would be responsible for acting in the below-mentioned situations under the draft Framework Decision. Please also indicate whether or not under the law of your Member State such authority would be considered to be an "judicial authority".

1) Which authority in your Member State would be competent to recognise a judgment (or, where applicable, a probation decision) issued in another Member State and to assume responsibility for supervising suspensory measures and alternative sanctions? [Article 7(1), Article 10(1)] Is the same authority also competent to refuse to recognise a judgment? [Article 9(1)]

In Latvia the competent authority to recognise and to refuse to recognise a judgment would be a court and it is a „judicial authority”. In Latvia the court can recognize only a decision of a judicial authority of another Member State.

The competent authority in Latvia to supervise suspensory measures is the State Probation Service. It is not a judicial authority.

Any decision will go to the court for recognition according to the national law of Latvia and then it will be handed over to the State Probation Service for supervision.

2) Which authority in your Member State would be competent to adapt suspensory measures and alternative sanctions? [Article 7(2)]

Only the court would be competent to adapt suspensory measures and alternative sanctions in Latvia.

3) Which authority in your Member State would have jurisdiction to take all subsequent decisions relating to the suspended sentence, conditional release or alternative sanction, such as the modification of suspensory measures and the revocation of suspension? [Article 12(1)] Is the same authority also competent to inform the issuing State of all decisions relating to the modification of the suspensory measures or alternative sanction, revocation of the suspension of the sentence, or lapsing of the suspensory measures or alternative sanction? [Article 14(1)]

In Latvia, only the court would have jurisdiction to take subsequent decisions.

The same authority would be competent to inform the issuing State of all decisions relating to the modification of suspensory measures. The State Probation Service would have the competence to inform the court in Latvia about breach of suspensory measures and to request the court to modify the suspensory measures.

4) Which authority in your Member State would be competent to inform the issuing State of all further decisions taken in accordance with Article 12? [Article 15(1)]

The court which has taken the decision.

5) Which authority in your Member State would be competent to 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 issuing State? [Article 17(1)]

The court.

Part B: Member State acting as issuing State

In the above 5 situations, where would you as issuing Member State require a "judicial authority" to act in the executing State?

The authority which recognises the judgement must be a judicial authority.

LITHUANIA

Part A: Member State acting as executing State

1) Within the framework of the applicable laws of the Republic of Lithuania, the court exclusively will be able to recognize the judgment (or probation sentence) passed in other member-state and to assume responsibility for supervision of implementation of sentence enforcement suspension measures and alternative sanctions.

Yes, the same legal institution (court) shall be competent to refuse judgment recognition.

2) The court exclusively shall be competent to take sentence suspension measures and alternative sanctions.

3) The court exclusively shall be entitled to make all further resolutions related to the suspended sentence, provisory parole or alternative sanction; also the court shall be competent to inform the judgment passing country regarding the resolutions related to replacement of sentence suspension measures or implementation of sentence enforcement suspension measures with expiry or an alternative sanction.

4) The court exclusively shall be competent to inform the judgment passing country regarding all further resolutions taken according to Article 12.

5) The court exclusively shall be competent to hand over the jurisdiction regarding implementation of sentence enforcement suspension measures supervision and alternative sanctions and regarding all further resolutions related to sentence enforcement to the judgment passing country.

Part B: Member State acting as issuing State

The present position of Lithuania, acting as issuing State, lies in the request that, in the five defined situations, only the courts would act (make respective resolutions in relation to the provisions of this draft fundamental resolution of European Council) in the executive state. Otherwise, this would be nonsense if the judgment of the court in our country was not recognized by the probation council or other analogous institution of other Member State.

LUXEMBOURG

Part A: Member State acting as executing State

- 1) Which authority in your Member State would be competent to recognise a judgment (or, where applicable, a probation decision) issued in another Member State and to assume responsibility for supervising suspensory measures and alternative sanctions? [Article 7(1), Article 10(1)] Is the same authority also competent to refuse to recognise a judgment? [Article 9(1)]

In Luxembourg, the “*procureur général d’Etat*” (prosecutor general) would be competent to recognise a judgment (or, where applicable, a probation decision) issued in another Member State and assumes responsibility for supervising suspensory measures and alternative sanctions. The same authority is also competent to refuse to recognise a judgment.

The “*procureur général d’Etat*” (prosecutor general) would be acting as a judicial authority in this case.

- 2) Which authority in your Member State would be competent to adapt suspensory measures and alternative sanctions? [Article 7(2)]

The “*procureur général d’Etat*” (prosecutor general) would be also competent to adapt suspensory measures and alternative sanctions.

The “*procureur général d’Etat*” (prosecutor general) would be acting as a judicial authority in this case.

3) Which authority in your Member State would have jurisdiction to take all subsequent decisions relating to the suspended sentence, conditional release or alternative sanction, such as the modification of suspensory measures and the revocation of suspension? [Article 12(1)] Is the same authority also competent to inform the issuing State of all decisions relating to the modification of the suspensory measures or alternative sanction, revocation of the suspension of the sentence, or lapsing of the suspensory measures or alternative sanction? [Article 14(1)]

The “*procureur général d’Etat*” (prosecutor general) would be the authority in Luxembourg to take all subsequent decisions relating to the suspended sentence, conditional release or alternative sanction. The same authority is competent to inform the issuing State of all decisions relating to the modification of the suspensory measures or alternative sanction. Considering that national procedural rules shall be applicable, the same authority must, in case of revocation of the suspension granted by the issuing State, request a competent judicial authority (criminal court) to pronounce the revocation.

The “*procureur général d’Etat*” (prosecutor general) and the criminal court would be acting as separate judicial authorities.

4) Which authority in your Member State would be competent to inform the issuing State of all further decisions taken in accordance with Article 12? [Article 15(1)]

The “*procureur général d’Etat*” (prosecutor general) will inform the issuing State of all further decisions taken in accordance with Article 12.

The “*procureur général d’Etat*” (prosecutor general) would be acting as a judicial authority in this case.

5) Which authority in your Member State would be competent to 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 issuing State? [Article 17(1)]

The “*procureur général d’Etat*” (prosecutor general) would be competent to 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 issuing State.

The “*procureur général d’Etat*” (prosecutor general) prosecutor would be acting as a judicial authority in this case.

Part B: Member State acting as issuing State

In the above 5 situations, where would you as issuing Member State require a "judicial authority" to act in the executing State?

Luxembourg as issuing Member State would require in all 5 situations a “judicial authority” to act in the executing State, subject to this authority to determine, according to its own procedural rules, the authority that would have competence in all 5 situations (see question 3 in particular)..

MALTA

No answer received.

NETHERLANDS

General remarks

In the Dutch legal system the public prosecutions department and the Minister of Justice are responsible for the execution of sentences. The Minister of Justice is responsible for the execution of custodial sentences and measures involving deprivation of liberty. The public prosecutions department is responsible for the supervision of conditions imposed in a suspended sentence and (in the future) for the supervision of conditions imposed in connection with conditional release. The public prosecutions department is also responsible for the execution of the independent, alternative sanction of community service and for the execution of fines.

Matters concerning the transfer of the execution of foreign sentences are a shared responsibility between the Minister of Justice, the public prosecutions department and the judiciary, depending on the sanction or measure involved.

In the light of the proposed EU instruments on the mutual recognition of criminal sentences the matter of the division of responsibility for the recognition and execution of foreign sentences is under reconsideration. At present no decision has been taken yet on the designation of the competent authorities.

Furthermore, discussions on the draft framework decision on suspended sentences and alternative sanctions are on-going and many problems are still unresolved.

For these reasons, it is not possible to give any definite or precise answer to the question which authority *would be* competent under the framework decision. The answers given below are therefore without prejudice to any future decision on competent authorities.

Part A: Member State acting as executing State

1) Probably a shared responsibility between the administration (Minister of Justice), the public prosecutions department and the judiciary. It would be more likely that the recognition of a judgement would be the competence of the judiciary of the public prosecutions department, whereas in case of recognition of a probation order it would be likely to be a matter for the public prosecutions department in conjunction with the Minister if Justice.

2) Probably the public prosecutions department or the judiciary.

3) Competent to modify conditions imposed in a suspended sentence is the sentencing court. Competent to modify conditions imposed in connection with conditional release is the public prosecutor.

In case the sentenced person does not comply with the conditions imposed in a suspended sentence, the execution of the suspended custodial sentence may be demanded by the public prosecutor. The criminal court is competent to decide on the public prosecutor's demand.

In case a sentenced person does not perform properly the community service imposed, detention may be ordered by the public prosecutor. The sentenced person may object against the decision of the public prosecutor with the court that imposed the community service. The court may then change the public prosecutor's decision.

The authority competent to inform the issuing State will probably be an administrative authority (most likely the Minister of Justice).

4) Administrative authority (under the framework decision, probably the Minister of Justice).

5) Administrative authority (under the framework decision, probably the Minister of Justice).

The public prosecutions service may be considered a "judicial authority". The Minister of Justice obviously may not be considered a "judicial authority".

Part B. Member State acting as an issuing State

In general, the Netherlands would not require a “judicial authority” (under the assumption that this refers to a court of public prosecutions department) to act in the executing State in any of the 5 situations.

ÖSTERREICH / AUSTRIA

Part A: Member State acting as executing State

Please indicate which (kind of) authority would be responsible for acting in the below-mentioned situations under the draft Framework Decision. Please also indicate whether or not under the law of your Member State such authority would be considered to be a "judicial authority".

1) Which authority in your Member State would be competent to recognise a judgment (or, where applicable, a probation decision) issued in another Member State and to assume responsibility for supervising suspensory measures and alternative sanctions? [Article 7(1), Article 10(1)]

Answer: the Court of first instance (*Gerichtshof erster Instanz*).

Is the same authority also competent to refuse to recognise a judgment? [Article 9(1)].

Answer: yes.

2) Which authority in your Member State would be competent to adapt suspensory measures and alternative sanctions? [Article 7(2)].

Answer: the Court of first instance (*Gerichtshof erster Instanz*).

3) Which authority in your Member State would have jurisdiction to take all subsequent decisions relating to the suspended sentence, conditional release or alternative sanction, such as the modification of suspensory measures and the revocation of suspension? [Article 12(1)]

Answer: the Court of first instance (*Gerichtshof erster Instanz*), in some cases also the district court (*Bezirksgericht*).

Is the same authority also competent to inform the issuing State of all decisions relating to the modification of the suspensory measures or alternative sanction, revocation of the suspension of the sentence, or lapsing of the suspensory measures or alternative sanction? [Article 14(1)].

Answer: Yes.

4) Which authority in your Member State would be competent to inform the issuing State of all further decisions taken in accordance with Article 12? [Article 15(1)].

Answer: the Court of first instance (*Gerichtshof erster Instanz*)/district court (*Bezirksgericht*).

5) Which authority in your Member State would be competent to 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 issuing State? [Article 17(1)].

Answer: the Court of first instance (*Gerichtshof erster Instanz*).

Part B: Member State acting as issuing State

In the above 5 situations, where would you as issuing Member State require a "judicial authority" to act in the executing State?

Answer: at least in the cases under questions 1-3, the decision should be taken by a judicial authority in the executing State.

POLAND

For all cases described in the questionnaire, the competent authorities in Poland will be the criminal courts (in particular the court in which territorial jurisdiction the person under probation permanently resides).

PORTUGAL

Part A: Member State acting as executing State

Please indicate which (kind of) authority would be responsible for acting in the below-mentioned situations under the draft Framework Decision. Please also indicate whether or not under the law of your Member State such authority would be considered to be an "judicial authority".

1) Which authority in your Member State would be competent to recognise a judgment (or, where applicable, a probation decision) issued in another Member State and to assume responsibility for supervising suspensory measures and alternative sanctions? [Article 7(1), Article 10(1)] Is the same authority also competent to refuse to recognise a judgment? [Article 9(1)]

Judicial authority (Court) which will also be competent to refuse the recognition of the judgement on the basis of article 9(1).

2) Which authority in your Member State would be competent to adapt suspensory measures and alternative sanctions? [Article 7(2)]

Judicial authority (Court).

3) Which authority in your Member State would have jurisdiction to take all subsequent decisions relating to the suspended sentence, conditional release or alternative sanction, such as the modification of suspensory measures and the revocation of suspension? [Article 12(1)] Is the same authority also competent to inform the issuing State of all decisions relating to the modification of the suspensory measures or alternative sanction, revocation of the suspension of the sentence, or lapsing of the suspensory measures or alternative sanction? [Article 14(1)]

Judicial authority (Court) will be competent in all of these situations.

4) Which authority in your Member State would be competent to inform the issuing State of all further decisions taken in accordance with Article 12? [Article 15(1)]

Judicial authority (Court).

5) Which authority in your Member State would be competent to 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 issuing State? [Article 17(1)]

Judicial authority (Court).

Part B: Member State acting as issuing State

In the above 5 situations, where would you as issuing Member State require a "judicial authority" to act in the executing State?

In the situations 1, 2 and 3.

However, in the situations 4 and 5 the Portuguese delegation can envisage to accept other authorities.

ROMANIA

Part A: Member State acting as executing State

Please indicate which (kind of) authority would be responsible for acting in the below-mentioned situations under the draft Framework Decision. Please also indicate whether or not under the law of your Member State such authority would be considered to be an "judicial authority".

1) Which authority in your Member State would be competent to recognise a judgment (or, where applicable, a probation decision) issued in another Member State and to assume responsibility for supervising suspensory measures and alternative sanctions? [Article 7(1), Article 10(1)] Is the same authority also competent to refuse to recognise a judgment? [Article 9(1)]

Answer: In Romania, only a judicial authority (a court) is competent to recognise a judgment (or, where applicable, a probation decision) issued in another Member State and to assume responsibility for supervising suspensory measures and alternative sanctions.

The same authority is also competent to refuse to recognise a judgment. But the court is informed by the Ministry of Justice about this solicitation.

2) Which authority in your Member State would be competent to adapt suspensory measures and alternative sanctions? [Article 7(2)]

Answer: The court having the competence to recognise a judgment (or, where applicable, a probation decision) issued in another Member State and to assume responsibility for supervising suspensory measures and alternative sanctions, is also competent to adapt suspensory measures and alternative sanctions.

3) Which authority in your Member State would have jurisdiction to take all subsequent decisions relating to the suspended sentence, conditional release or alternative sanction, such as the modification of suspensory measures and the revocation of suspension? [Article 12(1)] Is the same authority also competent to inform the issuing State of all decisions relating to the modification of the suspensory measures or alternative sanction, revocation of the suspension of the sentence, or lapsing of the suspensory measures or alternative sanction? [Article 14(1)]

Answer: The first court which rendered the sentenced or another court would have jurisdiction to take all subsequent decisions relating to the suspended sentence, conditional release or alternative sanction, such as the modification of suspensory measures and the revocation of suspension.

This court informs the Ministry of Justice of all decisions relating to the modification of the suspensory measures or alternative sanction, revocation of the suspension of the sentence, or lapsing of the suspensory measures or alternative sanction and the Ministry of Justice informs the issuing State of all these decisions accordingly.

4) Which authority in your Member State would be competent to inform the issuing State of all further decisions taken in accordance with Article 12? [Article 15(1)]

Answer: The court which recognised the judgement will inform the Ministry of Justice and the latter will inform the issuing State of all further decisions taken in accordance with Article 12.

5) Which authority in your Member State would be competent to 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 issuing State? [Article 17(1)]

Answer: The court which recognised the judgement is competent to transfer the 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 issuing State.

Part B: Member State acting as issuing State

In the above 5 situations, where would you as issuing Member State require a "judicial authority" to act in the executing State?

Answer: As issuing Member Stat, Romania will require in all the situations mentioned above a "judicial authority" to act in the executing State.

SLOVENIA

Part A: Member State acting as executing State

Please indicate which (kind of) authority would be responsible for acting in the below-mentioned situations under the draft Framework Decision. Please also indicate whether or not under the law of your Member State such authority would be considered to be a "judicial authority".

1) Which authority in your Member State would be competent to recognise a judgment (or, where applicable, a probation decision) issued in another Member State and to assume responsibility for supervising suspensory measures and alternative sanctions? [Article 7(1), Article 10(1)] Is the same authority also competent to refuse to recognise a judgment? [Article 9(1)]

In accordance with the existing system (provisions of the Criminal Procedure Code that regulates also enforcement of foreign judgments) district courts have jurisdiction for recognition and enforcement of foreign judicial decisions or for refusal of recognition. The authority responsible for supervision of suspensory measures and alternative sanctions would depend on the concrete measure in question (social service authority, police...).

Recognition of other decisions (i.e. decisions issued by non-judicial authorities) is not regulated at present in the existing legislation, therefore also not competent authorities or procedure for their recognition and/or enforcement.

2) Which authority in your Member State would be competent to adapt suspensory measures and alternative sanctions? [Article 7(2)]

District courts.

3) Which authority in your Member State would have jurisdiction to take all subsequent decisions relating to the suspended sentence, conditional release or alternative sanction, such as the modification of suspensory measures and the revocation of suspension? [Article 12(1)] Is the same authority also competent to inform the issuing State of all decisions relating to the modification of the suspensory measures or alternative sanction, revocation of the suspension of the sentence, or lapsing of the suspensory measures or alternative sanction? [Article 14(1)]

In national proceedings territorially competent courts (either county or district courts) have jurisdiction for the revoking of suspended sentences and suspended sentences with custodial supervision and for modification of suspensory measures. Also in cases of taking over the supervision of suspensory measures on the basis of foreign judgments courts would have jurisdiction for modification of suspensory measures and revoking of suspended sentences.

Competent authorities to take decisions on revocation of conditional release in national proceedings are also courts. That means that they would take subsequent decisions on conditional release also for foreign judgements.

As in national system of Slovenia the system of alternative sanctions imposed by courts does not exist, Slovenia would not take over jurisdiction for subsequent decisions in cases where the foreign judgment would not include alternative to the alternative sanction in cases of breach of the latter.

District courts would be competent to inform the competent authority of the issuing state of all decisions directly.

4) Which authority in your Member State would be competent to inform the issuing State of all further decisions taken in accordance with Article 12? [Article 15(1)]

District courts would be competent to inform the competent authority of the issuing state of all decisions directly.

5) Which authority in your Member State would be competent to 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 issuing State?

[Article 17(1)]

As all above mentioned situations are not at present regulated in the Slovene legal system, it is difficult to give the exact answer at present. Taking into consideration the fact that court would be competent to decide on recognition of foreign judgement and supervision of suspensory measures, the court would probably also be competent to decide on the transfer of jurisdiction in cases regulated in Art. 17/1.

Part B: Member State acting as issuing State

In the above 5 situations, where would you as issuing Member State require a "judicial authority" to act in the executing State?

Final position on that question will be given after the discussion on different system in member states with regard to authorities competent to decide on revocation of suspended sentences, adoption of suspensory measures etc.

SLOVAK REPUBLIC

General comment:

At this stage of negotiations the Slovak delegation considers premature to provide for any binding statements concerning the nature of authorities which will be authorized to make decisions on the basis of this draft Framework Decision. The final decisions will depend on the mechanism established by the Framework Decision.

Part A: Member State acting as executing State

Please indicate which (kind of) authority would be responsible for acting in the below-mentioned situations under the draft Framework Decision. Please also indicate whether or not under the law of your Member State such authority would be considered to be an "judicial authority".

1) Which authority in your Member State would be competent to recognise a judgment (or, where applicable, a probation decision) issued in another Member State and to assume responsibility for supervising suspensory measures and alternative sanctions? [Article 7(1), Article 10(1)] Is the same authority also competent to refuse to recognise a judgment? [Article 9(1)]

The courts will be /in any case/ responsible for the recognition of the judgment issued in another member state. Courts will be competent to refuse to recognize judgment as well. However, in the cases of Article 9 para 1 lit a) the Ministry of Justice might be the competent authority to refuse to recognise a judgment.

2) Which authority in your Member State would be competent to adapt suspensory measures and alternative sanctions? [Article 7(2)]

The adaptation of any measures will be in the competence of the court.

3) Which authority in your Member State would have jurisdiction to take all subsequent decisions relating to the suspended sentence, conditional release or alternative sanction, such as the modification of suspensory measures and the revocation of suspension? [Article 12(1)] Is the same authority also competent to inform the issuing State of all decisions relating to the modification of the suspensory measures or alternative sanction, revocation of the suspension of the sentence, or lapsing of the suspensory measures or alternative sanction? [Article 14(1)]

Courts will be competent for taking the subsequent decisions. As regards the obligation to inform, the solution is not yet found. It might be the court or authority responsible for the enforcement of respective sanction or measure, or the Ministry of Justice on the basis of the information of any of these authorities. The purpose of the Framework Decision is to make co-operation more effective. It is believed, however, that the amount of administrative responsibilities will not increased for judges and courts.

4) Which authority in your Member State would be competent to inform the issuing State of all further decisions taken in accordance with Article 12? [Article 15(1)]

The solutions outlined in the response to the question 3 are considered relevant also in this case.

5) Which authority in your Member State would be competent to 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 issuing State? [Article 17(1)]

The Slovak Republic does not support the idea of the obligation to transfer the jurisdiction. Its reservation to this point was raised repeatedly. However it is not reflected in a document. The Slovak Republic also raised its concerns about the possibility of a misuse of this Article. Therefore the Slovak Republic is not in a position to respond the question.

Part B: Member State acting as issuing State

In the above 5 situations, where would you as issuing Member State require a "judicial authority" to act in the executing State?

We would require a judicial authority to recognize a judgment or to refuse its recognition, except of cases described in Article 9(1)(a).

SUOMI / FINLAND

Solutions on various questions, including the issue on competent authorities, will be analysed during the implementation stage. Therefore answers given at this stage of negotiations, are preliminary.

In general the Finnish delegation has the view that, since legal systems of Member States relating to measures covered in this Framework Decision differ considerably, it is necessary, for proper functioning of cooperation, that the FD is flexible and legal systems of various Member States are respected.

Part A: Member State acting as executing State

- 1) In the Finnish system the Criminal Sanctions Agency (*Rikosseuraamusvirasto*), which belongs to the organisation of the Ministry of Justice, would be the competent authority to have responsibility on supervision of the suspensory measures. Concrete probation measures as well as the enforcement of alternative sanctions would be carried out by local probation authorities, as in cases where probation had been ordered in Finland. As yet we have not taken the final position on the question which authority would be competent to decide upon various grounds for refusal. In any case there would be a possibility for an appeal to a court.
- 2) Most likely it would be the Criminal Sanctions Agency. But, depending on the adaptable measure, in some cases it might also be a court.
- 3) As in domestic cases, if obligations are breached, supervising authorities would have to make a report to a public prosecutor, who then, subject to the conditions specified in our national law, would take the case to a court. On the other hand, Finland would most likely make use of the possibility allowed in paragraph 3 of Article 12, not to take decisions on subsequent measures in specific cases (to allow flexibility also in cases, since due to differences between legal systems it might turn difficult to apply domestic provisions applicable in these cases as such to foreign convictions).

- 4) It would be the Criminal Sanctions Agency.
- 5) It would be the Criminal Sanctions Agency.

Part B: Member State acting as issuing State

There seems to be broad support, shared by the Finnish delegation, for the view that there should always be a judgment as a basic decision, establishing that a natural person has committed a criminal offence. As to the question which authority issues a decision on probation or conditional release, systems of various Member States differ a lot. In cases Finland would be the issuing State, our competent authority to decide upon probation measures, would be the Criminal Sanctions Agency, or in most cases where a person would be conditionally released, a prison director, who acts in cooperation with probation authorities. Alternative sanctions in Finland are always determined by a court.

Against this background as well as taken into account our general view that it should be possible to cooperate while respecting different legal systems of Member States, we would not as an issuing State require that the decision in the executing State should be taken by a judicial authority.

SWEDEN

Part A

The issue of which authorities that will be appointed as competent under the Framework Decision on the recognition and supervision of suspended sentences and alternative sanctions, will in Sweden be dealt with thoroughly in the process of implementing the Framework Decision. Due to the parliamentary process that is required for the adoption and implementation of the Framework Decision it is not possible for Sweden, at this stage, to state which authorities that will be appointed under the Framework decision. However, Sweden will provide a few general comments.

It is in our view of great importance that the Framework Decision allows the Member States to maintain their different judicial and administrative systems. In accordance with the principle of mutual recognition, the Member States should respect the different organisation of these systems and the division of labour between various domestic authorities that may exist. This is of particular importance for this Framework Decision which takes particular aim at the enforcement, rather than the issuance, of the decision in question. Apart from a smooth incorporation into the existing systems, the Member States may also wish to assign different authorities depending upon their particular needs with respect to adaptation of the decision into the domestic system. That would imply that no requirement of judicial authority should be regulated in this Framework Decision. Therefore, Sweden strongly suggests that the term judicial authority is substituted by the term competent authority throughout the text of the Framework Decision.

The Swedish Prison and Probation Service is currently the authority that implement probation sentences and instructions for community services and supervise conditionally released persons. The Supervision Board, the chairman and vice chairman being judicial officers, has the authority to warn an offender who does not comply with his or her obligations. Furthermore, the Supervision Board may under certain limitations modify the sentence. If the sentenced person seriously neglects his or her obligations the matter should be brought before the court. It is only the court that can revoke the sentence.

Part B

The Swedish position is not to require that an authority acting in the executing State is considered to be a judicial authority.

UNITED KINGDOM

England and Wales, Northern Ireland and Scotland

Part A: Member State acting as executing State

1) A central administrative authority would be competent to recognise or refuse to recognise a judgment.

Probation ¹ would assume the responsibility for supervising the relevant measures.

2) A central administrative authority ², in liaison with probation as appropriate, would be competent to adapt measures with regard to our domestic legislation.

3) A judicial authority (the courts) would take subsequent decisions relating to the modification of suspensory measures in relation to suspended sentences and alternative sanctions, if the latter were included in the scope of the instrument.

Probation would be responsible for subsequent decisions relating to conditional release, for example recall to prison for breach of licence conditions.

4) A central administrative authority would be competent to inform the issuing State of all further decisions taken in accordance with Article 12.

5) A central administrative authority would be competent to transfer jurisdiction back to the issuing State under Article 17.

¹ In Scotland, social work services

² We would establish separate central authorities for each of England and Wales, Scotland and Northern Ireland

Part B: Member State acting as issuing State

We would expect the executing State to act in accordance with their domestic procedures and to make their own decision as to what the relevant competent authority is for the purposes of the various Articles under this instrument. It is not for the issuing State to impose requirements on the executing State.
