



**COUNCIL OF
THE EUROPEAN UNION**

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COPEN 7

NOTE

from :	Presidency
to :	JAI Counsellors
no. Initiative :	6480/07 COPEN 22
no. Prev. doc. :	16573/07 COPEN 183
Subject:	INITIATIVE of the Federal Republic of Germany and of the French Republic with a view to adopting a Council Framework Decision on the recognition and supervision of suspended sentences, alternative sanctions and conditional sentences

On 7 December 2007 the Council (Justice and Home Affairs) reached a general approach on the text of the above draft Framework Decision ¹.

The Council instructed its preparatory bodies to examine and finalise the recitals, as well as the certificate and the form, so as to achieve final adoption of the text as soon as possible.

¹ 16374/07 COPEN 180

With a view to facilitating further work, the Presidency prepared an updated version of the recitals, as well as of the certificate and the form, which was submitted to delegations for comments under 16573/07 COPEN 183. In this context, the Presidency recalled that recitals 8 to 22 form part of the package on which the Council reached a general approach and that therefore in principle no substantive changes should be made to these recitals ².

On the basis of the comments received from delegations, the Presidency and Council General Secretariat prepared a revised text, which is set out in the Annex.

Modifications in respect of the previous version in 16573/07 COPEN 183 have been marked by underlined characters and (...).

² See also the cover note of 16374/07 COPEN 180.

Council Framework Decision

of

**on the application of the principle of mutual recognition to judgments and probation decisions
with a view to the supervision of probation measures and alternative sanctions**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the initiative of the Federal Republic of Germany and of the French Republic ³,

Having regard to the Opinion of the European Parliament ⁴,

RECITALS

Whereas:

- (1) The European Union has set itself the objective of developing an area of freedom, security and justice. This presupposes that there is an understanding of freedom, security and justice on the part of the Member States which is identical in its essential elements and based on the principles of freedom, democracy, respect for human rights and fundamental freedoms, as well as the rule of law.

³ OJ C147 of 30.06.2007, p. 1

⁴ Opinion of 25 October 2007 (reference to be inserted)

- (2) The aim of police and judicial cooperation in the European Union is to provide a high degree of security for all citizens. One of the cornerstones for this is the principle of mutual recognition of judicial decisions, established in the conclusions of the European Council held in Tampere on 15 and 16 October 1999 and reaffirmed in the Hague Programme of 4 and 5 November 2004 for strengthening freedom, security and justice in the European Union ⁵. In the programme of measures of 29 November 2000 adopted for the purpose of implementing the principle of mutual recognition of decisions in criminal matters, the Council pronounced itself in favour of cooperation in the area of suspended sentences and parole.
- (3) Council Framework Decision 2007/.../JHA of xx.xx.xxxx* 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 ⁶ concerns the mutual recognition and enforcement of custodial sentences or measures involving deprivation of liberty. Further common rules are required, in particular where non-custodial measures involving the supervision of probation measures or alternative sanctions have been imposed in respect of a person who does not have his legal and ordinary residence in the State of conviction. (...)
- (4) The Council of Europe Convention of 30 November 1964 on the Supervision of Conditionally Sentenced or Conditionally Released Offenders has been ratified by only 12 Member States, with, in some cases, numerous reservations. As a result, this Convention is hardly used in practice. The present Framework Decision provides for a more effective instrument because it is based on the principle of mutual recognition and all Member States participate.

⁵ OJ C 53, 3.3.2005, p. 1.

* Number and date of FD to be added.

⁶ Publication details to be added.

- (5) This Framework Decision respects fundamental rights and adheres to the principles recognised in Article 6 of the Treaty on European Union, which are also expressed in the Charter of Fundamental Rights of the European Union, especially in Chapter VI thereof. No provision of this Framework Decision should be interpreted as prohibiting refusal to recognise a judgment and/or supervise a probation measure or alternative sanction if there are objective indications that the probation measure or alternative sanction was imposed to punish a person because of his or her sex, race, religion, ethnic origin, nationality, language, political convictions or sexual orientation or that this person might be disadvantaged for one of these reasons.
- (6) This Framework Decision should not prevent any Member State from applying its constitutional rules relating to entitlement to due process, freedom of association, freedom of the press, freedom of expression in other media and freedom of religion.
- (7) The provisions of this Framework Decision should be applied in conformity with the right of the Union's citizens to move and reside freely within the territory of the Member States, pursuant to Article 18 of the Treaty establishing the European Community.
- (8) The aim of mutual recognition and supervision of suspended sentences, conditional sentences, alternative sanctions and decisions on conditional release is to enhance the prospects of the sentenced person's being re-integrated into society, by enabling him to preserve family, linguistic, cultural and other ties, but also to improve monitoring of compliance with probation measures and alternative sanctions, with a view to preventing recidivism, thus paying due regard to the protection of victims and the general public.

- (9)(ex 8a) There are several types of probation measures and (...) alternative sanctions which are common among the Member States and which all Member States are in principle willing to supervise. The supervision (...) of these types of measures and sanctions should be obligatory, subject to certain exceptions provided for in this Framework Decision. Member States may declare that, in addition, they are willing to supervise other types of probation measures and/or other types of alternative sanctions.
- (10)(ex 8b) The probation measures and alternative sanctions that are in principle obligatory to supervise include *inter alia* orders relating to behaviour (such as an obligation to stop the consumption of alcohol), residence (such as an obligation to change residence for reasons of domestic violence), education and training (such as an obligation to follow a "safe-driving course"), leisure activities (such as an obligation to quit playing a certain sport) and limitations on or modalities of carrying out a professional activity (such as an obligation to seek a professional activity in a different working environment; this obligation does not include the supervision of compliance with any professional disqualifications imposed on the person as part of the sanction).
- (11)(ex 8c) The Member State where the person concerned is sentenced may forward a judgement and, where applicable, a probation decision to the Member State where the sentenced person is lawfully and ordinarily resident with a view to recognition thereof and with a view to the supervision of probation measures or alternative sanctions contained in such a judgment and/or probation decision.

- (12)(ex 8d) The judgment and, where applicable, the probation decision may also be forwarded to a Member State other than that where the sentenced person is residing, if the competent authority of that executing State consents to such forwarding, and taking account of any (...) conditions set out in a statement made by that State regarding such a possibility. In particular, consent may be given, with a view to social rehabilitation, where the sentenced person, without losing his/her right of residence, intends to move to another Member State because he/she is granted an employment contract, if he/she is a family member of a lawful and ordinary resident person of that Member State, or if he/she intends to follow a study or training in that Member State, in accordance with Community law.
- (13)(ex 8e) Where appropriate, electronic monitoring could be used with a view to supervising probation measures or alternative sanctions, in accordance with national law and procedures.
- (14)(ex 8f) The decision on whether to forward the judgment and, where applicable, the probation decision to another Member State should be taken in an individual case by the competent authority of the issuing Member State, taking into account, inter alia, the statements made in accordance with Article 6(4) and the declarations made in accordance with Articles 8(4) and 12(3).
- (15)(ex 8f1) Member States should apply their own national law and procedures for the recognition of a judgment and, where applicable, a probation decision. In the case of a conditional sentence or alternative sanction where the judgment does not contain a custodial sentence or measure involving deprivation of liberty to be enforced in case of non-compliance with the obligation(s) or instruction(s) concerned, this could imply that Member States having made a declaration under Article 12(3), when deciding to recognise, agree to supervise the probation measures or alternative sanctions concerned and to assume no other responsibility than just for taking the subsequent decisions consisting of the modification of obligations or instructions contained in the probation measure or alternative sanction, or modification of the duration of the probation period. Consequently, the recognition has in such cases no further effect than enabling the executing State to take those types of subsequent decisions.

- (16)(ex 8g) A Member State may refuse to recognise a judgment and, where appropriate, a probation decision, if the judgment concerned was issued against a person who has not been found guilty, such as in the case of a mentally ill person, and the judgment or, where applicable, the probation decision provides for medical/therapeutic treatment which the executing State under its national law cannot supervise in respect of such persons ⁷.
- (17)(ex 8h) In view of the principle of mutual recognition, on which this Framework Decision is based, issuing and executing Member States should promote that their competent authorities have direct contact when applying this Framework Decision.
- (18)(ex 8i) All Member States ensure that sentenced persons, in respect of whom decisions under this Framework Decision are taken, are subject to a set of legal rights and remedies in accordance with national law, regardless of whether the competent authorities designated to take decisions under this Framework Decision are of a judicial or a non-judicial nature.
- (19)(ex 8j) The form of the certificate is drafted in such a way so that essential elements of the judgment and, where appropriate, of the probation decision are comprised in the certificate, which should be translated into the official language or one of the official languages of the executing State. The certificate should assist the competent authorities in the executing State in taking decisions under this Framework Decision, including decisions on recognition and assumption of responsibility for supervision of probation measures and alternative sanctions, decisions on adaptation of probation measures and alternative sanctions, and subsequent decisions in case notably of non-compliance with a probation measure or alternative sanction.
- (20)(ex 8k) The ground for refusal relating to territoriality in Article 9(1)(k) should be applied only in exceptional cases and with a view to co-operating to the greatest extent possible under the provisions of this Framework Decision, while taking into account of its objectives as set out in Article 1(1). Any decision to apply this ground for refusal should be based on a case-by-case analysis and consultations between the competent authorities of the issuing and executing State.

⁷ In order to stay as closely as possible to the text of Article 9(1)(i), it might be preferable to modify the last words as follows: "... *which the executing State is unable to supervise in respect of such persons in view of its legal or healthcare system*" (see comments by ES).

(21)(ex 8l) If the probation measures or alternative sanctions include community service, then the executing State should be entitled to refuse to recognize (...) the judgment and, where applicable, the probation decision in accordance with Article 9(1)(j), if the community service would normally be completed in less than six months.

(22)(ex 8m) In any case, all subsequent decisions relating to a suspended sentence, a conditional sentence or an alternative sanction which result in the imposition of a custodial sanction should be taken by a judicial authority.

(ex 9) (deleted)

(23)(ex 10) [Since all Member States have ratified the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, personal data processed when implementing this Framework Decision should be protected in accordance with the principles laid down in that Convention. ⁸]

(24)(ex 11) Since the objective of this Framework Decision, namely laying down the rules according to which one Member State is to supervise probation measures or alternative sanctions contained in a judgment given in another Member State, cannot be sufficiently achieved by the Member States themselves in view of the cross-border nature of the situations involved and can therefore, by the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as defined in Article 5 of the Treaty establishing the European Community as applied by the second paragraph of Article 2 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in Article 5 of the Treaty establishing the European Community, this Framework Decision does not go beyond what is necessary in order to achieve this objective,

HAS ADOPTED THIS FRAMEWORK DECISION:

⁸ This recital should probably be deleted or modified in view of the new Framework Decision on data protection which is currently under discussion and which will most probably be adopted in the same period as this draft Framework Decision.

CERTIFICATE

pursuant to Article 6 of the Council Framework Decision 2007/.../JHA
of ... on the application of the principle of mutual recognition to judgments and probation decisions
with a view to the supervision of probation measures and alternative sanctions⁹

(a) Issuing State:
Executing State:

(b) Court that issued the judgment imposing a suspended sentence, conditional sentence or
alternative sanction [that has become final]

Official name:

Please indicate whether any additional information concerning the judgment is to be obtained
from:

the court specified above

the central authority; if you ticked this box, please provide the official name of this
central authority:

Contact details of the court/central authority

Address:

Tel. no.: (country code) (area/city code)

Fax no.: (country code) (area/city code)

Details of the person(s) to be contacted

Surname:

Forename(s):

Position (title/grade):

Tel. no.: (country code) (area/city code)

Fax no.: (country code) (area/city code)

E-mail (if any):

Languages that may be used for communication (...):

⁹ This certificate must be written in, or translated into, the official language or one of the
official languages of the executing Member State, or any other official language of the
Institutions of the European Union that is accepted by that State.

(c) Authority that issued the probation decision [that has become final] (where applicable)

Official name:

Please indicate whether any additional information concerning the probation decision is to be obtained from

the authority specified above

the central authority; if you ticked this box, please provide the official name of this central authority if this information has not yet been provided under point (b):

Contact details of the authority, or of the central authority if this information has not yet been provided under point (b)

Address:

Tel. no.: (country code) (area/city code)

Fax no.: (country code) (area/city code)

Details of the person(s) to be contacted

Surname:

Forename(s):

Position (title/grade):

Tel. no.: (country code) (area/city code)

Fax no.: (country code) (area/city code)

E-mail (if any):

Languages that may be used for communication (...):

(d) Competent authority for supervision of the probation measures or alternative sanctions

Authority that has competence in the issuing State for supervising the probation measures or alternative sanctions:

- the court/authority referred to in point (b).
- the authority referred to in point (c).
- another authority (please provide its official name):

Please indicate which authority is to be contacted if any additional information is to be obtained for the purposes of supervising the probation measure(s) or alternative sanction(s):

- the authority specified above
- the central authority; if you ticked this box, please provide the official name of this central authority if this information has not yet been provided under point (b) or (c):

Contact details of the authority, or of the central authority if this information has not yet been provided under point (b) or (c)

Address:

Tel. no.: (country code) (area/city code)

Fax no.: (country code) (area/city code)

Details of the person(s) to be contacted

Surname:

Forename(s):

Position (title/grade):

Tel. no.: (country code) (area/city code)

Fax no.: (country code) (area/city code)

E-mail (if any):

Languages that may be used for communication (...):

(e) Authority or authorities that may be contacted (if points (c) and/or (d) have been completed)

Authority in point (b)

For the following matters:

Authority in point (c)

For the following matters:

Authority in point (d)

For the following matters:

(f) Information regarding the natural person in respect of whom the judgment and, where applicable, the probation decision has been issued

Surname:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identification number or social security number (if any):

Date of birth:

Place of birth:

Last known addresses/residences (if any):

- in the issuing State:

- in the executing State:

- elsewhere:

Language(s) understood (if known):

If available, please provide the following information:

- Type and number of the identity document(s) of the sentenced person (ID card, passport):
- Type and number of the residence permit of the sentenced person in the executing State:
- Other relevant information about the sentenced person's family, social or professional ties to the executing State:

(g) Information regarding the Member State to which the judgment and, where applicable, the probation decision, together with the certificate are being forwarded

The judgment and, where applicable, the probation decision, together with the certificate are being forwarded to the executing State indicated in box (a) for the following reason:

- the sentenced person has his/her lawful and ordinary residence in the executing State and has returned or wants to return to that State

- the sentenced person has moved or intends to move to the executing State for the following reason(s) (please tick the relevant box):
 - ◇ the sentenced person has been granted an employment contract in the executing State;

 - ◇ the sentenced person is a family member of a lawful and ordinary resident person of the executing State;

 - ◇ the sentenced person intends to follow a study or training in the executing State;

 - ◇ other reason (please specify):

(h) Indications regarding the judgment and, where applicable, the probation decision

The judgment was issued on (date: DD-MM-YYYY)

Where applicable, the probation decision was issued on (date: DD-MM-YYYY)

The judgment became final on (date: DD-MM-YYYY)

Where applicable, the probation decision became final on (date: DD-MM-YYYY)

The judgment became effective on (date: DD-MM-YYYY)

Where applicable, the probation decision became effective on (date: DD-MM-YYYY)

File reference of the judgment (if available):

Where applicable, file reference of the probation decision (if available):

1. The judgment covers in total: offences.

Summary presentation of the facts and description of the circumstances in which the offence(s) was (were) committed, including the time and place of the offence, and the degree of participation by the sentenced person:

Nature and legal classification of the offence(s) and applicable statutory provisions on the basis of which the judgment was issued:

2. If the offence(s) referred to in point 1 correspond(s) to one or more of the following offences, as defined in accordance with the law of the issuing State and which are punishable in the issuing State by a custodial sentence or measure involving deprivation of liberty of a maximum of at least 3 years, please confirm by ticking the relevant box(es) (...):

- participation in a criminal organisation
- terrorism
- trafficking in human beings
- sexual exploitation of children and child pornography
- illicit trafficking in narcotic drugs and psychotropic substances
- illicit trafficking in weapons, munitions and explosives
- corruption
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests
- laundering of the proceeds of crime

- counterfeiting of currency, including the euro
- computer-related crime
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties
- facilitation of unauthorised entry and residence
- murder, grievous bodily injury
- illicit trade in human organs and tissue
- kidnapping, illegal restraint and hostage-taking
- racism and xenophobia
- organised or armed robbery
- illicit trafficking in cultural goods, including antiques and works of art
- swindling
- racketeering and extortion
- counterfeiting and piracy of products

- forgery of administrative documents and trafficking therein
- illicit trafficking in hormonal substances and other growth promoters,
- forgery of means of payment
- illicit trafficking in nuclear or radioactive materials
- trafficking in stolen vehicles
- rape
- arson
- crimes within the jurisdiction of the International Criminal Court
- unlawful seizure of aircraft/ships
- sabotage

3. To the extent that the offence(s) identified under point 1 above is (are) not covered by point 2 or if the judgment and, where applicable, the probation decision, as well as the certificate are forwarded to a Member State, which has declared that it will verify the dual criminality (Article 8(4) of the Framework Decision), please give a full description of the offence(s) concerned: ¹⁰

¹⁰ SE put questions regarding the advisability of this paragraph in the light of paragraph 1.

(i) Information regarding the proceedings which led to the judgment (...):

Please indicate whether the sentenced person appeared in person in the proceedings:

Yes, the person appeared.

No, the person did not appear. It is confirmed

◇ that the person concerned was informed personally, or via a competent representative according to the national law of the issuing State, of the time and place of the proceedings which resulted in the judgment being rendered in absentia

◇ that the person concerned indicated to a competent authority that he or she did not contest the case¹¹

¹¹ The text of this paragraph could possibly be brought in line with any agreed text on the initiative for a Framework Decision on "in absentia".

(ia) Indications regarding the nature of the sentence (...)

1. The sentence imposing the probation measure(s) or alternative sanctions can be described as a:

- Suspended sentence
- Conditional sentence :
 - ◇ the imposition of a sentence has been conditionally deferred by imposing one or more probation measures
 - ◇ one or more probation measures have been imposed instead of a custodial sentence or measure involving deprivation of liberty
- Alternative sanction:
 - ◇ the judgment contains a custodial sentence or measure involving deprivation of liberty to be enforced in case of non-compliance with the obligation(s) or instruction(s) concerned
 - ◇ the judgment does not contain a custodial sentence or measure involving deprivation of liberty to be enforced in case of non-compliance with the obligation(s) or instruction(s) concerned
- Conditional release

2. Additional information

2.1. The sentenced person was in pre-trial detention during the following period:

2.2. The person was serving a custodial sentence/measure involving deprivation of liberty during the following period (to be filled in only in case of conditional release):

2.3. Length of deprivation of liberty still to be served upon

- revocation of suspension of the execution of the judgment;¹²
- revocation of the conditional release; or
- breach of the alternative sanction (if the judgment contains a custodial sentence or measure involving deprivation of liberty to be enforced in case of such a breach):¹³

¹² UK suggested moreover to refer under (j) to the duration of the custodial period imposed under a suspended sentence.

¹³ FI requested that further reflection be given to the advisability of this item 4.3, or at least to make the wording more flexible.

(j) Indications regarding the duration and nature of the probation measure(s) or alternative sanction(s)

1a. Overall duration of the supervision of the probation measure(s) or alternative sanction(s):

1b. Where relevant, duration of each individual obligation imposed as part of the probation measure(s) or alternative sanction(s):

[2. If possible, duration of the total probation period:]

3. Nature of the probation measure(s) or alternative sanction(s) (it is possible to tick multiple boxes):

- an obligation for the sentenced person to inform a specific authority of any change of residence or working place
- an obligation not to enter certain localities, places or defined areas in the issuing or executing State
- an obligation containing limitations on leaving the territory of the executing State
- instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity
- an obligation to report at specified times to a specific authority

- an obligation to avoid contact with specific persons
- an obligation to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence
- an obligation to compensate financially for the prejudice caused by the offence and/or an obligation to provide proof of compliance with such an obligation (..)
- an obligation to carry out community service
- an obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons
- an obligation to undergo therapeutic treatment or treatment for addiction
- other measures that the executing State is prepared to supervise in accordance with a notification under Article 5(2) of the Framework Decision

4. Please provide a detailed description of the probation measure(s) or alternative sanction(s) indicated under 3:

(k) (deleted)

(l) Other circumstances relevant to the case, including any known previous convictions
(optional information):

The text of the judgment and, where applicable, the probation decision is attached to the certificate.

Signature of the authority issuing the certificate and/or of its representative to confirm the accuracy of the content of the certificate:

Name:

Position (title/grade):

Date:

File reference (if any):

(Where appropriate) Official stamp:

FORM

pursuant to Article 15 of Council Framework Decision 2007/.../JHA of ... on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions

REPORT OF A BREACH OF A PROBATION MEASURE OR ALTERNATIVE SANCTION, OR OF ANY OTHER FINDINGS

(a) Details of the identity of the person subject to supervision:

Surname:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identification number or social security number (if any):

Date of birth:

Place of birth:

Address:

Language(s) understood (if known):

(b) Details of the decision concerning the suspended sentence, conditional sentence, alternative sanction or conditional release:

Judgment issued on:

File reference:

Where applicable, probation decision issued on:

File reference:

Court/authority which issued the judgment or, where applicable, the probation decision:

Official name:

Address:

Certificate issued on:

File reference in the issuing State (if any):

(c) Details of the authority responsible for supervising the probation measures or alternative sanctions:

Official name of the authority:

Name of the person to be contacted:

Position (title/grade):

Address:

Tel.: (country code) (area code)

Fax: (country code) (area code)

E-mail:

(d) Probation measures or alternative sanctions:

The person referred to in (a) is in breach of the following obligations or instructions:

- an obligation for the sentenced person to inform a specific authority of any change of residence or working place
- an obligation not to enter certain localities, places or defined areas in the issuing or executing State
- an obligation containing limitations on leaving the territory of the executing State
- instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity
- an obligation to report at specified times to a specific authority
- an obligation to avoid contact with specific persons
- an obligation to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence
- an obligation to compensate financially for the prejudice caused by the offence and/or an obligation to provide proof of compliance with such an obligation (...)
- an obligation to carry out community service
- an obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons
- an obligation to undergo therapeutic treatment or treatment for addiction
- other measures:

(e) Description of the breach(es) (place, date and specific circumstances):

[(f) Why was it considered not to be sufficient to proceed to a modification of the obligations and instructions contained in the probation measure(s) or alternative sanction(s), or modify the duration of the probation period?]

(g) Other findings

Description of the findings:

(h) Details of the person to be contacted if additional information is to be obtained concerning the breach:

Surname:

Forename(s):

Address:

Tel. No.: (country code) (area/city code)

Fax No.: (country code) (area/city code)

E-mail (if any):

Signature of the authority issuing the form and/or its representative, to confirm that the contents of the form are correct:

Name:

Position (title/grade):

Date:

Official stamp (where applicable):