

Note by the Standing Committee of Experts in international immigration, refugee and criminal law on a Framework Decision on the European supervision order in pre-trial procedures COM(2006) 468.

In August 2006 the European Commission presented the draft Framework Decision on the European supervision order in pre-trial procedures between Member States of the European Union (COM(2006) 468). It proposes the application of the principle of mutual recognition to non-custodial supervision measures that are imposed pending a court decision.

According to the proposal the current problem is that foreign suspects are kept in pre-trial detention more often than national suspects, due to the risk of flight and the lack of community ties. This would result in possible unequal treatment of EU-citizens.

Furthermore, non-custodial supervision measures (e.g. reporting to the police) are preferable to pre-trial detention. It should be made easier to impose non-custodial pre-trial measures equally to foreign suspects and national suspects.

The Standing Committee welcomes the proposal because it would encourage the Member States to impose non-custodial supervision measures on foreign suspects pending court proceedings. Furthermore, it would improve the suspect's possibilities to await proceedings in his home state.

Nevertheless, the Standing Committee has its concerns with regards to certain elements of the original draft text. Under the Slovenian Presidency, an amended proposal is expected to have taken into account the critical comments made by Member States and the European Parliament.

The Standing Committee asks to take note of the following points during negotiations on the amended proposal - despite the fact that its precise content is not known yet and the following remarks could be superfluous.

1. In some Member States (including The Netherlands) supervision measures may only be imposed in case the conditions for pre-trial detention are fulfilled. In other Member States supervision measures may also be imposed under different, lighter conditions. The seriousness of crimes that could result in issuing a supervision order to the suspect's state of normal residence, thus varies from state to state. The Standing Committee recommends that the supervision order may only be used in cases where pre-trial detention may be imposed. This would prevent the Netherlands from executing supervision measures that are not allowed under its national law. Otherwise, there is a clear risk of different treatment among Dutch nationals who have committed the same crime.

2. The draft text lists exhaustively the supervision measures that should be recognised and executed. One of these supervision measures is the obligation to undergo specified medical treatment. The Standing Committee advises not to agree with this obligation stated in the text, unless it can be clarified which medical treatments are covered by this formulation. It has to be taken into account that medical treatment without the suspect's consent is likely to violate the right to physical integrity (art. 8 ECHR).

3. According to the original proposal, issuing a supervision order by the issuing state to the executing state, is not subject to the condition of the suspect's consent. However, the Standing Committee is of the opinion that consent should be required in principle, especially in view of a smooth operation of the instrument in hand. The suspected person may have personal or practical reasons to await the court proceedings in the issuing state rather than in its home state. This preference should be accepted.

4. Again, it is deeply regretted that under the draft text a (risk of) violation of fundamental rights is not mentioned as a ground for refusal. During the negotiations, it should be ensured that where execution of a supervision order leads to a (risk of) violation of fundamental rights, recognition and execution of the supervision order can be refused.

5. The proposal determines a procedure for the arrest and transfer of the suspect from the executing state back to the issuing state in case the suspect does not fulfil the obligations contained in the supervision order. The Standing Committee does not understand why the arrest and transfer could not happen on the basis of a European arrest warrant; the existence of two different surrender procedures could result in unnecessary complexities.

6. The draft Framework Decision on a European supervision order aims at strengthening the right to liberty and the equal treatment of suspects throughout the European Union. It is therefore connected to the draft Framework Decision on certain procedural rights for suspects (COM(2004) 328). This instrument aims

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at the definition of minimum norms of procedural law, like the suspect's right to legal assistance and interpretation. Since adoption of this instrument still appears to take a long time, it is most important that the draft instrument on supervision orders should guarantee the suspect's rights itself. Concerning the suspect's right to information about the obligations imposed in the issued supervision order, it should be added that this information is given in a language he understands.

To summarise, the Standing Committee asks to take into account the following points with respect to the draft Framework Decision on a European supervision order:

- The scope of the proposal should be restricted to crimes susceptible for the imposition of pre-trial detention;
- The measure that obliges the suspect to undergo medical treatment should be clarified and specified; it should be kept in mind that medical treatment without consent of the suspect is likely to violate the right to physical integrity;
- To ensure smooth operation of the proposed instrument, consent from the suspect should be required
- A (risk of) violation of fundamental rights should be a ground for the executing state to refuse recognition and execution of the supervision order; it should be mentioned in the list of grounds for refusal;
- The arrest and transfer of the suspect to the issuing state in case a breach of the obligations contained in the supervision order should take place on the basis of a European arrest warrant;
- The guarantee of fundamental rights should be ensured in the draft instrument, especially since the draft Framework Decision on certain procedural rights is expected to take a long time to adopt a final text.