



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 14 January 2009

SN 1123/09

NOTE

from : Presidency

to : Working Party on Cooperation in Criminal Matters

No. prev. doc. : SN 5768/1/08 REV 1

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

Further to the discussions in the Working Party on 6 and 7 January 2009 on the proposal for a Framework Decision on "Conflict of Jurisdiction", the Presidency submits in the Annex a non-paper for consideration with a possible new text of Article 1 (which has been split into three different Articles).

"NON-PAPER"

(ref: SN 5768/1/08 REV 1)

The Presidency invites delegations to reflect on the following wording for Article 1 (which is split into three new Articles):

Article 1

Objectives

This Framework Decision aims to improve the efficiency of the administration of justice through the exchange of information between the competent authorities of the Member States in order to

- a) avoid, as early in the proceedings as appropriate,¹ situations where the same person is subject to parallel criminal proceedings in different Member States which might lead to double conviction for the same facts ("ne-bis-in-idem");
- b) ensure closer cooperation in the exercise of the competence of two or more Member States to conduct criminal proceedings in respect of the same facts involving the same person(s) or in respect of the same or related facts involving different person(s) or in respect of the same criminal organisation ².

¹ The precise moment will depend upon the discretion of the competent authority in the MS.
² "Criminal organisation" shall be understood as defined in Article 1(1) of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, i.e.: '*criminal organisation*' means a structured association, established over a period of time, of more than two persons acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, to obtain, directly or indirectly, a financial or other material benefit.

Article 1a

Subject matter

With a view to achieving the objectives set out in Article 1, this Framework Decision establishes rules on:

- a) the exchange of information through a notification procedure between the competent authorities of the Member States, in order to discover the existence of parallel criminal proceedings in respect of the same facts involving the same person(s);
- b) exchange of information within the mechanism of direct consultations between the competent authorities of the Member States conducting parallel criminal proceedings in respect of the same facts involving the same person(s) or in respect of the same or related facts involving different person(s) or in respect of the same criminal organization. Such consultations, aimed at reaching agreement on the best placed jurisdiction, should lead to effective closer cooperation between the competent authorities conducting the criminal proceedings in two or more jurisdictions, which may include inter alia:
 - i) where appropriate, the concentration of the criminal proceedings in one Member State, e.g. through the transfer of criminal proceedings;or
 - ii) setting the timeframe and modalities for any other effective solution concerning the negative aspects of parallel exercise of competence.

Article 1b

Scope

1. The provisions on exchange of information through the notification procedure contained in this Framework Decision shall apply to situations where a competent authority in a Member State, when conducting criminal proceedings, has sufficient grounds to believe, taking into account in particular the conditions and criteria set out in Articles 5, 6 and 15, that the competent authority of that other Member State(s) is conducting criminal proceedings for the same facts involving the same person(s).
2. The provisions on mandatory direct consultations¹ set out in this Framework Decision shall apply in any case at least to situations where a competent authority in a Member State, when conducting criminal proceedings, has knowledge of the existence of parallel criminal proceedings being conducted in one or more other Member States in respect of the same facts involving the same person(s). Member States may provide in their internal legal order that the provisions on mandatory direct consultations should also apply in other situations, notably when parallel criminal proceedings are being conducted in respect of the same or related facts involving different person(s) or in respect of the same criminal organisation.
3. [This Framework Decision shall not apply to any proceedings brought against undertakings if such proceedings have as their object the application of European Community Competition Law.]
4. [This Framework Decision does not confer any rights on a person to be invoked before the national authorities.]²

¹ Without prejudice to further discussion on Chapter 3 and especially without prejudice to final wording of Article 12, the Presidency suggests that mandatory consultations shall take place at least in cases of *ne bis in idem* situations.

² Following the initial exchange of views in the COPEN meeting on 6-7 January, the Presidency, in cooperation with the Council Legal Service, will be considering the rewording this paragraph in order to exclude clearly the forum shopping phenomenon.

The Presidency further invites delegations to express their view on means of limitation of the obligation to notify which arises in situation dealt with by Article 1(b)(1) and as spelled out in Articles 5 and 6(1), in particular.
