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REPORT

on the initiative of the Czech Republic, the Republic of Poland, the Republic of Slovenia, the Slovak Republic and of the Kingdom of Sweden for adoption of a Council framework decision 2009/.../JHA on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (8535/2009 – C7-0205/2009 – 2009/0802(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Renate Weber

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the initiative of the Czech Republic, the Republic of Poland, the Republic of Slovenia, the Slovak Republic and of the Kingdom of Sweden for adoption of a Council framework decision 2009/.../JHA on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings
(8535/2009 – C7-0205/2009 – 2009/0802(CNS))**

(Consultation procedure)

The European Parliament,

- having regard to the initiative of the Czech Republic, the Republic of Poland, the Republic of Slovenia, the Slovak Republic and of the Kingdom of Sweden (8535/2009),
 - having regard to Article 39(1) and Article 34(2)(b) of the EU Treaty, pursuant to which the Council consulted Parliament (C7-0205/2009),
 - having regard to Rules 100 and 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A7-0011/2009),
1. Approves the initiative of the Czech Republic, the Republic of Poland, the Republic of Slovenia, the Slovak Republic and of the Kingdom of Sweden as amended;
 2. Calls on the Council to amend the text accordingly;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Calls on the Council to consult Parliament again if it intends to amend the initiative of the Czech Republic, the Republic of Poland, the Republic of Slovenia, the Slovak Republic and of the Kingdom of Sweden substantially;
 5. Calls the Council not to formally adopt the initiative prior to the entry into force of the Treaty of Lisbon so as to allow the final act to be finalised ensuring a full role and control by the Court of Justice of the European Union, the Commission and Parliament (Protocol to the Treaty of Lisbon on transitional provisions). This being the case is committed to considering any further proposal by urgent procedure.
 6. Instructs its President to forward its position to the Council and the Commission, and to the governments of the Czech Republic, the Republic of Poland, the Republic of Slovenia, the Slovak Republic and of the Kingdom of Sweden.

Amendment 1

Initiative of the Czech Republic, the Republic of Poland, the Republic of Slovenia, the

Slovak Republic and of the Kingdom of Sweden

Recital 4

Council draft

(4) There should be direct consultations between competent authorities of the Member States with the aim of achieving a consensus on any effective solution aimed at avoiding the adverse consequences arising from parallel proceedings and avoiding waste of time and resources of the competent authorities concerned. Such effective solution could notably consist in the concentration of the criminal proceedings in one Member State, for example through the transfer of criminal proceedings. It could also consist in any other step allowing efficient and reasonable handling of those proceedings, including concerning the allocation in time, ***for example through a referral of the case to Eurojust when the competent authorities are not able to reach consensus***. In this respect, specific attention should be paid to the issue of gathering the evidence which can be influenced by the parallel proceedings being conducted.

Amendment

(4) There should be direct consultations between competent authorities of the Member States with the aim of achieving a consensus on any effective solution aimed at avoiding the adverse consequences arising from parallel proceedings and avoiding waste of time and resources of the competent authorities concerned. Such effective solution could notably consist in the concentration of the criminal proceedings in one Member State, for example through the transfer of criminal proceedings. It could also consist in any other step allowing efficient and reasonable handling of those proceedings, including concerning the allocation in time. In this respect, specific attention should be paid to the issue of gathering the evidence which can be influenced by the parallel proceedings being conducted.

Justification

The referral of the case to Eurojust should not be a choice or a last resource.

Amendment 2

Initiative of the Czech Republic, the Republic of Poland, the Republic of Slovenia, the Slovak Republic and of the Kingdom of Sweden

Recital 7

Council draft

(7) A competent authority which has been contacted by a competent authority of another Member State should ***have a general obligation to*** reply to the request submitted. ***The contacting authority is encouraged to set a deadline within which***

Amendment

(7) A competent authority which has been contacted by a competent authority of another Member State should reply to the request submitted ***by the deadline set***. The specific situation of a person deprived of liberty should be fully taken into account

the contacted authority should respond, if possible. The specific situation of a person deprived of liberty should be fully taken into account by the competent authorities throughout the procedure of taking contact.

by the competent authorities throughout the procedure of taking contact.

Justification

The reply by contacted competent authority should not be intended as a "general obligation" but rather as a mandatory duty. A deadline to this purpose must be set by the framework decision.

Amendment 3

Initiative of the Czech Republic, the Republic of Poland, the Republic of Slovenia, the Slovak Republic and of the Kingdom of Sweden
Recital 8

Council draft

(8) Direct contact between competent authorities should be the leading ***principle*** of cooperation established under this Framework Decision. ***Member States should have discretion to decide which authorities are competent to act in accordance with this Framework Decision, in compliance with the principle of national procedural autonomy, provided that such authorities have competence to intervene and decide accordingly with its provisions.***

Amendment

(8) Direct contact between competent authorities ***and the involvement of Eurojust*** should be the leading ***principles*** of cooperation established under this Framework Decision.

Justification

Eurojust should be given a leading role reflecting the position resulting from Council Decision 2009/426/JHA. Due to the relevance of jurisdiction issues, which are at stake in this context, only judicial authorities should be considered as competent authorities.

Amendment 4

Initiative of the Czech Republic, the Republic of Poland, the Republic of Slovenia, the Slovak Republic and of the Kingdom of Sweden

Recital 9

Council draft

(9) When striving to reach consensus on any effective solution aimed at avoiding the adverse consequences arising from parallel proceedings being conducted in two or more Member States, the competent authorities should take into account that each case is specific and give consideration to all its facts and merits. ***In order to reach consensus, the competent authorities should consider relevant criteria, which may include those set out in the Guidelines which were published in the Eurojust Annual Report 2003 and which were drawn up for the needs of practitioners, and take into account for example the place where the major part of the criminality occurred, the place where the majority of the loss was sustained, the location of the suspected or accused person and possibilities for securing its surrender or extradition to other jurisdictions, the nationality or residence of the suspected or accused person, significant interests of the suspected or accused person, significant interests of victims and witnesses, the admissibility of evidence or any delays that may occur.***

Amendment

(9) When striving to reach consensus on any effective solution aimed at avoiding the adverse consequences arising from parallel proceedings being conducted in two or more Member States, the competent authorities should take into account that each case is specific and give consideration to all its facts and merits.

Justification

Criteria to set jurisdiction should be clearly set and be better inserted in the body of the Framework decision rather than in a Recital.

Amendment 5

Initiative of the Czech Republic, the Republic of Poland, the Republic of Slovenia, the Slovak Republic and of the Kingdom of Sweden

Recital 16

Council draft

(16) This Framework Decision should not lead to undue bureaucracy in cases where for the problems addressed more suitable options are readily available. Thus in situations where more flexible instruments or arrangements are in place between Member States, those should prevail over this Framework Decision.

Amendment

(16) This Framework Decision should not lead to undue bureaucracy in cases where for the problems addressed more suitable options are readily available. Thus in situations where more flexible instruments or arrangements are in place between Member States, those should prevail over this Framework Decision ***provided that they do not lower the protection afforded to the suspected or accused person.***

Justification

It is the opinion of the rapporteur that the protection of the suspect and the accused must receive the highest attention.

Amendment 6

Initiative of the Czech Republic, the Republic of Poland, the Republic of Slovenia, the Slovak Republic and of the Kingdom of Sweden

Recital 18

Council draft

(18) Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters should apply to the processing of personal data exchanged under this Framework Decision.

Amendment

(18) Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters should apply to the processing of personal data exchanged under this Framework Decision.

The transmission of information relating to so-called racial or ethnic origin, religion or belief and sexual orientation is expressly prohibited;

Amendment 7

Initiative of the Czech Republic, the Republic of Poland, the Republic of Slovenia, the

Slovak Republic and of the Kingdom of Sweden
Recital 20

Council draft

(20) This Framework Decision respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected by the Charter of Fundamental Rights of the European Union,

Amendment

(20) This Framework Decision respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected by the Charter of Fundamental Rights of the European Union *with particular regard to Article 50 thereof*,

Justification

The final goal of preventing and solving conflicts of jurisdiction is to avoid that persons are trialed twice for the same facts and therefore to avoid ne bis in idem cases.

Amendment 8

Initiative of the Czech Republic, the Republic of Poland, the Republic of Slovenia, the Slovak Republic and of the Kingdom of Sweden
Article 3 - paragraph 1 - point b

Council draft

(b) "*competent authority*" means a **judicial authority** or another authority, which is competent, under the law of its Member State, to carry out the acts envisaged by Article 2(1) of this Framework Decision;

Amendment

(b) "*competent authority*" means a **judge, investigating magistrate or public prosecutor** or another **judicial** authority, which is competent, under the law of its Member State, to carry out the acts envisaged by Article 2(1) of this Framework Decision;

Justification

Any matter concerning jurisdiction should be dealt with by judicial authorities, meaning a judge, investigating magistrate or public prosecutor.

Amendment 9

Initiative of the Czech Republic, the Republic of Poland, the Republic of Slovenia, the Slovak Republic and of the Kingdom of Sweden
Article 5 - paragraph 3 a (new)

Council draft

Amendment

3a. In accordance with the Eurojust Decision, the contacting authority shall at the same time inform Eurojust.

Justification

Due to its coordinating role, Eurojust should be involved in the earliest stage.

Amendment 10

Initiative of the Czech Republic, the Republic of Poland, the Republic of Slovenia, the Slovak Republic and of the Kingdom of Sweden
Article 6 - paragraph 1

Council draft

Amendment

1. The contacted authority shall reply to a request submitted in accordance with Article 5(1) within any reasonable deadline indicated by the contacting authority, or, if no deadline has been indicated, ***without undue delay***, and inform the contacting authority whether parallel proceedings are taking place in its Member State. In cases where the contacting authority has informed the contacted authority that the suspected or accused person is held in provisional detention or custody, the latter authority shall treat the request as a matter of urgency.

1. The contacted authority shall reply to a request submitted in accordance with Article 5(1) within any reasonable deadline indicated by the contacting authority, or, if no deadline has been indicated, ***within 30 days***, and inform the contacting authority whether parallel proceedings are taking place in its Member State. In cases where the contacting authority has informed the contacted authority that the suspected or accused person is held in provisional detention or custody, the latter authority shall treat the request as a matter of urgency.

Amendment 11

Initiative of the Czech Republic, the Republic of Poland, the Republic of Slovenia, the Slovak Republic and of the Kingdom of Sweden
Article 8 - paragraph 1 - point c

Council draft

(c) *all relevant details about the identity* of the suspected or accused person and about the victims, if applicable;

Compromise amendment

(c) *name, nationality, date of birth and address* of the suspected or accused person and of the victims, if applicable, *and other details that are relevant where there is a suspicion that the identity of the suspected or accused person is false;*

Amendment 12

Initiative of the Czech Republic, the Republic of Poland, the Republic of Slovenia, the Slovak Republic and of the Kingdom of Sweden

Article 10 - paragraph 1

Council draft

1. When it is established that parallel proceedings exist, the competent authorities of the Member States concerned shall enter into direct consultations in order to reach consensus on any effective solution aimed at avoiding the adverse consequences arising from such parallel proceedings, which may, where appropriate, lead to the concentration of the criminal proceedings in one Member State.

Amendment

1. When it is established that parallel proceedings exist, the competent authorities of the Member States concerned shall ***without undue delay*** enter into direct consultations in order to reach consensus on any effective solution aimed at avoiding the adverse consequences arising from such parallel proceedings, which may, where appropriate, lead to the concentration of the criminal proceedings in one Member State. ***In cases where the suspected or accused person is held in provisional detention or custody, direct consultations shall aim to reach consensus as a matter of urgency.***

Justification

No timescale is envisaged in the obligation to consult set out in Article 10. This delay could lead to a detrimental effect upon the parties involved in the proceedings, particularly the suspect, and particularly if they are in detention.

Amendment 13

Initiative of the Czech Republic, the Republic of Poland, the Republic of Slovenia, the Slovak Republic and of the Kingdom of Sweden

Article 11

Council draft

When the competent authorities of Member States enter into direct consultations on a case in order to reach consensus in accordance with Article 10, they shall consider the facts and merits of the case and **all the** factors ***which they consider to be relevant.***

Amendment

When the competent authorities of Member States enter into direct consultations on a case in order to reach consensus in accordance with Article 10, they shall consider the facts and merits of the case and factors ***such as:***

- ***the place where the major part of the crime was committed,***
- ***the place where the major part of the loss was sustained,***
- ***the location of the suspected or accused person and the possibilities for securing his or her surrender or extradition to another jurisdiction,***
- ***the nationality or residence of the suspected or accused person,***
- ***any significant interests of the suspected or accused person,***
- ***any significant interests of victims and witnesses,***
- ***the admissibility of evidence or***
- ***any delays that may occur.***

Justification

Criteria to set jurisdiction should be clearly set and be better inserted in the body of the Framework decision rather than in a Recital.

Amendment 14

Initiative of the Czech Republic, the Republic of Poland, the Republic of Slovenia, the Slovak Republic and of the Kingdom of Sweden

Article 11 a (new)

Council draft

Amendment

Article 11a

Procedural guarantees

The person formally charged shall notably at the trial stage:

- be notified of exchanges of information and consultations between authorities of Member States and between authorities of a Member State and Eurojust, as well as of solutions chosen or failure to reach agreement under this Framework Decision, including of actors involved, contents and reasons;

- have a right to make representations as to the best placed jurisdiction before a solution is chosen;

- have a right to appeal against any decision taken in accordance with Article 10(1) or, in case of failure to reach agreement, to have it re-examined.

Member States shall ensure that appropriate translation, interpretation and legal aid are guaranteed.

Amendment 15

Initiative of the Czech Republic, the Republic of Poland, the Republic of Slovenia, the Slovak Republic and of the Kingdom of Sweden
Article 11 b (new)

Council draft

Amendment

Article 11b

Fundamental rights

Any consensus reached on the basis of Article 10(1) must constitute an expression of fairness, independence and objectivity and must be reached by applying the principles recognised by Article 6 of the Treaty on European Union and reflected by the Charter of Fundamental Rights of the European Union and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, so as to ensure that the human rights of the suspected or

accused person are protected.

Justification

The respect of fundamental rights cannot in any case be compressed.

Amendment 16

Initiative of the Czech Republic, the Republic of Poland, the Republic of Slovenia, the Slovak Republic and of the Kingdom of Sweden
Article 12 - paragraph 1 a (new)

Council draft

Amendment

1a. Any national authority shall be free, at any stage of a national procedure, to ask for Eurojust's advice and to refer to Eurojust specific cases which raise the question of the best placed jurisdiction.

Justification

Due to its coordination role, Eurojust is extremely well placed to help national authority to solve this kind of issues and it seems appropriate that to be emphasized.

Amendment 17

Initiative of the Czech Republic, the Republic of Poland, the Republic of Slovenia, the Slovak Republic and of the Kingdom of Sweden
Article 12 - Paragraph 2 a (new)

Council draft

Amendment

2a. If Member States decide not to comply with the opinion of Eurojust, they shall inform Eurojust in writing of their decision in accordance with Article 7 of the Eurojust Decision.

Justification

This amendment completes the previous amendment.

Amendment 18

Initiative by the Czech Republic, the Republic of Poland, the Republic of Slovenia, the Slovak Republic and of the Kingdom of Sweden
Article 15 - paragraph 1 - introductory part

Council draft

1. Insofar as other legal instruments or arrangements allow the objectives of this Framework Decision to be extended or help to simplify or facilitate the procedure under which national authorities exchange information about their criminal proceedings, enter into direct consultations and try to reach consensus on any effective solution aimed at avoiding adverse consequences arising from the parallel proceedings, the Member States may:

Amendment

1. Insofar as other legal instruments or arrangements allow the objectives of this Framework Decision to be extended or help to simplify or facilitate the procedure under which national authorities exchange information about their criminal proceedings, enter into direct consultations and try to reach consensus on any effective solution aimed at avoiding adverse consequences arising from the parallel proceedings ***and provided that the protection afforded to the suspected or accused person is not reduced***, the Member States may:

Justification

It is the opinion of the rapporteur that the protection of the suspect and the accused must receive the highest attention.

Amendment 19

Initiative of the Czech Republic, the Republic of Poland, the Republic of Slovenia, the Slovak Republic and of the Kingdom of Sweden
Article 15 a (new)

Council draft

Amendment

Article 15a

Inclusion in annual report

The cases referred to Eurojust on which consensus has not been reached among Member States shall be included in the annual report of Eurojust.

EXPLANATORY STATEMENT

The Hague Programme for strengthening freedom, security and justice in the EU addresses conflicts of jurisdiction stressing that, in cross-border multilateral cases, particular attention should be paid to possibilities of concentrating the prosecution in one Member State and that further attention should be given to proposals on conflicts of jurisdiction and the *ne bis in idem principle*, so as to complete the comprehensive programme of measures to implement the principle of mutual recognition of judicial decisions in criminal matters.

This issue is strictly linked to the principles laid down in Articles 54-58 of the Convention Implementing the Schengen Agreement (CISA).

The proposal for a Council framework decision on prevention and settlement of conflicts of jurisdiction in criminal proceedings was tabled on the initiative of the Czech Republic, the Republic of Poland, the Republic of Slovenia, the Slovak Republic and of the Kingdom of Sweden and aims to prevent and settle conflicts of jurisdiction in criminal proceedings.

The aim of this legislative initiative was setting:

- the procedural framework under which national authorities must exchange information about ongoing criminal proceedings for specific facts in order to find out whether there are parallel ongoing proceedings for the same facts in other Member State(s)
- the proceeding under which their national authorities would agree on the jurisdiction for conducting criminal proceedings for specific facts which fall within the jurisdiction of two or more Member States;
- rules and common criteria which should be taken into account by the national authorities whenever they seek agreement on the jurisdiction for conducting criminal proceedings for specific facts.

According to Article 39 TEU, the European Parliament was asked to deliver its opinion on the above mentioned legislative initiative.

At the LIBE meeting held on 19 March 2009, the draftsman Renate Weber presented her draft report.

At the same time she stressed that, according to informal information, the Council had substantially modified the legislative proposal. She considered it not appropriate to work on an outdated text and called the European Parliament to be re-consulted on the up-dated text.

The draftsman received the support of the Committee and the representative of the Czech Presidency of the Council, sharing the Parliament's point of view, announced a re-consultation on the final text of the Framework decision. Waiting for the re-consultation by the Council the LIBE Committee chairman postponed the procedure.

On 6 April 2009 Member States reached a general consensus on a text which significantly differs from the original initiative.

This opinion refers to the text agreed by Council. Deadline fixed by Council to deliver the opinion according to Article 39 TEU is 23 October 2009.

The draft Framework decision refers to situations where the same person(s) is (are) subject to parallel criminal proceedings in different member states in respect of the same facts, which might lead to an infringement of the "*ne bis in idem*" principle.

The draft Framework decision contains the following measures:

- a procedure for establishing contacts between the competent authorities of Member States, with a view to confirming the existence of parallel criminal proceedings in respect of the same facts involving the same person(s);
- rules on the exchange of information, through direct consultations, between the competent authorities of two or more Member States conducting such parallel criminal proceedings(s), with a view to reaching a consensus on any effective solution aimed at avoiding the adverse consequences arising there from.

No deadline for the reply of the authority requested for information is fixed.

No criterion is indicated in order to establish which the most appropriate judicial authority should be.

No form to guide competent authorities is annexed to the draft framework decision (it was in the original text).

Despite the obligation to contact competent authority of another Member States, no similar obligation to inform Eurojust is imposed.

The role of Eurojust in solving potential conflicts is weak and far from being satisfactory.

PROCEDURE

Title	Prevention and settlement of conflicts of jurisdiction in criminal proceedings
References	05208/2009 – C6-0036/2009 – 2009/0802(CNS)
Date of consulting Parliament	23.1.2009
Committee responsible Date announced in plenary	LIBE 3.2.2009
Rapporteur(s) Date appointed	Renate Weber 22.7.2009
Date adopted	30.9.2009
Result of final vote	+: 45 -: 4 0: 2
Members present for the final vote	Jan Philipp Albrecht, Sonia Alfano, Vilija Blinkevičiūtė, Louis Bontes, Simon Busuttil, Philip Claeys, Cornelis de Jong, Agustín Díaz de Mera García Consuegra, Tanja Fajon, Monika Flašíková Beňová, Héléne Flautre, Kinga Gál, Kinga Göncz, Sylvie Guillaume, Ágnes Hankiss, Anna Hedh, Jeanine Hennis-Plasschaert, Salvatore Iacolino, Sophia in 't Veld, Livia Járóka, Juan Fernando López Aguilar, Baroness Sarah Ludford, Monica Luisa Macovei, Clemente Mastella, Véronique Mathieu, Claude Moraes, Antigoni Papadopoulou, Jacek Protasiewicz, Carmen Romero López, Judith Sargentini, Birgit Sippel, Csaba Sógor, Renate Sommer, Rui Tavares, Wim van de Camp, Axel Voss, Tatjana Ždanoka
Substitute(s) present for the final vote	Magdi Cristiano Allam, Anna Maria Corazza Bildt, Nadja Hirsch, Stanimir Ilchev, Ramon Jauregui Atondo, Mariya Nedelcheva, Joanna Senyszyn, Ernst Strasser, Michèle Striffler, Kyriacos Triantaphyllides, Cecilia Wikström
Substitute(s) under Rule 187(2) present for the final vote	Rosa Estaras Ferragut, Ashley Fox, Judith A. Merkies