

## III

(Acts adopted under the EU Treaty)

## ACTS ADOPTED UNDER TITLE VI OF THE EU TREATY

## COUNCIL FRAMEWORK DECISION 2008/675/JHA

of 24 July 2008

**on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 31 and 34(2)(b) thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament <sup>(1)</sup>,

Whereas:

(1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice. This objective requires that it be possible for information on convictions handed down in the Member States to be taken into account outside the convicting Member State, both in order to prevent new offences and in the course of new criminal proceedings.

(2) On 29 November 2000 the Council, in accordance with the conclusions of the Tampere European Council, adopted the programme of measures to implement the principle of mutual recognition of decisions in criminal matters <sup>(2)</sup>, which provides for the 'adoption of one or more instruments establishing the principle that a court in one Member State must be able to take account of final criminal judgments rendered by the courts in other Member States for the purposes of assessing the offender's criminal record and establishing whether he has reoffended, and in order to determine the type of sentence applicable and the arrangements for enforcing it'.

(3) The purpose of this Framework Decision is to establish a minimum obligation for Member States to take into account convictions handed down in other Member States. Thus this Framework Decision should not prevent Member States from taking into account, in accordance with their law and when they have information available, for example, final decisions of administrative authorities whose decisions can be appealed against in the criminal courts establishing guilt of a criminal offence or an act punishable under national law by virtue of being an infringement of the rules of law.

(4) Some Member States attach effects to convictions handed down in other Member States, whereas others take account only of convictions handed down by their own courts.

(5) The principle that the Member States should attach to a conviction handed down in other Member States effects equivalent to those attached to a conviction handed down by their own courts in accordance with national law should be affirmed, whether those effects be regarded by national law as matters of fact or of procedural or substantive law. However, this Framework Decision does not seek to harmonise the consequences attached by the different national legislations to the existence of previous convictions, and the obligation to take into account previous convictions handed down in other Member States exists only to the extent that previous national convictions are taken into account under national law.

(6) In contrast to other instruments, this Framework Decision does not aim at the execution in one Member State of judicial decisions taken in other Member States, but rather aims at enabling consequences to be attached to a previous conviction handed down in one Member State in the course of new criminal proceedings in another Member State to the extent that such consequences are attached to previous national convictions under the law of that other Member State.

<sup>(1)</sup> Opinion of 27 September 2006 (not yet published in the Official Journal).

<sup>(2)</sup> OJ C 12, 15.1.2001, p. 10.

Therefore this Framework Decision contains no obligation to take into account such previous convictions, for example, in cases where the information obtained under applicable instruments is not sufficient, where a national conviction would not have been possible regarding the act for which the previous conviction had been imposed or where the previously imposed sanction is unknown to the national legal system.

(7) The effects of a conviction handed down in another Member State should be equivalent to the effects of a national decision at the pre-trial stage of criminal proceedings, at the trial stage and at the time of execution of the sentence.

(8) Where, in the course of criminal proceedings in a Member State, information is available on a previous conviction in another Member State, it should as far as possible be avoided that the person concerned is treated less favourably than if the previous conviction had been a national conviction.

(9) Article 3(5) should be interpreted, *inter alia*, in line with recital 8, in such a manner that if the national court in the new criminal proceedings, when taking into account a previously imposed sentence handed down in another Member State, is of the opinion that imposing a certain level of sentence within the limits of national law would be disproportionately harsh on the offender, considering his or her circumstances, and if the purpose of the punishment can be achieved by a lower sentence, it may reduce the level of sentence accordingly, if doing so would have been possible in purely domestic cases.

(10) This Framework Decision is to replace the provisions of Article 56 of the European Convention of 28 May 1970 on the International Validity of Criminal Judgments, concerning the taking into consideration of criminal judgments, as between the Member States parties to that Convention.

(11) This Framework Decision respects the principle of subsidiarity provided for by Article 2 of the Treaty on European Union and Article 5 of the Treaty establishing the European Community in so far as it aims to approximate the laws and regulations of the Member States, which cannot be done adequately by the Member States acting unilaterally and requires concerted action in the 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 that objective.

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

(13) This Framework Decision respects the variety of domestic solutions and procedures required for taking into account a previous conviction handed down in another Member State. The exclusion of a possibility to review a previous conviction should not prevent a Member State from issuing a decision, if necessary, in order to attach the equivalent legal effects to such previous conviction. However, the procedures involved in issuing such a decision should not, in view of the time and procedures or formalities required, render it impossible to attach equivalent effects to a previous conviction handed down in another Member State.

(14) Interference with a judgment or its execution covers, *inter alia*, situations where, according to the national law of the second Member State, the sanction imposed in a previous judgment is to be absorbed by or included in another sanction, which is then to be effectively executed, to the extent that the first sentence has not already been executed or its execution has not been transferred to the second Member State,

HAS ADOPTED THIS FRAMEWORK DECISION:

#### Article 1

##### Subject matter

1. The purpose of this Framework Decision is to determine the conditions under which, in the course of criminal proceedings in a Member State against a person, previous convictions handed down against the same person for different facts in other Member States, are taken into account.

2. This Framework Decision shall not have the effect of amending the obligation to respect the fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty.

#### Article 2

##### Definitions

For the purposes of this Framework Decision 'conviction' means any final decision of a criminal court establishing guilt of a criminal offence.

*Article 3***Taking into account, in the course of new criminal proceedings, a conviction handed down in another Member State**

1. Each Member State shall ensure that in the course of criminal proceedings against a person, previous convictions handed down against the same person for different facts in other Member States, in respect of which information has been obtained under applicable instruments on mutual legal assistance or on the exchange of information extracted from criminal records, are taken into account to the extent previous national convictions are taken into account, and that equivalent legal effects are attached to them as to previous national convictions, in accordance with national law.

2. Paragraph 1 shall apply at the pre-trial stage, at the trial stage itself and at the time of execution of the conviction, in particular with regard to the applicable rules of procedure, including those relating to provisional detention, the definition of the offence, the type and level of the sentence, and the rules governing the execution of the decision.

3. The taking into account of previous convictions handed down in other Member States, as provided for in paragraph 1, shall not have the effect of interfering with, revoking or reviewing previous convictions or any decision relating to their execution by the Member State conducting the new proceedings.

4. In accordance with paragraph 3, paragraph 1 shall not apply to the extent that, had the previous conviction been a national conviction of the Member State conducting the new proceedings, the taking into account of the previous conviction would, according to the national law of that Member State, have had the effect of interfering with, revoking or reviewing the previous conviction or any decision relating to its execution.

5. If the offence for which the new proceedings being conducted was committed before the previous conviction had been handed down or fully executed, paragraphs 1 and 2 shall not have the effect of requiring Member States to apply their national rules on imposing sentences, where the application of those rules to foreign convictions would limit the judge in imposing a sentence in the new proceedings.

However, the Member States shall ensure that in such cases their courts can otherwise take into account previous convictions handed down in other Member States.

*Article 4***Relation to other legal instruments**

This Framework Decision shall replace Article 56 of the European Convention of 28 May 1970 on the International Validity of Criminal Judgments as between the Member States parties to that Convention, without prejudice to the application of that Article in relations between the Member States and third countries.

*Article 5***Implementation**

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 15 August 2010.

2. Member States shall communicate to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision.

3. On the basis of that information the Commission shall, by 15 August 2011, present a report to the European Parliament and the Council on the application of this Framework Decision, accompanied if necessary by legislative proposals.

*Article 6***Entry into force**

This Framework Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Done at Brussels, 24 July 2008.

*For the Council*

*The President*

B. HORTEFEUX