

Thursday 8 October 2009

Prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings *

P7_TA(2009)0027

European Parliament legislative resolution of 8 October 2009 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 (08535/2009 – C7-0205/2009 – 2009/0802(CNS))

(2010/C 230 E/05)

(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 (08535/2009),
 - 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.

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AMENDMENT

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

(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.

(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.

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

(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 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.

(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 by the competent authorities throughout the procedure of taking contact.

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

(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.**

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

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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

(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.***

(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.

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

(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.

(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.***

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

(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.

(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 unless strictly necessary for the prevention and settlement of conflicts of jurisdiction in the application of this Framework Decision.***

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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**

(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,

(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,**

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**

(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;

(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;

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)**

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

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**

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.

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Amendment 11

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Article 8 – paragraph 1 – point c

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

(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

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.

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.***

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

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.***

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.*

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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)

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)

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.

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)

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.

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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)

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.

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

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:

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:

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)

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.
