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NOTE

from:	The Presidency
to:	Delegations
Subject:	Conclusions of the seminar on the legislative and practical implementation of the Framework Decision on the supervision of probation measures and alternative sanctions

On 8 and 9 July 2010, the Belgian Presidency of the Council of the European Union organised a seminar in Durbuy on the implementation of the Framework Decision of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions.

The seminar, which was open to all Member States, was targeted at both the departments responsible for transposing the framework decisions on mutual recognition and those responsible for enforcing alternative sanctions and probation measures. Over two days it was attended by sixty-five participants from 25 EU Member States.

The main objective was to improve mutual knowledge of national probation measures and to identify difficulties relating to the legal and practical implementation of the 2008 Framework Decision.

During the seminar, the workshops on the legal and practical aspects of transposition enabled a start to be made on the process of implementing this instrument, and more particularly on the discussions which must inevitably accompany it.

This event was in line with the Belgian Presidency's more general priority of improving follow-up to the implementation of the mutual recognition instruments which have been adopted.

It also forms part of a project on the implementation of Framework Decision 2008/947/JHA cofinanced by the European Commission under the "criminal justice" financing programme, in respect of which Belgium is fortunate to have the support of several partners (Luxembourg, Hungary, Spain, Slovakia, the United Kingdom, France, Germany and the European Organisation for Probation (CEP)).

In connection with that project, a questionnaire was sent to Member States on 20 April 2010 (8515/10 COPEN 97). The Belgian Presidency is very grateful to delegations for responding to that questionnaire.

The aim of the first part of the questionnaire is to improve mutual knowledge of national systems relating to probation measures through the drafting of structured national fact sheets containing information on the measures available and the practical aspects of such measures. In order to encourage an exchange of information between legal experts and specialist practitioners in the field of probation in the 27 EU Member States, this first part of the questionnaire will be incorporated into a manual containing the conclusions of the seminar and the structured fact sheets for each Member State.

The Belgian Presidency has sent each delegation a request for further information. Delegations are kindly invited to respond to that request by Monday 10 January 2011.

Delegations will find attached the conclusions relating to the main issues raised during this seminar.

I - Legal aspects

Discussions revealed that most Member States are at an early stage in the transposition process.

During discussions on the legal aspects of transposing this instrument, the national approaches were found to vary widely, in particular as regards:

- designation of competent authorities (Article 3);
- probation measures and additional alternative sanctions (Article 4(2));
- the additional criterion of habitual residence (Article 5);
- means of appeal (Article 3(3));
- subsequent decisions (Article 12);
- languages (Article 21);
- existing agreements and arrangements (Article 23(4));
- electronic monitoring (recital 11);
- double criminality (Article 10);
- grounds for refusing recognition (Article 11); and
- the instrument's relationship to other framework decisions on mutual recognition.

The main areas of divergence were revealed to be as follows:

First, attention was drawn to the sheer number of competent authorities (judicial and/or administrative authorities) and the difficulties associated with the recognition by the judicial authorities of a decision issued by an administrative authority.

Second, there were also found to be differences in the probation measures and alternative sanctions already applied in the Member States, and in the nature of such measures and sanctions. Electronic monitoring provides one example of the disparity between our systems: while such a procedure is unknown in some Member States, in others it may be used to enforce a custodial sentence, probation order or independent sanction.

The differences identified in the various systems have led the Council, *inter alia*, to allow Member States whose national law does not make provision for a particular measure to refuse to take responsibility for subsequent decisions. The difficulties associated with such a mechanism, which will entail a constant exchange of information between the competent authorities of the two Member States concerned, were underlined and discussed at length.

II - Practical aspects

These discussions also took place against the backdrop of the differences between the national systems, with the following questions being raised:

- (a) How can we improve our theoretical and practical knowledge of the different systems, and what tools can we use to do so? How should we deal with a person sentenced to a measure which does not exist in the national law of the executing State?

Participants stressed the importance of an exchange of information on the theory underlying the national legal systems in order to ensure a better understanding of those systems and the effective transposition and enforcement of the Framework Decision. Attention was drawn to the need to facilitate such mutual understanding by drafting national fact sheets and manuals or introducing specific training programmes for professionals.

On a more practical level, exchanging information on the feasibility of enforcing a measure is also very important. This relates in particular to information on the existence of waiting lists, the possibility of special treatment, costs and anything likely to influence a decision.

- (b) How should we implement a measure for a sentenced person who is not (yet) known to the authorities responsible for monitoring that measure?

An exchange of specific information on the person concerned is also essential. Once again, this means fostering contacts between all the authorities involved in implementing this Framework Decision besides the competent authorities pursuant to Article 3 thereof, and in particular between the competent probation services.

In order to do this, the transmission of welfare reports could be particularly useful, both at the sentencing stage (judicial authorities) and at the time of enforcement (probation services).

Obtaining and forwarding information on the candidate in question could lead to significant delays. Consequently, the participants take the view that it should be possible to provide a more limited amount of information at the time a decision is taken. Further details could then be communicated at a later stage.

- (c) How can a transferred measure best be enforced in practice?

In general, monitoring by another Member State will be more complex in cases where the latter is responsible for overseeing special conditions for which the judgment or probation order makes specific provision. Mental health care programmes would appear to be the most difficult to enforce owing to the differences between Member States in terms of their practices and philosophies.

Moreover, practitioners will certainly be confronted with language problems and terminological differences.

Bearing all this in mind, the participants examined the advisability of setting up a European "help desk" to encourage the identical application of probation measures and alternative sanctions. If this option were to be approved, the help desk should be established at the level of the probation services.

- (d) How can the different approaches relating to the consent of a sentenced person best be managed?

Questions were also raised concerning the content of the information to be transmitted to candidates. The issue of the informed consent of the sentenced person was also referred to during the discussions, and was regarded as essential. In certain cases, the executing State could require the consent of the sentenced person in order to have him undergo treatment, while in the issuing State such treatment may be compulsory.

Conclusion

The seminar made participants aware of the need to continue discussions with a view to implementing this instrument efficiently and effectively and keeping the transposition of the Framework Decision on probation on the political agenda.