

ECBA spring conference 2009 „ The use and abuse of universal jurisdiction and the European Arrest Warrant in European Criminal Justice“, Madrid, 25 April 2009:

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

▪ **Legislative background:**

- initiative of the CZ PRES
- co - initiators : Slovakia, Slovenia, Poland, Sweden
- start of negotiations in the Council preparatory bodies : 6 January 2009
- general approach reached by the Council: 6 April 2009
- stage of consultation procedure with the European Parliament

▪ **Objective of the proposal:** to promote a closer cooperation between the competent authorities of two or more Member States conducting criminal proceedings, with a view to improving the efficient and proper administration of justice.

Such closer cooperation aims to: (a) prevent situations where the same person is subject to parallel criminal proceedings in different Member States in respect of the same facts, which might lead to the final disposal of the proceedings in two or more Member States thereby constituting an infringement of the principle of "ne bis in idem"; and (b) reach consensus on any effective solution aimed at avoiding the adverse consequences arising from such parallel proceedings. (*prevention of cross-border double jeopardy*)

▪ **The scope of the proposal:** a framework mechanism for national authorities to contact each other at an early stage in order to consult mutually how to proceed with the multiple prosecution/trial with the following basic elements:

1) obligation to take contact: the criterion „reasonable grounds to believe“, obligation to reply within a timeframe, minimum set of information to be exchanged initially, the duty to cooperate

2) obligation to enter into direct consultations and the respective procedure

3) criteria for reaching consensus on any effective solution (the „best placed jurisdiction“, Eurojust guidelines for deciding which jurisdiction should prosecute)

4) the involvement of Eurojust

5) legality principle, rights of individuals

Relevant documents:

OJ 2009 C 39 – original proposal for Framework Decision:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:039:0002:0014:EN:PDF>

Explanatory report accompanying the proposal (doc. 5208/09 ADD 2):

<http://register.consilium.europa.eu/pdf/en/09/st05/st05208-ad02.en09.pdf>

Replies to Presidency questionnaire, 5 January 2009 (doc. 17553/08):

<http://register.consilium.europa.eu/pdf/en/08/st17/st17553.en08.pdf>

Confirmation of conclusions on selected issues in the JHA Council on 27 February 2009
(doc. 6417/1/09):

<http://register.consilium.europa.eu/pdf/en/09/st06/st06417-re01.en09.pdf>

General approach reached by the JHA Council on 6 April 2009 (doc. 8338/09):

<http://register.consilium.europa.eu/pdf/en/09/st08/st08338.en09.pdf>