

Translation from Finnish
Legally binding only in Finnish and Swedish
Ministry of Justice, Finland

Act on the National Implementation of the Provisions of a Legislative Nature in the Framework Decision on Probation Measures and Alternative Sanctions within the European Union and on the Application of the Framework Decision

(1170/2011)

By decision of Parliament, the following is enacted:

Chapter 1

General provisions

Section 1

Implementation of the Framework Decision

The provisions of a legislative nature in Council Framework Decision 2008/947/JHA 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, hereinafter *the Framework Decision*, shall have the force of law, unless otherwise provided in this Act.

Article 6 of Council Framework Decision 2009/299/JHA amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial, shall have the force of law.

Section 2

Scope of application

In accordance with this Act and the Framework Decision:

1) a judgment or a probation decision referred to in the Framework Decision issued in another Member State of the European Union is recognised in Finland, and the supervision of a person subject to supervision or sentenced to an alternative sanction is executed in Finland;

2) a judgment or a probation decision referred to in the Framework Decision issued in Finland and a request to supervise a person subject to supervision or sentenced to an alternative sanction is forwarded to another Member State of the European Union for recognition.

In Finland, the sanctions and probation decisions referred to in the Framework Decision are community service, juvenile punishment, monitoring sentence, and conditional imprisonment, as well as a decision on supervision of a person sentenced to conditional imprisonment, a decision on supervision of a conditionally released person, and a decision on placement in probationary liberty under supervision.

Section 3

Competent authority

The Central Administration of the Criminal Sanctions Agency decides on whether to send to another Member State a request to recognise a judgment or a probation decision and to execute a probation measure or supervision of an alternative sanction (*request to transfer supervision*) and whether to consent to execution in Finland of such a request sent by another Member State.

Chapter 2

Execution of a request to transfer supervision forwarded from another Member State to Finland

Section 4

Admissibility of a request

A request to transfer supervision is considered admissible without consulting the Central Administration of the Criminal Sanctions Agency, if the person subject to supervision or sentenced to an alternative sanction is a Finnish citizen and has consented to the supervision being carried out in Finland.

If the person subject to supervision or sentenced to an alternative sanction is not ordinarily residing in Finland, the consent of the Central Administration of the Criminal Sanctions Agency is required for a request to transfer supervision to be admissible. Consent may be given if, due to the personal circumstances of the person subject to supervision or sentenced to an alternative

sanction or for special reasons, enforcement of the probation measure or alternative sanction in Finland would facilitate the reintegration of the person into society.

Section 5

Double criminality

If a request to transfer supervision is based on a sanction imposed for an act referred to in Article 10(1) of the Framework Decision, consenting to the request is not subject to the condition that the act constitutes an offence under Finnish law or would do so if committed in Finland in similar circumstances.

If a request to transfer supervision is based on a sanction imposed for an act other than those referred to in Article 10(1) of the Framework Decision, consenting to the request is subject to the condition that the act constitutes an offence under Finnish law or would do so if committed in Finland in similar circumstances.

Section 6

Execution of a request to transfer supervision

As the executing state, Finland may only supervise the probation measures and alternative sanctions referred to in Article 4(1) of the Framework Decision.

A decision to adapt a probation measure or an alternative sanction in accordance with Article 9 of the Framework Decision is made by the Central Administration of the Criminal Sanctions Agency. However, if a court would be competent to decide on the measure in question in a corresponding national situation, the decision shall be made by the Helsinki District Court. A request is submitted by a prosecutor on the proposal of the Central Administration of the Criminal Sanctions Agency. In such a case, the provisions governing the criminal procedure apply to the consideration of the matter concerning adaptation, as appropriate.

The person subject to supervision or sentenced to an alternative sanction shall be given an opportunity to be heard in a case involving adaptation. The provisions of section 13 apply to the right to legal counsel and defence counsel.

The enforcement of a probation measure or an alternative sanction is governed by the provisions of Finnish law concerning the enforcement of a similar measure or sanction.

Section 7

Jurisdiction to take subsequent decisions

The authority that would have jurisdiction in a corresponding national situation decides on the consequences of a breach of the conditions of a probation measure or an alternative sanction and the other measures referred to in Article 14(1) of the Framework Decision. However, a district court decides on the measures referred to in Article 14(1)(b) and (c) of the Framework Decision. The case is considered in the district court of the judicial district in which the person subject to supervision is residing or which is otherwise deemed appropriate.

Where a person subject to supervision or sentenced to an alternative sanction has failed to comply with the conditions or orders imposed on him or her or committed a new offence, the district court may refrain from undertaking the measures referred to in Article 14(1)(b) and (c) of the Framework Decision if:

- 1) the necessary measure is incompatible with the Finnish legislation;
- 2) the act does not constitute an offence under Finnish law or would not do so if committed in Finland in similar circumstances; or
- 3) there are other special reasons or grounds referred to in Article 20 of the Framework Decision for refraining from undertaking the measures.

In such a case, the jurisdiction to take subsequent decisions is transferred back to the issuing state.

Section 8

Languages and translations

The Central Administration of the Criminal Sanctions Agency accepts the certificate referred to in Article 6 of the Framework Decision if it is provided in Finnish, Swedish or English or accompanied by a translation into one of these languages. The Central Administration of the Criminal Sanctions Agency may also accept a certificate in a language other than Finnish, Swedish or English, if there is no other impediment to accepting it.

Where necessary, the Central Administration of the Criminal Sanctions Agency is responsible for the translation of the certificate into Finnish or Swedish.

Persons subject to supervision or sentenced to an alternative sanction have the right to be informed of any decision in the case in a language they understand.

Chapter 3

Forwarding a request to transfer supervision from Finland to another Member State

Section 9

Conditions for forwarding a request

The Central Administration of the Criminal Sanctions Agency decides on whether to forward a request to transfer supervision to a Member State referred to in Article 5(1) and (2) of the Framework Decision. A request to transfer supervision shall be subject to the condition that the transfer could facilitate the reintegration of the person subject to supervision or sentenced to an alternative sanction into society due to the personal circumstances of the person or for other special reasons and that the person has consented to the transfer.

Section 10

Content and format of a request to transfer supervision

Transfer of supervision shall be requested in accordance with Article 6 of the Framework Decision by forwarding the judgment and, where necessary, the probation decision or certified copies of them together with the certificate for which the standard form is given in the Annex of the Framework Decision to a Member State referred to in section 9.

Section 11

Languages and translations

The Central Administration of the Criminal Sanctions Agency is responsible for the translation of the certificate for which the standard form is given in the Annex of the Framework Decision into a language accepted by the executing state.

Chapter 4

Miscellaneous provisions

Section 12

Hearing persons subject to supervision

In addition to the provisions of this Act, the provisions of the Administrative Procedure Act (434/2003) apply to the hearing of persons subject to supervision or sentenced to an alternative sanction.

Section 13

Right to legal counsel and defence counsel

A person subject to supervision or sentenced to an alternative sanction has the right to legal counsel.

A defence counsel shall be appointed for a person subject to supervision or sentenced to an alternative sanction, if he or she so requests. The provisions of chapter 2 of the Criminal Procedure Act (689/1997) apply, as appropriate, to defence counsel, including to the appointment of defence counsel by virtue of office. A defence counsel is appointed by the Central Administration of the Criminal Sanctions Agency. The court considering a matter referred to in this Act may also appoint a defence counsel. The person subject to supervision or sentenced to an alternative sanction shall be informed without delay of his or her right to legal counsel and to a court-appointed defence counsel.

If the person subject to supervision or sentenced to an alternative sanction is in a foreign state and a legal counsel has been appointed for him or her there, the prerequisite for appointing a defence counsel is that there are special reasons for this from the perspective of the legal protection of the person subject to supervision or sentenced to an alternative sanction.

The Ministry of Justice orders a reasonable remuneration to be paid to the defence counsel from state funds, which shall be borne by the State.

Section 14

Request for review

Decisions made by the Central Administration of the Criminal Sanctions Agency under this Act may be appealed against to the Helsinki Administrative Court as provided in the Administrative Judicial Procedure Act (586/1996). Appeals shall be considered urgently. The decision of the Helsinki Administrative Court is not subject to appeal.

A district court decision referred to in this Act is appealed against to a court of appeal in accordance with the provisions of the Code of Judicial Procedure on appealing against a district court decision.

Section 15

Relationship to other legislation

Notwithstanding this Act, the Act on Nordic Cooperation in Criminal Matters (326/1963) may be applied.

Section 16

Entry into force

This Act enters into force on 5 December 2011.

This Act applies in relation to a Member State that has implemented the Framework Decision.