European Supervision Order (ESO)
The issue of a non-resident suspect

- ECHR and general principles of law regard pre-trial detention as an exceptional measure - the use of non-custodial supervision measures should be explored first.

- It has been observed that EU citizens who are not residents at the state where legal proceedings are taking place, due to the risk of flight, are kept in pre-trial detention or subject to non-custodial supervision in a foreign environment to them.

- Whereas, often an individual who is a resident in a state where legal proceedings are taking place, would experience less coercive supervision measures.
Foreign suspects are in a more vulnerable position, than suspects who normally reside in the country.

Non-resident suspect could possibly lose his employment due to coercive measures imposed on him, for instance travel prohibition.

It also affects suspect’s mental state, as the individual is cut from his family or other close contacts.

Moreover, keeping persons in pre-trial detention is costly for the public authorities involved.
Alternative to the pre-trial detention?

- Potential risk of unequal treatment between resident and non-resident suspect.
- In 2006 the European Commission have proposed the European Supervision Order in order to reduce the pre-trial detention.
- It addresses challenges regarding transposition of alternative pre-trial measures and recognition of foreign judicial decisions.
What is the European Supervision Order?

- ESO allows a suspect to remain in his place of residence while awaiting his trial in a different Member State.
- A suspect remains under non-custodial supervision, enforced by a Member State of his residence according to the request made by a State where legal proceedings are taking place.
Framework Decision 2009/829/JHA on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention.

Main objectives:
- Ensure that the person in question will be available to stand trial.
- Promote the use of non-custodial measures where appropriate, in the course of criminal proceedings for persons who are not resident in the place where the legal proceedings are taking place.
- Improve protection of victims and of the general public.
Types of supervision measures

- An obligation for the person to inform the competent authority in the executing State of any change of residence, in particular for the purpose of receiving a summons to attend a hearing or a trial in the course of criminal proceedings.
- An obligation not to enter certain localities, places or defined areas in the issuing or executing State;
- An obligation to remain at a specified place, where applicable during specified times;
- An obligation containing limitations on leaving the territory of the executing State;
- An obligation to report at specified times to a specific authority;
- An obligation to avoid contact with specific persons in relation with the offence(s) allegedly committed.
MS shall notify the General Secretariat of the Council of the EU which supervision measures it is prepared to monitor. These measures may include in particular:

- an obligation not to engage in specified activities in relation with the offence(s) allegedly committed, which may include involvement in a specified profession or field of employment;
- an obligation not to drive a vehicle;
- an obligation to deposit a certain sum of money or to give another type of guarantee, which may either be provided through a specified number of instalments or entirely at once;
- an obligation to undergo therapeutic treatment or treatment for addiction;
- an obligation to avoid contact with specific objects in relation with the offence(s) allegedly committed.
The issuing State

- The Framework Decision does not oblige the State to issue the European Supervision Order.
- The issuing MS has to issue the decision on supervision measures together with the certificate as set in Art. 10 of the Framework Decision.
- As long as the executing MS has not recognised the decision on supervision measures, the competent authority of the MS remains competent in monitoring of the supervision. Measures imposed.
Annexes I and II
“The competent authority in the executing State shall, as soon as possible and in any case within 20 working days of receipt of the decision on supervision measures and certificate, recognise the decision on supervision measures forwarded in accordance with Article 9 and following the procedure laid down in Article 10 and without delay take all necessary measures for monitoring the supervision measures, unless it decides to invoke one of the grounds for non-recognition referred to in Article 15.”
Execution of a Decision

- Two scenarios: the executing MS may invoke double criminality requirement or the double criminality shall not be checked by the executing MS in case of 32 categories of offences.
- Art. 14(1) lists offences that give rise to recognition of the decision on supervision measures without verification of the double criminality of the act.
- For offences that are not in the Art. 14(1) list, the executing MS may recognise the decision on supervision measures based on the condition that the decision relates to acts which also constitute an offence under the law of the executing State.
Non recognition of a Decision

- The principle of mutual recognition does not mean that there is an absolute obligation to execute the decision.
- The competent authorities in the executing MS are in principle obliged to act unless the MS invokes one of the non-execution grounds listed in Art. 15(1) of the Framework Decision.
- Before deciding to not recognize the decision on supervision, the executing MS shall communicate with the issuing MS in case there is missing information.
The Framework Decision provides for a possibility to issue the EAW to bring back the person to stand trial if he does not fulfil the conditions imposed by the European Supervision Order.

Article 21(1) of the Framework Decision states:

“If the competent authority of the issuing State has issued an arrest warrant or any other enforceable judicial decision having the same effect, the person shall be surrendered in accordance with the Framework Decision on the European Arrest Warrant.”
Benefits

- ESO provides for a middle ground between provisional detention or unsupervised movement of the suspect.
- Thus it enhances public safety
- ESO enhances the right to liberty
- Presumption of innocence
- Cooperation between Member States
- Reduces the number of prosecution EAWs
- Prevents discrimination between those who are residents in the trial State and those who are not.
Thank you!