



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 27 July 2011

13298/11

**COPEN 190
EUROJUST 117
EJN 96**

NOTE

from: General Secretariat
to: Delegations
Subject: Council Framework Decision 2009/299/JHA of 26 February 2009 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.
- Consolidated version of the certificate concerning the execution of financial penalties.

Delegations find attached the consolidated version of the certificate concerning the execution of financial penalties.

CERTIFICATE

referred to in Article 4 of Council Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties

(a)

* Issuing State:

* Executing State:

(b) The authority which issued the decision imposing the financial penalty:

Official name:

Address:

.....

File reference (...)

Tel. No.: (country code) (area/city code)

Fax No. (country code) (area/city code)

E-mail (when available).....

Languages in which it is possible to communicate with the issuing authority.....

.....

Contact details for person(s) to contact to obtain additional information for the purpose of the enforcement of the decision or, where applicable, for the purpose of the transfer to the issuing State of monies obtained from the enforcement (name, title/grade, tel. No., fax No., and, when available, E-mail)

.....

.....

(c) The authority competent for the enforcement of the decision imposing the financial penalty in the issuing State (if the authority is different from the authority under point (b)):

Official name:

Address:

Tel. No.: (country code) (area/city code)

Fax No. (country code) (area/city code)

E-mail (when available).....

Languages in which it is possible to communicate with the authority competent for the enforcement

Contact details for person(s) to contact to obtain additional information for the purpose of the enforcement of the decision or, where applicable, for the purpose of the transfer to the issuing State of monies obtained from the enforcement (name, title/grade, tel. No., fax No., and, when available, E-mail):

(d) Where a central authority has been made responsible for the administrative transmission of decisions imposing financial penalties in the issuing State :

Name of the central authority:

.....

Contact person, if applicable (title/grade and name):.....

.....

Address:

.....

File reference

Tel. No.: (country code) (area/city code)

Fax No.: (country code) (area/city code)

E-mail (when available):

(e) The authority or authorities which may be contacted (in the case where point (c) and/or (d) has been filled):

Authority mentioned under point (b)

Can be contacted for questions concerning:

Authority mentioned under point (c)

Can be contacted for questions concerning:

Authority mentioned under point (d)

Can be contacted for questions concerning:

(f) Information regarding the natural or legal person on which the financial penalty has been imposed:

1. In case of a natural person

Name:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (when available):

Date of birth:

Place of birth:

Last known address:

.....

Language(s) which the person understands (if known):.....

.....

- (a) If the decision is transmitted to the executing State because the person against whom the decision has been passed is normally resident, add the following information:

Normal residence in the executing State:

.....

.....

- (b) If the decision is transmitted to the executing State because the person against whom the decision has been passed has property in the executing State, add the following information:

Description of the property of the person:

Location of the property of the person:

- (c) If the decision is transmitted to the executing State because the person against whom the decision has been passed has income in the executing State, add the following information:

Description of the source(s) of income of the person:

Location of the source(s) of income of the person:

2. In case of a legal person:

Name:

Form of legal person:

Registration number (if available) ¹:

Registered seat (if available) ¹:

Address of the legal person:

¹ Where a decision is transmitted to the executing State because the legal person against whom the decision has been passed has its registered seat in that State, Registration number and Registered seat must be completed.

- (a) If the decision is transmitted to the executing State because the legal person against whom the decision has been passed has property in the executing State, add the following information:

Description of the property of the legal person:

Location of the property of the legal person :

.....

- (b) If the decision is transmitted to the executing State because the legal person against whom the decision has been passed has income in the executing State, add the following information:

Description of the source(s) of income of the legal person:

Location of the source(s) of income of the legal person:

.....

(g) The decision imposing a financial penalty:

1. The nature of the decision imposing the financial penalty (tick the relevant box):

(i) Decision of a court of the issuing State in respect of a criminal offence under the law of the issuing State.

(ii) Decision of an authority of the issuing State other than a court in respect of a criminal offence under the law of the issuing State. It is confirmed that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters.

(iii) Decision of an authority of the issuing State other than a court in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law. It is confirmed that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters.

(iv) Decision of a court having jurisdiction in particular in criminal matters regarding a decision as referred to in point iii.

The decision was made on (date)

The decision became final on (date)

Reference number of the decision (if available):

The financial penalty constitutes an obligation to pay (tick the relevant box(es) and indicate the amount(s) with indication of currency):

- (i) A sum of money on conviction of an offence imposed in a decision.

Amount:.....

- (ii) Compensation imposed in the same decision for the benefit of victims, where the victim may not be a civil party to the proceedings and the court is acting in its exercise of its criminal jurisdiction.

Amount:.....

- (iii) A sum of money in respect of the costs of court or administrative proceedings leading to the decision.

Amount:.....

- (iv) A sum of money to a public fund or a victim support organisation, imposed in the same decision.

Amount:.....

The total amount of the financial penalty with indication of currency:

.....

- 2. A summary of facts and a description of the circumstances in which the offence(s) has(have) been committed, including time and place:

.....

.....

.....

.....

.....

Nature and legal classification of the offence(s) and the applicable statutory provision/code on basis of which the decision was made:.....

.....

.....

.....

3. To the extent that the offence(s) identified under point 2 above constitute(s) one or more of the following offences, confirm that by ticking the relevant box(es):

- participation in a criminal organisation;
- terrorism;
- trafficking in human beings;
- sexual exploitation of children and child pornography;
- illicit trafficking in narcotic drugs and psychotropic substances;
- illicit trafficking in weapons, munitions and explosives;
- corruption;
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests;
- laundering of the proceeds of crime;
- counterfeiting currency, including of the euro;
- computer-related crime;
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
- facilitation of unauthorised entry and residence;
- murder, grievous bodily injury;
- illicit trade in human organs and tissue;
- kidnapping, illegal restraint and hostage-taking;
- racism and xenophobia;
- organised or armed robbery;
- illicit trafficking in cultural goods, including antiques and works of art;
- swindling;
- racketeering and extortion;

- counterfeiting and piracy of products;
- forgery of administrative documents and trafficking therein;
- forgery of means of payment;
- illicit trafficking in hormonal substances and other growth promoters;
- illicit trafficking in nuclear or radioactive materials;
- trafficking in stolen vehicles;
- rape;
- arson;
- crimes within the jurisdiction of the International Criminal Court;
- unlawful seizure of aircraft/ships;
- sabotage.
- conduct which infringes road traffic regulations, including breaches of regulations pertaining to driving hours and rest periods and regulations on hazardous goods;
- smuggling of goods;
- infringements of intellectual property rights;
- threats and acts of violence against persons, including violence during sport events;
- criminal damage;
- theft;
- offences established by the issuing State and serving the purpose of implementing obligations arising from instruments adopted under the EC Treaty or under Title VI of the EU Treaty.

If this box is ticked, indicate the exact provisions of the instrument adopted on the basis of the EC Treaty or the EU Treaty that the offence relates to:

.....

.....

4. To the extent that the offence(s) identified under point 2 above are not covered by point 3, give a full description of the offence(s) concerned:

.....

.....

.....

(h) Status of the decision imposing the financial penalty

1. Confirm that (tick the boxes):

- (a) the decision is a final decision
- (b) to the knowledge of the authority issuing the Certificate, a decision against the same person in respect of the same acts has not been delivered in the executing State and that no such decision delivered in any State other than the issuing State or the executing State has been executed.

2. Indicate if the case been subject to a written procedure:

- (a) No, it has not.
- (b) Yes, it has. It is confirmed that the person concerned was, in accordance with the law of the issuing State, informed personally or via a representative competent according to national law of his right to contest the case and of time limits of such a legal remedy

3. Indicate if the person concerned appeared in person at the trial resulting in the decision:

1. Yes, the person appeared in person at the trial resulting in the decision.

2. No, the person did not appear in person at the trial resulting in the decision.

3. If you have ticked the box under point 2, please confirm the existence of one of the following:

- 3.1a. the person was summoned in person on ... (day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

3.1b. the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the decision, in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

3.2. being aware of the scheduled trial, the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

OR

3.3. the person was served with the decision on ... (day/month/year) and was expressly informed about the right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and

the person expressly stated that he or she does not contest this decision;

OR

the person did not request a retrial or appeal within the applicable timeframe;

OR

3.4. the person, having been expressly informed about the proceedings and the possibility to appear in person in a trial, expressly waived his or her right to an oral hearing and has expressly indicated that he or she does not contest the case.

4. If you have ticked the box under point 3.1b, 3.2, 3.3 or 3.4 above, please provide information about how the relevant condition has been met:

.....
.....

4. Partial payment of the penalty

If any part of the penalty has already been paid to the issuing State, or, to the knowledge of the authority issuing the Certificate, to any other State, indicate the amount which has been paid:

.....

(i) Alternative sanctions, including custodial sanctions

1. State whether the issuing State allows for the application by the executing State of alternative sanctions in case it is not possible to enforce the decision imposing a penalty, either totally or in part:

yes

no

2. If yes, state which sanctions may be applied (nature of the sanctions, maximum level of the sanctions):

Custody. Maximum period:

Community service (or equivalent). Maximum period.....

Other sanctions. Description:

.....

(j) Other circumstances relevant to the case (optional information):.....
.....
.....

(k) The text of the decision imposing the financial penalty is attached to the certificate.

Signature of the authority issuing the certificate and/or its representative certifying the content of the certificate as accurate:

Name:

Post held (title/grade):

Date:

Official stamp (if available)
