



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 27 July 2011

13301/11

**COPEN 192
EUROJUST 119
EJN 98**

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 judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty.

Delegations find attached the consolidated version of the certificate concerning the execution of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty.

CERTIFICATE

referred to in Art. 4 of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union¹

| | | |
|-----|---|------------------------|
| (a) | * | Issuing State: |
| | * | Executing State: |

| | |
|-----|---|
| (b) | The court which delivered the judgment imposing the sentence that became final: Official name: |
| | The judgment was delivered on (give date: dd-mm-yyyy): |
| | The judgment became final on (give date: dd-mm-yyyy): |
| | Reference number of the judgment (if available): |

¹ "This certificate must be written in, or translated into, one of the official languages of the executing Member State or any other language accepted by that State."

(c) Information related to the authority that may be contacted for any question related to the certificate:

1. Type of authority: Please tick the relevant box:

Central authority

Court

Other authority

2. Contact details of the authority indicated under point (c) 1:

Official name:

.....

Address:

.....

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

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

E-mail address (if available):

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

4. Contact details of person(s) to be contacted to obtain additional information for the purposes of enforcement of the judgment or agreement on the transfer procedures (name, title/grade, tel. No, fax No, e-mail address), if different from 2:

.....

.....

(d) Information regarding the person on whom the sentence has been imposed:

Name:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if available):

Date of birth:

Place of birth:

Last known addresses/residences:

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

.....

The sentenced person is:

in the issuing State and is to be transferred to the executing State.

in the executing State and enforcement is to take place in that State.

.....

Additional information to be provided, if available and if appropriate:

1. Photo and fingerprints of the person, and/or contact details of the person to be contacted in order to obtain such information:

.....

2. Type and reference number of the sentenced person's identity card or passport:

.....

3. Type and reference number of the sentenced person's residence permit:

.....

4. Other relevant information about the sentenced person's family, social or professional ties to the executing State:

.....

.....

- (e) Request for provisional arrest by the issuing State (where the sentenced person is in the executing State):

- The issuing State requests the executing State to arrest the sentenced person, or to take any other measure to ensure that the sentenced person remains in its territory, pending a decision to recognise and enforce the sentence.
- The issuing State has already requested the executing State to arrest the sentenced person, or to take any other measure to ensure that the sentenced person remains in its territory, pending a decision to recognise and enforce the sentence. Please provide the name of the authority in the executing State that has taken the decision on the request to arrest the person (If applicable and available):

.....

.....

.....

(f) Relation to any earlier European Arrest Warrant (EAW):

- An EAW has been issued for the purpose of the execution of a custodial sentence or detention order and the executing Member State undertakes to execute the sentence or detention order (Article 4(6) of the EAW Framework Decision).

Date of issue of the EAW and, if available, reference number:

.....

Name of the authority that issued the EAW:

Date of decision to undertake execution and, if available, reference number:

.....

Name of the authority that issued the decision to undertake execution of the sentence:

.....

- An EAW has been issued for the purpose of prosecution of a person who is a national or resident of the executing State and the executing State has surrendered the person under the condition that the person is to be returned to the executing State in order to serve there the custodial sentence or detention order passed against him or her in the issuing Member State (Article 5(3) of the EAW Framework Decision).

Date of the decision to surrender the person:

Name of the authority that issued the decision to surrender:

Reference number of the decision, if available:

Date of the surrender of the person, if available:

(g) Reasons for forwarding the judgment and the certificate (if you have filled in box (f), there is no need to fill in this box):

The judgment and the certificate are forwarded to the executing State because the issuing authority is satisfied that the enforcement of the sentence by the executing State would serve the purpose of facilitating the social rehabilitation of the sentenced person and:

- (a) The executing State is the State of nationality of the sentenced person in which he or she lives.
- (b) The executing State is the State of nationality of the sentenced person, to which the sentenced person will be deported, once he or she is released from the enforcement of the sentence on the basis of an expulsion or deportation order included in the judgment or in a judicial or administrative decision or any other measure taken consequential to the judgment. If the expulsion or deportation order is not included in the judgment, please provide the name of the authority that issued the order, the date of issue, and, if available, the reference number:
- (c) The executing State is a State, other than a State referred to in (a) or (b), the competent authority of which consents to the forwarding of the judgment and the certificate to that State.
- (d) The executing State has given a notification under Article 4(7) of the Framework Decision, and:
 - it is confirmed that, to the knowledge of the competent authority of the issuing State, the sentenced person lives and has been legally residing continuously for at least five years in the executing State and will retain a permanent right of residence in that state, or
 - it is confirmed that the sentenced person is a national of the executing State.

(h) Judgment imposing the sentence:

1. The judgment covers offences in total.

Summary of facts and a description of the circumstances in which the offence(s) was (were) committed, including time and place; and the nature of the involvement of the sentenced person:

.....
.....
.....
.....

Nature and legal classification of the offence(s) and the applicable statutory provisions on the basis of which the judgment was made:

.....
.....
.....

2. To the extent that the offence(s) identified under point (h) 1 constitute(s) one or more of the following offences, as defined in the law of the issuing State, which are punishable in the issuing State by a custodial sentence or detention order of a maximum of at least three years, please confirm 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.

3. To the extent that the offence(s) identified under point 1 is (are) not covered by point 2 or if the judgment and the certificate is forwarded to the Member State, which has declared that it will verify the double criminality (Article 7(4) of the Framework Decision), please give a full description of the offence(s) concerned:

.....

.....

.....

(i) Status of the judgment imposing the sentence:

1. Indicate if the person 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.

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

.....
.....

2. Details of the length of the sentence :

2.1. Total length of the sentence (in days):

2.2. The full period of deprivation of liberty already served in connection with the sentence in respect of which the judgment was issued (in days):

..... as per (...) (give date on which calculation was made: dd-mm-yyy):

2.3. Number of days to be deducted from total length of the sentence for reasons other than the one referred to under 2.2 (e.g. amnesties, pardons or clemencies, etc. already granted with respect to the sentence):, as per (give date on which calculation was made: dd-mm-yyyy):

2.4. Sentence expiry date in the issuing State:

- Not applicable, because the person is currently not in custody
- The person is currently in custody and the sentence, under the law of the issuing State, would be fully served by (give date: dd-mm-yyyy)¹: :.....

¹ Please insert here the date by which the sentence would be fully served (not taking into account the possibilities of any form of early and/or conditional release) if the person were to stay in the issuing State.

3. Type of sentence:

custodial sentence

measure involving deprivation of liberty (please specify):

.....

(j) Information related to early or conditional release:

1. Under the law of the issuing State the sentenced person is entitled to early or conditional release, having served:

half the sentence

two-thirds of the sentence

another portion of the sentence (please indicate):

2. The competent authority of the issuing State requests to be informed of:

The applicable provisions of the law of the executing State on early or conditional release of the sentenced person;

The beginning and the end of the period of early or conditional release.

(k) Opinion of the sentenced person:

1. The sentenced person could not be heard because he/she is already in the executing State.

2. The sentenced person is in the issuing State and:

- a. has requested the forwarding of the judgment and the certificate
- consented to the forwarding of the judgment and the certificate
- did not consent to the forwarding of the judgment and the certificate
(state reasons given by the sentenced person):

.....
.....

- b. Opinion of the sentenced person is attached.
- Opinion of the sentenced person was forwarded to the executing State on
(give date: dd-mm-yyyy):

(l) Other circumstances relevant to the case (optional information):

.....
.....

(m) Final information:

The text of the judgment(s) is (are) attached to the certificate¹.

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)

¹ The competent authority of the issuing State must attach all judgments related to the case which are necessary to have all the information on the final sentence to be enforced. Any available translation of the judgment(s) may also be attached.