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NOTE

From:	Swedish Delegation
To:	Working Party on Cooperation in Criminal Matters
Subject:	COPEN Meeting - Mutual Recognition experts - Question regarding parallel proceedings under Framework Decision 2002/584/JHA and under Framework Decision 2008/909/JHA

The Swedish delegation would like to discuss the following issue:

When a sentenced person is found in a Member State other than the sentencing state, there are two options in order to have the judgement in question executed. The sentencing state can either issue a European arrest warrant to have the person surrendered (Framework Decision 2002/584/JHA), or send the judgment to the other state for recognition and enforcement in the other Member State (Framework Decision 2008/909/JHA).

The question which is the most appropriate procedure depends on the circumstances of the specific case, such as where the sentenced person is resident. A procedure that starts with a European arrest warrant can also end up with a procedure on transfer of the judgement (see Article 4.6 of Framework Decision 2002/584/JHA and the right to refuse the execution of an arrest warrant if the executing Member State instead undertakes to execute the sentence or detention order in accordance with its domestic law).

However, Swedish competent authorities have encountered situations where a Member State has issued both a European arrest warrant, for the purpose of having a person surrendered for the execution of a sentence, and sent the judgment to the other state for recognition and enforcement in accordance with Framework Decision 2008/909/JHA. Hence, parallel proceedings have been initiated by the same state concerning the same judgement. It should be noted that both framework decisions contain mandatory time limits and the competent authorities are obliged to process both requests. Parallel proceedings take unnecessary resources and time. There are also practical issues concerning which procedure that takes precedence, etc.

Have other Member States had similar experiences? Are there any opinions on how such parallel proceedings should be avoided or handled?
