

Commission notice — Handbook on the transfer of sentenced persons and custodial sentences in the European Union

(2019/C 403/02)

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LIST OF ABBREVIATIONS

CISA Convention	Convention implementing the Schengen Agreement of 19 June 1990
EAW	European arrest warrant
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
EJN	European Judicial Network in criminal matters
EuroPris	European Organisation of Prison and Correctional Services
Framework Decision 2002/584	Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and surrender procedures between Member States
The Framework Decision	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 Union
Framework Decision 2008/947	Council Framework Decision 2008/947/JHA of 27 November 2008 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
Framework Decision 2009/299	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
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
Victims' Rights Directive	Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA
1983 CoE Convention	Council of Europe Convention on the Transfer of Sentenced Persons of 21 March 1983
1997 CoE Additional Protocol	Additional Protocol to Council of Europe Convention on the Transfer of Sentenced Persons of 18 December 1997

Disclaimer:

This handbook is neither legally binding nor exhaustive. It is without prejudice to existing Union law and its future development. It is also without prejudice to the authoritative interpretation of Union law which may be given by the Court of Justice of the European Union.

PREFACE

This handbook aims to provide Member States and their designated competent authorities with practical guidance in applying the Council Framework Decision 2008/909/JHA of 27 November 2008 (hereinafter: 'the Framework Decision'), as amended by the Council Framework Decision 2009/299/JHA of 26 February 2009 on trials *in absentia* ⁽¹⁾ (hereinafter: 'Framework Decision 2009/299'). The Framework Decision's implementation date was set for 5 December 2011. In drafting this Handbook, the Commission has taken on board the views expressed by practitioners in numerous experts' meetings organised in cooperation with the European Organisation of Prison and Correctional Services (hereinafter: 'EuroPris') where the participants shared the challenges and obstacles in implementing this instrument and in undertaking prisoner transfers in practice ⁽²⁾. Moreover, experts invited by the Commission were consulted on a draft document. An implementation report on the Framework Decision was published on 5 February 2014 ⁽³⁾.

The handbook is available on the internet at: <https://e-justice.europa.eu> and on the website of the European Judicial Network (hereinafter: 'EJN') ⁽⁴⁾ in all official languages of the Union.

Information on the implementation of this Framework Decision and the Declarations made by the different Member States can be found on the website of the EJN ⁽⁵⁾.

A valuable document, which contains practical guidelines, is the EuroPris 'Resource Book on the Transfer of Sentenced Persons' ⁽⁶⁾.

In accordance with Article 3 of Council Decision 2002/187/JHA, one of the objectives of Eurojust is to improve the execution of requests for, and decisions on, judicial cooperation, including requests and decisions based on instruments that give effect to the principle of mutual recognition. Eurojust can thus act as facilitator and coordinator in transfer of prisoners cases ⁽⁷⁾.

The information contained in this Handbook is up to date until 1 July 2019.

INTRODUCTION AND GENERAL LEGAL CONTEXT

1. Overview

Judicial relations between the Member States are underpinned by mutual confidence in other Member States legal systems, which enables recognition by the executing State of decisions taken by the issuing State's authorities with only limited possibilities to oppose such recognition.

Over the last decades, it has become more frequent for Member States to convict and sentence citizens from other EU Member States to custodial sentences or measures involving deprivation of liberty ⁽⁸⁾. The most recently available figures ⁽⁹⁾ show that the percentage of citizens of other EU Member States out of the total prison population per Member State ranges from 0,3 % (PL and RO) to 39,4 % (LU). Some are habitually residents in the Member State in which they are imprisoned. Some of those residents may however be subject to deportation at the completion of sentence.

For many convicted citizens of EU Member States the enforcement of the sentence in the Member State of conviction may not be optimal in view of their social rehabilitation.

The Framework Decision increases the possibilities to deal with a sentenced foreign person in terms of transferring him or her to another EU Member State with a view to enhancing the person's rehabilitation.

The Framework Decision applies to all EU citizens and third country nationals located in an EU Member State. With respect to foreign nationals, however, who are not residing in an EU Member State, other international instruments of judicial cooperation apply, such as the Council of Europe Convention on the Transfer of Sentenced Persons of 21 March 1983 (hereinafter: '1983 CoE Convention') and the Additional Protocol to this Convention of

⁽¹⁾ Framework Decision 2009/299 amended the Framework Decision by replacing the ground for refusal on *in absentia* of the Framework Decision. These provisions concern situations where an executing judicial authority has received a request concerning execution of a custodial sentence arising from proceedings in the issuing Member State where the person was not present. The current Handbook includes the consolidated version of the Framework Decision and the certificate, taking into account the above-mentioned amendments.

⁽²⁾ See www.europris.org

⁽³⁾ COM(2014) 57 final of 5 February 2014, p. 5.

⁽⁴⁾ <https://www.ejn-crimjust.europa.eu/>

⁽⁵⁾ https://www.ejn-crimjust.europa.eu/ejn/EJN_Library_StatusOfImpByCat.aspx?CategoryId=36

⁽⁶⁾ <https://www.europris.org/file/europris-resource-book-on-the-transfer-of-sentenced-prisoners-under-eu-framework-decision-909/>

⁽⁷⁾ Article 2(2)(b) of Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA (OJ L 295, 21.11.2018, p. 138) which shall apply as from 12 December 2019.

⁽⁸⁾ United Nations Office on Drugs and Crime, *Handbook on the International Transfer of Sentenced Persons*, 2012, p. 1, available via: http://www.unodc.org/documents/justice-and-prison-reform/11-88322_ebook.pdf.

⁽⁹⁾ See *Council of Europe Annual Penal Statistics, SPACE 1* — Prison Populations Survey 2018 Statistics available via: http://wp.unil.ch/space/files/2019/04/FinalReportSPACEI2018_190402.pdf

18 December 1997 (hereinafter: '1997 CoE Additional Protocol') ⁽¹⁰⁾.

This 1983 CoE Convention also provided an initial answer to facilitate cross border transfers within the EU. Since 5 December 2011, however, the Framework Decision has replaced the 1983 CoE Convention and its 1997 CoE Additional Protocol among EU Member States.

One of the major changes of the Framework Decision compared to the 1983 CoE Convention, is the shift to a compulsory system of prisoner transfers for certain situations, while at the same time enabling much broader possibilities for transfer than before. The need for consent for each transfer by both states and the person concerned has indeed led to difficulties in the application of the 1983 CoE Convention. To overcome this issue, Schengen members had already decided to supplement the 1983 CoE Convention through adding the possibility of 'forced transfer'. According to Articles 67 to 69 of the 1990 Convention implementing the Schengen Agreement (hereinafter: 'CISA Convention'), the consent of the individual to serve a sentence in their country of nationality is not necessary, if they have avoided the enforcement of a penalty or detention order by fleeing to that country. This innovation in the CISA Convention was mirrored in the 1997 CoE Additional Protocol to the 1983 CoE Convention.

Both the 1983 CoE Convention and the Framework Decision primarily intend to facilitate the social rehabilitation of prisoners by giving foreigners convicted of a criminal offence the possibility of serving their sentences in another Member State.

Finally, the Framework Decision applies to the transfer of prisoners who continue to serve their sentences and does therefore not deal with the deportation of offenders who have completed their sentences and are thus no longer subject to criminal proceedings. However, the Framework Decision should be applied in accordance with applicable Union legislation, including Directive 2004/38/EC of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member State. Article 28 of that Directive states that EU citizens can only be deported from another Member State for reasons of public policy or public security.

1.1. *Main features of the Framework Decision*

The Framework Decision establishes in what situations and how EU Member States shall cooperate concerning the recognition of judgments and the enforcement of sentences imposed by another Member State, with a view to facilitating the social rehabilitation of the sentenced person. The instrument intends to enhance efficient cooperation, compared to the 1983 CoE Convention, by applying the mutual recognition principle requiring Member States to trust each other's judicial decisions. Therefore, the Framework Decision takes a different approach on some of the 1983 CoE Convention's core features:

- The Framework Decision imposes in principle an obligation to accept requests for transfer in two situations. There is, however, no obligation for the issuing State to forward a judgment for the purposes of its recognition and enforcement in another Member State.
- Transfers can only be refused on the basis of a limited number of grounds of non-recognition or non-enforcement.
- The Framework Decision limits the situations where consent of the sentenced person is required. Already under the 1997 CoE Additional Protocol this consent was no longer necessary when transfer was sought to a State to which the person had fled ⁽¹¹⁾, or when the sentenced person was subject to an expulsion or deportation order to the requested State ⁽¹²⁾. In addition to these two exemptions, a third exemption is provided in the Framework Decision where the transfer is sought to the Member State of nationality in which the sentenced person lives.

⁽¹⁰⁾ Both the 1983 CoE Convention and its 1997 CoE Additional Protocol are available via: <http://conventions.coe.int/Treaty/en/Treaties/Html/112.htm>

⁽¹¹⁾ Cf. Article 2(3) of the 1997 CoE Additional Protocol.

⁽¹²⁾ Cf. Article 3(1) of the 1997 CoE Additional Protocol.

- The traditional verification of the requirement of double criminality ⁽¹³⁾ is abolished for a list of 32 offences (subject, however, to the possibility for Member States to maintain it) ⁽¹⁴⁾.
- The instrument prescribes a clear timeframe for the procedure.
- The Framework Decision provides for a continued enforcement of sentences as imposed by the issuing State, with limited possibilities for the executing State to adapt the sentence under strict conditions. The issuing State has the final say regarding the transfer, if it is satisfied with the adaptation of the sentence and the modalities for execution of the sentence.

1.1.1. Forwarding

The forwarding of the judgment and the certificate may take place where the competent authority of the issuing State – where appropriate after consultation with the competent authority of the executing State – is satisfied that the transfer and enforcement of the sentence by the executing State would serve the purpose of facilitating the social rehabilitation of the sentenced person (Article 4(2)).

1.1.2. Certificate

The issuing State forwards the judgment to the Member State to which it can transfer the sentenced person, i.e. the executing State (Article 4(1)). To expedite the process, the judgment is accompanied by a standard certificate, which includes the information needed for the transfer (Articles 4 and 5, see Annex I to the Framework Decision).

The certificate has to be completed in a correct manner and has to correspond to the judgment. The certificate has to be signed and its content certified as accurate by the competent authority of the issuing State.

It shall be translated in the official language – or, when more official languages are applicable, one of the official languages – of the executing State (Article 23(1)). Each Member State may, however, deposit a declaration with the General Secretariat of the Council that it will accept a translation in one or more of the official languages of the EU.

If sections of the certificate are not completed or lack detail, this results in a situation where the executing State lacks sufficient information to take a decision on the transfer and has to request further information from the issuing State, thereby causing delay to the process (see Article 9(1)(a)).

Standard certificates are available in all official EU languages. Declarations on the languages accepted by the Member States can be consulted on the website of the EJN ⁽¹⁵⁾.

The Framework Decision employs certain definitions (under Article 1(a) to (d)) that may require additional explanation. The following paragraphs present the relevant terminology of the instrument.

1.1.3. Judgment

A ‘judgment’ shall mean ‘a final decision or order of a court of the issuing State imposing a sentence on a natural person’. The Framework Decision requires that the judgment or order of a court that is meant to be forwarded is a final decision (Article 1(a)), i.e. all national appeal options against the decision have been exhausted, or the time limits for such remedies expired ⁽¹⁶⁾.

1.1.4. Sentence

A ‘sentence’ shall mean ‘any custodial sentence or any measure involving deprivation of liberty imposed for a limited or unlimited period of time on account of a criminal offence on the basis of criminal proceedings’ (Article 1(b)).

⁽¹³⁾ Cf. Article 3(1)(e) of the 1983 CoE Convention.

⁽¹⁴⁾ Many Member States continue to verify double criminality, see declarations pursuant to Article 7(4) made by: AT, CZ, DE, FR, HR, HU, IE, LT, LV, NL, PL, RO and SI.

⁽¹⁵⁾ The webpage is available at the following link:
<https://www.ejn-crimjust.europa.eu/ejn/libcategories.aspx?Id=36>

⁽¹⁶⁾ See Judgment of the Court of Justice of 25 January 2017, *van Vemde*, C-582/15, ECLI:EU:C:2017:37. In this case the Court of Justice established that the term ‘judgment’ must be interpreted as an autonomous and uniform concept of EU law, and covers a judgment which is issued in criminal proceedings and which makes final the sentence imposed on the person sentenced (paragraphs 23-27).

Article 3(3) specifies that the Framework Decision shall apply only to the recognition of judgments and the enforcement of sentences within the meaning of the Framework Decision. The fact that, in addition to the sentence, a fine or a confiscation order has been imposed, which has not yet been paid, recovered or enforced, shall not prevent a judgment from being forwarded. The mutual recognition of decisions imposing fines and confiscation orders is not covered by the Framework Decision, but by other instruments such as Council Framework Decision 2005/214/JHA ⁽¹⁷⁾ on the cross-border enforcement of financial penalties and Council Framework Decision 2006/783/JHA ⁽¹⁸⁾ on confiscation.

1.1.5. The issuing State and the executing State

The Framework Decision refers to the 'issuing State' as 'the Member State in which a judgment is delivered', while the 'executing State' is 'the Member State to which a judgment is forwarded for the purpose of its recognition and enforcement' (Article 1(c) and (d)).

1.2. *The principle of mutual recognition*

Following the endorsement of mutual recognition as the cornerstone for judicial cooperation in criminal matters, this principle was also applied as a basis for adopting the Framework Decision in 2008 ⁽¹⁹⁾.

This principle implies that a Member State has to recognise and enforce judicial decisions in criminal matters issued by another Member State, except where one of the exhaustive grounds for refusal applies. It is based upon a high level of mutual trust between EU Member States.

The concept of mutual trust is based on the assumption that all EU Member States are fully compliant with principles of freedom, democracy and respect for human rights, fundamental freedoms and the rule of law.

1.3. *Legal effect of EU framework decisions*

According to their legal basis (Article 34(2)(b) of the Treaty on European Union (hereinafter: 'TEU'), in the version applicable before the entry into force of the Lisbon Treaty), framework decisions are binding upon the Member States as to the result to be achieved but leave to the national authorities the choice of form and methods; framework decisions have no direct effect. Under the Lisbon Treaty, the Framework Decision has not been subject to any repeal, annulment or amendment (as referred to in Article 9 of Protocol No 36 on transitional provisions adopted on the entry into force of the Treaty of Lisbon). Consequently, its nature has not changed, and in particular, it has no direct effect ⁽²⁰⁾.

However, it is clear from the Court of Justice's settled case law that the binding character of a framework decision places on national authorities, including national courts, an obligation to interpret national law in conformity with EU law by taking the whole body of domestic law into consideration and applying interpretative methods. When those courts apply domestic law, they are therefore bound to interpret it, as far as possible, in the light of the wording and the purpose of the framework decision concerned in order to achieve the result sought by it. This obligation to interpret national law in conformity with EU law is inherent in the system of the Treaty on the Functioning of the European Union (hereinafter: 'TFEU'), since it permits national courts, for the matters within their jurisdiction, to ensure the full effectiveness of EU law when they rule on the disputes before them ⁽²¹⁾.

⁽¹⁷⁾ Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ L 76, 22.3.2005, p. 16).

⁽¹⁸⁾ Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders (OJ L 328, 24.11.2006, p. 59). This Framework Decision has been replaced by Regulation (EU) 2018/1805 of the European Parliament and the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders (OJ L 303/1 of 28.11.2018) which shall apply as from 19 December 2020.

⁽¹⁹⁾ The principle of mutual recognition was endorsed in the Tampere Conclusions (the European Council Conclusions) of 15 and 16 October 1999 and reaffirmed in the Hague Programme of 4 and 5 November 2004 (the Presidency Conclusions) for strengthening freedom, security and justice in the European Union.

⁽²⁰⁾ Judgment of the Court of Justice (Grand Chamber) of 8 November 2016, *Ognyanov*, C-554/14, ECLI:EU:C:2016:835, paragraph 56.

⁽²¹⁾ See chronologically Judgment of the Court of Justice (Grand Chamber) of 16 June 2005, *Pupino*, C-105/03, ECLI:EU:C:2005:386, paragraphs 33-34; Judgment of the Court of Justice (Grand Chamber) of 5 September 2012, *Lopes Da Silva Jorge*, C-42/11, ECLI:EU:C:2012:517, paragraph 53; Judgment of the Court of Justice (Grand Chamber) of 8 November 2016, *Ognyanov*, C-554/14, ECLI:EU:C:2016:835, paragraph 56; Judgment of the Court of Justice of 29 June 2017, *Popławski*, C-579/15, ECLI:EU:C:2017:503, paragraph 46.

It is true that the principle of interpreting national law in conformity with EU law has certain limitations. Thus, the obligation on the national court to refer to the content of a framework decision when interpreting and applying the relevant rules of its national law is limited by general principles of law, particularly those of legal certainty and non-retroactivity. In particular, those principles preclude an interpretation leading to the criminal liability of individuals determined or aggravated on the basis of a framework decision alone, absent any legislation implementing its provisions, where they are in breach of those provisions. Moreover, the principle of conforming interpretation cannot serve as the basis for an interpretation of national law *contra legem* ⁽²²⁾.

However, the requirement to interpret national law in conformity with EU law includes the obligation on national courts, including those ruling as courts of last instance, to alter, where necessary, settled national case law if that case law is based on an interpretation of national law that is incompatible with the objectives of a framework decision. It is therefore for the competent court to ensure that the Framework Decision is given full effect, and if necessary, not to apply, on its own authority, the interpretation adopted by Supreme Court, if that interpretation is not compatible with EU law ⁽²³⁾.

1.4. Article 267 TFEU: Preliminary ruling procedure

The Court of Justice can interpret framework decisions like any other measure of EU law. In the area of police and judicial cooperation in criminal matters, all courts of any Member State can, as of 1 December 2014, in disputes which have been brought before them, refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts before which a similar issue is raised. The preliminary ruling procedure is a non-contentious proceeding designed to enable the Court of Justice to guide national courts on how to interpret EU law, so that they can apply it correctly.

The essential characteristics of the preliminary ruling procedure can be found in the Court of Justice's 'Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings' ⁽²⁴⁾.

In 2017, the average time for consideration of a preliminary ruling was less than 16 months ⁽²⁵⁾. This can be a long time to wait for someone who is in detention ⁽²⁶⁾. Accordingly, since 2008, the Court of Justice has had in place an urgent procedure for preliminary rulings, called the 'PPU' (*procédure préjudicielle d'urgence*). In 2017, the average time for consideration of these cases was on average just 2.9 months ⁽²⁷⁾.

PART I: FORWARDING A JUDGMENT AND A CERTIFICATE

2. Requirements for forwarding

2.1. Scope of the Framework Decision

2.1.1. Ratione personae

The recognition of a judgment and enforcement of a sentence shall apply to all EU citizens and to third countries nationals, who are either in the issuing State or in the executing State (Article 3(2)).

2.1.2. Ratione materiae

With a view to facilitating the social rehabilitation of the sentenced person, the Framework Decision covers any custodial sentence or any measure involving deprivation of liberty imposed for a limited or unlimited period of time on account of a criminal offence on the basis of criminal proceedings (Article 1(b)).

As is clear from the definition, any judgment, following criminal proceedings on account of a criminal offence, and resulting in a deprivation of liberty, may be forwarded under the Framework Decision. This means that decisions imposing internment – following the establishment of the offender's full or partial criminal unaccountability due to a mental disability (see recital 20) – are included in the definition used in the instrument.

⁽²²⁾ Judgment of the Court of Justice of 29 June 2017, *Popławski*, C-579/15, ECLI:EU:C:2017:503, paragraph 32-33 (and the case law cited).

⁽²³⁾ Judgment of the Court of Justice (Grand Chamber) of 8 November 2016, *Ognyanov*, C-554/14, ECLI:EU:C:2016:835, paragraph 70.

⁽²⁴⁾ OJ C 257, 20.7.2018, p. 1.

⁽²⁵⁾ https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-04/_ra_2017_en.pdf, page 13.

⁽²⁶⁾ In that respect, Article 267 TFEU states that if a question of EU law is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court shall act with the minimum of delay.

⁽²⁷⁾ https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-04/_ra_2017_en.pdf.

In addition, so-called combined sentences – where the judicial authority has deemed it necessary to impose a combination of a custodial measure together with another measure involving deprivation of liberty, such as psychiatric treatment – are covered by the Framework Decision.

2.1.3. Ratione temporis

The Framework Decision applies as from 5 December 2011 (Article 26).

Transfer requests received before 5 December 2011 shall continue to be governed in accordance with the existing legal instruments on the transfer of sentenced persons. Requests received after that date shall be governed by the rules adopted by Member States pursuant to this Framework Decision (Article 28(1)).

However, Member States had the possibility, on the date of adoption of the Framework Decision, to make a declaration indicating that, with respect to final judgments issued before a specified date (which can be no later than 5 December 2011), they will continue to apply the existing legal instruments on the transfer of sentenced persons (Article 28(2)). The date of adoption of the Framework Decision was 27 November 2008.

Four Member States (Ireland, Malta, the Netherlands ⁽²⁸⁾ and Poland) made such declarations. However, those Member States did so after the date of adoption of this Framework Decision, i.e. after 27 November 2008. In the Commission's view, these declarations are therefore not valid and the time limitation should be removed by Member States from their legislation forthwith ⁽²⁹⁾.

2.2. Competent authorities

The main actors ensuring cooperation under the Framework Decision are the competent authorities of the issuing State and the executing State. Member States are free to designate their competent authority or authorities under their national laws, both when acting as an issuing State or an executing State (Article 2).

It is noteworthy that the Framework Decision does not limit the definition of 'competent authority' to a judicial authority, allowing Member States the discretion to select the competent authority deemed most appropriate to deal with the procedures under this instrument. In some Member States, these tasks have been conferred on the Ministry of Justice while in other Member States, they have been entrusted to judicial or quasi-judicial bodies. The Member States have to inform the General Secretariat of the Council of the European Union, which makes this information available (Article 2) ⁽³⁰⁾.

Certain Member States have accepted a system of devolved jurisdictions, meaning that all courts have been appointed as competent authorities. This may lead to complications in identifying the relevant authority and to diverging approaches within one and the same Member State. Some Member States have countered this by the appointment of a central authority dealing with incoming requests ⁽³¹⁾.

2.3. Choice of the executing State

2.3.1. Scenarios pursuant to Article 4(1)

Article 4(1) of the Framework Decision provides for the possibility to forward the judgment and the certificate to:

- the Member State of nationality of the sentenced person in which *he or she lives*,
- or
- the Member State of nationality to which, while not being the Member State where *he or she lives*, 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,

⁽²⁸⁾ The Netherlands has however withdrawn this declaration with effect as from 1 June 2018.

⁽²⁹⁾ This approach is shared by Advocate General Bot who, in the *van Vemde* case, stated that 'the declaration of the Kingdom of the Netherlands was not made in a valid manner since it was presented out of time' (Opinion delivered on 12 October 2016 in C-582/15, ECLI:EU:C:2016:766, paragraph 26). The Court suggested a strict interpretation of the deadline so as 'to guarantee the objective pursued by the Framework Decision' (Judgment of the Court of Justice of 25 January 2017, *van Vemde*, C-582/15, ECLI:EU:C:2017:37, paragraph 31). See also the Judgment of the Court of Justice (Grand Chamber) of 24 June 2019 in Case C-573/17, *Daniel Adam Popławski*.

⁽³⁰⁾ The latest update can be found on the website of the EJN. <https://www.ejn-crimjust.europa.eu/ejn/libcategories.aspx?Id=36>.

⁽³¹⁾ Information on contact details of the competent executing authorities can be found in the 'Judicial Atlas' on the website of the EJN: <https://www.ejn-crimjust.europa.eu/ejn/WorkerPage.aspx?x1=AC>.

or

- *any other Member State the competent authority of which consents* to the forwarding of the judgment and the certificate, subject to the consent of the sentenced person where required (see Article 4(3) in conjunction with Article 4(6) and Article 4(7), and Article 6).

2.3.2. Transfer to the Member State of nationality of the sentenced person in which he or she lives (Article 4(1)(a))

Determining where a person lives for the purposes of Article 4(1)(a) is an important aspect of the correct application of the Framework Decision and is directly linked to the compulsory nature of that provision. When this condition is not fulfilled, the sentence transfer process will often require the consent of a sentenced person (see *infra* for the other situations where consent is not required).

The notion of ‘the State in which the sentenced person lives’ is further clarified in recital 17. According to this recital, the State in which the person lives indicates the place to which the person is attached based on habitual residence and on elements such as family, social or professional ties ⁽³²⁾.

Inspiration may be drawn from the ruling of the Court of Justice in the *Kozłowski* case. In the context of Council Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States ⁽³³⁾ (hereinafter: ‘the Framework Decision 2002/584’), the Court held that the ascertainment of a person’s connection with an executing State needs to be based on an overall assessment of ‘various objective factors characterising the situation of that person, including, in particular, the length, nature and conditions of his presence and the family and economic connections which that person has with the executing Member State’ ⁽³⁴⁾. Moreover, the Court stated that the term ‘resident’ means that the person has established his actual place of residence there, and that the person is ‘staying’ in that Member State when, following a stable period of presence in that State, he or she has acquired connections with that State which are of a similar degree to those resulting from residence ⁽³⁵⁾.

2.3.3. Transfer to the Member State to which the person will be deported (Article 4(1)(b))

According to Article 4(1)(b), the judgment and the certificate may also be forwarded to the Member State of nationality, while not being the Member State where the sentenced person lives, but to which he or she will be deported, once he or she is released from the enforcement of the sentence. For this provision to apply it is required that the underlying expulsion or deportation order is included in the judgment or in a judicial or administrative decision or any other measure taken consequential to the judgment.

2.3.4. Transfer to any other Member State which consents to the transfer (Article 4(1)(c))

The third situation which is covered by the scope of the Framework Decision (Article 4(1)(c)) applies when the issuing State wishes to forward the judgment and the certificate to a Member State other than the Member State of nationality in which the sentenced person lives or to which this person will be deported on the basis of an expulsion or deportation order. This can, for example, be the Member State where the sentenced person is residing or is studying, or the Member State of which this person is a national, but where he or she neither lives nor to which he or she will be deported.

In that situation, prior consent of the executing State is needed (Article 4(1)(c)), and consultation between the competent authorities is mandatory (Article 4(3)). The competent authorities should take into account such elements as, for example, the duration of the residence or other links to the executing State. In cases where the sentenced person could be transferred to a Member State and to a third country under national law or international instruments, the competent authorities of the issuing State and executing States should, in consultations, consider whether enforcement in the executing State would enhance the aim of social rehabilitation better than enforcement in the third country (recital 8).

⁽³²⁾ See also the pending request for a preliminary ruling in Case C-495/18, *YX*, from Najvyšší súd republiky (the Supreme Court of the Slovak Republic) lodged on 30 July 2018.

⁽³³⁾ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1).

⁽³⁴⁾ Judgment of the Court of Justice (Grand Chamber) of 17 July 2008, *Kozłowski*, C-66/08, ECLI:EU:C:2008:437, paragraph 48.

⁽³⁵⁾ The *Kozłowski* case concerned a preliminary question regarding EAW proceedings, where the Court had to rule on the interpretation of the connection between a person who is not a national of the executing Member State and the latter Member State (see paragraph 53 of the judgment). This judgment was later confirmed in the *Wolzenburg* case (Judgment of the Court of Justice (Grand Chamber) of 6 October 2009; C-123/08, ECLI:EU:C:2009:616, paragraph 70).

Prior consent of the sentenced person is always required, except in the specific situation provided for in Article 6(2)(c).

2.4. *Informed consent of the sentenced person*

One of the novelties introduced by the Framework Decision in the area of transfer of sentenced persons – compared to previous international transfer regimes – is that it increases the number of situations where the consent of the sentenced person is not required.

The consent of the sentenced person is not required (Article 6(2)) when:

- the person is a national of the executing State and also lives there, or
- the person will be deported to the executing State 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 consequential to the judgement, or
- the person has fled or otherwise returned to the executing State in view of pending criminal proceedings against him or her in the issuing State or following the conviction in that issuing State.

In all other cases, the informed consent of the sentenced person is required.

Article 6(4) contains an obligation for the issuing State to inform the sentenced person, in a language which he or she understands, that it has decided to forward the judgment together with the certificate by using the standard form of the notification set out in Annex II (see also sections 3.2 and 3.3). When the sentenced person is in the executing State at the time of that decision, that form shall be transmitted to the executing State which shall inform the sentenced person accordingly.

Because of the importance of social rehabilitation as a leading principle of the Framework Decision, it must be ensured that the person concerned is properly consulted in transfer decisions. It is therefore recommended that basic information is provided by the issuing State to the sentenced person in order to allow that person to give an informed consent or an informed opinion. Such information could include the logistics of the transfer, prison regimes in the executing State on early and conditional release arrangements.

In cases where the sentenced person does not consent to the transfer, no transfer is possible where such consent is required (Articles 4(1) and 6(1)). In the situation where no consent is required, a negative opinion of the sentenced person has to be taken into account but does not constitute a ground for refusal on social rehabilitation (recital 10).

2.5. *Consent of the executing State*

The consent of the executing State is required in all other situations than those covered by Articles 4(1)(a) and (b) (e.g. where the person is a national of the executing State, but does not live there nor will be deported to it; or where the person is residing in the executing State without being a national of that State) (Article 4(1)(c)). In this case, consultation between the competent authorities of the issuing State and the executing State is mandatory and the executing State can refuse cooperation by not consenting to the forwarding of the judgment to it (recital 8).

However, Article 4(7) enables each Member State to make a declaration indicating that its prior consent is not required for the forwarding of the judgment and the certificate if the sentenced person:

- (a) lives in 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 ⁽³⁶⁾; and/or
- (b) is a national of the executing State in cases other than those provided for in Article 4 paragraph 1(a) and (b).

Such declaration is valid in its relations with other Member States that have given the same notification either at the time of the adoption of the Framework Decision or at any time later (Article 4(7)). Declarations under Article 4(7) can be consulted on the website of the EJN ⁽³⁷⁾.

⁽³⁶⁾ The term 'permanent right of residence' is explained in the second subparagraph of Article 4(7). In this context, as also recalled by recital 16, the Framework Decision should be applied in accordance with the applicable Union legislation including in particular Council Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States and Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long term residents.

⁽³⁷⁾ <http://www.ejn-crimjust.europa.eu/ejn/libcategories.aspx?Id=36>

In implementing this Framework Decision, Member States shall adopt measures, in particular taking into account the purpose of facilitating social rehabilitation of the sentenced person, constituting the basis on which their competent authorities have to take their decisions whether or not to consent to the forwarding of the judgment and the certificate in cases pursuant to Article 4(1)(c) (Article 4(6)).

2.6. *Opinion of the sentenced person*

Even if no consent of the sentenced person is required, it is required that the sentenced person, when he or she is still in the issuing State, shall be given the opportunity to state his or her opinion (orally or in writing) on the transfer, recognition and enforcement of the sentence (Article 6(3)).

Although the opinion of the sentenced person cannot constitute a ground for refusal on social rehabilitation (recital 10), the opinion needs to be taken into account when assessing the facilitation of the social rehabilitation and the appropriateness of the transfer sought. Moreover, when the sentenced person has availed himself or herself of the opportunity to state this opinion, a written record of this opinion shall be forwarded to the executing State so that it may be incorporated in its own reasoned opinion regarding the rehabilitation purpose (Article 6(3)).

2.7. *Assessment of social rehabilitation*

2.7.1. The issuing State must be satisfied

In accordance with its recital 15, the Framework Decision should be applied in accordance with the right of citizens of the Union to move and reside freely within the territory of the Member States conferred by Article 18 of the Treaty establishing European Community, which is now enshrined in Article 21 of the TFEU.

As mentioned above, social rehabilitation is a key aspect of the Framework Decision ⁽³⁸⁾. The competent authority of the issuing State shall be 'satisfied that the enforcement of the sentence by the executing State would serve the purpose of facilitating the social rehabilitation of the sentenced person' (cf. recital 9 and Article 4(2)).

The assessment of the facilitated social rehabilitation may not be restricted to the mere establishment of a geographical connection but needs to be based on a thorough, case-by-case evaluation. To this end, the instrument foresees a consultation procedure between the issuing State and the executing State.

2.7.2. Consultation with the executing State where appropriate

When the issuing State consults the executing State, on an optional or mandatory basis, for the purpose of establishing that social rehabilitation will be enhanced, the competent authority of the executing State may present a reasoned opinion to the competent authority of the issuing State that the enforcement of the sentence would not serve the purpose of facilitating the social rehabilitation of the sentenced person. Moreover, the executing State retains this option even in a situation where no consultation took place between the competent authorities. In this case, such an opinion may be presented without delay after the transmission of the judgment and the certificate. The competent authority of the issuing State shall consider such opinion and decide whether to withdraw the certificate or not (Article 4(4)). The EJN can provide assistance in the consultations between the competent authorities ⁽³⁹⁾.

⁽³⁸⁾ The principle is mirrored in relevant instruments of international law: the United Nations International Covenant on Civil and Political Rights provides in Article 10(3) that the essential aim of a penitentiary system is the reformation and social rehabilitation of the sentenced persons. The Standard Minimum Rules for the Treatment of Prisoners, adopted by the First UN Congress on the Prevention of crime and the treatment of offenders in 1955 (available via:

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/TreatmentOfPrisoners.aspx>) refer in several rules (58, 61, 64, 65, 67, 80) to the social rehabilitation of the prisoner; the United Nation Standard Minimum Rules for the Treatment of Prisoners — the Nelson Mandela Rules, adopted by UN General Assembly Resolution 70/175 in 2015, do so in Rules Number 59, 88, 90, 93(1)(b) available via:

https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf). The Council of Europe European Prison Rules (available via: <https://www.coe.int/en/web/human-rights-rule-of-law/european-prison-rules>) 17.1, 105.1, 106.1 and 107.1 specifically stipulate that prisoners need to be allocated as close as possible to prisons close to their home or places of social rehabilitation, as well as that the work, education and release regimes need to facilitate the reintegration of the prisoner into society.

⁽³⁹⁾ Information about the EJN can be found on the EJN website. <https://www.ejn-crimjust.europa.eu/>.

It is important to note that a negative opinion in itself does not constitute a ground for refusal based on social rehabilitation (recital 10).

When the issuing State is confronted with the opinion of either the sentenced person or the executing State that the enforcement of the sentence would fail to achieve to facilitate the social rehabilitation of the sentenced person, the competent authority of the issuing State will have to consider this opinion and, should it wish to continue the proceedings, satisfy itself that, notwithstanding the arguments included in the opinion concerned, rehabilitation will be facilitated or enhanced after all (recital 10).

2.7.3. Definition of social rehabilitation

While the Framework Decision provides no explicit definition of social rehabilitation, it however provides a non-exhaustive list of elements to assess whether the social rehabilitation of the sentenced person will be enhanced as a result of the transfer of the sentence. The competent authority of the issuing State should take into account such elements as, for example, 'the person's attachment to the executing State, whether he or she considers it the place of family, linguistic, cultural, social or economic and other links to the executing State' (recital 9).

It follows from the above that in the context of the Framework Decision social rehabilitation should be understood in the sense that it is more appropriate for measures of rehabilitation to be taken in a State where the sentenced person understands the language and to which he or she has close links. The opportunity for social contact with relatives and friends helps preparing the sentenced person for a return to the community. This objective may not be served if such a person is kept in a foreign State when it is likely that he or she will no longer be permitted to remain in that State after having served the sentence.

2.7.4. Sentence execution modalities

Prospects for social rehabilitation may also depend on sentence execution modalities in the executing State.

When the executing State – during consultations or when it has availed itself of the opportunity to present its reasoned opinion following the transmission of the judgment and the certificate – anticipates the need for an adaptation of the sentence, this information may be included in its motivation regarding the prospects of facilitating the social rehabilitation.

A similar observation can be made regarding the potential provisions on early or conditional release that may be applicable in the executing State (cf. Article 17). The issuing State has the opportunity to request information on these enforcement modalities whereupon the executing State has the obligation to inform (see Article 17(3)).

As such, it would enable the executing State to substantiate its evaluation of the sought transfer, as well as provide the issuing State with additional relevant information to satisfy itself that the social rehabilitation will be enhanced.

2.8. *The list of 32 offences which give rise to surrender without verification of double criminality*

Before transferring the sentence, the competent issuing authority should determine whether one or more of the offences belong to one of the 32 categories in respect of which the verification of double criminality does not apply. The list of offences can be found in Article 7(1) and also in the certificate, where offences belonging to the list should be 'ticked'. In order for Article 7 to apply, the offences on the list should be punishable in the issuing State by a custodial sentence or a measure involving the deprivation of liberty for a maximum period of at least three years.

It is the issuing Member State's law which is decisive. This was confirmed in the judgment in Case C-303/05 *Advocaten voor de Wereld* relating to the Framework Decision 2002/584⁽⁴⁰⁾.

The executing authority can only verify double criminality in respect of offences that are not in the list of 32 offences.

However, several Member States have availed themselves of the possibility to verify dual criminality in all cases (Article 7(4), see footnote 14). The declarations made to that effect may be withdrawn at any time.

⁽⁴⁰⁾ Judgment of the Court of Justice of 3 May 2007, *Advocaten voor de Wereld*, C-303/05, ECLI:EU:C:2007:261, paragraphs 48 to 61.

2.9. *Vulnerable groups: minors and mentally disordered offenders and transfer of psychiatric or health care measures*

A specific category of sentenced persons prone to vulnerability regarding treatment, care and accommodation are minor offenders and offenders suffering from mental health issues. Special attention should be paid to the application of the Framework Decision to these specific groups of offenders.

The Framework Decision contains two provisions applicable to situations where minors and persons with mental disorders and/or addictions are involved (both in Article 9). In essence, the competent authority of the executing State may refuse to recognise the judgment and enforce the sentence if:

- (i) the sentence has been imposed on a person who, under the law of the executing State, owing to his/her age, could not have been held criminally liable for the acts in respect of which the judgment was issued (Article 9 (1)(g)); or if
- (ii) the sentence imposed includes a measure of psychiatric or health care or another measure involving deprivation of liberty, which, notwithstanding the possibility to adapt the sentence as provided for under Article 8(3) ⁽⁴¹⁾, cannot be executed by the executing State in accordance with its legal or health care system (Article 9(1)(k)).

In cases referred to in Article 9(1)(k), the executing State should consider the possibility of adapting the sentence in accordance with this Framework Decision before it refuses to recognise and enforce the sentence involving a measure other than a custodial sentence (see recital 19).

Moreover, in these types of situations, before deciding not to recognise the judgment and enforce the sentence, the executing State is obliged to consult the issuing State, by any appropriate means, and shall, where appropriate, ask it to supply any necessary additional information without delay (Article 9(3)).

The ground for refusal provided for in Article 9(1)(k) may be applied also in cases where the person has not been found guilty of a criminal offence although the competent authority applied the measure involving the deprivation of liberty other than a custodial sentence as a consequence of a criminal offence (see recital 20).

Where the issuing State considers it necessary in view of the sentenced person's age or his or her physical or mental condition, the opportunity to state his or her opinion orally or in writing regarding the transfer shall be given to his or her legal representative (Article 6(3)).

2.10. *Fundamental rights considerations by the issuing State*

The Framework Decision respects fundamental rights and observes the principles recognized by Article 6 TEU and reflected by the Charter of Fundamental Rights of the European Union (hereinafter: 'EU Charter of Fundamental Rights') (recital 13).

According to its Article 3(4), the Framework Decision shall not have the effect of modifying the obligation to respect these fundamental rights and fundamental legal principles.

As a result, the issuing State, especially in situations where the transfer of the sentence is sought without the consent of the sentenced person, must ensure that the transfer, recognition and execution of the sentence will not compromise the basic fundamental rights of the sentenced person.

Prison conditions give rise to significant problems in several EU Member States, with prison overcrowding as one of the most pressing issues. Inhuman or degrading prison conditions have the potential to seriously undermine the application of EU instruments on mutual recognition, as this could lead to a violation of the provisions of both the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: 'ECHR') and the EU Charter of Fundamental Rights.

However, this issue has, for the time being, only been dealt with by the Court of Justice in the context of the Framework Decision 2002/584 ⁽⁴²⁾. Under the Framework Decision 2002/584, the executing State is bound by the principle of mutual recognition and therefore has in principle to execute the EAW and thus to surrender the

⁽⁴¹⁾ Article 8(3) states that where the sentence is incompatible with the law of the executing State in terms of its nature, the competent authority of the executing State may adapt it to the punishment or measure provided for under its own law for similar offences. Such a punishment or measure shall correspond as closely as possible to the sentence imposed in the issuing State and therefore the sentence shall not be converted into a pecuniary punishment.

⁽⁴²⁾ Judgment of the Court of Justice (Grand Chamber) of 5 April 2016, *Aranyosi and Căldăraru*; C-404/15 and C-659/15 PPU, ECLI:EU:C:2016:198; Judgment of the Court of Justice of 25 July 2018, *MLT*, C-220/18 PPU, ECLI:EU:C:2018:589; see also the *Dorobantu* case (C-128/18, pending).

person concerned to the issuing State, unless grounds for refusal apply. In contrast, the situations under the Framework Decision concern the transfer of sentenced persons from the issuing State to the executing State. In that respect, the issuing State has no obligation to transfer the sentence if doubts about detention conditions arise, even when the other Member State has explicitly requested the transfer. Article 4 of the EU Charter of Fundamental Rights, which prohibits torture or inhuman or degrading treatment, equally applies to transfers of prisoners, in particular in a situation where a State wishes to transfer a person without his or her consent.

3. Procedure for forwarding

3.1. Subjects entitled to initiate the procedure

The Framework Decision enables the issuing State, the executing State, as well as the sentenced person to initiate the mechanism that could lead to a transfer. There are, however, important differences depending on who initiates the procedure.

The executing State may on its own initiative request the issuing State to forward the judgment. Likewise, the sentenced person may also request the competent authorities of the issuing State or of the executing State to initiate a procedure for forwarding the judgment (Article 4(5)).

In both scenarios, however, there shall be no obligation for the issuing State to comply with the requested forwarding of the judgment. This emanates logically from the fact that the issuing State remains the sole actor that has, following a criminal offence, delivered a judgment for which it had the sovereign competence to do so. As such, the issuing State retains the discretionary margin to assess the requests of either or both the executing State and the sentenced person.

For example, the issuing State might wish to not transfer the sentenced person if a less lengthy incarceration is foreseen in the executing State, taking into account the provisions on early and conditional release in that State. Victims' interests might also be taken into account in deciding where the offender could best serve his or her sentence. A Member State might also be reluctant to transfer a person if such a transfer would imply the reintegration in the criminal milieu of his or her home state, instead of being in the interest of his or her social rehabilitation.

The full decisional power of the issuing State is also illustrated by Article 13 of the Framework Decision which indicates that as long as the enforcement of the sentence in the executing State has not begun, the issuing State may withdraw the certificate, giving reasons for doing so. See in this context also Article 17(3).

It is therefore important to note that the issuing State, for its part, is not under an obligation to forward the judgment and the certificate, even if that would be in the interest of the convicted person. As such there is no 'right' to a transfer for the sentenced person ⁽⁴³⁾.

There is an increasing awareness across Member States that opinions of victims should be taken into account in the context of the enforcement of the sentences of convicted offenders, including international prison transfer. Victims can be present in the executing State as well as in the issuing State. Many Member States have adopted a procedure whereby victims have the opportunity to be consulted regarding transfers and their opinion is taken into account. However, this does not establish a right for victims to oppose a transfer.

3.2. Procedure to obtain the opinion of the sentenced person

The sentenced person, when he or she is still in the issuing State, shall be given the opportunity to state his or her opinion (orally or in writing) on the transfer, recognition and enforcement of the sentence (Article 6(3)). Where the issuing State considers it necessary in view of the sentenced person's age or his or her physical or mental condition, that opportunity shall be given to his or her legal representative.

The opinion of the sentenced person should always be asked even if no consent is required.

Although the opinion of the sentenced person cannot constitute a ground for refusal on social rehabilitation (recital 10), the opinion needs to be taken into account when assessing the facilitation of the social rehabilitation and the appropriateness of the transfer sought (Article 6(3)).

⁽⁴³⁾ There is, however, an exception if the Member States concerned agreed already in the proceedings regarding the execution of an EAW that the sentence is to be served in the Member State of nationality or residence of the sentenced person in the context of Article 5(3) of the Framework Decision 2002/584. See section 11.1.

Information on the opinion of the sentenced person needs to be provided under box (k) of the certificate:

(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):

3.3. Notification of the sentenced person (Article 6(4) and form Annex II)

The competent authority of the issuing State shall inform the sentenced person, in a language which he or she understands, that it has decided to forward the judgment together with the certificate by using the standard form of the notification set out in Annex II. When the sentenced person is in the executing State at the time of that decision, that form shall be transmitted to the executing State which shall inform the sentenced person accordingly (Article 6(4)).

Annex II to the Framework Decision provides for a standard form of notification to the sentenced person:

ANNEX II

NOTIFICATION OF THE SENTENCED PERSON

You are hereby notified of the decision of (competent authority of the issuing State) to forward the judgment of (competent court of the issuing State) dated (date of judgment) (reference number; if available) to (executing State) for the purpose of its recognition and enforcement of the sentence imposed therein in accordance with the national law implementing Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.

The enforcement of the sentence will be governed by the law of (executing State). The authorities of that State will be competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for early or conditional release.

The competent authority of (executing State) has to deduct the full period of deprivation of liberty already served in connection with the sentence from the total duration of deprivation of liberty to be served. An adaptation of the sentence by the competent authority of (executing State) may take place only if it is incompatible with the law of that State in terms of its duration or nature. The adapted sentence must not aggravate the sentence passed in (issuing State) by its nature or duration.

3.4. Documents to be sent

3.4.1. Certificate

The Framework Decision provides for a process different from that of earlier multilateral instruments: rather than submitting a formal request, the issuing State forwards the judgment to the Member State to which it wishes to transfer the sentenced person. To expedite the process, the judgment is accompanied by a standard certificate, which includes the information necessary for the transfer (Articles 4 and 5, see Annex I to the Framework Decision). The certificate has to be completed in a correct manner and has to correspond to the judgment. The

certificate has to be signed and its content certified as accurate by the competent authority of the issuing State (Article 5(2)). There is on the website of the EJN an online tool available for drafting the certificate – the Compendium tool ⁽⁴⁴⁾.

The certificate shall be translated in the official language – or, when more official languages are applicable, one of the official languages – of the executing State (Article 23(1)). Each Member State may, however, deposit a declaration with the General Secretariat of the Council that it will accept a translation in one or more of the official languages of the EU. If sections of the certificate are not completed or lack detail, this results in a situation where the executing State lacks sufficient information to take a decision on the transfer and has to request further information from the issuing State, thereby causing delay to the process.

The standard certificates in all official EU languages as well as declarations on the languages accepted by the Member States are available on the website of the EJN ⁽⁴⁵⁾.

3.4.2. Judgment

The competent authority of the issuing State has to forward together with the certificate the judgment or a certified copy of it.

As a rule, no translation of the judgment shall be required (Article 23(2)). There remains a possibility, however, that the executing State requests that the judgment or essential parts of it be accompanied by a translation. In order to do so, the Member States must firstly have deposited a declaration with the General Secretariat of the Council that it wishes to have the opportunity to formulate such a request (Article 23(3)). Secondly, such a request may only be made when the executing State considers the content of the certificate insufficient to decide on the enforcement of the sentence, and where necessary after consultation between the competent authorities of the executing State and of the issuing State to indicate which essential parts of the judgment require translation.

Information on the judgment needs to be provided under boxes (h) and (i) of the certificate:

(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;

⁽⁴⁴⁾ Using this tool presents the advantage of filling-in the certificate as easy as filling in a Word form, but with several useful and user-friendly features, such as: the possibility of directly importing the competent executing authorities from the EJN 'Judicial Atlas' tool; obtaining the form in the language(s) accepted by the executing Member State; saving and sending by email. <https://www.ejn-crimjust.europa.eu/ejn/WorkerPage.aspx?x1=CC>.

⁽⁴⁵⁾ <https://www.ejn-crimjust.europa.eu/ejn/libcategories.aspx?Id=36>

- 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-yyyy):

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):

3. Type of sentence:

custodial sentence

measure involving deprivation of liberty (please specify):

.....

3.5. *Useful supplementary information by the issuing State*

Although this is not required by the Framework Decision, practice shows that certain documents related to the prisoner are considered as a useful complement to accompany the transfer request or can be shared with the executing State when the transfer actually takes place in order to ease the re-location of the prisoner. Such documents are: prisoner history sheet, prisoner record of imprisonment, prisoner security information reports (see the EuroPris 'Resource Book on the Transfer of Sentenced Persons') ⁽⁴⁶⁾.

3.6. *Forwarding [Transmitting]*

The competent authority of the issuing State will need to forward the judgment or a certified copy of it, together with the certificate, directly to the competent authority of the executing State. A written record is required so that the competent authority of the executing State can establish the authenticity of the request. If the executing State so requires, the original of the judgment, or a certified copy of it, and the original of the certificate, shall be sent to it. All official communications shall also be made directly between the said competent authorities (Article 5(1)).

The judgment or a certified copy thereof and a certificate can be transmitted to the competent authority in the executing State by any means which leaves a written record, for example email and fax, under conditions allowing the executing State to establish authenticity (recital 18).

The issuing State shall forward the judgment together with the certificate to only one executing State at any one time (Article 5(3)).

If the competent authority of the executing State is not known to the competent authority of the issuing State, the latter shall make all necessary inquiries, including via the contact points of the EJN, in order to obtain the information from the executing State (Article 5(4)) ⁽⁴⁷⁾.

When an authority of the executing State which receives a judgment together with a certificate has no competence to recognise it and take the necessary measures for its enforcement, it shall, *ex officio*, forward the judgment together with the certificate to the competent authority of the executing State and inform the competent authority of the issuing State accordingly (Article 5(5)).

3.7. *Request for information on provisions on possible early or conditional release*

The enforcement of a sentence shall be governed by the law of the executing State. The authorities of the executing State alone are competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for early or conditional release (Article 17(1)).

How much time the sentenced person will actually spend in prison depends largely on the provisions on early and conditional release in the executing State. The differences between Member States are considerable in this respect: e.g. in some Member States the sentenced person is released after two thirds of the sentence, in others after one third of the sentence ⁽⁴⁸⁾.

The executing State shall, upon request, inform the competent authority of the issuing State of the applicable provisions on possible early or conditional release. The issuing State may agree to the application of such provisions or it may withdraw the certificate (Article 17(3)).

Member States have the possibility to provide that any decision on early or conditional release may take account of those provisions of national law, indicated by the issuing State, under which the person is entitled to early or conditional release at a specified point in time (Article 17(4)).

It is recommended that the executing State provide clear communication and an explanation of its applicable conditional release provisions to the issuing State and to the sentenced person. This might imply that more detailed information on the execution modalities than only the applicable legal provisions needs to be provided.

⁽⁴⁶⁾ <https://www.europpris.org/file/europpris-resource-book-on-the-transfer-of-sentenced-prisoners-under-eu-framework-decision-909/>

⁽⁴⁷⁾ Information on contact details of competent authorities can be found in the 'Judicial Atlas' on the website of the EJN: <https://www.ejn-crimjust.europa.eu/ejn/WorkerPage.aspx?x1=AC>.

⁽⁴⁸⁾ See Judgments of the ECtHR of 15 March 2005, *Veermae v. Finland*, application No 38704/03, and of 27 June 2006, *Szabo v. Sweden*, application No 28578/03. The ECtHR found that the possibility of a *de facto* longer period of imprisonment in the executing State did not in itself render the deprivation of liberty arbitrary as long as the sentence to be served did not exceed the sentence imposed in the criminal proceedings in Finland. However, the ECtHR did not exclude that a flagrantly longer *de facto* sentence could give rise to an issue under Article 5 ECHR, and hence engage the responsibility of the sentencing State under that Article.

Information on early and conditional release in the issuing State needs to be provided under box (j) of the certificate. More detailed information on the applicable provisions of early and conditional release may be provided under box (l) of the certificate:

(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.

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

.....

.....

3.8. Request for provisional arrest

Where the sentenced person is in the executing State, the executing State may, at the request of the issuing State, arrest the sentenced person, or take any other measure to ensure that the sentenced person remains in its territory. Such request for arrest can be made before the arrival of the judgment and the certificate, or before the decision to recognise the judgment and enforce the sentence. The duration of the sentence shall not be aggravated as a result of any period spent in custody on the basis of provisional arrest (Article 14).

This provision allows the sentencing State to ensure that the sentenced person does not abscond, for example while awaiting the outcome of the examination undertaken by the executing State of whether it is actually possible to take over the execution of the sentence.

Information on provisional arrest needs to be provided under box (e) of the certificate:

(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):

.....

.....

.....

3.9. Withdrawal of the certificate

The issuing State may withdraw the certificate, giving reasons for doing so, as long as the enforcement of the sentence in the executing State has not yet begun (Article 13). The issuing State may indeed, on the basis of Article 17(3), request information on the sentence execution modalities of the executing State upon which the latter must reply with accurate information. Then, and still before the enforcement of the sentence has begun, the

issuing State may choose to withdraw the certificate. In particular, if the issuing State considers that the transfer would lead to a premature release, it may decide not to transfer the person concerned and to withdraw the certificate.

Upon withdrawal of the certificate, the executing State shall no longer enforce the sentence.

PART II: RECOGNITION OF THE JUDGMENT AND ENFORCEMENT OF THE SENTENCE

4. Procedure for recognition

4.1. Time limit for taking the decision on the recognition and remedies against the transfer decision

The Framework Decision aims to establish a new simplified and more effective system for the transfer of sentences to facilitate and accelerate cross-border judicial cooperation. Therefore, it provides for time limits for a transfer to take place. The competent authority in the executing State shall decide as quickly as possible whether or not to recognise the judgment and enforce the sentence and shall inform the issuing State thereof, including of any decision to adapt the sentence (Article 12(1)). The final decision on the recognition of the judgment and the enforcement of the sentence should be taken within a period of 90 days of receipt of the judgment and the certificate (Article 12(2)).

Exceeding the time limit may only occur in exceptional circumstances. The executing State should then without delay inform the issuing State by any means, giving the reasons for the delay and the estimated time needed for the final decision to be taken (Article 12(3)).

Although it is a common cause that all Member States should ensure that sentenced persons can access legal rights and remedies in accordance with their national law, Member States should ensure that such remedies in their system comply with the importance of respecting the time limits of the Framework Decision ⁽⁴⁹⁾.

According to Article 19(1) of the TEU, Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by EU law (see also Article 47 of the EU Charter of Fundamental Rights as regards the right to an effective remedy).

The sentenced persons may lodge an appeal against the decision to recognise and enforce the judgment under the law of the executing State. Member States should ensure that such appeals do not hinder the smooth application of the Framework Decision and that the time limits are respected. As a general rule, according to recital 22, the final decision on the recognition of judgment and the enforcement of the sentence, including any possible appeal procedure, shall be completed within a period of 90 days upon receipt of the judgment and the certificate.

The Court of Justice has ruled in the context of the Framework Decision 2002/584, that the Framework Decision 2002/584 does not prevent Member States from providing for an appeal suspending execution of the decision of the judicial authority provided that the final decision is given within the time limits of the Framework Decision 2002/584 ⁽⁵⁰⁾.

4.2. Request for translation of the judgment

As a rule, no translation of the judgment shall be required (Article 23(2)). There remains a possibility, however, for the executing State to request that the judgment or essential parts of it be accompanied by a translation. In order to do so, the Member States must firstly have deposited a declaration with the General Secretariat of the Council that it wishes to have the opportunity to formulate such a request (Article 23(3)). Secondly, such a request may only be made when the executing State considers the content of the certificate insufficient to decide on the enforcement of the sentence, and where necessary after consultation between the competent authorities of the executing State and the issuing State to indicate which essential parts of the judgment require translation (Article 23(2) and (3)).

4.3. Postponement

The Framework Decision foresees the optional postponement of the (non-) recognition when the certificate is incomplete or manifestly does not correspond to the judgment (Article 11). The competent authority of the executing State may set a reasonable deadline for the certificate to be completed or corrected (see Article 9(1)(a)).

⁽⁴⁹⁾ See in the context of the EAW, the Judgment of the Court of Justice of 30 May 2013, *Jeremy F.*, C-168/13 PPU, ECLI:EU:C:2013:358.

⁽⁵⁰⁾ See also the Judgment of the Court of Justice in *Jeremy F.*

4.4. *Provisional arrest*

Where the sentenced person is in the executing State, the executing State may, at the request of the issuing State, arrest the sentenced person, or take any other measure to ensure that the sentenced person remains in its territory. Such request for arrest can be made before the arrival of the judgment and the certificate, or before the decision to recognise the judgment and enforce the sentence. The duration of the sentence shall not be aggravated as a result of any period spent in custody on the basis of provisional arrest (Article 14).

This provision allows the sentencing State to ensure that the sentenced person does not abscond, for example while awaiting the outcome of the examination undertaken by the executing State of whether it is actually possible to take over the execution of the sentence.

5. **Decision on recognition and enforcement**

5.1. *General duty to recognise and enforce*

The competent authority of the executing State is obliged to recognise a judgment which has been forwarded, and it must forthwith take all the necessary measures for the enforcement of the sentence, unless it decides to invoke one of the grounds for non-recognition and non-enforcement (Article 8(1)).

5.2. *Consent of the executing State*

The consent of the executing State is a prior requirement in all situations not covered by Articles 4(1)(a) or (b), e.g. in case of nationals who do not live in the executing State, nor will be deported to it, or persons residing in the executing State without being nationals of that State (Article 4(1)(c)). In this case, consultations have to take place between the competent authorities of the issuing State and of the executing State, and the executing State has the right to refuse cooperation by not consenting to the transfer (recital 8).

An exception to this rule can be made by each Member State by making a declaration indicating that its prior consent is not required for the forwarding of the judgment and the certificate (Article 4(7)) if the sentenced person:

- (a) lives in 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 ⁽⁵¹⁾; and/or
- (b) is a national of the executing State in cases other than those provided for in Article 4(1)(a) and (b).

Such declaration is valid in its relations with other Member States that have given the same notification either at the time of the adoption of the Framework Decision or any time later (Article 4(7)).

In implementing this Framework Decision, Member States shall adopt measures, in particular taking into account the purpose of facilitating social rehabilitation of the sentenced person, constituting the basis on which their competent authorities have to take their decisions whether or not to consent to the forwarding of the judgment and the certificate in cases pursuant to Article 4(1)(c) (Article 4(6)).

Declarations under Article 4(7) can be consulted on the website of the EJN ⁽⁵²⁾.

5.3. *The list of 32 offences for which there is no verification of double criminality*

The executing authority should check whether any of the offences have been determined by the issuing authority as belonging to one of the 32 categories of offences listed in Article 7(1). The executing authority can only verify double criminality for offences that are not in the list of 32 offences.

It should be emphasised that for assessing the conditions of Art. 7(1), only the definition of the offence and maximum punishment in the issuing Member State's law are relevant. The executing authority must recognise what the issuing authority has indicated in the certificate.

According to the Framework Decision, Member States have the possibility to continue to apply a double criminality test also for the 32 categories of offences. For this exception to apply, a declaration needs to be notified to the General Secretariat of the Council at the time of adoption of the instrument or at any later stage deemed appropriate by the Member State. Likewise, these declarations may be withdrawn by the Member States at any time (Article 7(4)). Many Member States have made declarations which enable a check of double criminality for all offences (see footnote 14).

⁽⁵¹⁾ The term 'permanent residence' is explained in the second paragraph of that Article.

⁽⁵²⁾ <https://www.ejn-crimjust.europa.eu/ejn/libcategories.aspx?Id=36>

In its judgment in Case C-289/15 *Grundza* ⁽⁵³⁾ the Court of Justice interpreted Article 7(3) and Article 9(1)(d) of the Framework Decision (namely how the double criminality condition needs to be assessed). The Court of Justice ruled as follows:

‘38 (...) when assessing double criminality, the competent authority of the executing State is required to verify whether the factual elements underlying the offence, as reflected in the judgment handed down by the competent authority of the issuing State, would also, *per se*, be subject to a criminal penalty in the executing State if they were present in that State.

(...)

49 (...) in assessing double criminality, the competent authority of the executing State must ascertain, not whether an interest protected by the issuing State has been infringed, but whether, in the event that the offence at issue were committed in the territory of the executing State, it would be found that a similar interest, protected under the national law of that State, had been infringed’.

5.4. *Adaptation of the sentence*

As the Framework Decision is based on mutual trust in other Member States’ legal systems, the decision of the judge in the issuing State should be respected and, in principle, there should be no revision or adaptation of this decision (Article 8(1)) ⁽⁵⁴⁾. To this principle of so-called ‘continued enforcement’ ⁽⁵⁵⁾ two exceptions exist, both deriving from the incompatibility of the sentence imposed in the issuing State, either in terms of duration or of nature, with the law of the executing State:

- (1) Duration of the sentence differs: when the sentence of the issuing State is incompatible with the law of the executing State in terms of its duration, the latter may adapt it only, where it exceeds the maximum penalty provided for similar offences under the national law of the executing State (e.g. transfer of a sentence for drug offences of 14 years to which a maximum penalty of 12 years is applicable under national law of the executing State). The adapted sentence shall, however, not be less than the maximum penalty provided for similar offences under the law of the executing State (Article 8(2)).
- (2) Nature of the sentence differs: when the sentence of the issuing State is incompatible with the national law of the executing State in terms of its nature, the latter may adapt it to the punishment or measure provided for under its own law for similar offences (e.g. a life sentence may be adapted to a sentence of 20 years). The competent authority of the executing State has to make sure, however, that the adapted punishment or measure shall correspond as closely as possible to the original sentence imposed in the issuing State. Moreover, it is impossible for the competent authority of the executing State to convert the original sentence into a pecuniary punishment (Article 8(3)).

In both situations, when adaptation is considered necessary, the competent authority of the executing State shall as quickly as possible inform the competent authority of the issuing State of its decision to adapt the sentence (Article 12(1)).

If the issuing State does not agree with the adaptation of the sentence, it might decide to withdraw the certificate (Article 13).

The adapted sentence shall not aggravate the sentence passed in the issuing State in terms of its nature or duration (Article 8(4)).

As long as the enforcement of the sentence in the executing State has not begun, the issuing State has the possibility to withdraw the certificate, should it consider the decision to adapt the sentence contrary to its initial intentions for transferring the sentenced person (combined reading of Articles 12(1) and 13).

Article 8(2) and (3) deal with adaptation of the sentence which was originally imposed by the issuing State. The provisions on adaptation of the sentence do therefore not cover arrangements for early and conditional release as the arrangements concern sentence execution. The regime for sentence execution is laid down in Article 17 (cf. section 7.3 below).

⁽⁵³⁾ Judgment of the Court of Justice of 11 January 2017, *Grundza*, C-289/15, ECLI:EU:C:2017:4 concerning the interpretation of Articles 7(3) and 9(1)(d) on the conditions to be met for double criminality requirement.

⁽⁵⁴⁾ Judgment of the Court of Justice of 13 December 2018, *Sut*, C-514/17, ECLI:EU:C:2018:1016 and the pending preliminary reference from the Rechtbank Amsterdam (Netherlands) lodged on 20 July 2018, SF (Case C-314/18).

⁽⁵⁵⁾ As opposed to the so-called conversion principle, which is applicable under the 1983 CoE Convention. See Explanatory Memorandum to the 1983 CoE Convention.

5.5. Grounds for non-recognition and non-enforcement

The general duty to recognise and execute a judgment which has been forwarded (enshrined in Article 8(1)) is limited by the grounds for non-recognition and non-enforcement, that is to say, the grounds for refusal (Article 9). It is important to note that these grounds are the only ones which the executing authority may invoke as the basis for non-execution. The Court of Justice has clarified in relation to the Framework Decision 2002/584 that the list of grounds for refusal is exhaustive ⁽⁵⁶⁾.

The grounds for refusal should be implemented as optional for the competent authority. Article 9 clearly states that the competent authority 'may' refuse to recognise the judgment and enforce the sentence, meaning that the competent executing authority still has a discretionary margin to assess on a case-by-case basis the appropriateness of invoking a ground for refusal ⁽⁵⁷⁾.

The competent authority of the executing State *may* refuse to recognise the judgment and enforce the sentence, if one or more of the following grounds for non-recognition and non-enforcement apply:

5.5.1. Incomplete or incorrect certificate (Article 9(1)(a))

The certificate referred to in Article 4 is incomplete or manifestly does not correspond to the judgment and has not been completed or corrected within a reasonable deadline set by the competent authority of the executing State.

5.5.2. Non-compliance with the criteria for forwarding (Article 9(1)(b))

The criteria set forth in Article 4(1) are not met. See for further explanation Section 2.3.1.

5.5.3. *Ne bis in idem* (Article 9(1)(c))

The enforcement of the sentence would be contrary to the principle of *ne bis in idem*.

The Court of Justice has handed down several judgments in cases on the interpretation of the *ne bis in idem* principle in relation to Article 54 of the CISA Convention. These judgments are applicable to the Framework Decision 2002/584 by virtue of the judgment in Case C-261/09 *Mantello* ⁽⁵⁸⁾ and clarify the concepts such as 'final decision', 'same act' and 'sentence has been served'. In its judgment in Case C-129/14 PPU *Spasic* ⁽⁵⁹⁾, the Court of Justice ruled that Article 54 of the CISA Convention is as such compatible with Article 50 of the EU Charter of Fundamental Rights, where the *ne bis in idem* principle is enshrined.

Article 54 of the CISA Convention

'A person whose trial has been finally disposed of in one Contracting Party may not be prosecuted by another Contracting Party for the same acts provided that, if a penalty has been imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing Contracting Party'.

Article 50 of the EU Charter of Fundamental Rights

'Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law'.

5.5.4. Lack of double criminality (Article 9(1)(d))

In a case referred to in Article 7(3) and, where the executing State has made a declaration under Article 7(4), in a case referred to in Article 7(1), the competent authority of the executing State may refuse to recognise the judgment if it relates to acts which would not constitute an offence under the law of the executing State.

This ground for refusal thus concerns:

- (1) those offences which do not belong to one of the 32 categories of offences listed in Article 7(1);
 - (2) offences which belong to one of the 32 categories of offences listed in Article 7(1) but are punishable in the issuing State only by a custodial sentence or a detention order for a maximum period of less than three years;
- or

⁽⁵⁶⁾ Notably in its Judgments in Case C-123/08 *Wolzenburg*, paragraph 57, and Joined Cases C-404/15 and C-659/15 PPU *Aranyosi and Căldăraru*, paragraph 80.

⁽⁵⁷⁾ See in this respect also the Judgment of the Court of Justice of 29 June 2017, *Popławski*, C-579/15, ECLI:EU:C:2017:503, paragraph 21.

⁽⁵⁸⁾ Judgment of the Court of Justice of 16 November 2010, *Mantello*, C-261/09, ECLI:EU:C:2010:683.

⁽⁵⁹⁾ Judgment of the Court of Justice of 27 May 2014, *Spasic*, C-129/14 PPU, ECLI:EU:C:2014:586.

(3) all offences when a declaration has been made under Article 7(4).

In relation to taxes or duties, customs and exchange, the recognition and execution of a judgment may not be refused on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing State.

In its judgment in Case C-289/15 *Grundza* the Court of Justice has clarified how the double criminality condition needs to be assessed (see Section 5.3).

5.5.5. Enforcement of the sentence statute-barred (Article 9(1)(e))

The enforcement of the sentence is statute-barred according to the law of the executing State.

5.5.6. Immunity under the law of the executing State (Article 9(1)(f))

There is immunity under the law of the executing State, which makes it impossible to enforce the sentence.

5.5.7. The age of criminal responsibility (Article 9(1)(g))

The sentence has been imposed on a person who, under the law of the executing State, owing to his or her age, could not have been held criminally liable for the acts in respect of which the judgment was issued.

Member States' laws define the minimum age of criminal responsibility differently. This ground for refusal applies if, in the executing State, the requested person might only face civil or administrative proceedings, but not criminal, due to his or her age.

The Court of Justice has clarified, in the context of the Framework Decision 2002/584 ⁽⁶⁰⁾, that the executing judicial authority must ⁽⁶¹⁾ refuse to surrender only those minors who, under the law of the executing Member State, have not yet reached the age at which they are criminally responsible for the acts the EAW is based on. To assess this, the judicial authority must simply verify whether the person concerned has reached the minimum age required to be criminally responsible in the executing Member State for the acts on which the EAW is based. The authority does not have to consider any additional conditions, relating to an assessment based on the circumstances of the individual, to which the prosecution and conviction of a minor for such acts are specifically subject under the law of that Member State.

5.5.8. The remainder of the sentence to be served is too short (Article 9(1)(h))

At the time the judgment was received by the competent authority of the executing State, less than six months of the sentence remain to be served.

Given the maximum time limits of 120 days (90 days for taking the final decision on the recognition of the judgment, see Article 12(2) + 30 days for the transfer of the sentenced person, see Article 15(1)) provided for in the Framework Decision, a transfer may not be considered appropriate by the executing State if the remainder of the sentence to be served is less than 6 months. The moment at which the judgment was received by the executing State is relevant in that respect.

5.5.9. Trials *in absentia* (Article 9(1)(i))

Framework Decision 2009/299 amended the Framework Decision by amending Article 9(1)(i) on decisions rendered *in absentia*. These provisions concern situations where an executing authority has received a judgment for recognition and enforcement of the sentence arising from proceedings in the issuing State where the person was not present.

Article 9(1)(i) of the Framework Decision contains a ground for refusal if, according to the certificate provided for in Article 4, the person did not appear in person at the trial resulting in the decision.

However, this rule contains a number of exceptions. An executing authority cannot refuse to execute a request for recognition and enforcement of the sentence based on a decision rendered *in absentia* where the certificate states that the person, in accordance with further procedural requirements defined in the national law of the issuing State:

⁽⁶⁰⁾ Judgment of the Court of Justice of 23 January 2018, *Dawid Piotrowski*, C-367/16, ECLI:EU:C:2018:27.

⁽⁶¹⁾ According to Article 3(3) of the Framework Decision 2002/584, this is a mandatory ground for refusal, whereas the same ground for refusal is optional in the Framework Decision.

- (i) in due time:
 - either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial 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
- (ii) being aware of the scheduled trial 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
- (iii) after being served with the decision and being expressly informed of the right to a retrial, or an appeal, in which the person 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
 - expressly stated that he or she does not contest the decision,
 - or
 - did not request a retrial or appeal within the applicable time frame.

The Court of Justice has already rendered some judgments concerning trials *in absentia* in the context of the Framework Decision 2002/584.

The Judgment in Case C-399/11 *Melloni* ⁽⁶²⁾ concerned the question whether Article 4a(1) of the Framework Decision 2002/584 must be interpreted as precluding the executing judicial authorities, in the circumstances specified in that provision, from making the execution of an EAW issued for the purposes of executing a sentence conditional upon the conviction rendered *in absentia* being open to review in the issuing Member State.

The Court of Justice considered that Article 4a(1) of the Framework Decision 2002/584 provides for an optional ground for non-execution of an EAW issued for the purpose of executing a sentence, where the person concerned has been sentenced *in absentia*. That option is nevertheless accompanied by four exceptions as set out in points (a) to (d) of Article 4a(1) of the Framework Decision 2002/584. The Court held that in these four situations, the executing judicial authority may not make the surrender of a person convicted *in absentia* conditional upon the conviction being open to review in his or her presence.

Moreover, several judgments have been rendered concerning the interpretation of ‘trial resulting in the decision’ within the meaning of Article 4a(1) of the Framework Decision 2002/584 ⁽⁶³⁾.

5.5.10. Prosecution for offences prior to transfer (Article 9(1)(j))

The executing State, before a decision is taken in accordance with Article 12(1), makes a request for consent to the competent authority of the issuing State, in accordance with Article 18(3), and the issuing State does not consent, in accordance with Article 18(2)(g), to the person concerned being prosecuted, sentenced or otherwise deprived of his or her liberty in the executing State for an offence committed prior to the transfer other than that for which the person was transferred. According to recital 23, Article 18(1) states that, subject to the exceptions listed in paragraph 2, the specialty rule applies only where the person has been transferred to the executing State. It should therefore not be applicable where the person has not been transferred to the executing State, for example where the person has fled to the executing State.

⁽⁶²⁾ Judgment of the Court of Justice of 26 February 2013, *Melloni*, C-399/11, ECLI:EU:C:2013:107.

⁽⁶³⁾ Judgments of the Court of Justice: of 24 May 2016, *Dworzecki*, C-108/16 PPU, ECLI:EU:C:2016:346; of 10 August 2017, *Tupikas*, C-270/17 PPU, ECLI:EU:C:2017:628; of 10 August 2017, *Zdziaszek*, C-271/17 PPU, ECLI:EU:C:2017:629 and of 22 December 2017, *Ardic*, C-571/17 PPU, ECLI:EU:C:2017:1026.

5.5.11. Measure of psychiatric or health care or another measure involving deprivation of liberty (Article 9(1)(k))

The sentence imposed includes a measure of psychiatric or health care or another measure involving deprivation of liberty, which, notwithstanding Article 8(3), cannot be executed by the executing State in accordance with its legal or health care system.

Recital 19 states that, in cases referred to in Article 9(1)(k), the executing State should consider the possibility of adapting the sentence in accordance with the Framework Decision before it refuses to recognise and enforce the sentence involving a measure other than a custodial sentence.

According to recital 20, the ground for refusal provided for in Article 9(1)(k) may be applied also in cases where the person has not been found guilty of a criminal offence although the competent authority applied the measure involving the deprivation of liberty other than a custodial sentence as a consequence of a criminal offence.

5.5.12. Extraterritoriality (Article 9(1)(l))

The judgment relates to criminal offences which under the law of the executing State are regarded as having been committed wholly or for a major or essential part within its territory, or in a place equivalent to its territory.

According to recital 21, the ground for refusal relating to territoriality should be applied only in exceptional cases and with a view to cooperating to the greatest extent possible under the provisions of this Framework Decision, while taking into account its purpose. Any decision to apply this ground for refusal should be based on a case-by-case analysis and be preceded by consultations between the competent authorities of the issuing State and of the executing State.

5.6. *Partial recognition and enforcement*

The Framework Decision allows the executing State to consult with the issuing State's competent authority in order to find an agreement on the partial recognition and enforcement of a sentence, rather than refusing cooperation should a full recognition not be possible (Article 10).

On a case-by-case basis, a partial recognition and enforcement of the sentence may be agreed upon by the States in accordance with the conditions set out by them, provided that such a recognition and enforcement does not result in the aggravation of the duration of the sentence. In the absence of an agreement, the certificate shall be withdrawn.

6. **Transfer of the sentenced person**

6.1. *Time limits for the physical transfer*

As a basic principle, if the sentenced person is in the issuing State, transfer shall take place at a time agreed between the issuing State and the executing State but no later than 30 days after the final decision of the executing State on the recognition of the judgment, unless unforeseen circumstances prevent the transfer (Article 15(1)).

If the transfer of the sentenced person within the period laid down in Article 15(1) is prevented by unforeseen circumstances, the competent authorities of the issuing State and the executing State shall immediately contact each other. Transfer shall take place as soon as these circumstances cease to exist. The competent authority of the issuing State shall immediately inform the competent authority of the executing State and agree on a new transfer date. In that event, transfer shall take place within 10 days of the new date thus agreed Article 15(2).

6.2. *Transit via another Member State*

To ensure unrestricted transit of the sentenced person from the issuing State to the executing State across the territory of other Member States, the issuing State shall forward a copy of the certificate and a transit request to the relevant Member States which shall permit the transit. The Member State requested to permit the transit shall notify its decision not later than one week after having received the request for transit (Article 16(1)-(3)).

Forwarding a copy of the certificate and a transit request is not required in case of transport by air without a scheduled stopover on the territory of one or more of the Member States (cf. Article 16(5)).

6.3. *Costs of transfer*

The costs resulting from the application of the Framework Decision are borne by the executing State, except for the costs of the transfer of the sentenced person to the executing State and those arising exclusively on the territory of the issuing State, which are borne by the latter (Article 24).

6.4. *Travel documents*

Although not mentioned in the text of the Framework Decision, the issue of travel documents is an important element for the smooth practical application of the Framework Decision. A valid travel document is regarded as a crucial and necessary precondition for a transfer (see for further details the EuroPris 'Resource Book on the Transfer of Prisoners')⁽⁶⁴⁾.

7. **Enforcement of the sentence**

7.1. *Law governing enforcement*

The Framework Decision clearly stipulates that the enforcement of the sentence shall be governed by the law of the executing State. The authorities of the executing State alone shall be competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for early and conditional release (Article 17).

7.2. *Deduction*

The competent authority of the executing State shall deduct the full period of deprivation of liberty already served in connection with the sentence in respect of which the judgment was issued from the total duration of the deprivation of liberty to be served (Article 17(2))⁽⁶⁵⁾.

7.3. *Early and conditional release*

How much time the sentenced person will actually spend in prison depends largely on the provisions on early and conditional release in the executing State. The differences between Member States are considerable in this respect: e.g. in some Member States the sentenced person is released after two thirds of the sentence, in others after one third of the sentence⁽⁶⁶⁾.

The competent authority of the executing State shall, upon request, inform the competent authority of the issuing State of the applicable provision on possible early or conditional release. When this information is provided, the issuing State may agree to the application of such provisions or may choose to withdraw the certificate and end the transfer process (Article 17(3)).

Member States have the possibility to provide that any decision on early or conditional release may take account of those provisions of national law, indicated by the issuing State, under which the person is entitled to early or conditional release at a specified point in time (Article 17(4)).

It is recommended that the executing State provide clear communication and an explanation of its applicable conditional release provisions to the issuing State and to the sentenced person. Solely indicating the applicable legal provisions might not be sufficient.

7.4. *Amnesty, pardon*

Both the issuing State and the executing State may grant amnesty or pardon to the sentenced person (Article 19 (1)).

⁽⁶⁴⁾ <https://www.europaris.org/file/europaris-resource-book-on-the-transfer-of-sentenced-prisoners-under-eu-framework-decision-909/>

⁽⁶⁵⁾ As regards the taking into account by the executing State of work performed in prison in the issuing State, see the Judgment of the Court of Justice (Grand Chamber) of 8 November 2016, *Ognyanov*, (C-554/14, ECLI:EU:C:2016:835). In this case, the Court held that the Framework Decision must be interpreted as precluding a national rule being interpreted in such a way that it permits the executing State to grant to the sentenced person a reduction of the sentence by reason of work he carried out during the period of his detention in the issuing State, while no such reduction of the sentence was granted by the competent authorities of the issuing State, in accordance with the law of the issuing State.

⁽⁶⁶⁾ See Judgments of the ECtHR of 15 March 2005, *Veermae v. Finland*, application No 38704/03, and of 27 June 2006, *Szabo v. Sweden*, application No 28578/03. The ECtHR found that the possibility of a *de facto* longer period of imprisonment in the executing State did not in itself render the deprivation of liberty arbitrary as long as the sentence to be served did not exceed the sentence imposed in the criminal proceedings in the sentencing State. However, the ECtHR did not exclude that a flagrantly longer *de facto* sentence could give rise to an issue under Article 5 ECHR, and hence engage the responsibility of the sentencing State under that Article. For this to be the case, however, substantial grounds would have to be shown to exist for believing that the time to be served in the executing State would be flagrantly disproportionate to the time which would have had to be served in the sentencing State.

7.5. *Review of the judgment*

When a review of the judgment is sought, however, only the issuing State may decide on the applications for review of the judgment (Article 19(2)).

7.6. *Right to enforce the judgment*

The issuing State shall not proceed with the enforcement of the sentence once its enforcement in the executing State has begun except in cases where the right to enforce the sentence shall be reverted to the issuing State upon its being informed by the executing State of the partial non-enforcement of the sentence (Article 22).

7.7. *Communication and information duties*

The Framework Decision contains detailed information obligations for both the issuing State and the executing State, both before and after the transfer.

The competent authority of the issuing State needs to inform the competent authority of the executing State of any decision or measure as a result of which the sentence ceases to be enforceable immediately or within a certain period of time (Article 20). As a consequence, the competent authority of the executing State shall terminate enforcement of the sentence as soon as it has received this information.

The competent authority of the executing State shall without delay inform the competent authority of the issuing State by any means which leaves a written record (Article 21):

- (a) of the forwarding of the judgment and the certificate to the competent authority of another Member State because the executing State had no competence to recognise it;
- (b) of the fact that it is in practice impossible to enforce the sentence because after transmission of the judgment and the certificate to the executing State, the sentenced person cannot be found in the territory of the executing State, in which case there shall be no obligation on the executing State to enforce the sentence;
- (c) of the final decision to recognise the judgment and enforce the sentence together with the date of the decision;
- (d) of any decision not to recognise the judgment and enforce the sentence on the basis of grounds for refusal (Article 9), together with the reasons for the decision;
- (e) of any decision to adapt the sentence (Article 8(2) or (3)), together with the reasons for the decision;
- (f) of any decision not to enforce the sentence if amnesty or pardon was granted (Article 19(1)) together with the reasons for the decision;
- (g) of the beginning and the end of the period of conditional release, where so indicated in the certificate by the issuing State;
- (h) of the sentenced person's escape from custody;
- (i) of the enforcement of the sentence as soon as it has been completed.

8. **Rule of speciality**

A sentenced person transferred to the executing State shall 'not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed before his or her transfer other than that for which he or she was transferred' (Article 18).

According to recital 23, the speciality rule applies only where the person has been transferred to the executing State. It should therefore not be applicable where the person has not been transferred to the executing State, for example where the person has fled to the executing State.

Nevertheless, there are a number of specific exceptions to the principle of speciality (cf. Article 18(2)). The person may therefore be prosecuted in the executing State:

- (a) when the person having had an opportunity to leave the territory of the executing State has not done so within 45 days of his or her final discharge, or has returned to that territory after leaving it;
- (b) when the offence is not punishable by a custodial sentence or a detention order;
- (c) when the criminal proceedings do not give rise to the application of a measure restricting personal liberty;

- (d) when the sentenced person could be liable to a penalty or a measure not involving deprivation of liberty, in particular a financial penalty or a measure in lieu thereof, even if the penalty or measure in lieu may give rise to a restriction of his or her personal liberty;
- (e) when the person consented to the transfer;
- (f) when the sentenced person, after his or her transfer, has expressly renounced entitlement to the specialty rule with regard to specific offences preceding his or her transfer. Renunciation shall be given before the competent judicial authorities of the executing State and shall be recorded in accordance with that State's national law; the renunciation shall be drawn up in such a way as to make clear that the person has given it voluntarily and in full awareness of the consequences. To that end, the person shall have the right to legal counsel;
- (g) for cases other than those mentioned above, where the issuing State gives its consent.

A request for consent shall be submitted to the competent authority of the issuing State, accompanied by the information mentioned in Article 8(1) of the Framework Decision 2002/584 ⁽⁶⁷⁾ and a translation thereof. Consent shall be given where there is an obligation to surrender the person under the Framework Decision 2002/584. The decision shall be taken no later than 30 days after receipt of the request. For the situations mentioned in Article 5 of the Framework Decision 2002/584 ⁽⁶⁸⁾, the executing State shall give the guarantees provided for therein (cf. Article 18(3)).

PART III: MISCELLANEOUS

9. **Communication between the competent authorities at the different stages of the procedure**

The Framework Decision provides for regular consultation among the issuing State and the executing State at different stages of the process. Such consultation is often foreseen as a mandatory part of the procedure with the purpose to enhance cooperation.

- (1) The executing State needs to carry out to a mandatory consultation of the issuing State when it intends to invoke refusal on the grounds of Article 9(1)(a), (b), (c), (i), (k) and (l) (Article 9(3)).
- (2) The executing State may consult the issuing State's competent authority on a case-by-case basis in order to find an agreement on the partial recognition and enforcement of a sentence, rather than refusing cooperation, should a full recognition not be possible (Article 10).
- (3) In case unforeseen circumstances arise that prevent the transfer to take place on the date originally agreed by the States, the issuing State and the executing State need to consult one another to decide on a new transfer date (Article 12(3)).

The communication between the States which are part of the procedure needs to take place 'by any appropriate means', e.g. by email, telephone, writing (see in that context also recital 18).

The EJN and Eurojust have the role of facilitating the communication between the competent authorities ⁽⁶⁹⁾.

⁽⁶⁷⁾ According to Article 8(1) of the Framework Decision 2002/584, the following information shall be provided: (a) the identity and nationality of the requested person; (b) the name, address, telephone and fax numbers and email address of the issuing judicial authority; (c) evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect; (d) the nature and legal classification of the offence; (e) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person; (f) the penalty imposed, if there is a final judgment, or the prescribed scale of penalties for the offence under the law of the issuing Member State; (g) if possible, other consequences of the offence.

⁽⁶⁸⁾ Article 5 of the Framework Decision 2002/584 includes the following guarantees:
 — if the offence on the basis of which the European arrest warrant has been issued is punishable by custodial life sentence or lifetime detention order, the execution of the said arrest warrant may be subject to the condition that the issuing Member State has provisions in its legal system for a review of the penalty or measure imposed, on request or at the latest after 20 years, or for the application of measures of clemency to which the person is entitled to apply for under the law or practice of the issuing Member State, aiming at a non-execution of such penalty or measure,
 — where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the executing Member State, surrender may be subject to the condition that the person, after being heard, is returned to the executing Member State in order to serve there the custodial sentence or detention order passed against him in the issuing Member State.

⁽⁶⁹⁾ See the EJN/Eurojust Joint Paper 'European Judicial Network and Eurojust — What can we do for you?', available both on the EJN website and the Eurojust website.

10. Relationship with other agreements

From 5 December 2011, the Framework Decision has replaced the following instruments as regards transfers between EU Member States while they remain applicable between Member States and third States (Article 26(1)):

- the 1983 CoE Convention (Treaty No 112) of and its 1997 Additional Protocol (Treaty No 167),
- the 1970 CoE Convention on the International Validity of Criminal Judgement (Treaty No 70),
- Title III, Chapter 5 of the 1990 CISA Convention, and
- the 1991 Convention between the Member States of the European Communities on the enforcement of foreign criminal sentences.

Member States may continue to apply or may conclude bilateral or multilateral agreements or arrangements in force after 27 November 2008, in so far as they allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for the enforcement of sentences (Article 26(2) and (3)). Member States need to provide updated information to the Council and the Commission on such applicable bilateral agreements or any new agreement or arrangement within three months of signing it (Article 26(4)) ⁽⁷⁰⁾.

11. Links with other instruments on judicial cooperation in criminal matters

11.1. Framework Decision 2002/584/JHA on the European arrest warrant

The connection between the Framework Decision and the Framework Decision 2002/584 is laid down in Article 25 and recital 12 of the former.

Article 4(6) of the Framework Decision 2002/584 provides that if an EAW has been issued for the purpose of execution of a custodial sentence or a detention order, where the requested person is staying in, is a national or a resident of the executing State, that State may execute the sentence or detention order in accordance with its domestic law.

Article 5(3) of the Framework Decision 2002/584 provides that where a person who is the subject of an EAW for the purposes of prosecution is a national or resident of the executing Member State, surrender may be subject to the condition that the person, after being heard, is returned to the executing Member State in order to serve there the custodial sentence or detention order passed against him or her in the issuing Member State ⁽⁷¹⁾.

According to Article 25 and recital 12 of the Framework Decision, in cases where Articles 4(6) and 5(3) of the Framework Decision 2002/584 are applied, the domestic law implementing the Framework Decision shall apply, *mutatis mutandis* and to the extent compatible with the Framework Decision 2002/584, to the enforcement of the sentence. This also implies that the limitations contained in the rules on adaptation of the sentence (i.e. the principle of continued enforcement as laid down in Article 8 of the Framework Decision) will need to be respected ⁽⁷²⁾.

The Court of Justice has also clarified that any refusal to execute an EAW under Article 4(6) of the Framework Decision 2002/584 presupposes an actual undertaking on the part of the executing Member State to execute the custodial sentence imposed on the requested person, even though, in any event, the mere fact that that Member State declares itself 'willing' to execute the sentence could not be regarded as justifying such a refusal ⁽⁷³⁾.

This implies that any refusal to execute an EAW under Article 4(6) of the Framework Decision 2002/584 must be preceded by the executing judicial authority's examination of whether it is actually possible to enforce the sentence in accordance with its domestic law implementing the Framework Decision.

In the event that the executing Member State finds that it cannot ensure the enforcement itself, it is under an obligation, in order to avoid impunity, to execute the EAW and, therefore, to surrender the requested person to the issuing Member State ⁽⁷⁴⁾.

⁽⁷⁰⁾ Such bilateral agreements currently exist between the Nordic countries (Sweden, Denmark and Finland) and between Slovakia and the Czech Republic.

⁽⁷¹⁾ See, in this context, pending Case C-314/18: request for a preliminary ruling from the Rechtbank Amsterdam (Netherlands) lodged on 8 May 2018 — *Openbaar Ministerie v SF*.

⁽⁷²⁾ See, in this context, pending Case C-314/18: request for a preliminary ruling from the Rechtbank Amsterdam (Netherlands) lodged on 8 May 2018 — *Openbaar Ministerie v SF*.

⁽⁷³⁾ Judgment of the Court of Justice of 29 June 2017, *Popławski*, C-579/15, ECLI:EU:C:2017:503, paragraph 22.

⁽⁷⁴⁾ Judgment of the Court of Justice of 29 June 2017, *Popławski*, C-579/15, ECLI:EU:C:2017:503, paragraph 22.

Information in relation to an earlier EAW needs to be provided in box (f) of the certificate:

(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

11.2. Other instruments

11.2.1. Directive 2012/29/EU of the European Parliament and of the Council ⁽⁷⁵⁾ on victims' rights

The Directive 2012/29/EU on victims' rights (hereinafter: 'the Victims' Rights Directive') provides for victims to be notified of the release of the offender from detention (Article 6(5) of the Victims' Rights Directive). Furthermore, Article 21(h) and (i) of the Framework Decision provide for an obligation on the executing State to notify the issuing State of the sentenced person's escape from custody and of his or her release (the enforcement of the sentence has been completed). There is, however, no right for the victims to be informed of the transfer. It is recommended, where it is known that victims' rights might be affected, that the issuing State share this information with the executing State.

11.2.2. Council Framework Decision 2008/947/JHA ⁽⁷⁶⁾ on the application of the principle of mutual recognition of probation decisions and alternative sanctions

An important distinction has to be made between the Framework Decision and the Framework Decision 2008/947/JHA on the application of the principle of mutual recognition of probation decisions and alternative sanctions (hereinafter: 'the Framework Decision 2008/947'). To this effect, the latter instrument makes clear that 'it is not applicable for the execution of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty which fall within the scope of Framework Decision 2008/909/JHA' (Article 1(3) (a) of the Framework Decision 2008/947). Furthermore, an 'alternative sanction' is defined as 'a sanction, other than a custodial sentence, a measure involving deprivation of liberty or a financial penalty, imposing an obligation or instruction' (Article 2(4) of the Framework Decision 2008/947).

⁽⁷⁵⁾ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, p. 57).

⁽⁷⁶⁾ Council Framework Decision 2008/947/JHA of 27 November 2008 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 (OJ L 337, 16.12.2008, p. 102).

However, when the individual fails to comply with the obligations and/or conditions imposed on him or her following the probation measure or alternative sanction, and the issuing State subsequently imposes a custodial sentence on the individual, with a view of its execution in the executing State (see in this respect Articles 14(4) and 17 of the Framework Decision 2008/947), the Framework Decision 2008/909 will need to be applied as under the Framework Decision 2008/947 no legal basis exists to execute a foreign custodial sentence.

Another issue which might arise is the issue of so-called 'combined sentences' which can be imposed under the national laws of some Member States. Occasionally, a judgment contains a sentence which is partly custodial and partly suspended (with or without probation). As a result, the situation could arise where a Member State could be asked to execute the sentence both under the Framework Decision and under the Framework Decision 2008/947. The combined application of both Framework Decisions could result in a situation where only a part of the sentence could be transferred. Member States should consider this situation on a case-by-case basis.

ANNEX I

FRAMEWORK DECISION 2008/909/JHA, UNOFFICIAL CONSOLIDATION

Text in the English language of the Framework Decision

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 Union

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 31(1)(a) and 34(2)(b) thereof,

Having regard to the initiative of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition, which should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union.
- (2) On 29 November 2000 the Council, in accordance with the Tampere conclusions, adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters ⁽¹⁾, in which it called for an assessment of the need for modern mechanisms for the mutual recognition of final sentences involving deprivation of liberty (Measure 14) and for extended application of the principle of the transfer of sentenced persons to cover persons resident in a Member State (Measure 16).
- (3) The Hague Programme on strengthening freedom, security and justice in the European Union ⁽²⁾ requires Member States to complete the programme of measures, in particular in the field of enforcing final custodial sentences.
- (4) All the Member States have ratified the Council of Europe Convention on the Transfer of Sentenced Persons of 21 March 1983. Under that Convention, sentenced persons may be transferred to serve the remainder of their sentence only to their State of nationality and only with their consent and that of the States involved. The Additional Protocol to that Convention of 18 December 1997, which allows transfer without the person's consent, subject to certain conditions, has not been ratified by all the Member States. Neither instrument imposes any basic duty to take charge of sentenced persons for enforcement of a sentence or order.
- (5) Procedural rights in criminal proceedings are a crucial element for ensuring mutual confidence among the Member States in judicial cooperation. Relations between the Member States, which are characterised by special mutual confidence in other Member States' legal systems, enable recognition by the executing State of decisions taken by the issuing State's authorities. Therefore, a further development of the cooperation provided for in the Council of Europe instruments concerning the enforcement of criminal judgments should be envisaged, in particular where citizens of the Union were the subject of a criminal judgment and were sentenced to a custodial sentence or a measure involving deprivation of liberty in another Member State. Notwithstanding the need to provide the sentenced person with adequate safeguards, his or her involvement in the proceedings should no longer be dominant by requiring in all cases his or her consent to the forwarding of a judgment to another Member State for the purpose of its recognition and enforcement of the sentence imposed.

⁽¹⁾ OJ C 12, 15.1.2001, p. 10.

⁽²⁾ OJ C 53, 3.3.2005, p. 1.

- (6) This Framework Decision should be implemented and applied in a manner which allows general principles of equality, fairness and reasonableness to be respected.
- (7) Article 4(1)(c) contains a discretionary provision which enables the judgment and the certificate to be forwarded, for example, to the Member State of nationality of the sentenced person, in cases other than those provided for in paragraphs 1(a) and (b) or to the Member State in which the sentenced person lives and has been legally residing continuously for at least five years and will retain a permanent right of residence there.
- (8) In cases referred to in Article 4(1)(c) the forwarding of the judgment and the certificate to the executing State is subject to consultations between the competent authorities of the issuing and the executing States, and the consent of the competent authority of the executing State. The competent authorities should take into account such elements as, for example, duration of the residence or other links to the executing State. In cases where the sentenced person could be transferred to a Member State and to a third country under national law or international instruments, the competent authorities of the issuing and executing States should, in consultations, consider whether enforcement in the executing State would enhance the aim of social rehabilitation better than enforcement in the third country.
- (9) Enforcement of the sentence in the executing State should enhance the possibility of social rehabilitation of the sentenced person. In the context of satisfying itself that the enforcement of the sentence by the executing State will serve the purpose of facilitating the social rehabilitation of the sentenced person, the competent authority of the issuing State should take into account such elements as, for example, the person's attachment to the executing State, whether he or she considers it the place of family, linguistic, cultural, social or economic and other links to the executing State.
- (10) The opinion of the sentenced person referred to in Article 6(3) may be useful mainly in applying Article 4(4). The words 'in particular' are intended to cover also cases where the opinion of the sentenced person would include information which might be of relevance in relation to the grounds for non-recognition and non-enforcement. Provisions of Articles 4(4) and 6(3) do not constitute a ground for refusal on social rehabilitation.
- (11) Poland needs more time than the other Member States to face the practical and material consequences of transfer of Polish citizens convicted in other Member States, especially in the light of an increased mobility of Polish citizens within the Union. For that reason, a temporary derogation of limited scope for a maximum period of five years should be foreseen.
- (12) This Framework Decision should also, *mutatis mutandis*, apply to the enforcement of sentences in the cases under Articles 4(6) and 5(3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States⁽³⁾. This means, inter alia, that, without prejudice to that Framework Decision, the executing State could verify the existence of grounds for non-recognition and non-enforcement as provided in Article 9 of this Framework Decision, including the checking of double criminality to the extent that the executing State makes a declaration under Article 7(4) of this Framework Decision, as a condition for recognising and enforcing the judgment with a view to considering whether to surrender the person or to enforce the sentence in cases pursuant to Article 4(6) of Framework Decision 2002/584/JHA.
- (13) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected by the Charter of Fundamental Rights of the European Union, in particular Chapter VI thereof. Nothing in this Framework Decision should be interpreted as prohibiting refusal to execute a decision when there are objective reasons to believe that the sentence was imposed for the purpose of punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced on any one of those grounds.
- (14) This Framework Decision should not prevent any Member State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media.
- (15) This Framework Decision should be applied in accordance with the right of citizens of the Union to move and reside freely within the territory of the Member States conferred by Article 18 of the Treaty establishing European Community.

⁽³⁾ OJ L 190, 18.7.2002, p. 1.

- (16) This Framework Decision should be applied in accordance with applicable Community legislation, including in particular Council Directive 2003/86/EC ⁽⁴⁾, Council Directive 2003/109/EC ⁽⁵⁾ and Directive 2004/38/EC of the European Parliament and of the Council ⁽⁶⁾.
- (17) Where in this Framework Decision reference is made to the State in which the sentenced person 'lives', this indicates the place to which that person is attached based on habitual residence and on elements such as family, social or professional ties.
- (18) When applying Article 5(1), it should be possible to transmit a judgment or a certified copy thereof and a certificate to the competent authority in the executing State by any means which leaves a written record, for example email and fax, under conditions allowing the executing State to establish authenticity.
- (19) In cases referred to in Article 9(1)(k), the executing State should consider the possibility of adapting the sentence in accordance with this Framework Decision before it refuses to recognise and enforce the sentence involving a measure other than a custodial sentence.
- (20) The ground for refusal provided for in Article 9(1)(k) may be applied also in cases where the person has not been found guilty of a criminal offence although the competent authority applied the measure involving the deprivation of liberty other than a custodial sentence as a consequence of a criminal offence.
- (21) The ground for refusal relating to territoriality should be applied only in exceptional cases and with a view to cooperating to the greatest extent possible under the provisions of this Framework Decision, while taking into account its purpose. Any decision to apply this ground for refusal, should be based on a case-by-case analysis and consultations between the competent authorities of the issuing and executing States.
- (22) The time limit referred to in Article 12(2) should be implemented by the Member States in such a way that as a general rule, the final decision, including an appeal procedure is completed within a period of 90 days.
- (23) Article 18(1) states that, subject to the exceptions listed in paragraph 2, the specialty rule applies only where the person has been transferred to the executing State. It should therefore not be applicable where the person has not been transferred to the executing State, for example where the person has fled to the executing State,

HAS ADOPTED THIS FRAMEWORK DECISION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Definitions

For the purposes of this Framework Decision:

- (a) 'judgment' shall mean a final decision or order of a court of the issuing State imposing a sentence on a natural person;
- (b) 'sentence' shall mean any custodial sentence or any measure involving deprivation of liberty imposed for a limited or unlimited period of time on account of a criminal offence on the basis of criminal proceedings;

⁽⁴⁾ OJ L 251, 3.10.2003, p. 12.

⁽⁵⁾ OJ L 16, 23.1.2004, p. 44.

⁽⁶⁾ OJ L 158, 30.4.2004, p. 77.

- (c) 'issuing State' shall mean the Member State in which a judgment is delivered;
- (d) 'executing State' shall mean the Member State to which a judgment is forwarded for the purpose of its recognition and enforcement.

Article 2

Determination of the competent authorities

1. Each Member State shall inform the General Secretariat of the Council which authority or authorities, under its national law, are competent in accordance with this Framework Decision, when that Member State is the issuing State or the executing State.
2. The General Secretariat of the Council shall make the information received available to all Member States and the Commission.

Article 3

Purpose and scope

1. The purpose of this Framework Decision is to establish the rules under which a Member State, with a view to facilitating the social rehabilitation of the sentenced person, is to recognise a judgment and enforce the sentence.
2. This Framework Decision shall apply where the sentenced person is in the issuing State or in the executing State.
3. This Framework Decision shall apply only to the recognition of judgments and the enforcement of sentences within the meaning of this Framework Decision. The fact that, in addition to the sentence, a fine and/or a confiscation order has been imposed, which has not yet been paid, recovered or enforced, shall not prevent a judgment from being forwarded. The recognition and enforcement of such fines and confiscation orders in another Member State shall be based on the instruments applicable between the Member States, in particular Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties ⁽⁷⁾ and Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders ⁽⁸⁾.
4. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.

CHAPTER II

RECOGNITION OF JUDGMENTS AND ENFORCEMENT OF SENTENCES

Article 4

Criteria for forwarding a judgment and a certificate to another Member State

1. Provided that the sentenced person is in the issuing State or in the executing State, and provided that this person has given his or her consent where required under Article 6, a judgment, together with the certificate for which the standard form is given in Annex I, may be forwarded to one of the following Member States:
 - (a) the Member State of nationality of the sentenced person in which he or she lives; or
 - (b) the Member State of nationality, to which, while not being the Member State where he or she lives, 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; or

⁽⁷⁾ OJ L 76, 22.3.2005, p. 16.

⁽⁸⁾ OJ L 328, 24.11.2006, p. 59.

(c) any Member State other than a Member State referred to in (a) or (b), the competent authority of which consents to the forwarding of the judgment and the certificate to that Member State.

2. The forwarding of the judgment and the certificate may take place where the competent authority of the issuing State, where appropriate after consultations between the competent authorities of the issuing and the executing States, 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.

3. Before forwarding the judgment and the certificate, the competent authority of the issuing State may consult, by any appropriate means, the competent authority of the executing State. Consultation shall be obligatory in the cases referred to in paragraph 1(c). In such cases the competent authority of the executing State shall promptly inform the issuing State of its decision whether or not to consent to the forwarding of the judgment.

4. During such consultation, the competent authority of the executing State may present the competent authority of the issuing State with a reasoned opinion, that enforcement of the sentence in the executing State would not serve the purpose of facilitating the social rehabilitation and successful reintegration of the sentenced person into society.

Where there has been no consultation, such an opinion may be presented without delay after the transmission of the judgment and the certificate. The competent authority of the issuing State shall consider such opinion and decide whether to withdraw the certificate or not.

5. The executing State may, on its own initiative, request the issuing State to forward the judgment together with the certificate. The sentenced person may also request the competent authorities of the issuing State or of the executing State to initiate a procedure for forwarding the judgment and the certificate under this Framework Decision. Requests made under this paragraph shall not create an obligation of the issuing State to forward the judgment together with the certificate.

6. In implementing this Framework Decision, Member States shall adopt measures, in particular taking into account the purpose of facilitating social rehabilitation of the sentenced person, constituting the basis on which their competent authorities have to take their decisions whether or not to consent to the forwarding of the judgment and the certificate in cases pursuant to paragraph 1(c).

7. Each Member State may, either on adoption of this Framework Decision or later, notify the General Secretariat of the Council that, in its relations with other Member States that have given the same notification, its prior consent under paragraph 1(c) is not required for the forwarding of the judgment and the certificate:

- (a) if the sentenced person lives in 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, and/or
- (b) if the sentenced person is a national of the executing State in cases other than those provided for in paragraph 1(a) and (b).

In cases referred to in point (a), permanent right of residence shall mean that the person concerned:

- has a right of permanent residence in the respective Member State in accordance with the national law implementing Community legislation adopted on the basis of Article 18, 40, 44 and 52 of the Treaty establishing the European Community, or
- possesses a valid residence permit, as a permanent or long-term resident, for the respective Member State, in accordance with the national law implementing Community legislation adopted on the basis of Article 63 of the Treaty establishing the European Community, as regards Member States to which such Community legislation is applicable, or in accordance with national law, as regards Member States to which it is not.

Article 5

Forwarding of the judgment and the certificate

1. The judgment or a certified copy of it, together with the certificate, shall be forwarded, by the competent authority of the issuing State directly to the competent authority of the executing State by any means which leaves a written record under conditions allowing the executing State to establish its authenticity. The original of the judgment, or a certified copy of it, and the original of the certificate, shall be sent to the executing State if it so requires. All official communications shall also be made directly between the said competent authorities.

2. The certificate, shall be signed, and its content certified as accurate, by the competent authority of the issuing State.
3. The issuing State shall forward the judgment together with the certificate to only one executing State at any one time.
4. If the competent authority of the executing State is not known to the competent authority of the issuing State, the latter shall make all necessary inquiries, including via the Contact points of the European Judicial Network set up by Council Joint Action 98/428/JHA ⁽⁹⁾, in order to obtain the information from the executing State.
5. When an authority of the executing State which receives a judgment together with a certificate has no competence to recognise it and take the necessary measures for its enforcement, it shall, ex officio, forward the judgment together with the certificate to the competent authority of the executing State and inform the competent authority of the issuing State accordingly.

Article 6

Opinion and notification of the sentenced person

1. Without prejudice to paragraph 2, a judgment together with a certificate may be forwarded to the executing State for the purpose of its recognition and enforcement of the sentence only with the consent of the sentenced person in accordance with the law of the issuing State.
2. The consent of the sentenced person shall not be required where the judgment together with the certificate is forwarded:
 - (a) to the Member State of nationality in which the sentenced person lives;
 - (b) to the Member State 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 consequential to the judgment;
 - (c) to the Member State to which the sentenced person has fled or otherwise returned in view of the criminal proceedings pending against him or her in the issuing State or following the conviction in that issuing State.
3. In all cases where the sentenced person is still in the issuing State, he or she shall be given an opportunity to state his or her opinion orally or in writing. Where the issuing State considers it necessary in view of the sentenced person's age or his or her physical or mental condition, that opportunity shall be given to his or her legal representative.

The opinion of the sentenced person shall be taken into account when deciding the issue of forwarding the judgement together with the certificate. Where the person has availed him or her self of the opportunity provided in this paragraph, the opinion of the sentenced person shall be forwarded to the executing State, in particular with a view to Article 4(4). If the sentenced person stated his or her opinion orally, the issuing State shall ensure that the written record of such statement is available to executing State.

4. The competent authority of the issuing State shall inform the sentenced person, in a language which he or she understands, that it has decided to forward the judgment together with the certificate by using the standard form of the notification set out in Annex II. When the sentenced person is in the executing State at the time of that decision, that form shall be transmitted to the executing State which shall inform the sentenced person accordingly.
5. Paragraph 2(a) shall not apply to Poland as an issuing State and as an executing State in cases where the judgement was issued before the lapse of five years from 5 December 2011. Poland may at any time notify the General Secretariat of the Council that it will no longer avail itself of this derogation.

⁽⁹⁾ OJ L 191, 7.7.1998, p. 4.

*Article 7***Double criminality**

1. The following offences, if they are punishable in the issuing State by a custodial sentence or a measure involving deprivation of liberty for a maximum period of at least three years, and as they are defined by the law of the issuing State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to recognition of the judgment and enforcement of the sentence imposed:

- 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 ⁽¹⁰⁾
- 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.

2. The Council may decide to add other categories of offences to the list provided for in paragraph 1 at any time, acting unanimously after consultation of the European Parliament under the conditions laid down in Article 39(1) of the Treaty on European Union. The Council shall examine, in the light of the report submitted to it pursuant to Article 29(5) of this Framework Decision, whether the list should be extended or amended.

⁽¹⁰⁾ OJ C 316, 27.11.1995, p. 49.

3. For offences other than those covered by paragraph 1, the executing State may make the recognition of the judgment and enforcement of the sentence subject to the condition that it relates to acts which also constitute an offence under the law of the executing State, whatever its constituent elements or however it is described.

4. Each Member State may, on adoption of this Framework Decision or later, by a declaration notified to the General Secretariat of the Council declare that it will not apply paragraph 1. Any such declaration may be withdrawn at any time. Such declarations or withdrawals of declarations shall be published in the *Official Journal of the European Union*.

Article 8

Recognition of the judgment and enforcement of the sentence

1. The competent authority of the executing State shall recognise a judgment which has been forwarded in accordance with Article 4 and following the procedure under Article 5, and shall forthwith take all the necessary measures for the enforcement of the sentence, unless it decides to invoke one of the grounds for non-recognition and non-enforcement provided for in Article 9.

2. Where the sentence is incompatible with the law of the executing State in terms of its duration, the competent authority of the executing State may decide to adapt the sentence only where that sentence exceeds the maximum penalty provided for similar offences under its national law. The adapted sentence shall not be less than the maximum penalty provided for similar offences under the law of the executing State.

3. Where the sentence is incompatible with the law of the executing State in terms of its nature, the competent authority of the executing State may adapt it to the punishment or measure provided for under its own law for similar offences. Such a punishment or measure shall correspond as closely as possible to the sentence imposed in the issuing State and therefore the sentence shall not be converted into a pecuniary punishment.

4. The adapted sentence shall not aggravate the sentence passed in the issuing State in terms of its nature or duration.

Article 9

Grounds for non-recognition and non-enforcement

1. The competent authority of the executing State may refuse to recognise the judgment and enforce the sentence, if:
 - (a) the certificate referred to in Article 4 is incomplete or manifestly does not correspond to the judgment and has not been completed or corrected within a reasonable deadline set by the competent authority of the executing State;
 - (b) the criteria set forth in Article 4(1) are not met;
 - (c) enforcement of the sentence would be contrary to the principle of *ne bis in idem*;
 - (d) in a case referred to in Article 7(3) and, where the executing State has made a declaration under Article 7(4), in a case referred to in Article 7(1), the judgment relates to acts which would not constitute an offence under the law of the executing State. However, in relation to taxes or duties, customs and exchange, execution of a judgment may not be refused on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing State;
 - (e) the enforcement of the sentence is statute-barred according to the law of the executing State;
 - (f) there is immunity under the law of the executing State, which makes it impossible to enforce the sentence;
 - (g) the sentence has been imposed on a person who, under the law of the executing State, owing to his or her age, could not have been held criminally liable for the acts in respect of which the judgment was issued;
 - (h) at the time the judgment was received by the competent authority of the executing State, less than six months of the sentence remain to be served;

- (i) according to the certificate provided for in Article 4, the person did not appear in person at the trial resulting in the decision, unless the certificate states that the person, in accordance with further procedural requirements defined in the national law of the issuing State:
- (i) in due time:
- either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial 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
- (ii) being aware of the scheduled trial 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
- (iii) after being served with the decision and being expressly informed of the right to a retrial, or an appeal, in which the person 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:
- expressly stated that he or she does not contest the decision,
 - or
 - did not request a retrial or appeal within the applicable time frame;
- (j) the executing State, before a decision is taken in accordance with Article 12(1), makes a request, in accordance with Article 18(3), and the issuing State does not consent, in accordance with Article 18(2)(g), to the person concerned being prosecuted, sentenced or otherwise deprived of his or her liberty in the executing State for an offence committed prior to the transfer other than that for which the person was transferred;
- (k) the sentence imposed includes a measure of psychiatric or healthcare or another measure involving deprivation of liberty, which, notwithstanding Article 8(3), cannot be executed by the executing State in accordance with its legal or health care system;
- (l) the judgment relates to criminal offences which under the law of the executing State are regarded as having been committed wholly or for a major or essential part within its territory, or in a place equivalent to its territory.

2. Any decision under paragraph 1(l) in relation to offences committed partly within the territory of the executing State, or in a place equivalent to its territory, shall be taken by the competent authority of the executing State in exceptional circumstances and on a case-by-case basis, having regard to the specific circumstances of the case, and in particular to whether a major or essential part of the conduct in question has taken place in the issuing State.

3. In the cases referred to in paragraph 1(a), (b), (c), (i), (k) and (l), before deciding not to recognise the judgment and enforce the sentence, the competent authority of the executing State shall consult the competent authority of the issuing State, by any appropriate means, and shall, where appropriate, ask it to supply any necessary additional information without delay.

Article 10

Partial recognition and enforcement

1. If the competent authority of the executing State could consider recognition of the judgment and enforcement of the sentence in part, it may, before deciding to refuse recognition of the judgment and enforcement of the sentence in whole, consult the competent authority of the issuing State with a view to finding an agreement, as provided for in paragraph 2.

2. The competent authorities of the issuing and the executing States may agree, on a case-by-case basis, to the partial recognition and enforcement of a sentence in accordance with the conditions set out by them, provided such recognition and enforcement does not result in the aggravation of the duration of the sentence. In the absence of such agreement, the certificate shall be withdrawn.

Article 11

Postponement of recognition of the judgment

The recognition of the judgment may be postponed in the executing State where the certificate referred to in Article 4 is incomplete or manifestly does not correspond to the judgment, until such reasonable deadline set by the executing State for the certificate to be completed or corrected.

Article 12

Decision on the enforcement of the sentence and time limits

1. The competent authority in the executing State shall decide as quickly as possible whether to recognise the judgment and enforce the sentence and shall inform the issuing State thereof, including of any decision to adapt the sentence in accordance with Article 8(2) and (3).

2. Unless a ground for postponement exists under Article 11 or Article 23(3), the final decision on the recognition of the judgment and the enforcement of the sentence shall be taken within a period of 90 days of receipt of the judgment and the certificate.

3. When in exceptional cases it is not practicable for the competent authority of the executing State to comply with the period provided for in paragraph 2, it shall without delay inform the competent authority of the issuing State by any means, giving the reasons for the delay and the estimated time needed for the final decision to be taken.

Article 13

Withdrawal of the certificate

As long as the enforcement of the sentence in the executing State has not begun, the issuing State may withdraw the certificate from that State, giving reasons for doing so. Upon withdrawal of the certificate, the executing State shall no longer enforce the sentence.

Article 14

Provisional arrest

Where the sentenced person is in the executing State, the executing State may, at the request of the issuing State, before the arrival of the judgment and the certificate, or before the decision to recognise the judgment and enforce the sentence, arrest the sentenced person, or take any other measure to ensure that the sentenced person remains in its territory, pending a decision to recognise the judgment and enforce the sentence. The duration of the sentence shall not be aggravated as a result of any period spent in custody by reason of this provision.

Article 15

Transfer of sentenced persons

1. If the sentenced person is in the issuing State, he or she shall be transferred to the executing State at a time agreed between the competent authorities of the issuing and the executing States, and no later than 30 days after the final decision of the executing State on the recognition of the judgment and enforcement of the sentence has been taken.

2. If the transfer of the sentenced person within the period laid down in paragraph 1 is prevented by unforeseen circumstances, the competent authorities of the issuing and executing States shall immediately contact each other. Transfer shall take place as soon as these circumstances cease to exist. The competent authority of the issuing State shall immediately inform the competent authority of the executing State and agree on a new transfer date. In that event, transfer shall take place within 10 days of the new date thus agreed.

Article 16

Transit

1. Each Member State shall, in accordance with its law, permit the transit through its territory of a sentenced person who is being transferred to the executing State, provided that a copy of the certificate referred to in Article 4 has been forwarded to it by the issuing State together with the transit request. The transit request and the certificate may be transmitted by any means capable of producing a written record. Upon request of the Member State to permit transit, the issuing State shall provide a translation of the certificate into one of the languages, to be indicated in the request, which the Member State requested to permit transit accepts.

2. When receiving a request to permit transit, the Member State requested to permit transit shall inform the issuing State if it cannot guarantee that the sentenced person will not be prosecuted, or, except as provided in paragraph 1, detained or otherwise subjected to any restriction of his or her liberty in its territory for any offence committed or sentence imposed before his or her departure from the territory of the issuing State. In such a case, the issuing State may withdraw its request.

3. The Member State requested to permit transit shall notify its decision, which shall be taken on a priority basis and not later than one week after having received the request, by the same procedure. Such a decision may be postponed until the translation has been transmitted to the Member State requested to permit transit, where such translation is required under paragraph 1.

4. The Member State requested to permit transit may hold the sentenced person in custody only for such time as transit through its territory requires.

5. A transit request shall not be required in the case of transport by air without a scheduled stopover. However, if an unscheduled landing occurs, the issuing State shall provide the information provided for in paragraph 1 within 72 hours.

Article 17

Law governing enforcement

1. The enforcement of a sentence shall be governed by the law of the executing State. The authorities of the executing State alone shall, subject to paragraphs 2 and 3, be competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for early or conditional release.

2. The competent authority of the executing State shall deduct the full period of deprivation of liberty already served in connection with the sentence in respect of which the judgment was issued from the total duration of the deprivation of liberty to be served.

3. The competent authority of the executing State shall, upon request, inform the competent authority of the issuing State of the applicable provisions on possible early or conditional release. The issuing State may agree to the application of such provisions or it may withdraw the certificate.

4. Member States may provide that any decision on early or conditional release may take account of those provisions of national law, indicated by the issuing State, under which the person is entitled to early or conditional release at a specified point in time.

Article 18

Specialty

1. A person transferred to the executing State pursuant to this Framework Decision shall not, subject to paragraph 2, be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed before his or her transfer other than that for which he or she was transferred.

2. Paragraph 1 shall not apply in the following cases:

- (a) when the person having had an opportunity to leave the territory of the executing State has not done so within 45 days of his or her final discharge, or has returned to that territory after leaving it;
- (b) when the offence is not punishable by a custodial sentence or detention order;
- (c) when the criminal proceedings do not give rise to the application of a measure restricting personal liberty;
- (d) when the sentenced person could be liable to a penalty or a measure not involving deprivation of liberty, in particular a financial penalty or a measure in lieu thereof, even if the penalty or measure in lieu may give rise to a restriction of his or her personal liberty;
- (e) when the sentenced person consented to the transfer;
- (f) when the sentenced person, after his or her transfer, has expressly renounced entitlement to the specialty rule with regard to specific offences preceding his or her transfer. Renunciation shall be given before the competent judicial authorities of the executing State and shall be recorded in accordance with that State's national law. The renunciation shall be drawn up in such a way as to make clear that the person has given it voluntarily and in full awareness of the consequences. To that end, the person shall have the right to legal counsel;
- (g) for cases other than those mentioned under points (a) to (f), where the issuing State gives its consent in accordance with paragraph 3.

3. A request for consent shall be submitted to the competent authority of the issuing State, accompanied by the information mentioned in Article 8(1) of Framework Decision 2002/584/JHA and a translation as referred to in Article 8(2) thereof. Consent shall be given where there is an obligation to surrender the person under that Framework Decision. The decision shall be taken no later than 30 days after receipt of the request. For the situations mentioned in Article 5 of that Framework Decision, the executing State shall give the guarantees provided for therein.

Article 19

Amnesty, pardon, review of judgment

1. An amnesty or pardon may be granted by the issuing State and also by the executing State.

2. Only the issuing State may decide on applications for review of the judgment imposing the sentence to be enforced under this Framework Decision.

Article 20

Information from the issuing State

1. The competent authority of the issuing State shall forthwith inform the competent authority of the executing State of any decision or measure as a result of which the sentence ceases to be enforceable immediately or within a certain period of time.

2. The competent authority of the executing State shall terminate enforcement of the sentence as soon as it is informed by the competent authority of the issuing State of the decision or measure referred to in paragraph 1.

Article 21

Information to be given by the executing State

The competent authority of the executing State shall without delay inform the competent authority of the issuing State by any means which leaves a written record:

- (a) of the forwarding of the judgment and the certificate to the competent authority responsible for its execution in accordance with Article 5(5);
- (b) of the fact that it is in practice impossible to enforce the sentence because after transmission of the judgment and the certificate to the executing State, the sentenced person cannot be found in the territory of the executing State, in which case there shall be no obligation on the executing State to enforce the sentence;
- (c) of the final decision to recognise the judgment and enforce the sentence together with the date of the decision;
- (d) of any decision not to recognise the judgment and enforce the sentence in accordance with Article 9, together with the reasons for the decision;
- (e) of any decision to adapt the sentence in accordance with Article 8(2) or (3), together with the reasons for the decision;
- (f) of any decision not to enforce the sentence for the reasons referred to in Article 19(1) together with the reasons for the decision;
- (g) of the beginning and the end of the period of conditional release, where so indicated in the certificate by the issuing State;
- (h) of the sentenced person's escape from custody;
- (i) of the enforcement of the sentence as soon as it has been completed.

Article 22

Consequences of the transfer of the sentenced person

1. Subject to paragraph 2, the issuing State shall not proceed with the enforcement of the sentence once its enforcement in the executing State has begun.
2. The right to enforce the sentence shall revert to the issuing State upon its being informed by the executing State of the partial non-enforcement of the sentence pursuant to Article 21(h).

Article 23

Languages

1. The certificate shall be translated into the official language or one of the official languages of the executing State. Any Member State may, on adoption of this Framework Decision or later, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the European Union.
2. Subject to paragraph 3, no translation of the judgment shall be required.
3. Any Member State may, on adoption of this Framework Decision or later, in a declaration deposited with the General Secretariat of the Council state that it, as an executing State, may without delay after receiving the judgment and the certificate, request, in cases where it finds the content of the certificate insufficient to decide on the enforcement of the sentence, that the judgment or essential parts of it be accompanied by a translation into the official language or one of the official languages of the executing State or into one or more other official languages of the Institutions of the European Union. Such a request shall be made, after consultation, where necessary, to indicate the essential parts of the judgments to be translated, between the competent authorities of the issuing and the executing States.

The decision on recognition of the judgment and enforcement of the sentence may be postponed until the translation has been transmitted by the issuing State to the executing State or, where the executing State decides to translate the judgment at its own expenses, until the translation has been obtained.

Article 24

Costs

Costs resulting from the application of this Framework Decision shall be borne by the executing State, except for the costs of the transfer of the sentenced person to the executing State and those arising exclusively in the sovereign territory of the issuing State.

Article 25

Enforcement of sentences following a European arrest warrant

Without prejudice to Framework Decision 2002/584/JHA, provisions of this Framework Decision shall apply, *mutatis mutandis* to the extent they are compatible with provisions under that Framework Decision, to enforcement of sentences in cases where a Member State undertakes to enforce the sentence in cases pursuant to Article 4(6) of that Framework Decision, or where, acting under Article 5(3) of that Framework Decision, it has imposed the condition that the person has to be returned to serve the sentence in the Member State concerned, so as to avoid impunity of the person concerned.

CHAPTER III

FINAL PROVISIONS

Article 26

Relationship with other agreements and arrangements

1. Without prejudice to their application between Member States and third States and their transitional application according to Article 28, this Framework Decision shall, from 5 December 2011, replace the corresponding provisions of the following conventions applicable in relations between the Member States:

- The European Convention on the transfer of sentenced persons of 21 March 1983 and the Additional Protocol thereto of 18 December 1997;
- The European Convention on the International Validity of Criminal Judgements of 28 May 1970;
- Title III, Chapter 5, of the Convention of 19 June 1990 implementing the Schengen Convention of 14 June 1985 on the gradual abolition of checks at common borders;
- The Convention between the Member States of the European Communities on the Enforcement of Foreign Criminal Sentences of 13 November 1991.

2. Member States may continue to apply bilateral or multilateral agreements or arrangements in force after 27 November 2008, in so far as they allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for the enforcement of sentences.

3. Member States may conclude bilateral or multilateral agreements or arrangements after 5 December 2008 in so far as such agreements or arrangements allow the provisions of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for the enforcement of sentences.

4. Member States shall by 5 March 2009, notify the Council and the Commission of the existing agreements and arrangements referred to in paragraph 2 which they wish to continue applying. Member States shall also notify the Council and the Commission of any new agreement or arrangement as referred to in paragraph 3, within three months of signing it.

*Article 27***Territorial application**

This Framework Decision shall apply to Gibraltar.

*Article 28***Transitional provision**

1. Requests received before 5 December 2011 shall continue to be governed in accordance with the existing legal instruments on the transfer of sentenced persons. Requests received after that date shall be governed by the rules adopted by Member States pursuant to this Framework Decision.
2. However, any Member State may, on the adoption of this Framework Decision, make a declaration indicating that, in cases where the final judgment has been issued before the date it specifies, it will as an issuing and an executing State, continue to apply the existing legal instruments on the transfer of sentenced persons applicable before 5 December 2011. If such a declaration is made, those instruments shall apply in such cases in relation to all other Member States irrespective of whether or not they have made the same declaration. The date in question may not be later than 5 December 2011. The said declaration shall be published in the *Official Journal of the European Union*. It may be withdrawn at any time.

*Article 29***Implementation**

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 5 December 2011.
2. Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. On the basis of a report established using this information by the Commission, the Council shall, no later than 5 December 2012, assess the extent to which Member States have complied with the provisions of this Framework Decision.
3. The General Secretariat of the Council shall notify the Member States and the Commission of the notifications or declarations made pursuant to Article 4(7) and Article 23(1) or (3).
4. Without prejudice to Article 35(7) of the Treaty on European Union, a Member State which has experienced repeated difficulties in the application of Article 25 of this Framework Decision, which have not been solved through bilateral consultations, shall inform the Council and the Commission of its difficulties. The Commission shall, on the basis of this information and any other information available to it, establish a report, accompanied by any initiatives it may deem appropriate, with a view to resolving these difficulties.
5. By 5 December 2013, the Commission shall establish a report on the basis of the information received, accompanied by any initiatives it may deem appropriate. The Council shall on the basis of any report from the Commission and any initiative, review, in particular Article 25, with a view to considering whether it is to be replaced by more specific provisions.

*Article 30***Entry into force**

This Framework Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

ANNEX II

TRANSFER CERTIFICATE

CERTIFICATE

referred to in Article 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 Union ⁽¹⁾

- (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):

- (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. (country code) (area/city code)
- Fax (country code) (area/city code)
- Email 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, email 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:

⁽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.

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-yyyy):

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) ⁽²⁾:

3. Type of sentence:

custodial sentence

measure involving deprivation of liberty (please specify):

.....

⁽²⁾ 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.

(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 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)

(?) 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.

ANNEX III

NOTIFICATION OF THE SENTENCED PERSON

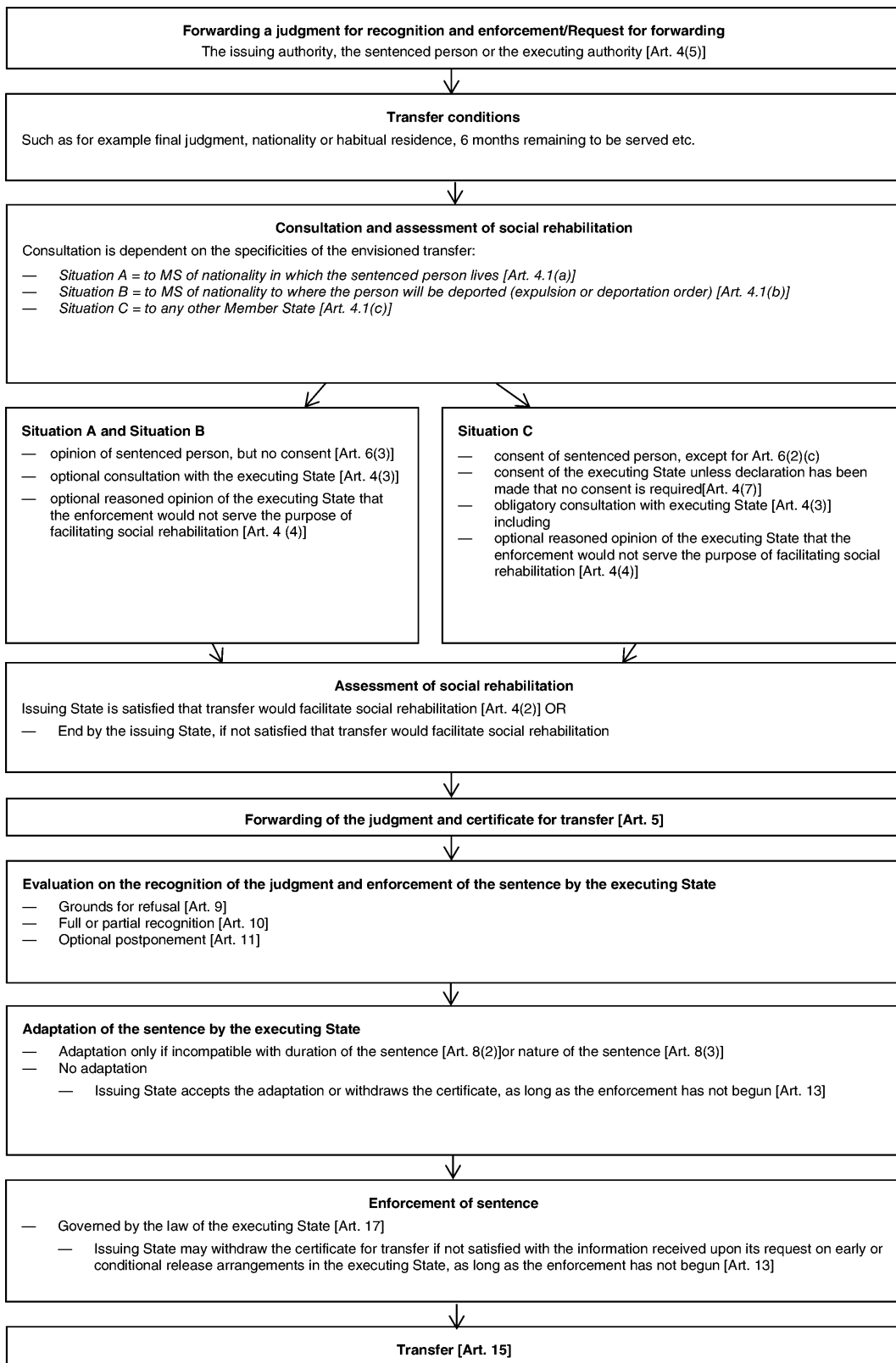
You are hereby notified of the decision of (competent authority of the issuing State) to forward the judgment of (competent court of the issuing State) dated (date of judgment) (reference number; if available) to (executing State) for the purpose of its recognition and enforcement of the sentence imposed therein in accordance with the national law implementing Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.

The enforcement of the sentence will be governed by the law of (executing State). The authorities of that State will be competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for early or conditional release.

The competent authority of (executing State) has to deduct the full period of deprivation of liberty already served in connection with the sentence from the total duration of deprivation of liberty to be served. An adaptation of the sentence by the competent authority of (executing State) may take place only if it is incompatible with the law of that State in terms of its duration or nature. The adapted sentence must not aggravate the sentence passed in (issuing State) by its nature or duration.

ANNEX IV

FLOWCHART FRAMEWORK DECISION 2008/909/JHA



ANNEX V

SOURCES OF INFORMATION

- Information provided by the Council of the EU on Framework Decision 2008/909/JHA:
<https://data.consilium.europa.eu/doc/document/ST-9618-2014-REV-1/en/pdf>
 - Information provided by the European Judicial Network in criminal matters (EJN): list of competent authorities, state of implementation and declarations made by the Member States for Framework Decision 2008/909/JHA
<https://www.ejn-crimjust.europa.eu/ejn/libcategories.aspx?Id=36>
 - Report from the Commission to the European Parliament and the Council on the implementation by the Member States of the Framework Decisions 2008/909/JHA, 2008/947/JHA and 2009/829/JHA on the mutual recognition of judicial decisions on custodial sentences or measures involving deprivation of liberty, on probation decisions and alternative sanctions and on supervision measures as an alternative to provisional detention (COM(2014) 57 final of 5.2.2014).
<https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties.aspx?Id=1222>
 - Commission Staff Working Document – Tables ‘State of play’ and ‘Declarations’ accompanying the document: ‘Report from the Commission to the European Parliament and the Council on the implementation by the Member States of the Framework Decisions 2008/909/JHA, 2008/947/JHA and 2009/829/JHA on the mutual recognition of judicial decisions on custodial sentences or measures involving deprivation of liberty, on probation decisions and alternative sanctions and on supervision measures as an alternative to provisional detention – Annex to the report’ (SWD(2014) 34 final of 5.2.2014).
 - EuroPris Experts’ groups reports and recommendations on Framework Decision 2008/909/JHA, including the EuroPris ‘Resource Book on the Transfer of Prisoners’
<http://www.euopris.org/>
 - STEPS 2 Resettlement (‘Support for Transfer of European Prison Sentences towards Resettlement’) aimed to support the effective delivery of Framework Decision 2008/909/JHA by investigating and analysing the legal and practical obstacles that may hinder its implementation and execution in all Member States.
<http://steps2.euopris.org/en/>
 - Study of the Fundamental Rights Agency (FRA) on Framework Decision 2008/909/JHA ‘Criminal detention and alternatives: fundamental rights aspects in EU cross border transfers’
<http://fra.europa.eu/en/publication/2016/criminal-detention-and-alternatives-fundamental-rights-aspects-eu-cross-border>
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ANNEX VI

**LIST OF JUDGMENTS OF THE COURT OF JUSTICE CONCERNING THE FRAMEWORK DECISION
2008/909/JHA**

C-573/17, *Openbaar Ministerie v Daniel Adam Popławski ('Popławski II')* (Judgment of 24 June 2019)

C-579/15, *Popławski* (Judgment of 29 June 2017)

C-582/15, *van Vemde* (Judgment of 25 January 2017)

C-289/15, *Grundza* (Judgment of 11 January 2017)

C-554/14, *Ognyanov* (Judgment of 8 November 2016)

Pending:

C-495/18: Request for a preliminary ruling from Najvyšší súd republiky (the Supreme Court of the Slovak Republic) lodged on 30 July 2018, YX

C-314/18: Request for a preliminary ruling from the Rechtbank Amsterdam (Netherlands) lodged on 8 May 2018, *Openbaar Ministerie v SF*

ANNEX VII

LIST OF JUDGMENTS OF THE COURT OF JUSTICE CONCERNING THE FRAMEWORK DECISION 2002/584

C-573/17, *Openbaar Ministerie v Daniel Adam Popławski ('Popławski II')* (Judgment of 24 June 2019)

C-514/17, *Sut* (Judgment of 13 December 2018)

C-327/18 PPU, RO (Judgment of 19 September 2018)

C-220/18 PPU, ML (Judgment of 25 July 2018)

C-268/17, *AY* (Judgment of 25 July 2018)

C-367/16, *Piotrowski* (Judgment of 23 January 2018)

C-404/15 and C-659/15 PPU, *Aranyosi and Căldăraru* (Judgment of 5 April 2016)

C-237/15 PPU, *Lanigan* (Judgment of 16 July 2015)

C-168/13 PPU, *Jeremy F* (Judgment of 30 May 2013)

C-66/08, *Kozłowski* (Judgment of 17 July 2008)

Pending:

C-314/18: Request for a preliminary ruling from the Rechtbank Amsterdam (Netherlands) lodged on 8 May 2018, *Openbaar Ministerie v SF*

C-128/18: Request for a preliminary ruling from the Hanseatisches Oberlandesgericht Hamburg (Germany) lodged on 16 February 2018, *Criminal proceedings against Dumitru-Tudor Dorobantu*
