



**COUNCIL OF
THE EUROPEAN UNION**

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COPEN 121

NOTE

from :	Presidency
to :	Coreper/Council
No prev doc	15389/1/06 REV 1 COPEN 118
Subject :	Council Framework Decision 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

I INTRODUCTION

Austria, Finland and Sweden submitted on 24 January 2005 a proposal for Framework Decision on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences and or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.¹

The European Parliament has delivered its opinion on the proposal on 14 June 2006.

Certain delegations have entered general scrutiny reservations and general parliamentary scrutiny reservations on the proposal.

¹ 5597/05 COPEN 13 + ADD 1, 7307/05 COPEN 54.

The COREPER examined at its meeting on 23 November 2006 a number of questions regarding the above proposal on the basis of 15389/1/06 REV 1 COPEN 118. Following the mandate given by the COREPER the JHA Counsellors group further examined the outstanding issues on the basis of a working document submitted by the Presidency.

On the basis of these discussions, the Presidency submits in the present document a revised text of the proposal addressing all the outstanding questions to Coreper and Council with a view to adopting a general approach on the draft (with the exception of the certificate to be annexed to the Framework Decision) on the basis of the compromise package at the JHA Council on 4 and 5 December 2006 as set out in Annex. It is the view of the Presidency that the present text represents a balanced approach and that delegations should be able to accept it without changes.

The outstanding questions are set out under II below. The draft Framework Decision resulting from proceedings is set out in Annex to this note.

II OUTSTANDING QUESTIONS SUBMITTED TO COREPER/COUNCIL

1. Article 20a (Transitional provision)

The main rule set out in Article 20a(1) is that this Framework Decision is applicable in cases where the request for the enforcement of the sentence is received after the date when the implementation of this Framework Decision has to be completed.

In addition to that, in order to accommodate the needs of certain delegations which have indicated that they need a transitional period to accommodate their legal and penitentiary systems in order to fully apply this Framework Decision the Presidency proposes a revision based on the suggestion made by one delegation during the COREPER meeting. This text sets out a transitional period according to which a Member State could make a statement indicating that as an Executing State it will continue to apply the existing, “old”, legal instruments in cases where requests relate to *final judgments* issued before a date which it specifies in its statement. This date may not be later than a date of implementation of the Framework Decision.

In addition to that, this transitional provision shall be applied reciprocally between the Member States both, as issuing and as executing state.

Three delegations entered scrutiny reservations on Presidency compromise proposal.

2. Articles 3a and 5 (Criteria for forwarding a judgment and a certificate to another Member State) (Opinion and notification of the sentenced person)

Two delegations have entered a general reservation on Articles 3a and 5 and one of these delegations has entered a general reservation on Article 9 as well. Two delegations have scrutiny reservations on these Articles and two delegations have specific scrutiny reservations on either Article 3a or on Article 5.

Four delegations made a proposal for a ground for refusal related to social rehabilitation. Several delegations were against introduction of such a ground for refusal. Three delegations have indicated that they could reconsider their position regarding the ground for refusal relating to social rehabilitation provided that the provisions and Recitals along the lines of Article 3a(2a), Article 5(2) and Recital 6(c) would be introduced. On this basis the Presidency has established a revised text of these Articles and Recital 6(c) and Recital 6(c bis).

This compromise includes the following elements:

1. The possibility of the executing State to present to the issuing State a reasoned opinion why the transfer of the person would not in its view serve the purpose of social rehabilitation of the person (*Article 3a(2a)*)
2. An obligation for the issuing State to take into account the opinion of the sentenced person and forward it to the executing State in particular with a view to Article 3a(2a). (*Article 5(2) second subparagraph*).
3. A Recital clarifying the elements which the issuing State should take into account in the context of satisfying itself that the enforcement in the executing State would facilitate the social rehabilitation of the sentenced person. (*Recital 6(c)*).
4. A Recital stating that Articles 3a(2a) and 5(2) do not constitute a ground for refusal on the basis of lack of social rehabilitation. (*Recital 6(c bis)*).

Several delegations could, in the spirit of compromise, consider accepting the compromise package proposal presented by the Presidency, provided, firstly, that they would lead to an agreement and secondly, that there would be no specific ground for refusal related to social rehabilitation.

Article 3a provides a compulsory regime to be applied in cases, where the judgment and the certificate is forwarded to the State of nationality of the sentenced person, in which he or she lives (*Article 3a(1)(a)*), or to which he or she would be deported (*Article 3a(1)(b)*).

In relation to the scope of discretionary regime cases, including the issue of the third country nationals, the definition of residence and concerns relating to the manner of exercising discretion by the executing State, the Presidency has presented a compromise proposal. This proposal includes the following elements:

1. The compulsory consultation prior to the transferring the judgment and the certificate in cases other than those referred to in Article 3a 1 (a) (b). (*Article 3a (2)*).
2. Article 3a(4) which takes account of the concerns expressed by the Council Legal Service imposes on the Member State an obligation to ensure in their implementing legislation that the social rehabilitations would constitute the main criteria to be applied by the competent authorities of the executing State while exercising discretion under Article 3a(1)(c).
3. An opt-in clause, allowing the Member States to notify that in their relations with the Member States which have given the same notification, prior consent will not be required in relation to the transfer of sentenced persons in cases referred to in Article 3a(5)

At an earlier stage, three delegations, supported by six delegations, have suggested that the scope of the obligatory regime in Article 3a should be made broader. At this stage of negotiations, these delegations have a scrutiny reservation on the Presidency proposal. Majority of delegations supported the Presidency's suggestion. Several of these delegations were strongly against the proposal of the three delegations. In general, delegations favouring the proposal of three delegations, have indicated flexibility and they could also consider accepting, as a compromise, the proposal submitted by the Presidency with an opt in clause.

3. Article 9 (Grounds for non-recognition and non-enforcement)

Subject to scrutiny reservation by one delegation, the ground for refusal relating to statute-barred cases (Article 9(1)(c)), with the deletion of the reference to the jurisdiction of the executing State, was acceptable to the delegations, provided that there will be a Council Declaration stating that this solution is without prejudice to future mutual recognition instruments.

The Presidency proposal for the wording of ground for refusal related to territoriality (Articles 9(1)(j), 9(1a)) aims to address concerns expressed by one delegation. This wording is mainly based on the approach taken in the Framework Decision on European Evidence Warrant. This proposal is still subject to scrutiny reservations by six delegations, who were concerned by the possible discretionary and extensive application of this ground for refusal. In order to address these concerns a new Recital 12(b) is suggested. This proposal could be acceptable to the delegations as a part of the entire compromise package on the proposal.

4. Articles 19a and 21 (3bis) (EAW-related issues)

The majority of delegations was prepared to accept the Presidency's "general" approach, as provided for in Article 19a, according to which this Framework Decision shall apply *mutatis mutandis* to enforcement of sentences pursuant to Article 4(6) and 5(3) of the EAW Framework decision. This approach underlines that the EAW Framework Decision and the present proposal are two separate instruments. However, at the same time it would provide a legal framework for cases where the EAW-procedure precedes the enforcement procedure applicable under this Framework Decision. At the COREPER meeting one delegation proposed an addition which would clarify that while applying the provisions of this Framework Decision the obligations imposed on the Member States under EAW Framework decision should be complied with. A need for such a clarification was supported by a number of delegations. In view of that the review clause set out under Article 21(3bis) was modified and an addition made to Article 19a that the application is made of this provision so as to avoid impunity of the sentenced person. The compromise proposal by the Presidency is completed by Recital (6d).

5. Other outstanding questions

Some delegations have entered parliamentary scrutiny reservations on the draft.

The following reservations set out in footnotes in Annex I have been maintained

- Two delegations' scrutiny reservation on Article 7
- One delegation scrutiny reservation on Article 13
- One delegation scrutiny reservation on Article 18a

Delegations are invited to lift the above reservations.

III CONCLUSION

Coreper/Council is invited to accept the proposed solutions on the outstanding issues, as set out under II above, with a view to adopting a general approach on the text of the draft Framework Decision (with the exception of the certificate annexed thereto) on the text proposed by the Presidency, as set out in the Annex to this note.

COUNCIL FRAMEWORK DECISION 2005/ JHA**of**

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 ¹,

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 matters², 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).

¹ OJ

² OJ

- (3) The Hague Programme on strengthening freedom, security and justice in the European Union¹ requires the 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 the 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) 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 EU nationals (...) have been 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 necessity of providing 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.
- (5a) (...)
- (5b) This Framework decision should be implemented and applied in a manner which allows for respecting general principles of equality, fairness and reasonableness.

¹ OJ

(6) (...)

(6a) Article 3a(1)(c) contains a discretionary provision, which enables forwarding the certificate and the judgment, for example, to the State of nationality of the sentenced person in cases other than paragraphs 1 a) and b), or to the State where the sentenced person lives and has been legally residing continuously for at least five years and will retain a permanent right of residence in that State,

(6b) In cases referred to Article 3a(1)(c) the forwarding of the certificate and the judgment to the executing State is subject to the consultations between the competent authorities of the issuing and the executing State, 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 State should in consultations, consider whether the enforcement in the executing Member State would enhance the aim of social rehabilitation better than enforcement in the third country.

(6c) Enforcement of the sentence in the executing Member 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/she considers it the place of family, linguistic, cultural, social or economic and other links to the executing State.

(6cbis) The opinion of the sentenced person referred in Article 5(2) may be useful mainly in applying Article 3a (2a). 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 the application of Article 9. Provisions of Articles 3a(2a) and 5(2) do not constitute a ground for refusal on social rehabilitation.

- (6d) This Framework Decision should also, *mutatis mutandis*, apply to the enforcement of sentences in the cases under Articles 4(6) und 5(3) of the Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States¹. This *inter alia* means, that without prejudice to the Council Framework Decision 2002/584/JHA, the executing Member State could verify the existence of grounds for refusal as provided for in Article 9, including checking of dual criminality to the extent the executing State has made a declaration under Article 7(4), as a condition to recognise and enforce the judgment with a view to consider whether to surrender the person or to enforce the sentence in cases pursuant to Article 4(6) of the said Framework Decision.
- (7) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty 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 anyone of those grounds.
- (8) This Framework Decision does 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.
- (9) The provisions of this Framework Decision should be applied in conformity with the right of citizens of the European Union to move and reside freely within the territory of the Member States conferred by Article 18 of the TEC.
- (10) The provisions of this Framework Decision should be applied in conformity with applicable EC law, including in particular Directive 2004/38/EC, Directive 2003/109/EC and Directive 2003/86/EC.

¹ OJ L 190, 18.7.2002, p. 1.

(11) Where in this Framework Decision reference is made to the State where 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.

(11a) When applying Article 4(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.

(12) In cases referred to Article 9(1)(i), the executing State should consider the possibility to adapt the sentence in accordance with article 8(3) before it refuses to recognise and execute the sentence involving a measure other than a custodial sentence.

(12a) The ground for refusal in Article 9(1)(i) 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.

(12b) The ground for refusal relating to the territoriality in Article 9(1)(j) should be applied only in exceptional cases and with a view to co-operating to the greatest extent possible under the provisions of this Framework Decision, while taking into account the purpose referred to in Article 3(1). 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 State.¹

(13) The time limit referred to Article 10, paragraph 1a, should be implemented by the Member States in such a way that as a general rule, the final decision, including an appeal procedure should be completed within a period of 90 days.

¹ Presidency compromise proposal, see cover note under point II.

(13a) Paragraph 1 of Article 14 states that, subject to exceptions listed in paragraph 2, the speciality rule applies only in cases where the person has been transferred to the executing State. Therefore paragraph 1 of Article 14 is not applicable in cases where the person has not been transferred to the executing State, for example in cases 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.
- (c) "issuing State" shall mean the Member State in which a judgment within the meaning of this Framework Decision was delivered;
- (d) "executing State" shall mean the Member State to which a judgment has been 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

- 1.¹ 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, shall recognise a judgment and enforce the sentence.
2. This Framework Decision is applicable where the sentenced person is in the issuing State or in the executing State.
3. This Framework Decision only applies 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 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 the Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties and on the Council Framework Decision 2005/xxx/JHA of xx.xx.2005 on the application of the principle of mutual recognition to confiscation orders.
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.

¹ Scrutiny reservation by one delegation (linked to Articles 3a, 5 and 9).

Chapter II
Recognition of judgments and enforcement of sentences

Article 3a

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

1. Provided the sentenced person is in the issuing State or in the executing State, and provided that the person has given his or her consent where required under Article 5, a judgment, together with a certificate as provided for in Article 4, may be forwarded to one of the following Member States:
 - a) the State of nationality of the sentenced person in which he or she lives; or
 - b) the State of nationality, to which, while not being the State where he or she lives, the sentenced person will be deported, (...) ¹, 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
 - c) any Member State other than a State referred to in a) or b), whose competent authority consents to the forwarding of the judgment and the certificate to that State.
- 1a. 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.
2. 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 is 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.

¹ In accordance with the suggestion made by one delegation, the words "in accordance with EC Law" was inserted in to the text of document 14903/06 COPEN 112. As a result of comments made in Article 36 Committee on 10 November 2006 this reference has been deleted. Scrutiny reservation by the delegation which suggested the addition.

- 2(a) During these consultations the competent authority of the executing State may present a reasoned opinion to the competent authority of the issuing State, 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 the society.
- In cases where there has been no consultation, such an opinion may be presented without delay after the transmission of the certificate and the judgment. The competent authority of the issuing State shall consider such opinion and decide whether to withdraw the certificate or not.

3. 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 under this Framework Decision. Requests made under this paragraph do not create an obligation of the issuing State to forward the judgment together with the certificate.
4. 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 3a(1)(c).¹
5. Each Member State may, either when this Framework Decision is adopted or at the later date, notify to 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 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 has the nationality of the executing State in cases other than paragraphs 1 a) and b).

In cases referred to in subparagraph (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 the Article 18, 40, 44 and 52 Treaty establishing the European Community, or

¹ Scrutiny reservation by three delegations, who had the view that social rehabilitation should be the sole criteria to be taken into account.

- 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 the Article 63 Treaty establishing the European Community, as regards Member States to which this Community legislation is applicable, or in accordance with national law, as regards Member States to which this Community legislation is not applicable.¹

Article 4

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 in the issuing State directly to the competent authority in 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, the standard form for which is given in Annex A, must be signed, and its content certified as accurate, by the competent authority in the issuing State.
3. The issuing State shall forward the judgment together with the certificate only to one executing State at any one time.
4. If the competent authority in the executing State is not known to the competent authority in 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/JHA², in order to obtain the information from the executing State.

¹ Scrutiny reservations by two delegations on references to TEC provisions. It was suggested that the words "in particular" should be added before the reference is made to the provisions of the TEC in this paragraph.

² OJ L 191, 7.7.1998, p. 4.

5. When an authority in 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 and shall inform the competent authority in the issuing State accordingly.

Article 5

Opinion and notification of the sentenced person

1. Without prejudice to paragraph 1a, a judgment together with a certificate may only be forwarded to the executing State for the purpose of its recognition and enforcement of the sentence with the consent of the sentenced person in accordance with the law of the issuing State.
- 1a¹. The consent of the sentenced person shall not be required where the judgment together with the certificate is forwarded:
- a)² to the State of nationality in which he or she lives;
 - b) to the 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 State to which the person has fled or otherwise returned³ in view of the criminal proceedings pending against him or her in the issuing State or following the conviction in that State.

¹ Scrutiny reservation by three delegations. One of them was prepared to accept only an exception to the need for the consent of the sentenced person for cases covered by the Schengen provisions (the sentenced person has fled to his or her State of nationality).

² Scrutiny reservation by two delegations.

³ Scrutiny reservation by one delegation.

2. In all cases where the person is still in the issuing State, the person 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/herself 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 3a(2a). If the person stated his or her opinion orally, the issuing State shall ensure that the written record of such statement is available to executing State.

3. 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 set out in Annex B. 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 person accordingly.

Article 6

(...)

Article 7¹

Dual 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 :

¹ Scrutiny reservation by two delegations who favoured a limited opt-out possibility. It was suggested to introduce the following Council Statement:
"The Council takes note that the agreement on Articles 7, 9(1)b and 9(2) is without prejudice to:
- the positions of the Member States in respect of solutions to be found regarding future instruments on mutual recognition in criminal matters, and
- the interpretation of existing instruments on mutual recognition in criminal matters."

- 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 ¹,
- 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,

¹ OJ C 316, 27.11.1995, p. 49.

- 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 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. The Council shall examine, in the light of the report submitted to it pursuant to Article 21(4) of this Framework Decision, whether the list should be extended or amended.
 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 the constituent elements or however it is described.
 4. Each Member State may, at the time of the adoption of the Framework Decision or later, by a declaration notified to the Secretary General 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 the judgment which has been forwarded in accordance with Article 3a and following the procedure under Article 4, and shall forthwith take all the necessary measures for the enforcement of the sentence, unless the competent authority 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 may not go below 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 that State may adapt it to the punishment or measure provided for under its own law for similar offences. Such a punishment or measure must correspond as closely as possible to the sentence imposed in the issuing State; this means that the sentence cannot be converted into a pecuniary punishment.
4. The adapted sentence shall not aggravate the sentence passed in the issuing State by 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 provided for in Art. 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 executing authority;
 - (ab) the criteria set forth in Article 3a(1) are not met;
 - (ac) enforcement of the sentence would be contrary to the principle of ne bis in idem;

- (b) in a case referred to in Article 7(3) and, in case 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;
- (c) the enforcement of the sentence is statute-barred according to the law of the executing State (...) ¹
- (cb) there is immunity under the law of the executing State, which makes it impossible to enforce the sentence;
- (d) the sentence has been imposed on a person who, under the law of the executing State, owing to his or her age, could not yet have been held criminally liable for the acts in respect of which the judgment was issued;
- (e) 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;
- (f) the judgment was rendered in absentia, unless the certificate states that the person was summoned personally or informed via a representative, competent according to the national law of the issuing State, of the time and place of the proceedings which resulted in the judgment being rendered in absentia, or that the person has indicated to a competent authority that he or she does not contest the case.

¹ Scrutiny reservation by one delegation. The Council Declaration stating that this solution is without prejudice to future mutual recognition instruments will be added.

- (g) the executing State, before a decision is taken in accordance with Article 10(1), makes a request, in accordance with Article 14(3), and the issuing State does not consent, in accordance with Article 14(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.
 - (h) (...)
 - (i) 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 the legal or health system of that State.
 - (j)¹ the judgment relates to criminal offences which under the law of the executing State are regarded as having been committed wholly or for major or essential part within its territory, or in a place equivalent to its territory.
- (1a) Any decision under the paragraph 1(j) of this Article 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 referred to in paragraph 2 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.
- 2 In the cases referred to in paragraph 1(a), (ab), (ac), (f) (i) and (j), before deciding not to recognise the judgment and enforce the sentence, the competent authority in the executing State shall consult the competent authority in the issuing State, by any appropriate means, and shall, where appropriate, ask it to supply any necessary additional information without delay.

¹ Presidency compromise proposal in order to address concerns expressed by number of delegations. It is also complemented by the new Recital 12(b). Scrutiny reservation by several delegations on this point.

Article 9a

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 Member State 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 they will not result in the aggravation of the duration of the sentence. In the absence of such agreement, the certificate shall be withdrawn.

Article 9b

Postponement of recognition of the judgment

The recognition of the judgment may be postponed in the executing State where the certificate provided for 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 10

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 paras. 2 and 3.
 - 1a. Unless a ground for postponement exists under Article 9a or under Article 18a(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.

2. When in exceptional cases it is not practicable for the competent authority of the executing State to meet the deadline in paragraph 1a, 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 10a

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 10b

Provisional arrest

In cases where the person is in the executing State, at the request of the issuing State, the executing State may, prior to the arrival of the judgment and the certificate, or prior to 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 paragraph.

Article 11

Transfer of 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 State, 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. (...)

3. If the transfer of the 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 have ceased 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.
4. (...)

Article 12

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

- 2a. The Member State requested to permit transit may hold the sentenced person in custody only for such time as transit through its territory requires.
3. A transit request is not 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 13¹

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 in 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.

¹ Scrutiny reservation by one delegation.

Article 14
Specialty

1. A person transferred to the executing State pursuant to this Framework Decision may not, subject to paragraph 2, be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to 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 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 may give rise to a restriction of his or her personal liberty;
 - (e) when the person consented to the transfer;
 - (f) when the person, after his or her transfer, has expressly renounced entitlement to the speciality 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 domestic 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) above, 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 if there would be an obligation to surrender 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 15

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 16

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 that decision or measure.

Article 17

Information from the executing State

1. 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 4(5);

- (a bis) of the fact that it is in practice impossible to enforce the sentence for the reason that, after transmission of the certificate and the judgment 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 of the executing State to enforce the sentence;
- (a ter) of the final decision to recognise the judgment and enforce the sentence including its date;
- (b) of any decision not to recognise the judgment and enforce the sentence in accordance with Article 9, together with the reasons for the decision;
- (c) of any decision to adapt the sentence in accordance with Article 8(2) or (3), together with the reasons for the decision;
- (d) of any decision not to enforce the sentence, either for the reasons referred to in Article 15(1) together with the reasons for the decision;
- (e) of the beginning and the end of the period of conditional release, where so indicated in the certificate by the issuing State;
- (f) of the sentenced person's escape from custody prior to completion of the sentence;
- (g) of the enforcement of the sentence as soon as it has been completed.

Article 18

Consequences of the transfer of the sentenced person

1. Subject to paragraph 2, the issuing State may not proceed further 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 17(1)(f).

Article 18a¹

Languages

1. The certificate, the standard form which is set in the Annex, must be translated into the official language or one of the official languages of the executing State. Any Member State may, either when this Framework Decision is adopted or at a later date, 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 Union.
2. Subject to paragraph 3 below, no translation of judgment shall be required.
3. Any Member State may, either when this Framework decision is adopted or at a later date, 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 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 State.
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.

¹ Positive scrutiny reservation by one delegation.

Article 19

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 person to the executing State and those arising exclusively in the sovereign territory of the issuing State.

Article 19a

Enforcement of sentences following an European arrest warrant¹

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 the Framework Decision 2002/584/JHA, to enforcement of sentences in cases where a Member State undertakes to enforce the sentence in cases pursuant to Article 4(6) of the Framework Decision 2002/584/JHA, or where, acting under Article 5(3) of the Framework Decision 2002/584/JHA , it has imposed a 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 20

Relationship with other agreements and arrangements

- ² Without prejudice to their application between member states and third States, this Framework Decision shall, from [date to be inserted] replace the corresponding provisions of the following conventions applicable in relations between the Member States:

¹ This Presidency compromise proposal, subject to scrutiny reservation by some delegations, was generally acceptable to delegations. It is also linked to the review clause in Article 21 (3bis), under which more detailed provisions could be adopted at a later stage, when there is sufficient information based on the EAW evaluation and application of these Framework Decisions.

² The list of instruments will still be examined after the discussions on this Framework decision are completed.

- The European Convention on, the transfer of sentenced persons of 21 March 1983 and its Additional Protocol 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 when this Framework Decision was adopted, insofar 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 this Framework Decision has come into force in so far as such agreements or arrangements allow the prescriptions 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, within three months from the entry into force of this Framework Decision, 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 20a¹

Transitional provision

1. Requests received before the date referred in Article 21(1) 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.

¹ As an element of the compromise package this text was acceptable to the majority of delegations.

2. However, any Member State may, at the time of the adoption of this Framework Decision by the Council, make a statement 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 the date referred to in Article 21(1). The date in question may not be later than the^{*}. The said statement will be published in the *Official Journal of the European Union*. It may be withdrawn at any time.
3. (...)

Article 21
Implementation

1. Member States shall take the necessary measures to comply with this Framework Decision by^{*}.
2. Member States shall communicate 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 Decision¹. On the basis of a report drawn up by the Commission using this information, the Council shall, no later than ...^{**}, assess the extent to which Member States have complied with this Framework Decision.
3. The General Secretariat of the Council shall notify the Member States and the Commission of the declarations or notifications made pursuant to Article 3a(5) and Article 18a(1) or (3).

^{*} Two years after the date of entry into force of this Framework Decision.

^{*} Two years after the date of entry into force of this Framework Decision.

¹ One delegation proposed to add "and a correlative table between these provisions and the Framework Decision." One delegation thought that this issue should be addressed rather in the Recitals.

^{**} Four years after the date of entry into force of this Framework Decision.

3bis. Without prejudice to Article 35(7) of the Treaty, a Member State which has experienced repeated difficulties in the application of Article 19a 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. (...) ¹

4. By ... ^{*}, 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 19a, with a view to considering whether it shall be replaced by more specific provisions.

Article 22

Entry into force

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

Done at

For the Council
The President

¹ Presidency proposal, see cover note under point II.

^{*} Five years after the date of entry into force of this Framework Decision.

(...) CERTIFICATE

referred to in Art. 4 of the FD/...../JI⁺ of the Council on
the (...) application of the principle of mutual recognition to the enforcement of sentences
between Member States of the European Union

(...)

(a)	* Issuing State:
	* Executing State:

(b)	The court which issued the (...) <u>judgment</u> imposing the sentence: Official name: Address: File reference (...) Tel. No: (country code) (area/city code) Fax No (country code) (area/city code) E-mail address (if available)..... Languages in which it is possible to communicate with the issuing authority..... Contact details for person(s) to be contacted to obtain additional information for the purposes of enforcement of the (...) <u>judgment</u> or agreement on the transfer procedures (name, title/grade, tel. No, fax No, and, if available, e-mail address)
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⁺ OJ: please insert No of this Framework Decision.

(c) The authority in the issuing State competent for the enforcement of the (...) judgment (if the authority is different from the authority under point (b)):

Official name:

.....

Address:

.....

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

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

E-mail address (if available).....

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

.....

Contact details for 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, and, if available, e-mail address):

.....

.....

(d) Where a central authority has been made responsible for the administrative forwarding of the (...) judgment in the issuing State:

Name of the central authority:

.....

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

.....

Address:

.....

File reference

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

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

E-mail address (if available):

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

Authority mentioned under point (b)

Can be contacted for questions concerning:

Authority mentioned under point (c)

Can be contacted for questions concerning:

Authority mentioned under point (d)

Can be contacted for questions concerning:

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

Name:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if available):

Date of birth:

Place of birth:

Place of residence and/or last known address:

.....

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

.....

If the (...) judgment is forwarded to the executing State because the person on whom the sentence has been imposed has legal permanent residence in that State, add the following information:

Legal residence in the executing State:

.....

.....

If the (...) judgment is forwarded to the executing State because the person on whom the sentence has been imposed has other close links to that State, add the following information:

Nature of the close links to the executing State.....

(g) (...) Judgment imposing the sentence:

The (...) judgment was made on (date)

The (...) judgment became final on (date)

Reference number of the (...) judgment (if available):

The (...) judgment or an administrative decision consequential to (...) judgment includes an expulsion order or any other measure as a result of which the person will no longer be allowed to remain in the territory of the issuing State after serving the sentence:

Yes

No

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 1 above 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 above is (are) not covered by point 2, please give a full description of the offence(s) concerned:

.....

.....

(h) Status of the (...) judgment imposing the sentence:

1. Confirm that:

- (a) the (...) judgment is final
- (b) to the knowledge of the authority issuing the (...) certificate, the sentenced person possesses the nationality of the executing State or has legal permanent residence in that State
- (c) to the knowledge of the authority issuing the (...) certificate, the sentenced person has other close links to the executing State and has agreed to the forwarding of the (...) judgment.
- (d) to the knowledge of the authority issuing the (...) certificate, a decision against the same person in respect of the same acts has not been delivered in the executing State and that no such decision delivered in any State other than the issuing State or the executing State has been enforced.

2. Indicate if the sentenced person appeared personally in the proceedings:

- (a) Yes, he/she did.
- (b) No, he/she did not. It is confirmed:
that the person was informed in person, or otherwise, of the date and place of the proceedings which led to the decision *in absentia*, or that the person has indicated to a competent authority that he/she does not contest the decision.

3. Details of the length of the sentence:

- 3.1. Total length of the sentence.....
- 3.2. The sentenced person was remanded in custody for the following period:
.....
- 3.3. The person has been in prison/serving the sentence since:
.....
- 3.4. Sentence remaining to be served on.....(give date: dd-mm-yyyy):
.....

4. Details on the type of the sentence:

custodial sentence

detention order

sentence for juveniles

other type (to be specified):
.....

(i) Under the law of the issuing State the sentenced person is entitled to conditional release, having served

half the sentence

two-thirds of the sentence

another portion of the sentence

(please indicate).....

(j) Opinion of the person on the transfer:

The person has initiated the transfer:

The person has agreed to the transfer:

The person has not agreed to the transfer because:

.....

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

.....

.....

(k) Other circumstances relevant to the case (optional information)
.....
.....
.....

The text of the (...) judgment is attached to the (...) certificate.

Signature of the (...) authority issuing the certificate and/or its representative certifying the content of the certificate as accurate

.....

Name:

Post held (title/grade):

Date:

Official stamp (if available)
