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Subject: INITIATIVE of the Federal Republic of Germany and of the French Republic with a view to adopting a Council Framework Decision on the recognition and supervision of suspended sentences, alternative sanctions and conditional sentences

The Council (Justice and Home Affairs) reached on 7 December 2007 a general approach on the text as set out in the Annex to this note.

The Council instructed its preparatory bodies to examine and finalise the recitals, as well as the certificate and the form, with a view to final adoption of the text as soon as possible.

The Presidency stated that, when examining the recitals, the Council preparatory bodies should abstain from making any substantive changes to recitals 8 to 8m, including notably to recital 8(f)(1), which form part of the package on which the Council reached a general approach.

However, the texts of these specific recitals could be refined with a view to achieving consistency with the operative part of the text, as well as to clarifying them in view of practical requirements, while fully respecting the understanding of the general approach.

In this context, it was observed that recital 8(d) should be refined so as to incorporate the advice provided by the Council Legal Service in respect of Article 6(3).

To be noted that several delegations still have a Parliamentary scrutiny reserve outstanding.

As usual, before final adoption of the Framework Decision the legal-linguists will revise the text from a legal-linguist point of view.

**Initiative of the Federal Republic of Germany and of the French Republic with a view to
adopting a Council Framework Decision**

of

**on the recognition of judgments and probation decisions with a view to the supervision of
probation measures and alternative sanctions**¹

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the initiative of the Federal Republic of Germany and of the French Republic²,

Having regard to the Opinion of the European Parliament³,

Whereas⁴:

- (1) The European Union has set itself the objective of developing an area of freedom, security and justice. This presupposes that there is an understanding of freedom, security and justice on the part of the Member States which is identical in its essential elements and based on the principles of freedom, democracy, respect for human rights and fundamental freedoms, as well as the rule of law.

¹ The title has been redrafted by the Presidency; it has not yet been examined.

² OJ C147 of 30.06.2007, p. 1

³ Opinion of 25 October 2007 (reference to be inserted)

⁴ Recitals 1-7 and 9-11 have not yet been examined, see also the cover note.

- (2) The aim of police and judicial cooperation in the European Union is to provide a high degree of security for all citizens. One of the cornerstones for this is the principle of mutual recognition of judicial decisions, established in the conclusions of the European Council held in Tampere on 15 and 16 October 1999 and reaffirmed in the Hague Programme of 4 and 5 November 2004 for strengthening freedom, security and justice in the European Union ⁵. In the programme of measures of 29 November 2000 adopted for the purpose of implementing the principle of mutual recognition of decisions in criminal matters, the Council pronounced itself in favour of cooperation in the area of suspended sentences and parole.
- (3) All the Member States have ratified the Council of Europe Convention of 21 March 1983 on the Transfer of Sentenced Persons. The Convention enables sentenced persons to be transferred to the State of which they are a national, if the States in question and the sentenced person consent to the transfer. The Additional Protocol of 18 December 1997 to the Convention, which provides for transfer without the consent of the person concerned, has not yet been ratified by all Member States. Council Framework Decision 2007/.../JHA of xx.xx.xxxx* 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 ⁶ extended the principle of mutual recognition to the enforcement of custodial sentences.

⁵ OJ C 53, 3.3.2005, p. 1.

* Number and date of FD to be added.

⁶ Publication details to be added.

- (4) Relations between Member States, characterised by the mutual recognition of national legal systems, also enable recognition of a decision taken by another Member State in the course of criminal proceedings or enforcement. The Council of Europe Convention of 30 November 1964 on the Supervision of Conditionally Sentenced or Conditionally Released Offenders has been ratified by only 12 Member States, with, in some cases, numerous reservations. Council Framework Decision 2007/...*/JHA - is intentionally restricted to the transfer of sentenced persons already in prison. More extensive cooperation between Member States is, however, required, especially where criminal proceedings have been conducted against a person in one Member State and a suspended sentence or alternative sanction has been imposed, but the person concerned is lawfully and ordinarily resident in another Member State.
- (5) This Framework Decision respects fundamental rights and adheres to the principles recognised in Article 6 of the Treaty on European Union, which are also expressed in the Charter of Fundamental Rights of the European Union, especially in Chapter VI thereof. No provision of this Framework Decision should be interpreted as prohibiting refusal to recognise a judgment and/or supervise a probation measure or alternative sanction if there are objective indications that the probation measure or alternative sanction was imposed to punish a person because of his or her sex, race, religion, ethnic origin, nationality, language, political convictions or sexual orientation or that this person might be disadvantaged for one of these reasons.
- (6) This Framework Decision should not prevent any Member State from applying its constitutional rules relating to entitlement to due process, freedom of association, freedom of the press, freedom of expression in other media and freedom of religion.
- (7) The provisions of this Framework Decision should be applied in conformity with the right of the Union's citizens to move and reside freely within the territory of the Member States, pursuant to Article 18 of the Treaty establishing the European Community.

* Number of FD to be added.

- (8) The aim of mutual recognition and supervision of suspended sentences, alternative sanctions and conditional sentences in the executing State is to enhance the prospects of the sentenced person's being re-integrated into society, by enabling him to preserve family, linguistic, cultural and other ties, but also to improve monitoring of compliance with probation measures and alternative sanctions, with a view to preventing recidivism, thus paying due regard to the protection of victims and the general public.
- (8a) There are several types of probation measures and/or alternative sanctions which are common among the Member States and which all Member States are in principle willing to supervise. The supervision respectively enforcement of these types of measures and sanctions should be obligatory, subject to certain exceptions provided for in this Framework Decision. Member States may declare that, in addition, they are willing to supervise other types of probation measures and/or other types of alternative sanctions.
- (8b) The probation measures and alternative sanctions that are in principle obligatory to supervise include *inter alia* orders relating to behaviour (such as an obligation to stop the consumption of alcohol), residence (such as an obligation to change residence for reasons of domestic violence), education and training (such as an obligation to follow a "safe-driving course"), leisure activities (such as an obligation to quit playing a certain sport) and limitations on or modalities of carrying out a professional activity (such as an obligation to seek a professional activity in a different working environment; this obligation does not include the supervision of compliance with any professional disqualifications imposed on the person as part of the sanction).
- (8c) The Member State where the person concerned is sentenced may forward a judgement and, where applicable, a probation decision to the Member State where the sentenced person is lawfully and ordinarily resident with a view to recognition thereof and with a view to the supervision of probation measures or alternative sanctions contained in such a judgment and/or probation decision.

- (8d) The judgement and probation decision may also be forwarded to a Member State other than that where the sentenced person is residing, if the competent authority of that executing State consents, deciding on a case-by-case basis, to such forwarding. In particular, consent may be given, with a view to social rehabilitation, where the sentenced person, without losing his/her right of residence, intends to move to another Member State because he/she is granted an employment contract, if he/she is a family member of a lawful and ordinary resident person of that Member State, or if he/she intends to follow a study or training in that Member State, in accordance with Community law.
- (8e) Where appropriate, electronic monitoring could be used with a view to supervising probation measures or alternative sanctions, in accordance with national law and procedures.
- 8(f) The decision on whether to forward the judgment and, where appropriate, the probation decision to another Member State should be taken in an individual case by the competent authority of the issuing Member State, taking into account, inter alia, the statements made in accordance with Article 6(4) and the declarations made in accordance with Articles 8(4) and 12(3).
- 8(f)(1) Member States should apply their own national law and procedures for the recognition of a judgment and, where applicable, a probation decision. In the case of a conditional sentence or alternative sanction where the judgment does not contain a custodial sentence or measure involving deprivation of liberty to be enforced in case of non-compliance with the obligation(s) or instruction(s) concerned, this could imply that Member States having made a declaration under Article 12(3), when deciding to recognise, agree to supervise the probation measures or alternative sanctions concerned and to assume no other responsibility than just for taking the subsequent decisions consisting of the modification of obligations or instructions contained in the probation measure or alternative sanction, or modification of the duration of the probation period. Consequently, the recognition has in such cases no further effect than enabling the executing State to take those types of subsequent decisions.

- 8(g) A Member State may refuse to recognise a judgment and, where appropriate, a probation decision, if the judgment concerned was issued against a person who has not been found guilty, such as in the case of a mentally ill person, and the judgment or, where applicable, the probation decision provides for medical/therapeutic treatment which the executing State under its national law cannot supervise in respect of such persons.
- 8(h) In view of the principle of mutual recognition, on which this Framework Decision is based, issuing and executing Member States should promote that their competent authorities have direct contact when applying this Framework Decision.
- 8(i) All Member States ensure that sentenced persons, in respect of whom decisions under this Framework Decision are taken, are subject to a set of legal rights and remedies in accordance with national law, regardless of whether the competent authorities designated to take decisions under this Framework Decision are of a judicial or a non-judicial nature.
- 8(j) The form of the certificate is drafted in such a way so that essential elements of the judgment and, when appropriate, of the probation decision are comprised in the certificate, which should be translated into the official language or one of the official languages of the executing State, with a view to assisting the competent authorities in the executing State in taking decisions under this Framework Decision, including decisions on recognition and assumption of responsibility for supervision of probation measures and alternative sanctions, decisions on adaptation of probation measures and alternative sanctions, and subsequent decisions in case notably of non-compliance with a probation measure or alternative sanction.
- 8(k) The ground for refusal relating to territoriality in Article 9(1)(k) 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 of its objectives as set out in Article 1(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.

- 8(l) If the probation measures or alternative sanctions include community service, then the executing State should be entitled to refuse to accept recognition of the judgment and, where applicable, of the probation decision in accordance with Article 9(1)(j), if the community service would normally be completed in less than six months.
- 8(m) In any case, all subsequent decisions relating to a suspended sentence, a conditional sentence or an alternative sanction which result in the imposition of a custodial sanction should be taken by a judicial authority.
- (9) To ensure the effective exchange of information concerning all circumstances relevant to the suspension of sentences, Member States are encouraged to include provisions in their national legislation enabling them to assume the responsibility for the supervision of probation measures and alternative sanctions to be documented in their national registers.
- (10) Since all Member States have ratified the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, personal data processed when implementing this Framework Decision should be protected in accordance with the principles laid down in that Convention.
- (11) Since the objective of this Framework Decision, namely laying down the rules according to which one Member State is to supervise probation measures or alternative sanctions contained in a judgment given in another Member State, cannot be sufficiently achieved by the Member States themselves in view of the cross-border nature of the situations involved and can therefore, by the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as defined in Article 5 of the Treaty establishing the European Community as applied by the second paragraph of Article 2 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in Article 5 of the Treaty establishing the European Community, this Framework Decision does not go beyond what is necessary in order to achieve this objective,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1
Objectives and scope

1. This Framework Decision aims at facilitating the social re-integration of sentenced persons, improving the protection of victims and of the general public, and to facilitate the application of suitable probation measures and alternative sanctions in case of offenders, who do not live in the State of conviction. With a view to achieving these objectives, this Framework Decision lays down rules according to which a Member State, other than the Member State in which the person concerned has been sentenced, recognises judgments and, where appropriate, probation decisions and supervises probation measures imposed on the basis of a judgment, or alternative sanctions contained in such a judgment, and takes all other decisions relating to that judgment, unless otherwise provided in this Framework Decision.

2. This Framework Decision shall apply only to
 - a) the recognition of judgments and, where applicable, probation decisions;
 - b) the transfer of responsibility for the supervision of probation measures and alternative sanctions;
 - c) all other decisions related to those under a) and b),as described and provided for in this Framework Decision.

3. This Framework Decision shall not apply to

- the execution of judgments in criminal cases imposing custodial sentences or measures involving deprivation of liberty which fall within the scope of Council Framework Decision 2008/.../JHA ... ⁷;
- recognition and execution of financial penalties and confiscation orders which fall within the scope of Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties ⁸ and Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders ⁹.

⁷ Reference to be added.

⁸ OJ L 76, 22.3.2005, p. 16.

⁹ OJ L 328, 24.11.2006, p. 59.

Article 2
Definitions

For the purposes of this Framework Decision:

- (a) "judgment" shall mean a final decision or order of a court of the issuing State, establishing that a natural person has committed a criminal offence and imposing:
 - (i) a custodial sentence or any measure involving deprivation of liberty, if a conditional release has been granted on the basis of that judgment or by a subsequent probation decision,
 - (ii) a suspended sentence,
 - (iii) a conditional sentence,
 - (iv) an alternative sanction.
- (b) "suspended sentence" shall mean a custodial sentence or any measure involving deprivation of liberty, the execution of which is conditionally suspended, wholly or in part, when the sentence is passed by imposing one or more probation measures, which may be included in the judgment itself or determined in a separate probation decision taken by a competent authority;
- (c) "conditional sentence" shall mean a judgment in which the imposition of a sentence has been conditionally deferred by imposing one or more probation measures or in which one or more probation measures are imposed instead of a custodial sentence or measure involving deprivation of liberty; such probation measures may be included in the judgment itself or determined in a separate probation decision taken by a competent authority;
- (d) "alternative sanction" shall mean a sanction, other than a custodial sentence, a measure involving deprivation of liberty or a financial penalty, imposing an obligation or instruction;

- (e) "probation decision" shall mean a final judgment of a court or a final decision of a competent authority of the issuing State taken on the basis of such a judgment
 - (i) granting a conditional release, or
 - (ii) imposing probation measures;
- (f) "conditional release" shall mean a final decision by a competent authority or stemming from the national law on the early release of a sentenced person after part of the custodial sentence or other measure involving deprivation of liberty has been served by imposing one or more probation measures;
- (g) "probation measures" shall mean obligations and instructions imposed by a competent authority on a natural person, in accordance with the national legislation of the issuing State, in connection with a suspended sentence, a conditional sentence or a conditional release;
- (h) "issuing State" shall mean the Member State in which a judgment, as defined in point (a), has been issued;
- (i) "executing State" shall mean the Member State in which the probation measures and alternative sanctions are supervised following a decision in accordance with Article 7.

Article 3
Fundamental rights

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.

Article 4

Designation of competent authorities

1. Each Member State shall inform the General Secretariat of the Council which authority or authorities, under its national legislation, are competent to act according to this Framework Decision in the situation where that Member State is the issuing State or the executing State.
2. Member States may designate non-judicial authorities as the competent authorities for taking decisions under this Framework Decision, provided that such authorities have competence for taking decisions of a similar nature under their national law and procedures.
 - 2a. If a decision under Article 12(1)(b) or (c) is taken by another competent authority than a court, the Member States shall ensure that, upon request of the person concerned, such decision may be reviewed by a court or by another independent court-like body.
3. The General Secretariat of the Council shall make the information received available to all Member States and to the Commission.

Article 5

Types of probation measures and alternative sanctions

1. This Framework Decision shall apply to the following probation measures or alternative sanctions:
 - (a) an obligation for the sentenced person to inform a specific authority of any change of residence or working place;
 - (b) an obligation not to enter certain localities, places or defined areas in the issuing or executing State;
 - (c) an obligation containing limitations on leaving the territory of the executing State;

- (d) instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity;
- (e) an obligation to report at specified times to a specific authority;
- (f) an obligation to avoid contact with specific persons;
- (g) an obligation to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence;
- (h) an obligation to compensate financially for the prejudice caused by the offence and/or an obligation to provide proof of compliance with such an obligation;
- (i) an obligation to carry out community service;
- (j) an obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons;
- (k) an obligation to undergo therapeutic treatment or treatment for addiction.

2. Each Member State shall notify the General Secretariat of the Council, when transposing this Framework Decision, which probation measures and alternative sanctions, apart from those referred to in paragraph 1, it is prepared to supervise. The General Secretariat of the Council shall make the information received available to all Member States and to the Commission.

Article 6

Criteria relating to the Member State to which the judgment and, where applicable, the probation decision may be forwarded

1. The competent authority of the issuing State may forward the judgment and, where appropriate, the probation decision to the competent authority of the Member State in which the sentenced person is lawfully and ordinarily residing, in cases where the sentenced person has returned or wants to return to that State.
2. A competent authority in the issuing State may, upon request of the sentenced person, forward the judgment and, if appropriate, the probation decision to a competent authority in a Member State other than the Member State in which the sentenced person is lawfully and ordinarily residing, on condition that this latter authority has consented to such forwarding.
3. When implementing this Framework Decision, Member States shall determine, under which conditions, their competent authorities may consent to the forwarding of a judgment and, where applicable, a probation decision in cases pursuant to paragraph 2 of this Article.
4. Each Member State shall make a statement to the General Secretariat of the Council of the determination made under paragraph 3 of this Article. Member States may modify such a statement at any time. The General Secretariat shall make the information received available to all Member States and to the Commission.

Article 6a

Procedure for forwarding the judgment and, where applicable, the probation decision, together with the certificate

1. When, in application of Article 6(1) or (2), the competent authority of the issuing State forwards a judgment and, where appropriate, a probation decision to another Member State, it shall ensure that it is accompanied by a certificate, the standard form of which is set out in Annex I.
2. The judgment and, where appropriate, the probation decision, 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 their authenticity. The original of the judgment and the probation decision, or certified copies thereof, as well as 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.
3. The certificate shall be signed, and its content certified as accurate, by the competent authority in the issuing State.
4. Apart from the measures and sanctions referred to in Article 5(1), the certificate referred to in paragraph 1 shall include only such measures or sanctions as notified by the executing State concerned in accordance with Article 5(2).
5. The competent authority in the issuing State shall forward a certificate together with the judgment and, where appropriate, the probation decision only to one executing State at any one time.

6. 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/JHA of 29 June 1998 on the creation of a European Judicial Network¹⁰, in order to obtain the information from the executing State.
7. When a authority in the executing State which receives a judgement and, where applicable, a probation decision, together with a certificate, has no competence to recognise it and take the ensuing necessary measures for the supervision of the probation measure or alternative sanction, it shall, ex officio, forward it to the competent authority and shall without delay inform the competent authority in the issuing State accordingly by any means which leaves a written record.

Article 6b

Consequences for the issuing State

1. Once the competent authority in the executing State has recognised the judgment and, where applicable, the probation decision forwarded to it and has informed the competent authority in the issuing State of such recognition, the issuing State shall no longer have competence in relation to the supervision of the probation measures or alternatives sanctions imposed, nor to take subsequent measures referred to in Article 12(1).
2. That competence shall revert to the issuing State:
 - a) as soon as its competent authority has notified withdrawal of the certificate, pursuant to Article 7a(4), to the competent authority of the executing State;
 - b) in cases referred to in Article 12(3) in combination with 12(5); and
 - c) in cases referred to in Article 17.

¹⁰ OJ L 191, 7.7.1998, p. 4.

Article 7

Decision of the executing State

1. The competent authority in the executing State shall recognise the judgment and, where applicable, the probation decision forwarded in accordance with Article 6 and following the procedure laid down in Article 6a and shall without delay take all necessary measures for the supervision of the probation measure(s) and/or alternative sanction(s), unless it decides to invoke one of the grounds for refusing recognition and supervision referred to in Article 9.
2. The competent authority may postpone the decision on recognition of the judgment and, where applicable, the probation decision in the situation where the certificate provided for in Article 6a is incomplete or obviously does not correspond to the judgment or, where applicable, the probation decision, until such reasonable deadline set for the certificate to be completed or corrected.

Article 7a

Adaptation of the probation measures or alternative sanctions

1. If the nature or duration of the relevant probation measure or alternative sanction, or the duration of the probation period, are incompatible with the law of the executing State, the competent authority in that State may adapt them in line with the nature and duration of the probation measures and alternative sanctions, or duration of the probation period, which apply, under the law of the executing State, to equivalent offences. The adapted probation measure, alternative sanction or duration of the probation period shall correspond as far as possible to that imposed in the issuing State.

2. Where the probation measure, the alternative sanction or the probation period has been adapted because its duration exceeds the maximum duration provided for under the law of the executing State, the duration of the adapted probation measure, the adapted alternative sanction or the adapted probation period shall not be below the maximum duration provided for equivalent offences under the law of the executing State.
3. The adapted probation measure, alternative sanction or probation period shall not be more severe or longer than the probation measure, alternative sanction or probation period which was originally imposed.
4. Following receipt of an information referred to in Articles 14(2) or 15a(e), the competent authority in the issuing State may decide to withdraw the certificate as long as the supervision in the executing State has not yet begun. In any case, such a decision shall be taken and communicated as soon as possible and within ten days of the relevant notification at the latest.

Article 8

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 dual criminality of the act, give rise to recognition of the judgment and to supervision of probation measures and alternative sanctions:
 - 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 interests¹¹,
- 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,

¹¹ OJ C 316, 27.11.1995, p. 49.

- 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 on European Union. The Council shall examine, in the light of the report submitted to it pursuant to Article 21(3) 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 supervision of probation measures and of alternative sanctions subject to the condition that the judgment 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 to the Secretary General of the Council notify 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 9

Grounds for refusing recognition, as well as for refusing supervision

1. The competent authority in the executing State may refuse to recognise the judgment or, where applicable, the probation decision and to assume responsibility for supervising probation measures and alternative sanctions if:
- (a) the certificate referred to in Article 6 is incomplete or obviously does not correspond to the judgment or to the probation decision and is not completed or corrected within a reasonable period set by the competent authority in the executing State;
 - (b) the criteria laid down in Article 6(1), 6(2) or 6a(4) are not met;
 - (c) recognition of the judgment and assumption of responsibility for supervising probation measures or alternative sanctions would contravene the *ne bis in idem* principle;
 - (d) the judgment relates, in the cases referred to in Article 8(3) and, where the executing State has made a declaration under Article 8(4), in a case referred to in Article 8(1), to an act which would not constitute an offence under the law of the executing State; in tax, customs and currency matters, however, execution of the judgment may not be refused on the grounds that the law of the executing State does not prescribe any taxes of the same kind or does not contain any tax, customs or currency provisions of the same kind as the law of the issuing State;
 - (e) the enforcement of the sentence is statute-barred under the law of the executing State and relates to an act which falls within the competence of the executing State under its national law;

- (f) there is immunity under the law of the executing State, which makes it impossible to supervise probation measures or alternative sanctions;
 - (g) under the law of the executing State, the sentenced person cannot, because of his age, be held criminally responsible for the act on which the judgment is based;
 - (h) 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; or
 - (i) the judgment or, where applicable, the probation decision provides for medical/therapeutic treatment which, notwithstanding the provisions of Article 7a, the executing State is unable to supervise in view of its legal or healthcare system;
 - (j) the probation measure or alternative sanction is of less than 6 months' duration;
 - (k) 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 paragraph 1(k) 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 in the executing State only 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 cases referred to in paragraph 1 (a), (b), (c), (h), (i), (j) and (k) before deciding not to recognise the judgment or, where applicable, the probation decision and to assume responsibility for supervising probation measures and alternative sanctions, the competent authority in the executing State shall communicate, by appropriate means, with the competent authority in the issuing State and, as necessary, request the latter to supply without delay all additional information required.
3. Where the competent authority in the executing State has decided to invoke a ground for refusal referred to in paragraph (1), in particular the ground referred to under (1)(d) or (1)(k), it may nevertheless, in agreement with the competent authority in the issuing State, decide to supervise the probation measures or alternative sanctions that are imposed in the judgment and, where applicable, the probation decision forwarded to it, without assuming the responsibility for taking any of the decisions referred to in Article 12(1)(a), (b) and (c).

Article 10

Time-limits

1. The competent authority in the executing State shall decide as soon as possible, and within 60 days at the latest of receipt of the judgment and the certificate and, where applicable, the probation decision, whether or not to recognise the judgment and, where applicable, the probation decision and assume responsibility for supervising the probation measure(s) and/or alternative sanction(s). It shall immediately inform the competent authority in the issuing State, by any means which leaves a written record, of its decision.
2. If it is not possible, in exceptional circumstances, for the competent authority in the executing State to comply with the time-limits laid down in paragraph 1, it shall immediately inform the competent authority in the issuing State, by any means of its choosing, giving reasons for the delay and indicating how long it expects to take to issue a final decision.

Article 11
Governing law

1. The supervision and application of probation measures and alternative sanctions shall be governed by the law of the executing State.
2. The competent authority in the executing State may supervise an obligation referred to in Article 5(1)(h) by requiring the sentenced person to provide proof of compliance with an obligation to compensate for the prejudice caused by the offence.

Article 12
Competence to take all subsequent decisions
and governing law

1. The competent authority in the executing State shall have jurisdiction to take all subsequent decisions relating to a suspended sentence, conditional release, conditional sentence and alternative sanction, in particular in case of non-compliance with a probation measure or alternative sanction or if the sentenced person commits a new criminal offence. Such subsequent decisions include notably
 - a) the modification of obligations or instructions contained in the probation measure or alternative sanction, or modification of the duration of the probation period;
 - b) the revocation of the suspension of the execution of the judgment or of the decision on conditional release; and
 - c) the imposition of a custodial sentence or measure involving the deprivation of liberty in case of an alternative sanction or conditional sentence.
2. The law of the executing State shall apply to decisions taken pursuant to paragraph 1 and to all subsequent consequences of the judgment including, where applicable, the enforcement and, if necessary, the adaptation of the custodial sentence or measure involving deprivation of liberty.

3. Each Member State may, at the time of adoption of this Framework Decision or at a later stage, declare that as an executing State it will refuse to assume the responsibility provided for in paragraph 1(b) and (c) in cases or categories of cases to be specified by that Member State, in particular
- in cases relating to an alternative sanction, where the judgement does not contain a custodial sentence or measure involving deprivation of liberty to be enforced in case of non-compliance with the obligation(s) or instruction(s) concerned;
 - in cases relating to a conditional sentence;
 - in cases where the judgment relates to acts which do not constitute an offence under the law of the executing State, whatever the constituent elements or however it is described.
4. When a Member State makes use of any of the possibilities referred to in paragraph 3, the competent authority in the executing State shall transfer jurisdiction back to the competent authority in the issuing Member State in case of non-compliance with a probation measure or alternative sanction if the competent authority of the executing State is of the view that a subsequent decision as referred to in paragraph 1(b) or (c), needs to be taken.
5. In the cases referred to in paragraph 3, the obligation to recognise the judgement and, where applicable, the probation decision, as well as the obligation to take without delay all necessary measures for the supervision of the probation measure(s) and/or alternative sanction(s), as referred to in Article 7(1), shall not be affected.
6. Declarations as mentioned in paragraph 3 of this Article shall be made by notification to the Secretary General of the Council. Any such declaration may be withdrawn at any time. The declarations and withdrawals mentioned in this Article shall be published in the Official Journal of the European Union.

Article 13

Consultations between competent authorities

Where and whenever it is felt appropriate, competent authorities of the issuing State and of the executing State may consult each other with a view to facilitating the smooth and efficient application of this Framework Decision.

Article 14

*Obligations of the authorities involved where
the executing State has jurisdiction for subsequent decisions*

1. The competent authority in the executing State shall without delay inform the competent authority in the issuing State, by any means which leaves a written record, of all decisions on the:
 - (a) modification of the probation measure or alternative sanction;
 - (b) revocation of the suspension of the execution of the judgment or revocation of the decision on early release;
 - (c) enforcement of a custodial sentence or measure involving deprivation of liberty, because of non-compliance with a probation measure or alternative sanction;
 - (d) lapsing of the probation measures or alternative sanction.
2. If so requested by the competent authority in the issuing State, the competent authority in the executing State shall inform it of the maximum duration of deprivation of liberty that is foreseen in the national law of the executing State for the offence in question and which could be imposed on the sentenced person in case of breach of the probation measures or alternative sanctions. This information shall be provided immediately after reception of the judgment and the certificate and, where applicable, the probation decision.

3. The competent authority in the issuing State shall immediately inform the competent authority in the executing State, by any means which leaves a written record, of any circumstances or findings which, in its opinion, could entail one or more of the decisions referred to in paragraph 1 under (a), (b) or (c) being taken.

Article 15

*Obligations of the authorities involved where
the issuing State has jurisdiction for subsequent decisions*

1. If the competent authority in the issuing State has jurisdiction for the subsequent decisions mentioned in Article 12(1) pursuant to the application of Article 12(3), the competent authority in the executing State shall immediately notify it:
 - (i) of any finding which is likely to result in revocation of the suspension of the execution of the judgment or decision on conditional release;
 - (ii) of any finding which is likely to result in the imposition of a custodial sentence or measure involving deprivation of liberty;
 - (iii) of all further facts and circumstances which the competent authority of the issuing State requests to be provided and which are essential in order to allow it to take subsequent decisions in accordance with its national law.
- 1a. When a Member State has made use of the possibility referred to in Article 9(3), the competent authority in that State shall inform the competent authority in the issuing Member State in case of non-compliance by the sentenced person with a probation measure or alternative sanction.
2. Notice shall be given using the standard form set out in Annex II.

3. If, under the national law of the issuing State, the sentenced person must be given a judicial hearing before a decision is taken on the imposition of a sentence, this requirement may be met by following *mutatis mutandis* the procedure contained in instruments of international or European Union law that provide the possibility of using video links for hearing persons.
4. The competent authority in the issuing State shall without delay inform the competent authority in the executing State of all decisions on the:
 - (a) revocation of the suspension of the execution of the judgment or decision on conditional release;
 - (b) enforcement of the custodial sentence or measure involving deprivation of liberty, where such measure is contained in the judgement;
 - (c) imposition of a custodial sentence or measure involving deprivation of liberty, where such measure is not contained in the judgment;
 - (d) lapsing of the probation measure or alternative sanction.

Article 15a

Information from the executing State in all cases

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

- (a) of the transmission of the judgment and, where applicable, the probation decision as well as the certificate to the competent authority responsible for its recognition and for taking the ensuing measures for the supervision of the probation measures or alternative sanctions in accordance with Article 6a(7);

- (b) of the fact that it is in practice impossible to supervise the probation measures or the alternative sanctions for the reason that, after transmission of the certificate and the judgment and, where applicable, the probation decision 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 supervise the probation measures or the alternative sanctions;
- (c) of the final decision to recognise the judgment and, where applicable, the probation decision and take all necessary measures for the supervision of the probation measures or alternative sanctions;
- (d) of any decision not to recognize the judgment and, where applicable, the probation decision and to assume responsibility for supervising the probation measures and the alternative sanctions in accordance with Article 9, together with the reasons for the decision;
- (e) of any decision to adapt the probation measures or alternative sanctions in accordance with Article 7a, together with the reasons for the decision;
- (f) of any decision on amnesty or pardon which leads to not supervising the probation measures or the alternative sanctions for the reasons referred to in Article 16(1), together, where applicable, with the reasons for the decision.

Article 16

Amnesty, pardon, review of judgment

1. An amnesty or pardon may be granted both by the issuing State and by the executing State.
2. Only the issuing State may decide on applications for review of the judgment which forms the basis for the probation measures or alternative sanctions to be supervised under this Framework Decision.

Article 17

End of jurisdiction of the executing State

1. If the sentenced person absconds or no longer possesses a lawful and ordinary residence in the executing State, the competent authority of the executing State may transfer the jurisdiction in respect of the supervision of the probation measures and alternative sanctions and in respect of all further decisions relating to the judgment back to the competent authority of the issuing State.
2. If new criminal proceedings against the person concerned are taking place in the issuing State, the competent authority of the issuing State may request the competent authority of the executing State to transfer the jurisdiction in respect of the supervision of the probation measures and alternative sanctions and in respect of all further decisions relating to the judgment back to the competent authority of the issuing State. In such a case, the competent authority of the executing State may transfer such jurisdiction to the authority of the issuing State.
3. When, in application of this Article, jurisdiction is transferred back to the issuing State, the competent authority of that State shall resume such jurisdiction. For the further supervision of the probation measures or alternative sanctions, the competent authority of the issuing State shall take account of the duration and degree of compliance with the probation measures or alternative sanctions in the executing State, as well as of any decisions taken by the executing State in accordance with Article 14(1).

Article 18
Languages

Certificates shall 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 European Union.

Article 19
Costs

Costs resulting from the application of this Framework Decision shall be borne by the executing State, except for costs arising exclusively within the territory of the issuing State.

Article 20
Relationship with other agreements and arrangements

1. This Framework Decision shall, in relations between the Member States, from ...^{*} replace the corresponding provisions of the Council of Europe Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders.
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 supervision of probation measures and alternative sanctions.

^{*} Date to be provided.

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 supervision of probation measures and alternative sanctions.
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 1 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 2, within three months of signing it.

Article 21

Implementation

1. Member States shall take the necessary measures to comply with this Framework Decision by [three years after entry into force of this Framework Decision].
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.

Article 22

Review

1. By [three years after the date referred to in Article 21(1)], the Commission shall draw up a report on the basis of the information received from Member States under Article 21(2).

2. On the basis of this report, the Council shall assess
 - the extent to which the Member States have taken the necessary measures in order to comply with this Framework Decision; and
 - the application of this Framework Decision.
3. The report shall be accompanied, if necessary, by legislative proposals.

Article 23
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 [Brussels],

For the Council

The President

ANNEX I¹²

CERTIFICATE

pursuant to Article 6 of the Council Framework Decision 2007/.../JHA
of ... on the recognition and supervision of suspended sentences, alternative sanctions and
conditional sentences

(a) Issuing State:
Executing State:

(b) Court that issued the judgment imposing a suspended sentence, alternative sanction or
conditional sentence:
Official name:
Address:
File reference:
Tel. No.: (country code) (area/city code)
Fax No.: (country code) (area/city code)
E-mail (if any):
Languages that may be used for communicating with the Court:

Details of the person(s) to be contacted if additional information is to be obtained concerning
the judgment or for agreeing on arrangements for surrender (name, title/grade, tel. no.,
fax no. and e-mail, if any):

¹² The text of the certificate and of the form still need to be revised in the light of the general approach reached on the operative part of the Framework Decision. It is understood that further work on the form of the certificate should be carried out in order to ensure that the certificate will contain sufficient information so as to enable the competent authority in the executing State to take its decisions under the Framework Decision.

(c) Authority that imposed the probation measures:

- The authority referred to in point (b).
- The following authority:

Official name:

Address:

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

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

E-mail (if any):

Languages that may be used for communicating with the authority in question:

Details of the person(s) to be contacted if additional information is to be obtained concerning the decision (name, title/grade, tel. no., fax no. and e-mail, if any):

(d) Authority that has competence in the issuing State for supervising the probation measures:

- The authority referred to in point (b).
- The authority referred to in point (c).
- The following authority:

Official name:

Address:

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

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

E-mail (if any):

Languages that may be used for communicating with the authority in question:

Details of the person(s) to be contacted if additional information is to be obtained for the purposes of supervising the probation measures or alternative sanctions (name, title/grade, tel. no., fax no. and e-mail, if any):

(e) Authority or authorities that may be contacted (if points (c) and/or (d) have been completed):

Authority in point (b)

For the following matters:

Authority in point (c)

For the following matters:

Authority in point (d)

For the following matters:

(f) Information regarding the natural person for whom the judgment has been issued:

Surname:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identification number or social security number (if any):

Date of birth:

Place of birth:

Last known address:

Language(s) understood (if known):

Type and number of the identity document(s) of the sentenced person (ID card, passport):

Type and number of the residence permit of the sentenced person in the executing State:

(g) Information regarding the Member State to which the judgment and the certificate are being forwarded:

The judgment and the certificate are being forwarded to the executing State indicated in box (a) for the following reason:

- The sentenced person has his/her lawful and ordinary residence in that State.

(h) Judgment

Indications regarding the judgment:

The judgment was issued on (date: DD-MM-YYYY)

The judgment became final on (date: DD-MM-YYYY)

File reference of the judgment (if available):

1. The judgment covers in total: offences.

Summary presentation of the facts and description of the circumstances in which the offence(s) was (were) committed, including the time and place of the offence, and the degree of participation by the sentenced person:

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

2. If the offence(s) referred to in point 1 correspond(s) to one or more of the following offences, defined in accordance with the law of the issuing State and punishable in the issuing State by a custodial sentence or measure involving deprivation of liberty of a maximum of at least 3 years, please tick accordingly:

- 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 of currency, including 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
- illicit trafficking in hormonal substances and other growth promoters,
- forgery of means of payment
- 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. If the offence(s) referred to in point 1 is (are) not listed in point 2, please give a full description of the offence(s) in question:

(i) Information regarding the judgment:

1. Please indicate whether the sentenced person appeared in person in the proceedings:

- Yes, the person appeared.
- No, the person did not appear. It is confirmed that the person concerned was informed personally, or via a competent representative 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 concerned indicated to a competent authority that he or she did not contest the case.

2. Indications regarding sentencing

- Conditional sentence

3. Indications regarding the nature of the sentence (only to be completed if no indications were given in 2.):
- Alternative sanction
 - Suspended sentence
 - Custodial sentence
 - Measure involving deprivation of liberty
 - Suspension at the time of sentencing
 - Suspension after serving part of the custodial sentence (conditional release/parole)
4. Indications regarding the length of the sentence (only to be completed if any indications were given in point 3.)
- 4.1. Total length of the sentence:
- 4.2. The sentenced person was in pre-trial detention during the following period:
- 4.3. The person was serving a custodial sentence/measure involving deprivation of liberty during the following period (only in the case of conditional release/parole):
- 4.4. Length of the sentence still to be served upon revocation of suspension:

- (j) Indications regarding the decision on suspension of sentence/sentencing:
1. The decision was issued on (date: DD-MM-YYYY):
 2. Duration of the supervision of probation measures:
 3. Nature of the probation measures or alternative sanctions (multiple descriptions possible):
 - an obligation for the sentenced person to inform the competent authority in the executing State of any change of residence
 - an obligation not to leave or enter certain localities in the issuing or executing State without permission
 - an obligation relating to life style, residence, education and training, professional activity or leisure activities
 - an obligation to report at specified times to the competent authority in the executing State or to another agency in the executing State

- an obligation to avoid contact with certain persons and objects
- an obligation to compensate for the prejudice caused by the offence
- an obligation to carry out community service
- an obligation to cooperate with a probation officer
- an obligation to undergo therapeutic treatment or treatment for addiction
- other measures that the executing State is prepared to supervise in accordance with a notification under Article 5(2) of the Framework Decision

(k) Indications regarding competence for all further measures

- Competence for all further measures in connection with the conditional sentence lies with the issuing State.
- In the event of an adaptation to the probation measure or alternative sanction by the competent authority of the executing State, the issuing State waives the consultations provided for in Article 13(1) of the Framework Decision.

(l) 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 of its representative to confirm the accuracy of the content of the certificate.

Name:

Function (title/grade):

Date:

(Where appropriate) Official stamp:

ANNEX II

FORM

pursuant to Article 15 of Council Framework Decision 2007/.../JHA of ... on the recognition and supervision of suspended sentences, alternative sanctions and conditional sentences

**REPORT OF A BREACH OF A PROBATION MEASURE OR ALTERNATIVE SANCTION,
OR OF ANY OTHER FINDINGS**

The competent authority hereby reports that the person referred to in (a) is in breach of the probation measures or alternative sanctions listed in (d).

(a) Details of the identity of the person subject to supervision:

Surname:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identification number or social security number (if any):

Date of birth:

Place of birth:

Address:

Language(s) understood (if known):

(b) Details of the decision concerning the suspended sentence or alternative sanction:

Judgment issued on:

Court which issued the judgment:

Official name:

Address:

Certificate issued on:

File reference in the issuing State (if any):

(c) Details of the authority responsible for supervising the probation measures or alternative sanctions:

Official name of the authority:

Name of the person to be contacted:

Position (title/grade): Address:

Tel.: (country code) (area code)

Fax: (country code) (area code)

E-mail:

(d) Probation measures or alternative sanctions:

The person referred to in (a) is in breach of the following obligations or instructions:

- obligation for the sentenced person to inform the competent authority in the executing State of any change of residence;
- obligation not to leave or enter certain localities in the issuing or executing State without permission;
- orders relating to lifestyle, residence, education and training, professional activity or leisure activities;
- obligation to report at specified times to the competent authority in the executing State or to another agency in the executing State;
- obligation to avoid contact with certain persons and objects;
- obligation to compensate for the prejudice caused by the offence;
- obligation to carry out community service;
- obligation to cooperate with a probation officer;
- obligation to undergo therapeutic treatment or treatment for addiction;
- other measures:

Description of the breach(es) (place, date and specific circumstances):

There are other findings which:

- are liable to entail adaptation of probation measures or alternative sanctions;
- are relevant to imposition of a sentence in the case of a conditional sentence;
- could result in revocation of conditional suspension.

Description of the findings (place, date and specific circumstances):

Signature of the authority issuing the form and/or its representative, to confirm that the contents of the form are correct:

Name:

Position (title/grade):

Date:

Official stamp (where applicable):