



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 22 April 2008**

**8378/08**

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**Interinstitutional File:  
2008/0803 (CNS)**

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**COPEN 73**

**OUTCOME OF PROCEEDINGS**

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of : Council (Justice and Home Affairs)  
on : 18 April 2008

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no. Prev. doc. : 8372/08 COPEN 72 + ADD 1  
no. Initiative : 5598/08 COPEN 11

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Subject : Initiative of the Republic of Slovenia, the French Republic, the Czech Republic, the Kingdom of Sweden, the Slovak Republic, the United Kingdom and the Federal Republic of Germany with a view to adopting a Council Framework Decision on the enforcement of decisions rendered *in absentia* and amending Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States, Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties, Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders and Framework Decision 2008/.../JHA 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  
- General approach

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1. On 18 April 2008, the Council (Justice and Home Affairs) discussed the above draft Framework Decision on the basis of 8372/08 COPEN 72 + ADD 1.

2. During the discussions, 24 Member States indicated that they could accept the text as set out in the Annex, many Member States underlining that it was a good and strong text and that the Framework Decision should be adopted as soon as possible. Two Member States, however, indicated that they would like further modifications/refinements to be made to the text, and one Member State indicated that it was not in a position at this stage to take any decision whatsoever on the text.
3. All Member States, including the three Member States more particularly referred to above, confirmed that they were willing to reach a general approach on the text at the JHA Council in June.
4. The Presidency has decided to resume further work on the text of the draft Framework Decision following reception of clear and precise information by the Member States concerned of the further modifications/refinements that they would like to be made to the text. To this end, the Presidency has sent letters requesting such information to the relevant delegations.
5. After having reached a general approach on the text, the text of the certificates will as soon as possible be put completely in line with the text of the Articles. Under the responsibility of the Presidency, an attempt has already been made in the text of the draft Framework Decision in the Annex to align the text of the certificates as much as possible with the text of the Articles.
6. DK/IE/IT/NL/SE/UK maintain a Parliamentary scrutiny reservation on the text.

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(DRAFT)

**COUNCIL FRAMEWORK DECISION 2008/.../JHA**

**of ...**

**enhancing the procedural rights of persons,**

**fostering the application of the principle of mutual recognition in respect of decisions  
rendered in the absence of the person concerned at the trial,**

**and amending**

**Framework Decision 2002/584/JHA on the European arrest warrant**

**and the surrender procedures between Member States,**

**Framework Decision 2005/214/JHA on the application of  
the principle of mutual recognition to financial penalties,**

**Framework Decision 2006/783/JHA on the application of  
the principle of mutual recognition to confiscation orders,**

**Framework Decision 2008/.../JHA 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, and**

**Framework Decision 2008/.../JHA on the application of the principle of mutual recognition to  
judgments and probation decisions with a view to the supervision of probation measures and  
alternative sanctions**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the initiative from the Republic of Slovenia, the French Republic, the Czech Republic, the Kingdom of Sweden, the Slovak Republic, the United Kingdom and the Federal Republic of Germany <sup>1</sup>,

Having regard to the opinion of the European Parliament <sup>2</sup>,

Whereas:

- (1) The right for an accused person to appear in person at the trial is a fundamental right provided for in the United Nations' International Covenant on Civil and Political Rights (Article 14(3)(d)). The European Court of Human Rights has declared that it is included in the right to a fair trial provided for in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. It has also declared that this right of the accused person to appear in person at the trial is not absolute and that under certain conditions the accused person may, of his or her own free will, expressly or tacitly but unequivocally, waive the said right.
- (2) The various Framework Decisions implementing the principle of mutual recognition of final judicial decisions do not deal consistently with the issue of decisions rendered following a trial at which the person concerned did not appear in person. This diversity could complicate the work of the practitioner and hamper judicial cooperation.

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<sup>1</sup> OJ C ...

<sup>2</sup> OJ C ... (opinion asked for 19/22 May 2008).

- (3) Solutions provided by these Framework Decisions are not satisfactory as regards cases where the person could not be informed of the proceedings. Framework Decisions 2005/214/JHA <sup>3</sup>, 2006/783/JHA <sup>4</sup>, 2008/.../JHA <sup>5</sup> and 2008/.../JHA <sup>6</sup> allow the executing authority to refuse the execution of such judgments. Framework Decision 2002/584/JHA <sup>7</sup> allows the executing authority to require the issuing authority to give an assurance deemed adequate to guarantee the person who is the subject of the European arrest warrant that he or she will have an opportunity to apply for a retrial of the case in the issuing Member State and to be present when the judgment is given. The adequacy of such a guarantee is a matter to be decided by the executing authority, and it is therefore difficult to know exactly when execution may be refused.
- (4) It is therefore necessary to provide clear and common grounds for non-recognition of decisions rendered following a trial at which the person concerned did not appear in person. This Framework Decision is aimed at defining such common grounds allowing the executing authority to execute the decision despite the absence of the person at the trial, while fully respecting the person's right of defence. This Framework Decision is not designed to regulate the forms and methods, including procedural requirements, that are used to achieve the results specified in this Framework Decision, which are a matter for the national law of the Member States.
- (5) Such changes require amendment of the existing Framework Decisions implementing the principle of mutual recognition of final judicial decisions. The new provisions should also serve as a basis for future instruments in this field.

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<sup>3</sup> OJ L 76, 22.3.2005, p. 16.

<sup>4</sup> OJ L 328, 24.11.2006, p. 59.

<sup>5</sup> OJ L .... (FD Transfer of sentenced persons)

<sup>6</sup> OJ L .... (FD Probation)

<sup>7</sup> OJ L 190, 18.7.2002, p. 1.

- (6) The provisions of this Framework Decision amending other Framework Decisions set conditions under which the recognition and execution of a decision rendered following a trial at which the person concerned did not appear in person, should not be refused. These are alternative conditions; when one of the conditions is satisfied, the issuing authority, by completing the corresponding section of the European arrest warrant or of the certificate to the other Framework Decisions, gives the assurance that the requirements have been or will be met, which should be sufficient for the purpose of the execution of the decision on the basis of the principle of mutual recognition.
- (7) The recognition and execution of a decision rendered following a trial at which the person concerned did not appear in person, should not be refused if either he/she was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or if he/she by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he/she was aware of the scheduled trial. In this context, it is understood that the person should have received such information "in due time", meaning sufficiently in time to allow him/her to participate in the trial and to effectively exercise his/her right of defence.
- (8) The right to a fair trial of an accused person is guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights. This right includes the right of the person concerned to appear in person at the trial. In order to avail him- or herself of this right, the person concerned needs to be aware of the scheduled trial. Under this Framework Decision, the person's awareness of the trial should be ensured by each Member State in accordance with its national law, it being understood that this must comply with the requirements of the Convention for the Protection of Human Rights and Fundamental Freedoms. In accordance with the case law of the European Court of Human Rights, when considering whether the way in which the information is provided is sufficient to ensure the person's awareness of the trial, particular attention should also be paid to the diligence exercised by the person concerned in order to receive information addressed to him or her.

- (9) The scheduled date of a trial may for practical reasons initially be expressed as several possible dates within a short period of time.
- (10) The recognition and execution of a decision rendered following a trial at which the person concerned did not appear in person, should not be refused where the person concerned, being aware of the scheduled trial, was defended at the trial by a legal counsellor to whom he/she had given a mandate to do so, ensuring that legal assistance is practical and effective. In this context, it should not matter whether the legal counsellor was chosen, appointed and paid by the person concerned, or whether this legal counsellor was appointed and paid by the State, it being understood that the person concerned should deliberately have chosen to be represented by a legal counsellor instead of appearing him- or herself at the trial. The appointment of the legal counsellor and related issues are a matter of national law.
- (11) Common solutions concerning grounds for non-recognition in the relevant existing Framework Decisions should take into account the diversity of situations with regard to the right of the person concerned to a retrial or an appeal. Such a retrial, or appeal, is aimed at guaranteeing the rights of defence and is characterized by the following elements: the person concerned has the right to be present, the merits of the case including fresh evidence will be (re)examined, and the proceedings can lead to the original decision being reversed.
- (12) The right to a retrial or appeal should be guaranteed when the decision has already been served as well as, in the case of the European arrest warrant, when it could not yet be served, but will be served without delay after the surrender. The latter case refers to a situation where the authorities failed in their attempt to contact the person, in particular because he or she sought to evade justice.

- (13) This Framework Decision is limited to the definition of grounds for non-recognition in instruments implementing the principle of mutual recognition. Therefore, provisions such as those relating to the right to a retrial have a scope which is limited to the definition of these grounds for non-recognition. They are not designed to harmonise national legislation. This Framework Decision is without prejudice to future instruments of the European Union designed to approximate the laws of the Member States in the field of criminal law.
- (14) The grounds for non-recognition are optional. However, the discretion of Member States for transposing these grounds into national law is particularly governed by the right to a fair trial, while taking into account the overall objective of this Framework Decision to enhance the procedural rights of persons and to facilitate judicial cooperation in criminal matters,

HAS ADOPTED THIS FRAMEWORK DECISION:



*Article 1*  
*Objective and scope*

1. The objective of this Framework Decision is to enhance the procedural rights of persons subject to criminal proceedings and at the same time to facilitate judicial cooperation in criminal matters and in particular to improve mutual recognition of judicial decisions between Member States.
2. 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, including the right of defence of persons subject to criminal proceedings, and any obligations incumbent upon judicial authorities in this respect shall remain unaffected.
3. The scope of this Framework Decision is to establish common rules for the recognition and/or execution of judicial decisions in one Member State (the executing Member State) issued by another Member State (the issuing Member State) following proceedings where the person was not present, pursuant to the provisions of Article 5(1) of Framework Decision 2002/584/JHA, of Article 7(2)(g) of Framework Decision 2005/214/JHA, of Article 8(2)(e) of Framework Decision 2006/783/JHA, of Article 9(1)(f) of Framework Decision 2008/.../JHA and of Article XX of Framework Decision 2008/.../JHA.

*Article 2*

*Amendments to Framework Decision 2002/584/JHA*

Framework Decision 2002/584/JHA is hereby amended as follows:

- 1) the following Article shall be inserted:

*"Article 4a*

*Decisions rendered following a trial at which the person did not appear in person*

The executing judicial authority may also refuse to execute the European arrest warrant issued for the purpose of executing a custodial sentence or a detention order, if the person did not appear in person at the trial resulting in the decision, unless the European arrest warrant states that the person, in accordance with further procedural requirements defined in the national law of the issuing State:

- a) in due time
- (i) either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he/she was aware of the scheduled trial,
- and
- (ii) was informed that a decision may be handed down if he/she does not appear for the trial;

or

(b) being aware of the scheduled trial had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him/her at the trial, and was indeed defended by that counsellor at the trial;

or

(c) after being served with the decision and being expressly informed about the right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed:

(i) expressly stated that he or she does not contest the decision;

or

(ii) did not request a retrial or appeal within the applicable timeframe;

or

(d) could not be personally served with the decision but:

(i) will be personally served with it without delay after the surrender and will be expressly informed of his/her right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed;

and

(ii) will be informed of the timeframe within which he/she has to request such a retrial or appeal, as mentioned in the relevant European arrest warrant. "

2) in Article 5, paragraph 1 shall be deleted;

3) in the Annex ("EUROPEAN ARREST WARRANT"), point (d) shall be replaced by the following:

(d) Indicate if the person appeared in person at the trial resulting in the decision:

1.  Yes, the person appeared in person at the trial resulting in the decision
2.  No, the person did not appear in person at the trial resulting in the decision.
3. If you answered "no" to question 2 above, please indicate if:
  - 3.1a the person was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for the trial

*Date at which the person was summoned in person:*

.....(day/month/year)

*Place where the person was summoned in person:*

.....

OR

- 3.1b the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the decision, in such a manner that it was unequivocally established that he/she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial;

*Describe how it is established that the person concerned was aware of the trial :*

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

OR

- 3.2 being aware of the scheduled trial the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him/her at the trial, and was indeed defended by that counsellor at the trial;

*Provide information on how this condition has been met:*

.....

OR

- 3.3 the person, after being served with the decision, expressly stated that he or she does not contest this decision.

*Describe when and how the person expressly stated that he or she does not contest the decision:*

.....

OR

3.4 the person was entitled to a retrial or appeal under the following conditions:

3.4.1 the person was personally served with the decision on .....  
(day/month/year); and

- the person was expressly informed of the right to a retrial or appeal and to be present at that trial; and
- after being informed of this right, the person did not request a retrial or appeal within the applicable timeframe.

OR

3.4.2 the person could not be personally served with the decision, but

- the person will be personally served with this decision without delay after the surrender; and
- when served with the decision, the person will be expressly informed of his/her right to a retrial or appeal and to be present at that trial; and
- after being served with the decision, the person will have the right to request a retrial or appeal within ..... days.

*Article 3*

*Amendments to Framework Decision 2005/214/JHA*

Framework Decision 2005/214/JHA is hereby amended as follows:

1) Article 7(2) is hereby amended as follows:

(a) point (g) shall be replaced by the following:

"(g) according to the certificate provided for in Article 4, the person concerned, in case of a written procedure, was not, in accordance with the law of the issuing State, informed personally or through a representative competent according to national law of his/her right to contest the case and of the time limits for such a legal remedy";

(b) the following points shall be added:

"(i) according to the certificate provided for in Article 4, the person did not appear in person at the trial resulting in the decision, unless the certificate states that the person, in accordance with further procedural requirements defined in the national law of the issuing State:

(i) in due time

- either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that the person concerned was aware of the scheduled trial,

and

- was informed that a decision may be handed down if he or she does not appear for the trial;

or

- (ii) being aware of the scheduled trial had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him/her at the trial, and was indeed defended by that counsellor at the trial;

or

- (iii) after being served with the decision and being expressly informed of the right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed:

- expressly stated that he or she does not contest the decision;

or

- did not request a retrial or appeal within the applicable timeframe.

- (j) according to the certificate provided for in Article 4, the person did not appear in person, unless the certificate states that the person has indicated that he or she does not contest the case."



2) Article 7(3) shall be replaced by the following:

"3. In the cases referred to in paragraphs 1 and 2(c), (g), (i) and (j), before deciding not to recognise and to execute a decision, either totally or in part, the competent authority in the executing State shall consult the competent authority in the issuing State, by any appropriate means, and shall, where applicable, ask it to supply any necessary information without delay."

3) in point (h) of the Annex ("certificate"), point 3 is replaced by the following:

<p>3. Indicate if the person appeared in person at the trial resulting in the decision:</p> <p>1. <input type="checkbox"/> Yes, the person appeared in person at the trial resulting in the decision.</p> <p>2. <input type="checkbox"/> No, the person did not appear in person at the trial resulting in the decision.</p> <p>3. If you answered "no" to question 2 above, please indicate if:</p> <p><input type="checkbox"/> 3.1a the person was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for the trial</p> <p><i>Date at which the person was summoned in person:</i> .....(day/month/year)</p> <p><i>Place where the person was summoned in person:</i> .....</p> <p>OR</p>
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- 3.1b the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the decision, in such a manner that it was unequivocally established that he/she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial;

*Describe how it is established that the person concerned was aware of the trial :*

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

OR

- 3.2 being aware of the scheduled trial the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him/her at the trial, and was indeed defended by that counsellor at the trial;

*Provide information on how this condition has been met:*

.....

OR

- 3.3 the person, after being served with the decision, expressly stated that he or she does not contest this decision;

*Describe when and how the person expressly stated that he or she does not contest the decision:*

.....

OR

- 3.4 the person was served with the decision on ..... (day/month/year) and was entitled to a retrial or appeal in the issuing State under the following conditions:
  - the person was expressly informed of the right to a retrial or appeal and to be present at that trial; and
  - after being informed of this right, the person did not request a retrial or appeal within the applicable timeframe.

OR

- 3.5 the person has indicated that he or she does not contest the case

*Describe when and how the person indicated that her or she does not contest the case :*

.....  
.....

*Article 4*

*Amendments to Framework Decision 2006/783/JHA*

Framework Decision 2006/783/JHA is hereby amended as follows:

1) in Article 8(2), point (e) shall be replaced by the following:

"(e) according to the certificate provided for in Article 4(2), the person did not appear in person at the trial resulting in the confiscation order, unless the certificate states that the person, in accordance with further procedural requirements defined in the national law of the issuing State:

(i) in due time

- either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that the person concerned was aware of the scheduled trial,

and

- was informed that such a confiscation order may be handed down if he or she does not appear for the trial;

or

- (ii) being aware of the scheduled trial had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him/her at the trial, and was indeed defended by that counsellor at the trial;

or

- (iii) after being served with the confiscation order and being expressly informed of the right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed:

- expressly stated that he or she does not contest the confiscation order;

or

- did not request a retrial or appeal within the applicable timeframe."

2) in the Annex ("certificate"), point (j) shall be replaced by the following:

(j). Indicate if the person appeared in person at the trial resulting in the confiscation order:

1.  Yes, the person appeared in person at the trial resulting in the confiscation order.
2.  No, the person did not appear in person at the trial resulting in the confiscation order.
3. If you answered "no" to question 2 above, please indicate if:
  - 3.1a the person was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for the trial  
  
*Date at which the person was summoned in person:*  
.....(day/month/year)
  - Place where the person was summoned in person:*  
.....

OR

- 3.1b the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the decision, in such a manner that it was unequivocally established that he/she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial;  
  
*Describe how it is established that the person concerned was aware of the trial :*  
.....  
.....  
.....  
.....

OR

- 3.2 being aware of the scheduled trial the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him/her at the trial, and was indeed defended by that counsellor at the trial;

*Provide information on how this condition has been met:*

.....  
.....

OR

- 3.3 the person, after being served with the confiscation order, expressly stated that he or she does not contest this order;

*Describe when and how the person expressly stated that he or she does not contest the confiscation order:*

.....

OR

- 3.4 the person was served with the confiscation order on .....  
(day/month/year) and was entitled to a retrial or appeal in the issuing State under the following conditions:

- the person was expressly informed of the right to a retrial or appeal and to be present at that trial; and
- after being informed of this right, the person did not request a retrial or appeal within the applicable timeframe.

*Article 5*

*Amendments to Framework Decision 2008/.../JHA*

Framework Decision 2008/.../JHA is hereby amended as follows:

1) in Article 9(1), point (f) shall be replaced by the following:

"(f) according to the certificate provided for in Article 4, the person did not appear in person at the trial resulting in the decision, unless the certificate states that the person, in accordance with further procedural requirements defined in the national law of the issuing State:

(i) in due time

- either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that the person concerned was aware of the scheduled trial,

and

- was informed that a decision may be handed down if he or she does not appear for the trial;

or

(ii) being aware of the scheduled trial had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him/her at the trial, and was indeed defended by that counsellor at the trial;



or

(iii) after being served with the decision and being expressly informed of the right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed:

- expressly stated that he or she does not contest the decision;

or

- did not request a retrial or appeal within the applicable timeframe."

2) in point (k) of the Annex ("certificate"), point 1 shall be replaced by the following:

<p>1. Indicate if the person appeared personally in the trial resulting in the decision:</p> <p>1. <input type="checkbox"/> Yes, the person appeared in person at the trial resulting in the decision.</p> <p>2. <input type="checkbox"/> No, the person did not appear in person at the trial resulting in the decision.</p> <p>3. If you answered "no" to question 2 above, please indicate if:</p> <p><input type="checkbox"/> 3.1a the person was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for the trial</p> <p><i>Date at which the person was summoned in person:</i></p> <p>..... (day/month/year)</p> <p><i>Place where the person was summoned in person:</i></p> <p>.....</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

OR

- 3.1b the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the decision, in such a manner that it was unequivocally established that he/she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial;

*Describe how it is established that the person concerned was aware of the trial :*

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

OR

- 3.2 being aware of the scheduled trial the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him/her at the trial, and was indeed defended by that counsellor at the trial;

*Provide information on how this condition has been met:*

.....

OR

- 3.3 the person, after being served with the decision, expressly stated that he or she does not contest this decision;

*Describe when and how the person expressly stated that he or she does not contest the decision:*

.....

OR

- 3.4 the person was served with the decision on ..... (day/month/year) and was entitled to a retrial or appeal in the issuing State under the following conditions:
  - the person was expressly informed of the right to a retrial or appeal and to be present at that trial; and
  - after being informed of this right, the person did not request a retrial or appeal within the applicable timeframe.

*Article 6*  
*Amendments to Framework Decision 2008/.../JHA*

Framework Decision 2008/.../JHA is hereby amended as follows:

1) in Article 11(1), point (h) shall be replaced by the following:

"(h) according to the certificate provided for in Article 6, the person did not appear in person at the trial resulting in the decision, unless the certificate states that the person, in accordance with further procedural requirements defined in the national law of the issuing State:

(i) in due time

- either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that the person concerned was aware of the scheduled trial,

and

- was informed that a decision may be handed down if he or she does not appear for the trial;

or

(ii) being aware of the scheduled trial had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him/her at the trial, and was indeed defended by that counsellor at the trial;

or

(iii) after being served with the decision and being expressly informed about the right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed:

- expressly stated that he or she does not contest the decision;

or

- did not request a retrial or appeal within the applicable timeframe."

2) in the Annex ("certificate"), point h) shall be replaced by the following:

Indicate if the person appeared in person at the trial resulting in the decision:

1.  Yes, the person appeared in person at the trial resulting in the decision.
2.  No, the person did not appear in person at the trial resulting in the decision.
3. If you answered "no" to question 2 above, please indicate if:
  - 3.1a the person was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for the trial  
  
*Date at which the person was summoned in person:*  
..... (day/month/year)  
  
*Place where the person was summoned in person:*  
.....
  - OR
  - 3.1b the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the decision, in such a manner that it was unequivocally established that he/she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial;  
  
*Describe how it is established that the person concerned was aware of the trial :*  
.....  
.....  
.....  
.....

OR

- 3.2 being aware of the scheduled trial the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him/her at the trial, and was indeed defended by that counsellor at the trial;

*Provide information on how this condition has been met:*

.....

OR

- 3.3 the person, after being served with the decision, expressly stated that he or she does not contest this decision.

*Describe when and how the person expressly stated that he or she does not contest the decision:*

.....

OR

- 3.4 the person was served with the decision on ..... (day/month/year) and was entitled to a retrial or appeal in the issuing State under the following conditions:

- the person was expressly informed of the right to a retrial or appeal and to be present at that trial; and
- after being informed of this right, the person did not request a retrial or appeal within the applicable timeframe.

*Article 7*  
*Implementation*

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by ...<sup>\*</sup>.
2. Member States shall forward 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 8*  
*Review*

1. By ...<sup>+</sup>, the Commission shall draw up a report on the basis of the information received from the Member States pursuant to Article 7.
2. On the basis of the report referred to in paragraph 1, the Council shall assess:
  - (a) the extent to which Member States have taken the necessary measures in order to comply with this Framework Decision; and
  - (b) the application of this Framework Decision.
3. The report referred to in paragraph 1 shall be accompanied, where necessary, by legislative proposals.

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<sup>\*</sup> 24 months after the date of entry into force of this Framework Decision.

<sup>+</sup> 3 years after the date mentioned in Article 7(1).



*Article 9*  
*Entry into force*

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

Done at [Brussels]

*For the Council*  
*The President*

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