COUNCIL OF

LIMITE

NOTE

from :	General Secretariat
to :	delegations
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Subject :	Council Framework Decision on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union

At its meeting on 15 February 2007 the Justice and Home Affairs Council reached an agreement on a general approach on the Framework Decision on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.

The Working Party on Cooperation in Criminal Matters and the JHA Counsellors further examined the proposal and finalised the work on the certificate annexed to it, as well as the form for the notification of the person.

The final text resulting from these discussions is set out in the Annex I to this note. The Declaration of the Council introduced in relation to the rehabilitation purpose of this Framework Decision is set out in Annex II to this note.

The text of the proposal is subject to parliamentary reservations entered by DK/IE/NL/UK/SE.

ANNEX I

COUNCIL FRAMEWORK DECISION 2005/ /JHA
of

on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union

THE COUNCIL OF THE EUROPEAN UNION,

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

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

Having regard to the Opinion of the European Parliament [1],

Whereas:

(1) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition, which should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union.

(2) On 29 November 2000 the Council, in accordance with the Tampere conclusions, adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters[2], in which it called for an assessment of the need for modern mechanisms for the mutual recognition of final sentences involving deprivation of liberty (Measure 14) and for extended application of the principle of the transfer of sentenced persons to cover persons resident in a Member State (Measure 16).

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[1] OJ
[2] OJ

(3) The Hague Programme on strengthening freedom, security and justice in the European Union[3] requires the Member States to complete the programme of measures, in particular in the field of enforcing final custodial sentences.

(4) All the Member States have ratified the Council of Europe Convention on the Transfer of Sentenced Persons of 21 March 1983. Under that Convention, sentenced persons may be transferred to serve the remainder of their sentence only to their State of nationality and only with their consent and that of the States involved. The Additional Protocol to the Convention of 18 December 1997, which allows transfer without the person's consent, subject to certain conditions, has not been ratified by all the Member States. Neither instrument imposes any basic duty to take charge of sentenced persons for enforcement of a sentence or order.

(5) Relations between the Member States, which are characterised by special mutual confidence in other Member States' legal systems, enable recognition by the executing State of decisions taken by the issuing State's authorities. Therefore, a further development of the cooperation provided for in the Council of Europe instruments concerning the enforcement of criminal judgments should be envisaged, in particular where EU nationals (…) have been subject of a criminal judgment and were sentenced to a custodial sentence or a measure involving deprivation of liberty in another Member State. Notwithstanding the necessity of providing the sentenced person with adequate safeguards, his or her involvement in the proceedings should no longer be dominant by requiring in all cases his or her consent to the forwarding of a judgment to another Member State for the purpose of its recognition and enforcement of the sentence imposed.

(5a) (…)

(5b) This Framework decision should be implemented and applied in a manner which allows for respecting general principles of equality, fairness and reasonableness.

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[3] OJ

(6) (…)

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

(6b) In cases referred to Article 3a(1)(c) the forwarding of the certificate and the judgment to the executing State is subject to the consultations between the competent authorities of the issuing and the executing State, and the consent of the competent authority of the executing State. The competent authorities should take into account such elements as, for example, duration of the residence or other links to the executing State. In cases where the sentenced person could be transferred to a Member State and to a third country under national law or international instruments, the competent authorities of the issuing and executing State should in consultations, consider whether the enforcement in the executing Member State would enhance the aim of social rehabilitation better than enforcement in the third country.

(6c) Enforcement of the sentence in the executing Member State should enhance the possibility of social rehabilitation of the sentenced person. In the context of satisfying itself that the enforcement of the sentence by the executing State will serve the purpose of facilitating the social rehabilitation of the sentenced person the competent authority of the issuing State should take into account such elements as, for example the person's attachment to the executing State, whether he/she considers it the place of family, linguistic, cultural, social or economic and other links to the executing State.

(6cbis) The opinion of the sentenced person referred in Article 5(2) may be useful mainly in applying Article 3a (2a). The words "in particular" are intended to cover also cases where the opinion of the sentenced person would include information which might be of relevance in the application of Article 9. Provisions of Articles 3a(2a) and 5(2) do not constitute a ground for refusal on social rehabilitation.

(6ccis) The Council recognises that Poland needs more time than the other Member States to face the practical and material consequences of transfer of Polish citizens convicted in other Member States, especially in the light of an increased mobility of Polish citizens within the European Union. For that reason, a temporary derogation of a limited scope for a maximum period of five years has been foreseen in Article 5(4).

(6d) This Framework Decision should also, mutatis mutandis, apply to the enforcement of sentences in the cases under Articles 4(6) und 5(3) of the Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States[4]. This inter alia means, that without prejudice to the Council Framework Decision 2002/584/JHA, the executing Member State could verify the existence of grounds for refusal as provided for in Article 9, including checking of dual criminality to the extent the executing State has made a declaration under Article 7(4), as a condition to recognise and enforce the judgment with a view to consider whether to surrender the person or to enforce the sentence in cases pursuant to Article 4(6) of the said Framework Decision.

(7) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty and reflected by the Charter of Fundamental Rights of the European Union, in particular Chapter VI thereof. Nothing in this Framework Decision should be interpreted as prohibiting refusal to execute a decision when there are objective reasons to believe that the sentence was imposed for the purpose of punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced on anyone of those grounds.

(8) This Framework Decision does not prevent any Member State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media.

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[4] OJ L 190, 18.7.2002, p. 1.

(9) The provisions of this Framework Decision should be applied in conformity with the right of citizens of the European Union to move and reside freely within the territory of the Member States conferred by Article 18 of the TEC.

(10) The provisions of this Framework Decision should be applied in conformity with applicable EC law, including in particular Directive 2004/38/EC, Directive 2003/109/EC and Directive 2003/86/EC.

(11) Where in this Framework Decision reference is made to the State where the sentenced person "lives", this indicates the place to which that person is attached based on habitual residence and on elements such as family, social or professional ties.

(11a) When applying Article 4(1), it should be possible to transmit a judgment or a certified copy thereof and a certificate to the competent authority in the executing State by any means which leaves a written record, for example email and fax, under conditions allowing the executing State to establish authenticity.

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

(12a) The ground for refusal in Article 9(1)(i) may be applied also in cases where the person has not been found guilty of a criminal offence although the competent authority applied the measure involving the deprivation of liberty other than a custodial sentence as a consequence of a criminal offence.

(12b) The ground for refusal relating to the territoriality in Article 9(1)(j) should be applied only in exceptional cases and with a view to co-operating to the greatest extent possible under the provisions of this Framework Decision, while taking into account the purpose referred to in Article 3(1). Any decision to apply this ground for refusal, should be based on a case-by-case analysis and consultations between the competent authorities of the issuing and executing State.

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

(13a) Paragraph 1 of Article 14 states that, subject to exceptions listed in paragraph 2, the speciality rule applies only in cases where the person has been transferred to the executing State. Therefore paragraph 1 of Article 14 is not applicable in cases where the person has not been transferred to the executing State, for example in cases where the person has fled to the executing State.

HAS ADOPTED THIS FRAMEWORK DECISION:

Chapter I
General provisions

Article 1
Definitions

For the purposes of this Framework Decision:

(a) "Judgment" shall mean a final decision or order of a court of the issuing State imposing a sentence on a natural person;

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

(c) "issuing State" shall mean the Member State in which a judgment within the meaning of this Framework Decision was delivered;

(d) "executing State" shall mean the Member State to which a judgment has been forwarded for the purpose of its recognition and enforcement.

Article 2

Determination of the competent authorities

1. Each Member State shall inform the General Secretariat of the Council which authority or authorities, under its national law, are competent in accordance with this Framework Decision, when that Member State is the issuing State or the executing State.

2. The General Secretariat of the Council shall make the information received available to all Member States and the Commission.

Article 3

Purpose

1. The purpose of this Framework Decision is to establish the rules under which a Member State, with a view to facilitating the social rehabilitation of the sentenced person, shall recognise a judgment and enforce the sentence.

2. This Framework Decision is applicable where the sentenced person is in the issuing State or in the executing State.

3. This Framework Decision only applies to the recognition of judgments and the enforcement of sentences within the meaning of the Framework Decision. The fact that, in addition to the sentence, a fine and/or a confiscation order has been imposed, which has not yet been paid, recovered or enforced, shall not prevent a judgment from being forwarded. The recognition and enforcement of such fines and confiscation orders in another Member State shall be based on the instruments applicable between the Member States, in particular the Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties and on the Council Framework Decision 2005/ xxx/JHA of xx.xx.2005 on the application of the principle of mutual recognition to confiscation orders.

4. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.

Chapter II

Recognition of judgments and enforcement of sentences

Article 3a

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

1. Provided the sentenced person is in the issuing State or in the executing State, and provided that the person has given his or her consent where required under Article 5, a judgment, together with a certificate as provided for in Article 4, may be forwarded to one of the following Member States:

   a) the State of nationality of the sentenced person in which he or she lives; or

   b) the State of nationality, to which, while not being the State where he or she lives, the sentenced person will be deported, (…), once he or she is released from the enforcement of the sentence on the basis of an expulsion or deportation order included in the judgment or in a judicial or administrative decision or any other measure taken consequential to the judgment; or

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

1a. The forwarding of the judgment and the certificate may take place where the competent authority of the issuing State, where appropriate, after consultations between the competent authorities of the issuing and the executing States, is satisfied that the enforcement of the sentence by the executing State would serve the purpose of facilitating the social rehabilitation of the sentenced person.

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

2(a) During these consultations the competent authority of the executing State may present a reasoned opinion to the competent authority of the issuing State, that enforcement of the sentence in the executing State would not serve the purpose of facilitating the social rehabilitation and successful reintegration of the sentenced person into the society.
In cases where there has been no consultation, such an opinion may be presented without delay after the transmission of the certificate and the judgment. The competent authority of the issuing State shall consider such opinion and decide whether to withdraw the certificate or not.

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

4. In implementing this Framework Decision, Member States shall adopt measures, in particular taking into account the purpose of facilitating social rehabilitation of the sentenced person, constituting the basis on which their competent authorities have to take their decisions whether or not to consent to the forwarding of the judgment and the certificate in cases pursuant to Article 3a(1)(c).

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

a) if the sentenced person lives and has been legally residing continuously for at least five years in the executing State and will retain a permanent right of residence in that State, and/or
b) if the sentenced person has the nationality of the executing State in cases other than paragraphs 1 a) and b).

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

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

Article 4

Forwarding of the judgment and the certificate

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

2. The certificate, the standard form for which is given in Annex A, must be signed, and its content certified as accurate, by the competent authority in the issuing State.

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

4. If the competent authority in the executing State is not known to the competent authority in the issuing State, the latter shall make all necessary inquiries, including via the Contact points of the European Judicial Network set up by Council Joint Action 98/428/JHA [5], in order to obtain the information from the executing State.

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

Article 5

Opinion and notification of the sentenced person

1. Without prejudice to paragraph 1a, a judgment together with a certificate may only be forwarded to the executing State for the purpose of its recognition and enforcement of the sentence with the consent of the sentenced person in accordance with the law of the issuing State.

1a. The consent of the sentenced person shall not be required where the judgment together with the certificate is forwarded:

a) to the State of nationality in which he or she lives;

b) to the State to which the sentenced person will be deported once he or she is released from the enforcement of the sentence on the basis of an expulsion or deportation order included in the judgment or in a judicial or administrative decision or any other measure consequential to the judgment;

c) to the State to which the person has fled or otherwise returned in view of the criminal proceedings pending against him or her in the issuing State or following the conviction in that State.

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[5] OJ L 191, 7.7.1998, p. 4.

2. In all cases where the person is still in the issuing State, the person shall be given an opportunity to state his or her opinion orally or in writing. Where the issuing State considers it necessary in view of the sentenced person's age or his or her physical or mental condition, that opportunity shall be given to his or her legal representative.

The opinion of the sentenced person shall be taken into account when deciding the issue of forwarding the judgement together with the certificate. Where the person has availed him/her self of the opportunity provided in this paragraph, the opinion of the sentenced person shall be forwarded to the executing State, in particular with a view to Article 3a(2a). If the person stated his or her opinion orally, the issuing State shall ensure that the written record of such statement is available to executing State**.**

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

4. Paragraph (1a) (a) will not be applicable to Poland as an issuing State and as an executing State in cases where the judgement has been issued before the lapse of five years after the date mentioned in Article 21(1). Poland may at any time notify to the General Secretariat of the Council that it will not any longer avail itself of this derogation.

Article 6

(...)

Article 7

Dual Criminality

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

– 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 [6],

– laundering of the proceeds of crime,

– counterfeiting currency, including of the euro,

[6] OJ C 316, 27.11.1995, p. 49.

– computer-related crime,

– environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,

– facilitation of unauthorised entry and residence,

– murder, grievous bodily injury,

– illicit trade in human organs and tissue,

– kidnapping, illegal restraint and hostage-taking,

– racism and xenophobia,

– organised or armed robbery,

– illicit trafficking in cultural goods, including antiques and works of art,

– swindling,

– racketeering and extortion,

– counterfeiting and piracy of products,

– forgery of administrative documents and trafficking therein,

– forgery of means of payment,

– illicit trafficking in hormonal substances and other growth promoters,

– illicit trafficking in nuclear or radioactive materials,

– trafficking in stolen vehicles,

– rape,

– arson,

– crimes within the jurisdiction of the International Criminal Court,

– unlawful seizure of aircraft/ships,

– sabotage.

2. The Council may decide to add other categories of offences to the list in paragraph 1 at any time, acting unanimously after consultation of the European Parliament under the conditions laid down in Article 39(1) of the Treaty. The Council shall examine, in the light of the report submitted to it pursuant to Article 21(4) of this Framework Decision, whether the list should be extended or amended.

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

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

Article 8

Recognition of the judgment and enforcement of the sentence.

1. The competent authority of the executing State shall recognise the judgment which has been forwarded in accordance with Article 3a and following the procedure under Article 4, and shall forthwith take all the necessary measures for the enforcement of the sentence, unless the competent authority decides to invoke one of the grounds for non-recognition and non-enforcement provided for in Article 9.

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

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

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

Article 9

Grounds for non-recognition and non-enforcement

1. The competent authority of the executing State may refuse to recognise the judgment and enforce the sentence, if:

   (a) the certificate provided for in Art. 4 is incomplete or manifestly does not correspond to the judgment and has not been completed or corrected within a reasonable deadline set by the executing authority;

(ab) the criteria set forth in Article 3a(1) are not met;

(ac) enforcement of the sentence would be contrary to the principle of ne bis in idem;

(b) in a case referred to in Article 7(3) and, in case the executing State has made a declaration under Article 7(4), in a case referred to in Article 7(1), the judgment relates to acts which would not constitute an offence under the law of the executing State; however, in relation to taxes or duties, customs and exchange, execution of a judgment may not be refused on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing State;

(c) the enforcement of the sentence is statute-barred according to the law of the executing State

(cb) there is immunity under the law of the executing State, which makes it impossible to enforce the sentence;

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

(e) at the time the judgment was received by the competent authority of the executing State, less than six months of the sentence remain to be served;

(f) the judgment was rendered in absentia, unless the certificate states that the person was summoned personally or informed via a representative, competent according to the national law of the issuing State, of the time and place of the proceedings which resulted in the judgment being rendered in absentia, or that the person has indicated to a competent authority that he or she does not contest the case.

(g) the executing State, before a decision is taken in accordance with Article 10(1), makes a request, in accordance with Article 14(3), and the issuing State does not consent, in accordance with Article 14(2)(g), to the person concerned being prosecuted, sentenced or otherwise deprived of his or her liberty in the executing State for an offence committed prior to the transfer other than that for which the person was transferred.

(h) (…)

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

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

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

2 In the cases referred to in paragraph 1(a), (ab), (ac), (f) (i) and (j), before deciding not to recognise the judgment and enforce the sentence, the competent authority in the executing State shall consult the competent authority in the issuing State, by any appropriate means, and shall, where appropriate, ask it to supply any necessary additional information without delay.

Article 9a

Partial recognition and enforcement

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

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

Article 9b

Postponement of recognition of the judgment

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

Article 10

Decision on the enforcement of the sentence and time limits

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

1a. Unless a ground for postponement exists under Article 9a or under Article 18a(3) the final decision on the recognition of the judgment and the enforcement of the sentence shall be taken within a period of 90 days of receipt of the judgment and the certificate.

2. When in exceptional cases it is not practicable for the competent authority of the executing State to meet the deadline in paragraph 1a,it shall without delay inform the competent authority of the issuing State by any means, giving the reasons for the delay and the estimated time needed for the final decision to be taken.

Article 10a

Withdrawal of the certificate

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

Article 10b

Provisional arrest

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

Article 11

Transfer of persons

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

2. (…)

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

4. (…)

Article 12

Transit

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

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

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

2a. The Member State requested to permit transit may hold the sentenced person in custody only for such time as transit through its territory requires.

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

Article 13

Law governing enforcement

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

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

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

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

Article 14

Specialty

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

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

   (a) when the person having had an opportunity to leave the territory of the executing State has not done so within 45 days of his or her final discharge, or has returned to that territory after leaving it;

(b) when the offence is not punishable by a custodial sentence or detention order;

(c) when the criminal proceedings do not give rise to the application of a measure restricting personal liberty;

(d) when the person could be liable to a penalty or a measure not involving deprivation of liberty, in particular a financial penalty or a measure in lieu thereof, even if the penalty or measure may give rise to a restriction of his or her personal liberty;

(e) when the person consented to the transfer;

(f) when the person, after his or her transfer, has expressly renounced entitlement to the speciality rule with regard to specific offences preceding his or her transfer. Renunciation shall be given before the competent judicial authorities of the executing State and shall be recorded in accordance with that State's domestic law. The renunciation shall be drawn up in such a way as to make clear that the person has given it voluntarily and in full awareness of the consequences. To that end, the person shall have the right to legal counsel;

(g) for cases other than those mentioned under points (a) to (f) above, where the issuing State gives its consent in accordance with paragraph 3.

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

Article 15

Amnesty, pardon, review of judgment

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

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

Article 16

Information from the issuing State

1. The competent authority of the issuing State shall forthwith inform the competent authority of the executing State of any decision or measure as a result of which the sentence ceases to be enforceable immediately or within a certain period of time.
2. The competent authority of the executing State shall terminate enforcement of the sentence as soon as it is informed by the competent authority of the issuing State of that decision or measure.

Article 17

Information from the executing State

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

(a) of the forwarding of the judgment and the certificate to the competent authority responsible for its execution in accordance with Article 4(5);

(a bis) of the fact that it is in practice impossible to enforce the sentence for the reason that, after transmission of the certificate and the judgment to the executing State, the sentenced person cannot be found in the territory of the executing State, in which case there shall be no obligation of the executing State to enforce the sentence;

(a ter) of the final decision to recognise the judgment and enforce the sentence including its date;

(b) of any decision not to recognise the judgment and enforce the sentence in accordance with Article 9, together with the reasons for the decision;

(c) of any decision to adapt the sentence in accordance with Article 8(2) or (3), together with the reasons for the decision;

(d) of any decision not to enforce the sentence, either for the reasons referred to in Article 15(1) together with the reasons for the decision;

(e) of the beginning and the end of the period of conditional release, where so indicated in the certificate by the issuing State;

(f) of the sentenced person's escape from custody prior to completion of the sentence;

(g) of the enforcement of the sentence as soon as it has been completed.

Article 18

Consequences of the transfer of the sentenced person

1. Subject to paragraph 2, the issuing State may not proceed further with the enforcement of the sentence once its enforcement in the executing State has begun.
2. The right to enforce the sentence shall revert to the issuing State upon its being informed by the executing State of the partial non-enforcement of the sentence pursuant to Article 17(1)(f).

Article 18a

Languages

1. The certificate, the standard form which is set in the Annex, must be translated into the official language or one of the official languages of the executing State. Any Member State may, either when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the Union.

2. Subject to paragraph 3 below, no translation of judgment shall be required.

3. Any Member State may, either when this Framework decision is adopted or at al later date, in a declaration deposited with the General Secretariat of the Council state, that it, as an executing State, may without delay after receiving the judgment and the certificate, request, in cases where it finds the content of the certificate insufficient to decide on the enforcement of the sentence, that the judgment or essential parts of it be accompanied by a translation into the official language or one of the official languages of the executing State or into one or more other official languages of the Institutions of the Union. Such a request shall be made, after consultation, where necessary, to indicate the essential parts of the judgments to be translated, between the competent authorities of the issuing and the executing State.

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

Article 19

Costs

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

Article 19a

Enforcement of sentences following an European arrest warrant

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

Chapter III

Final provisions

Article 20

Relationship with other agreements and arrangements

1. Without prejudice to their application between Member States and third States and their transitional application according to article 20a, this Framework Decision shall, from [date to be inserted] replace the corresponding provisions of the following conventions applicable in relations between the Member States:

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

2. Member States may continue to apply bilateral or multilateral agreements or arrangements in force when this Framework Decision was adopted, insofar as they allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for the enforcement of sentences.

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

4. Member States shall, within three months from the entry into force of this Framework Decision, notify the Council and the Commission of the existing agreements and arrangements referred to in paragraph 2 which they wish to continue applying. Member States shall also notify the Council and the Commission of any new agreement or arrangement as referred to in paragraph 3, within three months of signing it.

Article 20a

Transitional provision

1. Requests received before the date referred in Article 21(1) shall continue to be governed in accordance with the existing legal instruments on the transfer of sentenced persons. Requests received after that date shall be governed by the rules adopted by Member States pursuant to this Framework Decision.

2. However, any Member State may, at the time of the adoption of this Framework Decision by the Council, make a statement indicating that, in cases where the final judgment has been issued before the date it specifies, it will as an issuing and an executing State, continue to apply the existing legal instruments on the transfer of sentenced persons applicable before the date referred to in Article 21(1). If such a declaration has been made, these instruments shall apply in such cases in relation to all other Member States irrespective of whether or not they have made the same declaration. The date in question may not be later than the ….[*]. The said statement will be published in the *Official Journal of the European Union.* It may be withdrawn at any time.

3. (…)

Article 21

Implementation

1. Member States shall take the necessary measures to comply with this Framework Decision by ..... [*].

2. Member States shall communicate to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. On the basis of a report drawn up by the Commission using this information, the Council shall, no later than ... [**], assess the extent to which Member States have complied with this Framework Decision.

---

[*] Three years after the date of entry into force of this Framework Decision.

[*] Three years after the date of entry into force of this Framework Decision.

[**] Four years after the date of entry into force of this Framework Decision.

3. The General Secretariat of the Council shall notify the Member States and the Commission of the declarations or notifications made pursuant to Article 3a(5) and Article 18a(1) or (3).

3bis. Without prejudice to Article 35(7) of the Treaty, a Member State which has experienced repeated difficulties in the application of Article 19a of this Framework Decision, which have not been solved through bilateral consultations, shall inform the Council and the Commission of its difficulties. The Commission shall, on the basis of this information and any other information available to it, establish a report, accompanied by any initiatives it may deem appropriate, with a view to resolving these difficulties.

4. By … [*], the Commission shall establish a report on the basis of the information received, accompanied by any initiatives it may deem appropriate. The Council shall on the basis of any (…) report from the Commission and any initiative, review, in particular Article 19a, with a view to considering whether it shall be replaced by more specific provisions.

Article 22
Entry into force

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

For the Council
The President

[*] Five years after the date of entry into force of this Framework Decision.

CERTIFICATE

referred to in Art. 4 of the FD ...../...../JHA [+] of the Council 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[12]

(a)

* Issuing State:
* Executing State:

(b) The court which issued the judgment imposing the sentence that became final:

Official name:

The judgment was rendered on (give date: dd-mm-yyyy):

The judgment became final on (give date: dd-mm-yyyy):

Reference number of the judgment (if available):

(c) Information related to the authority that may be contacted for any question related to the certificate:

1. Type of authority : Please tick the relevant box:

□ Central authority

□ Court

□ Other authority

[+] OJ: please insert No of this Framework Decision.

12 "This certificate must be written in, or translated into, one of the official languages of the executing Member State or any other language accepted by that State."

2. Contact details of the authority indicated under 1. above :

Official name:

Address:

Tel. No: (country code) (area/city code)
Fax No (country code) (area/city code)
E-mail address (if available):

3. Languages in which it is possible to communicate with the authority:

4. Contact details of person(s) to be contacted to obtain additional information for the purposes of enforcement of the judgment or agreement on the transfer procedures (name, title/grade, tel. No, fax No, e-mail address), if different from 2:

(d) [deleted]

(e) [deleted]

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

Name:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if available):

Date of birth:

Place of birth:

Last known addresses/residences:

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

The sentenced person is:

□ in the issuing State and shall be transferred to the executing State.

□ in the executing State and enforcement shall take place in that State.

Additional information to be provided, if available and if appropriate~~:~~

1. Photo and fingerprints of the person, and/or contact details of the person to be contacted in order to obtain such information:

2. Type and reference number of the sentenced person's identity card or passport:

3. Type and reference number of the sentenced person's residence permit:

……

4. Other relevant information about the sentenced person's family, social or professional ties to the executing State :

(g) Request for Provisional arrest by the issuing State (in case the sentenced person is in the executing State) :

□ The issuing State requests the executing State to arrest the sentenced person, or to take any other measure to ensure that the sentenced person remains in its territory, pending a decision to recognise and enforce the sentence.

□ The issuing State has already requested the executing State to arrest the sentenced person, or to take any other measure to ensure that the sentenced person remains in its territory, pending a decision to recognise and enforce the sentence. Please provide the name of the authority in the executing State that has taken the decision on the request to arrest the person (If applicable and available):

……

……

……

……

(h) Relation to any earlier European Arrest Warrant:

☐ An EAW has been issued for the purpose of the execution of a custodial sentence or detention order and the executing Member State undertakes to execute the sentence or detention order Article 4(6) of the EAW Framework Decision).

Date of the issuing of the EAW and, if available, reference number:

Name of the authority that issued the EAW:
Date of decision to undertake execution and, if available, reference number:

Name of the authority that issued the decision to undertake execution of the sentence:

☐ An EAW has been issued for the purpose of prosecution of a person who is a national or resident of the executing State and the executing State has surrendered the person under the condition that the person is to be returned back to the executing State in order to serve there the custodial sentence or detention order passed against him or her in the issuing Member State (Article 5(3) of the EAW Framework Decision).

Date of the decision to surrender the person:
Name of the authority that issued the decision to surrender:
Reference number of the decision, if available:
Date of the surrender of the person, if available: .

(i) Reasons for forwarding the judgment and the certificate (in case you have filled in box (h), there is no need to fill in this box):

The judgment and the certificate are forwarded to the executing State because the issuing authority is satisfied that the enforcement of the sentence by the executing State would serve the purpose of facilitating the social rehabilitation of the sentenced person and:

☐ a) The executing State is the State of nationality of the sentenced person in which he or she lives.

☐ b) The executing State is the State of nationality of the sentenced person, to which the sentenced person will be deported, once he or she is released from the enforcement of the sentence on the basis of an expulsion or deportation order included in the judgment or in a judicial or administrative decision or any other measure taken consequential to the judgment. If the expulsion or deportation order is not included in the judgment, please provide the name of the authority that issued the order, the date of issuance, and, if available, the reference number:……..

☐ c) The executing State is a State, other than a State referred to in a) or b), whose competent authority consents to the forwarding of the judgment and the certificate to that State.

☐ d) The executing State has given a notification under Article 3a, paragraph 5 of the Framework Decision, and:

- □ it is confirmed that, to the knowledge of the competent authority of the issuing State, the sentenced person lives and has been legally residing continuously for at least five years in the executing State and will retain a permanent right of residence in that state, or
- □ it is confirmed that the sentenced person has the nationality of the executing State.

(j) Judgment imposing the sentence:

1. The judgment covers …. offences in total.

Summary of facts and a description of the circumstances in which the offence(s) was (were) committed, including time and place; and the nature of the involvement of the sentenced person:

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

2. To the extent that the offence(s) identified under point 1 above constitute(s) one or more of the following offences, as defined in the law of the issuing State, which are punishable in the issuing State by a custodial sentence or detention order of a maximum of at least three years, please confirm by ticking the relevant box(es)):

- ☐ participation in a criminal organisation;
- ☐ terrorism;
- ☐ trafficking in human beings;
- ☐ sexual exploitation of children and child pornography;
- ☐ illicit trafficking in narcotic drugs and psychotropic substances;
- ☐ illicit trafficking in weapons, munitions and explosives;
- ☐ corruption;
- ☐ fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests;
- ☐ laundering of the proceeds of crime;
- ☐ counterfeiting currency, including of the euro;

- ☐ computer-related crime;
- ☐ environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
- ☐ facilitation of unauthorised entry and residence;
- ☐ murder, grievous bodily injury;
- ☐ illicit trade in human organs and tissue;
- ☐ kidnapping, illegal restraint and hostage-taking;
- ☐ racism and xenophobia;
- ☐ organised or armed robbery;
- ☐ illicit trafficking in cultural goods, including antiques and works of art;
- ☐ swindling;
- ☐ racketeering and extortion;
- ☐ counterfeiting and piracy of products;
- ☐ forgery of administrative documents and trafficking therein;
- ☐ forgery of means of payment;
- ☐ illicit trafficking in hormonal substances and other growth promoters;
- ☐ illicit trafficking in nuclear or radioactive materials;
- ☐ trafficking in stolen vehicles;
- ☐ rape;
- ☐ arson;
- ☐ crimes within the jurisdiction of the International Criminal Court;
- ☐ unlawful seizure of aircraft/ships;
- ☐ sabotage.

3. To the extent that the offence(s) identified under point 1 above is (are) not covered by point 2 or if the judgment and the certificate is forwarded to the Member State, which has declared that it will verify the dual criminality (Article 7(4) of the Framework Decision), please give a full description of the offence(s) concerned:

4. [Deleted]

(k) Status of the judgment imposing the sentence:

1. Indicate if the judgement was rendered *in absentia* :

☐ No, it was not.

☐ Yes, it was; it is confirmed that:

☐ the person was informed in person, or via a representative competent according to the national law of the issuing State, of the time and place of the proceedings which led to the judgment in absentia or

☐ the person has indicated to a competent authority that he/she does not contest the decision.

2. Details of the length of the sentence :

2.1. Total length of the sentence (in days):

2.2. The full period of deprivation of liberty already served in connection with the sentence in respect of which the judgment was issued (in days) : **……**

as per (…) (give date on which calculation was made: dd-mm-yyy) **……**

2.3. Number of days to be deducted from total length of the sentence for other reasons than the one referred to under 2.2. (e.g. amnesties, pardons or clemencies etc. already granted with respect to the sentence): ……, as per (give date on which calculation was made: dd-mm-yyyy)……

2.4. Sentence Expiry Date in the issuing State:

☐ Not applicable, because the person is currently not in custody

☐ The person is currently in custody and the sentence, under the law of the issuing State, would be fully served by (give date: dd-mm-yyyy) [13]:

3. Type of the sentence:

☐ custodial sentence

☐ measure involving deprivation of liberty (please specify):

……

[13] "*Please insert here the date by which the sentence would be fully served (not taking into account the possibilities of any form of early and/or conditional release) if the person were to stay in the issuing State*."

(l) Information related to early or conditional release:

1. Under the law of the issuing State the sentenced person is entitled to early or conditional release,

having served:

☐ half the sentence

☐ two-thirds of the sentence

☐ another portion of the sentence (please indicate) :

2. The issuing authority requests to be informed of

☐ The applicable provisions of the law of the executing State on early or conditional release of the sentenced person;

☐ The beginning and the end of the period of early or conditional release.

(m) Opinion of the person :

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

2. ☐ The person is in the issuing State and :

a. ☐ The person has requested the forwarding of the judgment and the certificate

☐ The person consented to the forwarding of the judgment and the certificate

☐ The person did not consent to the forwarding of the judgment and the certificate (state reasons given by the person):

b. ☐ Opinion of the sentenced person is attached.

☐ Opinion of the sentenced person has already been forwarded to the executing State on (give date: dd-mm-yyyy):

(n) Other circumstances relevant to the case (optional information) …….....

.....

.....

.....

.....

(o) Final information

The text of the judgment(s) is (are) attached to the certificate[14].

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

.....

.....

Name:

.....

Post held (title/grade):

.....

Date:

.....

Official stamp (if available)

[14] *The issuing authority must attach all judgments related to the case which are necessary to have all the information on the final sentence to be enforced. Any available translation of the judgment(s) may also be attached.*

NOTIFICATION OF THE SENTENCED PERSON

You are hereby notified of the decision of …… (competent authority of the issuing State) to forward the judgment of ……...(competent court of the issuing State) dated …….. (date of judgment) ……..(reference number; if available) to …….(executing State) for the purpose of its recognition and enforcement of the sentence imposed therein in accordance with the national law implementing Council Framework Decision (……/……/JHA) of (….)[15] on the application of the principle of mutual recognition of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, OJ …

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

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

_____

[15] OJ: please insert No and date of this Framework Decision.

The following Declaration of the Council is introduced in relation to the rehabilitation purpose of this Framework Decision:

Bearing in mind that the successful rehabilitation of the sentenced person in a State with which he or she has the closest links is the fundamental purpose of this Framework Decision, as indicated expressly in its Article 3 and confirmed in the Preamble thereof, and agreeing that the mutual trust between the Member States does not necessitate the introduction of the additional ground for refusal based on the inconsistence of the recognition of the judgment with the rehabilitation purpose, the Council underlines that this purpose should be a factor of primary importance for the issuing State each time the decision on the need of the forwarding of the judgment and the certificate to the executing state is being made.