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NOTE

from : Presidency
to : Committee of Permanent Representatives / Council

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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

A. INTRODUCTION

1. The above initiative for a Framework Decision on '*in absentia*' was presented on 11 January 2008 by SI/FR/CZ/SE/SK/UK/DE.

2. The initiative aims at enhancing the procedural rights of persons by providing a clear and consistent approach to the issue of recognition and execution of decisions rendered following a trial at which the person concerned did not appear in person. The initiative also aims at enhancing the application of the principle of "mutual recognition" in the field of cooperation on criminal matters within the European Union.
3. The Working Party on Cooperation in Criminal Matters discussed the text during meetings on 11 and 12 February, on 3 March and on 28 March 2008. CATS discussed the text on 2 April 2008. The JHA Counsellors discussed the text at several meetings in April 2008. COREPER examined the text at its meeting on 9 April 2008.
4. During their work, the instances of the Council took account of the observations submitted by the Secretariat of the Council of Europe (6706/08 COPEN 34).
5. In view of the progress reached in the examination of this file, the Presidency considers that the text as it currently stands in the Annex is ripe for reaching a general approach thereon. At the meeting of COREPER on 9 April 2008, most delegations expressed support for achieving such a general approach at the JHA Council meeting on 18 April 2008.
6. The Presidency considers that the recitals form part of the general approach, it being understood that small drafting refinements could be made after the general approach being reached, in the light also of the opinion of the European Parliament ¹.
7. In line with past practice, the Presidency suggests to examine the certificates after the general approach has been reached. The Presidency confirms that subsequent to reaching such general approach, 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 to align the text of the certificates as much as possible with the text of the Articles.

¹ Opinion scheduled to be delivered on 19-22 May 2008.

8. All delegations have for the time being a general scrutiny reservation on the text of the draft instrument. DK/FR/IE/NL/PL/SE/UK also have a Parliamentary scrutiny reserve.
9. The Presidency intends to finalise the discussion at the Council on 18 April 2008, subject to points 6 and 7 above. The text will afterwards be submitted for scrutiny to jurists-linguists.

B. COMPROMISE PACKAGE

The Presidency submits to COREPER/Council the following compromise package, which COREPER/Council is invited to examine and adopt as a package:

I) Article 2(2)(a)

This paragraph has been the most discussed item in the negotiations. The text that was agreed upon at an earlier stage by a large majority of delegations read as follows:

"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) *was summoned in person or by other means personally received official information of the scheduled date and place of the trial which resulted in the decision;*

and

(ii) *was informed that a decision may be handed down if he or she does not appear for the trial."*

DELETED however vowed objections to the use of the words 'in person' and 'personally' in point (i). **DELETED** referred in this context to the **DELETED** system of communicating information to **DELETED**, under which - said in a simplified way - the person concerned is obliged to provide an address at which he/she is supposed to receive all information relating to the proceedings that is sent to that address.

Subsequently, the Presidency presented a new text for point (i) in COPEN 65. This text, which has been edited on minor points in order to clarify the wording, read as follows:

(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;

While various Member States stated that this text was the bottom line of what they could accept, **DELETED** expressed that they still had difficulties with this wording.

In order to accommodate the concerns of these delegations, the Presidency has inserted a new recital 6a in the text, clarifying how the requirement to the 'awareness of the trial' can be fulfilled.

The Presidency invites COREPER/Council to confirm the text of Article 2(2)(a) in combination with recital 6a, taking into account the following considerations:

- *the objective of this Framework Decision is not to approximate the legal systems of the Member States, but rather to define those situations where the competent authorities of the Member States should recognise and execute a decision taken in the absence of the person at the trial, in full trust that the rights of defence of the person have been protected;*

- *the conditions under paragraph a), b), c) and d) are alternative, as explained in recital 5a. Therefore paragraph a) is only one of the conditions of which fulfilment can lead to a decision which should be recognised and executed in other Member States. If paragraph a) does not apply, there is still the possibility that recognition and execution in another Member States should be carried out on the basis of paragraph b) (the person was defended by a legal counsellor) and/or paragraph c) and d) (there is a possibility of a retrial or appeal);*
- *paragraph a), just like paragraphs b), c) and d), must be read in the light of the heading, which refers to "further procedural requirements defined in the national law of the issuing State". Hence, the Member States have the opportunity to set their own procedural requirements with a view to unequivocally establishing that the person concerned was aware of the trial and that he has actually received official information of the scheduled date and place of the trial.*

II) Legal counsellor/mandate: Article 2(2)(b)

A new Article 2(2) under b) regarding the Framework Decision on the European arrest warrant, and similar provisions in Articles 3, 4, 5 and 6 regarding the other Framework Decisions, have been inserted in the text. These provisions, which should be read together with recital 8, state that the recognition and execution of a decision, which was rendered following a trial at which the person concerned did not appear in person, may not be refused where the person concerned, being aware of the scheduled trial, has been defended at the trial by a legal counsellor to whom he/she had given a mandate to do so.

In the light of the discussions, the Presidency suggests that the current text, with the inclusion of the word 'mandate', is a reasonable compromise which safeguards the rights of defence.

III) Right to a retrial: Article 2(2) (d)

DELETED has argued that this Article should notably be applicable where the person voluntarily has sought to evade justice and therefore could not yet be served with the decision, but will be served with the decision after surrender.

*The Presidency considers that with a minor modification of the article the objective of the **DELETED** delegation could be met. A new recital 9 (a) further clarifies this issue.*

IV) Reserve by **DELETED**: Article 1(2)

In view of the reserve by **DELETED** (footnote 13 in COPEN 65), the Presidency, in liaison with **DELETED**, proposed additional wording in Article 1(2) (*‘including the right of defence of persons subject to criminal proceedings’*).

The Presidency suggests to accept this request, although one delegation still has a scrutiny reservation on this text.

V) Additional paragraph requested by **DELETED**: Article 7(2)(j)

At the request of **DELETED** a new point (j) is added in Article 7(2) of the Framework Decision on financial penalties which is based on Article 7(g)(ii) of the existing version of this Framework Decision and which reads as follows :

“(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.”

This new point (j) is only a confirmation of the current legal regime.

*The Presidency considers that the **DELETED** point should be taken on board, although one delegation still has a scrutiny reservation in this regard.*

VI) Other issues

Following comments by delegations, the Presidency has added a new recital 9a, has added additional wording in recital 10, and has added a new recital 11.

The Presidency considers that these texts should be acceptable to delegations.

C. CONCLUSION

COREPER/Council is invited to agree to the above package and reach a general approach on the text, subject to further parliamentary scrutiny in some Member States and subject to the opinion of the European Parliament, which will be examined as soon as possible.

(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 ²

² All delegations have for the time being a general scrutiny reservation on the text of the draft instrument.

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 ³,

Having regard to the opinion of the European Parliament ⁴,

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 (ECHR) 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.

³ OJ C ...

⁴ 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 ⁵, 2006/783/JHA ⁶, 2008/.../JHA ⁷ and 2008/.../JHA ⁸ allow the executing authority to refuse the execution of such judgments. Framework Decision 2002/584/JHA ⁹ 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.

⁵ OJ L 76, 22.3.2005, p. 16.

⁶ OJ L 328, 24.11.2006, p. 59.

⁷ OJ L (FD Transfer of sentenced persons)

⁸ OJ L (FD Probation)

⁹ OJ L 190, 18.7.2002, p. 1.

- (5a) This Framework Decision sets 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.
- (6) 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 the latter was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or if the person concerned 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 this person 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 or her to participate in the trial and to effectively exercise his/her right of defence.
- (6a) 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 ECHR. 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 may be ensured when the competent authority, the person being present before it, informs him/her in person and in writing of the ongoing criminal proceedings against him/her, of his/her legal obligation to indicate an address for the purpose of being summoned and to inform the competent authority of any change of or absence from that address, and of the fact that a decision may be handed down if he or she does not appear for the trial. The violation by the person of his or her legally notified obligations may result in continuation of the proceedings without he/she being present, provided that he/she was summoned, with indication of the scheduled date and place of the trial, at the address communicated by him or her to the competent authority.

- (7) The scheduled date of a trial may for practical reasons initially be expressed as several possible dates within a short period of time.
- (8) 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.
- (9) 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 an 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.
- (9a) 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.

- (10) 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 ensure compatibility in rules applicable in the Member States.¹⁰
- (11) 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:

¹⁰ The addition follows a request from **DELETED**, supported by several delegations (see footnote 11 in 8074/08). The wording "to ensure compatibility in rules applicable in the Member States" is taken from Article 31(1)(c) TEU.

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 proceedings¹¹, 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.

¹¹ Scrutiny reservation by **DELETED** on this text, which was inserted further to a request by **DELETED**.

Article 2
Amendments to Framework Decision 2002/584/JHA

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

- 1) (deleted)
- 2) the following Article shall be inserted: ¹²

"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:

¹² **DELETED** has a reserve on this Article relating to a problem concerning persons trying to evade justice.

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)¹³ 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. "

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

¹³ **DELETED** has a reservation on point (d), awaiting consultations with practitioners.

4) in the Annex ("EUROPEAN ARREST WARRANT"), point (d) shall be replaced by the following:¹⁴

(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;

¹⁴ The certificates have not yet been examined. This examination will be carried out after a general approach has been reached on the Articles and the recitals. **DELETED** is of the opinion that when reaching a general approach on the Framework Decision, the Council should firstly note that the certificates are not part of the general approach and secondly declare that these certificates shall include all elements necessary to ensure that the requirements set by the Framework Decision will be fulfilled. **DELETED** has similar views.

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 served with the decision and

- 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 3¹⁵

Amendments to Framework Decision 2005/214/JHA

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

1) (deleted)

2) 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:

¹⁵ Comments made by delegations on Article 2 apply where relevant *mutatis mutandis* to this Article 3, and to Articles 4, 5 and 6.

(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 case¹⁶."

3) 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."

¹⁶ **DELETED** requested adding a new point on the waiving of the right to appear personally, preferably in Articles 2, 3, 4, 5 and 6, relating to all Framework Decisions. Many delegations could not accept this extension. Therefore, the Presidency is of the opinion that this Framework Decision should only maintain this principle for the Framework Decision on financial penalties. This new point (j) is therefore a simple confirmation of what is currently covered in Article 7(g)(ii) of the existing version of the Framework Decision on financial penalties.

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

3. 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:
 - ¹⁷ 3.1 the person was summoned in person or 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 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;

Time and place when and where the person was summoned or by other means actually received the official information:

.....

Describe how the person was informed:

.....
 - 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:

.....

¹⁷ This part of the certificate in Article 3, 4, 5 and 6 has to be aligned with the similar text finally to be agreed in respect of the European arrest warrant.

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) (deleted)

2) 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."

3) 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:
 - 3.1 the person was summoned in person or by other means actually received official information of the scheduled date and place of the trial which resulted in the confiscation order, 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;

Time and place when and where the person was summoned or by other means actually received the official notification:

.....

Describe how the person was informed:

.....
 - 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) (deleted)

2) 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."

3) 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"/> 3.1 the person was summoned in person or 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 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;</p> <p><i>Time and place when and where the person was summoned or by other means personally received the official information:</i></p> <p>.....</p> <p><i>Describe how the person was informed:</i></p> <p>.....</p>
--

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 [9(1)], point (h) shall be replaced by the following:

"(h) according to the certificate provided for in Article [6a], 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:

- 3.1 the person was summoned in person or 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 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;

Time and place when and where the person was summoned or by other means actually received the official information:

.....

Describe how the person was informed:

.....

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 ...^{*}.
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 ...⁺, 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.

^{*} 24 months after the date of entry into force of this Framework Decision.

⁺ 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
