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REPORT

from : Presidency
to : Committee of Permanent Representatives (COREPER)

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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

The above initiative, which was presented on 11 January 2008 by SI/FR/CZ/SE/SK/UK/DE, aims at enhancing the procedural rights of citizens 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.

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 meetings on 4 and 7 April 2008.

During their work, the Working Party and the JHA Counsellors took account of the observations submitted by the Secretariat of the Council of Europe (6706/08 COPEN 34).

From the outset of the discussions, delegations generally expressed a very positive approach on the initiative, subject to some reservations and subject to refinements to be made to the text ¹.

Delegations also generally agreed with the Presidency that discussions should proceed in a speedy way and that pragmatic solutions should be searched for so as to adopt the Framework Decision as soon as possible. It was however also observed that reaching a text of good quality was the most important objective.

In the course of the discussions, the text was modified on several points. The most important modifications are the following:

- The definition of "decision rendered in absentia", as well as all references to "in absentia", have been deleted, since this term has a specific meaning under national laws (and may vary between them).
- A new paragraph has been added (e.g. Article 2(2) under b), providing that the recognition and execution of a decision should not be refused where the person concerned has been defended at the trial by a legal counsellor. This provision has been further elaborated in recital 8.
- Specific references to national law as regards timeframes etc have been deleted. Instead, a general reference to further procedural requirements in national law has been inserted (see the heading of Articles 2, 3, 4, 5 and 6, as well as recital 4).

¹ See more in detail 6501/08 COPEN 32.

Although considerable progress has been made in achieving a text that is acceptable to all delegations, some issues are still outstanding. These issues are indicated by footnotes in the text in the Annex, which contains the state of play following the JHA Counsellors meeting on 7 April ². COREPER is invited to solve these issues, so as to allow the JHA Council on 18 April 2008 to reach a general approach on the text.

In line with past practice, the Presidency suggests to examine the certificates after the general approach has been reached. The Presidency confirms that after 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.

To be noted finally that all delegations have for the time being a general scrutiny reservation on the text of the draft instrument. Several delegations also have a Parliamentary scrutiny reserve.

Observations on some specific outstanding issues submitted to COREPER

1) Article 2(2) under a)

Article 2(2) under a), and similar provisions in Articles 3, 4, 5 and 6, provide 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:

² Following advice of an English editor, small editorial changes have been made in the text (e.g. 'in the trial' was changed into 'at the trial', 'appear personally' was changed into 'appear in person', etc).

a) *in due time* :

(i) *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

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

A very large majority of delegations can accept this text as elaborated during work in the Working Party and by the JHA Counsellors, and which is based on the idea that for recognition and execution of a decision on the basis of this point a), either the person must have been summoned in person, or it must be otherwise unequivocally established that the person concerned was aware of the trial.

However, IT and PT still have difficulties with the current text while PL has a positive approach. Reference is made to footnote 17, and to footnote 14 (reserve by IT), relating to problems concerning persons trying to evade justice.

The Presidency refers to the observations by the Secretariat of the Council of Europe (point 20):

'...it is for the national courts to show that the person concerned was aware of the date of the trial.'

The Presidency is of the opinion that the current text is appropriate and necessary in order to ensure that the person concerned was aware of the trial.

The Presidency observes however that 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.

In this context, it is the view of the Presidency that the word "further" (before "requirements") could be deleted if this would help IT/PL/PT to accept the present text.

COREPER is invited to confirm the present text of Article 2(2) under a), if appropriate without the word "further".

2) Legal counsellor/mandate

Following a suggestion by BE, 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 mandate³ to do so.

The Presidency considers that the text as it currently stands is in line with the observations by the Secretariat of the Council of Europe (point 29):

"the ... exception ... where the person concerned had deliberately chosen not to appear in court, but was represented by a duly instructed legal counsellor, appears to be compatible with ECHR requirements as long as legal assistance is practical and effective and not merely theoretical and illusory". (underlining added)

³ In an earlier stage, the word 'instructions' was used, but on request by several delegations this was later modified into 'mandate'.

However, some delegations have difficulties with the requirement relating to a 'mandate', see footnote 19. They suggested replacing this requirement with one stating that the person should have been defended by a legal counsellor and that the defence should have been 'effective'.

Other delegations opposed the deletion of the reference to 'mandate', since it would mean that recognition and execution of a decision could also be required if a person has been defended by a legal counsellor although the person concerned had not deliberately decided that he/she wanted to be defended by a legal counsellor and has not had any contact with the legal counsellor concerned. These other delegations stated that they would have severe problems in recognizing and executing a decision rendered in such a situation.

In this light, at the JHA Counsellors meetings various alternatives have been examined, such as:

- 'had *requested* a legal counsellor to defend him/her';
- 'had *authorized* a legal counsellor to defend him/her';
- 'had *been in contact* with a legal counsellor to defend him/her';
- 'had *deliberately chosen* to be defended by a legal counsellor'.

Although notably the first alternative suggestion of 'requested' obtained some support, none of the suggestions was felt to be a real improvement, notably since the cases of 'mandatory defence' of the person, in which a legal counsellor is appointed by the State without the person having asked to do so and without there being a proper relationship between the person concerned and the legal counsellor, would not be covered.

The Presidency wonders however if it is advisable to cover these cases and hence further modify or 'weaken' the text. In fact, the instrument is designed to enhance mutual cooperation in situations in which it is commonly felt appropriate that decisions rendered following a trial at which the person did not appear in person, should be recognisable and executable in other Member States. It appears that there is no common understanding among Member States that decisions rendered following a trial at which the person did not appear in person, but was defended on a mandatory basis by a legal counsellor, should be recognisable and executable in other Member States on the basis of such a defence.

This does not mean however that decisions rendered in such a situation can never be ‘exported’. In fact, paragraph b) is only one of the conditions of which fulfilment can lead to a decision which should be recognised and executed in other Member States. This has been clearly set out in recital 5a. There is still the possibility that recognition and execution in another Member State should be carried out on the basis of paragraph a) (since it was unequivocally established that the person was aware of the trial) and/or paragraph c) and d) (since there is a possibility of a retrial).

In these circumstances, the Presidency takes the view that paragraph b) should remain as it stands, with the reference to ‘mandate’, which provides the most accurate wording in legal terms.

Therefore, Article 2(2) under b), and similar provisions in Articles 3, 4, 5 and 6, provide as follows:

"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".

To be noted however that a modification has been made in recital 8, so as to clarify that the way of appointment of a legal counsellor is a "matter for national law".

In view of the above, the Presidency suggests that COREPER confirm the wording as it currently stands in the text, with the inclusion of the word ‘mandate’.

3) Reserve by Spain

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

ES is invited to withdraw its reserve in the light of this new wording.

4) Additional paragraph requested by Finland

Article 7(g)(ii), second part, of the Framework Decision on financial penalties provides that “*The competent authority in the executing State may also refuse to recognise and execute the decision if it is established that ... according to the certificate provided 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*”.

FI requested, through various wordings, an extension of this principle to other 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.

A new point (j) is therefore 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 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.

COREPER is invited to agree on this proposal.

(DRAFT)

COUNCIL FRAMEWORK DECISION 2008/.../JHA

of ...

enhancing the procedural rights of citizens,

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

and amending

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

and the surrender procedures between Member States,

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

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

**Framework Decision 2008/.../JHA on the application of
the principle of mutual recognition to judgments in criminal matters**

imposing custodial sentences or measures involving deprivation of liberty

for the purpose of their enforcement in the European Union, and

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

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the initiative from the Republic of Slovenia, the French Republic, the Czech Republic, the Kingdom of Sweden, the Slovak Republic, the United Kingdom and the Federal Republic of Germany ⁴,

Having regard to the opinion of the European Parliament ⁵,

Whereas:

- (1) The right for an accused person to be present during the trial is a fundamental right provided for in the United Nations' International Covenant on Civil and Political Rights (Article 14(3)(d)). The European Court of Human Rights has declared that it is included in the right to a fair trial provided for in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. It has also declared that this right of the accused person to be present during hearings 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.

⁴ OJ C ...

⁵ 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 ⁶, 2006/783/JHA ⁷, 2008/.../JHA ⁸ and 2008/.../JHA ⁹ allow the executing authority to refuse the execution of such judgments. Framework Decision 2002/584/JHA ¹⁰ 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 personally. 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.

⁶ OJ L 76, 22.3.2005, p. 16.

⁷ OJ L 328, 24.11.2006, p. 59.

⁸ OJ L (FD Transfer of sentenced persons)

⁹ OJ L (FD Probation)

¹⁰ 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 or by other means actually received official information of the scheduled date and place of the trial which resulted in this decision, in such a manner that it was unequivocally established that the person concerned 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.
- (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 the 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.
- (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 ¹¹,
(¹²)

HAS ADOPTED THIS FRAMEWORK DECISION:

¹¹ LU requested adding the following sentence: "*This Framework Decision is without prejudice to future instruments of the European Union designed to harmonize national legislation.*"

¹² AT suggested adding the following recital 11:
"The grounds for refusal are optional; however, the discretion of Member States for transposing these grounds into national law is governed by the objective of this Framework Decision to enhance the procedural rights of persons and by the requirements stemming from the rules on the right to a fair trial."

AT stated that if this proposed new recital is taken on board, it can lift its reservation on the use of the word "may" in the heading of Article 2(2), relating to the question whether the grounds for refusal should be mandatory or optional. Other delegations did not show a very warm approach to this request.

Article 1
Objective and scope

1. The objective of this Framework Decision is to enhance the procedural rights of persons subject to criminal proceedings and at the same time to facilitate judicial cooperation in criminal matters and in particular to improve mutual recognition of judicial decisions between Member States.
2. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty, [including the right of defence of persons subject to criminal proceedings,] and any obligations incumbent upon judicial authorities in this respect shall remain unaffected.
3. The scope of this Framework Decision is to establish common rules for the recognition and/or execution of judicial decisions in one Member State (the executing Member State) issued by another Member State (the issuing Member State) following proceedings where the person was not present, pursuant to the provisions of Article 5(1) of Framework Decision 2002/584/JHA, of Article 7(2)(g) of Framework Decision 2005/214/JHA, of Article 8(2)(e) of Framework Decision 2006/783/JHA, of Article 9(1)(f) of Framework Decision 2008/.../JHA and of Article XX of Framework Decision 2008/.../JHA.

Article 2¹³

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:¹⁴

"Article 4a

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

The executing judicial authority may¹⁵ 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 trial¹⁶ 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:

-
- ¹³ ES has a general reserve on this Article, observing that the conditions in Spanish law in respect of decisions, which are rendered following a trial during which the person did not appear personally, are very clear-cut and need to comply with strict requirements, including those by constitutional case-law. In order to address this issue, the Presidency, in liaison with ES, suggests to insert additional wording in Article 1(2), see there. ES can in principle accept this wording but is further scrutinising this issue with a view to withdrawing its reservation. Scrutiny reservation for NL on this point.
- ¹⁴ IT has a reserve on this Article relating to the problems concerning persons trying to evade justice, which under Italian law may result in decisions being rendered without the person having been informed of the trial, but which are nevertheless not being considered as decisions that are rendered following a trial during which the person did not appear personally.
- ¹⁵ AT suggested replacing "may" by "shall" (7846/08 COPEN 56) and converting the text into a mandatory ground for non-recognition. Although some delegations showed a positive approach, it was generally considered that it would be advisable to keep "may". See also the suggestion by AT for a new recital 11.
- ¹⁶ IT considered that the term "trial" was too specific and suggested reconsideration. All other delegations agreed to the terminology used.

a) in due time

(i) 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. ¹⁷

and

(ii) was informed that a decision may be handed down if he or she does not appear for the trial; ¹⁸

or

(b) being aware of the scheduled trial had given a mandate ¹⁹ 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

¹⁷ This text has been revised in the light of comments by some delegations to the previous wording, which read as follows: "*was summoned in person or by other means personally received official information*". IT and PT still have difficulties with this text, which however for some other delegations is the absolute bottom-line of what they can accept. PL has a positive approach.

¹⁸ PT submitted an additional point aa) which would read as follows: "*was summoned at the address communicated by him or herself to the competent authorities specifically for the purpose of being summoned in those proceedings and was informed that a decision may be handed down if he or she does not appear for the trial*". Several delegations had strong difficulties with this proposal.

¹⁹ Some delegations have difficulties with the requirement relating to a 'mandate'. They suggested replacing this requirement with the requirement that the person should be defended by a legal counsellor and that the defence should be 'effective'. Other delegations opposed the deletion of the reference to 'mandate', since it would mean that a person could be considered to have been defended by a legal counsellor although he/she had not deliberately decided that he/she wanted to be defended by a legal counsellor and has not had any contact with the legal counsellor concerned. These other delegations stated that they would have severe problems in recognizing a decision rendered in such a situation.

(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)²⁰ was not personally served with the decision²¹ 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;

²⁰ NL has a reservation on point (d), awaiting consultations with practitioners.

²¹ In order to clearly define the scope of application of point (d), AT suggested adding the following words: "*due to circumstances within his or her control*".

4) in the Annex ("EUROPEAN ARREST WARRANT"), point (d) shall be replaced by the following:²²

(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:
 - 3.1 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 personally 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:

.....

²² 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. DE 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. NL has similar views.

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 was not 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 3²³

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",²⁴

²³ Comments made by delegations on Article 2 apply where relevant *mutatis mutandis* to this Article 3, and to Articles 4, 5 and 6.

²⁴ AT suggested rewording this paragraph to align it on other amendments to this Framework Decision. The paragraph would read as follows :

"(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 legal counsellor who was either appointed by the person concerned or by the State of his/her right to contest the case and of the time limits for such a legal remedy". Other delegations opposed, stating that it was not the purpose of the present exercise to modify the provisions in respect of written procedures.

(b) the following points shall be added:

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

(i) in due time

- 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;

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 case²⁵."

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."

²⁵ FI requested adding a new point on the waving 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. If this addition is accepted, a consequential change will be made in the certificate.

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:
 - 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 personally 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 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

- 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;

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 personally 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

- 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;

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

- 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;

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 personally 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
