

# EUROPEAN PARLIAMENT

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## **REPORT**

on the initiative by 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  
(5598/2008 – C6-0075/2008 – 2008/0803(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Armando França

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission.)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the initiative by 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 (5598/2008 – C6-0075/2008 – 2008/0803(CNS))**

### **(Consultation procedure)**

*The European Parliament,*

- having regard to the initiative by 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 (5598/2008),
  - having regard to Article 34(2)(b) of the EU Treaty,
  - having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted Parliament (C6-0075/2008),
  - having regard to Rules 93 and 51 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Legal Affairs (A6-0285/2008),
1. Approves the initiative by 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 as amended;
  2. Calls on the Council to amend the text accordingly;
  3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
  4. Calls on the Council to consult Parliament again if it intends to amend the initiative by 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 substantially;
  5. Calls on the Council and the Commission, following the entry into force of the Treaty of Lisbon, to give priority to any future proposal to amend the Decision in accordance with

Declaration No 50 concerning Article 10 of the Protocol on transitional provisions to be annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community;

6. Is determined to examine any such future proposal by urgent procedure in accordance with the procedure referred to in paragraph 5 and in close cooperation with national parliaments;
7. Instructs its President to forward its position to the Council and the Commission, and the governments 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.

### Amendment 1

#### **Initiative by 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 – amending act**

##### **Title**

*Text proposed by 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*

*Amendment*

***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

***on strengthening citizens' rights, promoting the application of the principle of mutual recognition in respect of decisions rendered following a trial at which the person concerned did not appear in person***, 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, ***and Framework***

***Decision 2008/.../JHA on the recognition  
and supervision of suspended sentences,  
alternative sanctions and conditional  
sentences***

*Justification*

*The aim of the proposal is to promote application of the principle of mutual recognition by eliminating existing obstacles, mainly, different approaches towards "grounds for non-recognition". The fifth legislative act on probation should be added as it is also dealing with decisions rendered in absentia.*

**Amendment 2**

**Initiative by 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 – amending act  
Recital 1 a (new)**

*Text proposed by the Council*

*Amendment*

***(1a) It is necessary to strengthen mutual trust in the European area of freedom, security and justice in criminal matters by means of measures at European level designed to ensure greater harmonisation and mutual recognition of judgments in criminal matters and by adopting some European provisions and practices in criminal matters.***

*Justification*

*The amendment is based on the notion of promoting a body of European criminal law.*

### Amendment 3

**Initiative by 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 – amending act**  
**Recital 1 b (new)**

*Text proposed by 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*

*Amendment*

***(1b) Adequate procedural safeguards are a necessary precondition for the mutual recognition of judicial decisions in criminal matters. It is therefore important to adopt the framework decision on procedural rights in criminal proceedings as soon as possible.***

### Amendment 4

**Initiative by 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 – amending act**  
**Recital 4**

*Text proposed by 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*

*Amendment*

(4) It is therefore necessary to provide clear and common solutions which define the grounds for refusal and the discretion left to the executing authority.

(4) It is therefore necessary to provide clear and common solutions which define the grounds for refusal ***of the execution of the decision rendered following a trial at which the person concerned did not appear in person*** and the discretion left to the executing authority. ***The purpose of this Framework Decision is to define such common grounds to allow the executing authority to execute the decision despite the absence of the person at the trial. It is***



*not designed to regulate the applicable forms and methods, or the 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. By completing the relevant section of the European arrest warrant or of the relevant certificate under the other Framework Decisions, the issuing authority gives an assurance that the requirements have been or will be met, which should be sufficient for the purposes of the execution of the decision on the basis of the principle of mutual recognition.*

#### **Amendment 5**

**Initiative by 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 – amending act**  
**Recital 6 a (new)**

*Text proposed by 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*

*Amendment*

*(6a) The recognition and execution of a decision rendered following a trial at which the defendant did not appear in person should not be refused if, on the basis of the information provided by the issuing State, it is satisfactorily established that the defendant was summoned in person, or by other means actually received official information of the scheduled date and place of the trial. In this context it is understood that the person should have received such information in good time, i. e. sufficiently in advance to allow him or her to participate in the trial and to effectively exercise his/her right of defence. All information should be provided in a language which the defendant*

*understands.*

## **Amendment 6**

**Initiative by 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 – amending act  
Recital 5 a (new)**

*Text proposed by 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*

*Amendment*

***(5a) The recognition and execution of a decision 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 an explicit mandate to do so, thus ensuring that the legal assistance was practical and effective. In this context, it should be immaterial whether the legal counsellor was chosen, appointed and paid by the person concerned, or was appointed and paid by the State in accordance with its national law applicable to the rights of the defence, it being understood that the person concerned would have chosen to be represented by a legal counsellor instead of appearing him- or herself at the trial.***

## Amendment 7

**Initiative by 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 – amending act**

### Recital 6

*Text proposed by 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*

*Amendment*

(6) Common solutions on grounds for **refusal** in the relevant existing Framework Decisions should take into account the diversity of situations with regard to **informing the accused person of his right to a retrial**.

(6) Common solutions on 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 to an appeal. Such a retrial, which aims to safeguard the rights of the defence, is characterised by the following elements: the person concerned has the right to participate in the retrial; the merits of the case, including fresh evidence, will be (re)examined, and the proceedings may result in the original decision being quashed.**

### *Justification*

*In some Member States the solution given to these cases is addressed through the right to appeal, rather than the right to a retrial.*

## Amendment 8

**Initiative by 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 – amending act**

### Recital 7 a (new)

*Text proposed by the Council*

*Amendment*

**(7b) At a retrial following a conviction resulting from a trial at which the person concerned did not appear in person, the defendant should be in the same position**

*as someone standing trial for the first time. Therefore the person concerned should have the right to be present at the retrial, the merits of the case, including fresh evidence, should be (re)examined, the retrial could result in the original decision being quashed and the defendant may appeal against the new decision.*

*Justification*

*It is of paramount importance that, in a retrial following an in absentia conviction, the defendant remains in the same position as someone being surrendered to stand trial for the first time. Especially, there must be a right to appeal after a retrial, in accordance with Article 2 of Protocol No. 7 to the European Convention on Human Rights (ECHR) and Article 14(5) of the ICCPR.*

**Amendment 9**

**Initiative by 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 – amending act**  
**Article 1 – paragraph 2**

*Text proposed by the Council*

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, and any obligations incumbent upon judicial authorities in this respect shall remain unaffected.

*Amendment*

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 **on European Union**, and any obligations incumbent upon judicial authorities in this respect shall remain unaffected.

*Justification*

*It is better to specify which Treaty is applicable.*

## Amendment 10

**Initiative by 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 – amending act**  
**Article 1 – paragraph 3**

*Text proposed by 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*

*Amendment*

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, according to the provisions in Article 5(1) of Framework Decision 2002/584/JHA, in Article 7(2)(g) of Framework Decision 2005/214/JHA, in Article 8(2)(e) of Framework Decision 2006/783/JHA and Article 9(1)(f) of Framework Decision 2008/.../JHA.

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 **a trial** where the person was not present, according to the provisions in Article 5(1) of Framework Decision 2002/584/JHA, in Article 7(2)(g) of Framework Decision 2005/214/JHA, in Article 8(2)(e) of Framework Decision 2006/783/JHA, Article ... of Framework Decision 2008/.../JHA **and in Article ... of Framework Decision 2008/.../JHA.**

### *Justification*

*The fifth legislative act on probation should be added as it is also dealing with decisions rendered in absentia. The exact number of the relevant Article shall be added when the lawyers-linguists will finalise the Probation text in the Council.*

## Amendment 11

**Initiative by 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 – amending act**  
**Article 2 – point 1**  
Framework Decision 2002/584/JHA  
Article 1 – paragraph 4

*Text proposed by 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*

*Amendment*

**1) the following paragraph shall be added  
to Article 1:**

**deleted**

**"4. For the purpose of this Framework  
Decision, 'decision rendered in absentia'  
shall mean a custodial sentence or a  
detention order when the person did not  
personally appear in the proceedings  
resulting in that decision."**

## **Amendment 12**

**Initiative by 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 – amending act**

**Article 2 – point 2**

Framework Decision 2002/584/JHA

Article 4a – paragraph 1

*Text proposed by 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*

*Amendment*

*Article 4a*

*Decisions rendered **in absentia***

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 decision was rendered **in absentia**, unless the European arrest warrant states that the person:

*Article 4a*

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

**1.** 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 decision was rendered **following a trial at which the person concerned did not appear in person**, unless the European arrest warrant states that the person, **in accordance with the national law of the**

*issuing Member State:*

### **Amendment 13**

**Initiative by 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 – amending act**

**Article 2 – point 2**

Framework Decision 2002/584/JHA

Article 4a – paragraph 1 – point a

*Text proposed by 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*

*Amendment*

(a) was summoned in person or ***informed in accordance with the national law of the issuing Member State through a competent representative and in due time, of the scheduled date and place of the hearing which led to the decision rendered in absentia and informed about the fact that such a decision may be handed down in case the person does not appear for the trial;***

(a) ***in due time, and in a language which he/she understood,***

(i) ***either was directly summoned in person or by other means actually received official information about the scheduled date and place of that trial in such a manner that it was unequivocally established that he/she was aware of the trial,***

***and***

***(ii) was personally informed that the decision may be handed down if he/she did not appear for the trial;***  
***or***

### **Amendment 14**

**Initiative by 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 – amending act**

**Article 2 – point 2**

Framework Decision 2002/584/JHA

Article 4a – paragraph 1 – point a a (new)

*Text proposed by 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*

*Amendment*

***(aa) having been directly summoned in person or by other means having actually received official information about the scheduled date and place of the trial in such a manner that it was unequivocally established that he/she was aware of the trial, had given an explicit mandate to a legal counsellor who was chosen, appointed and paid by the person concerned or who was appointed and paid by the State in accordance with its national law applicable to the rights of the defence, and was indeed defended by that counsellor during the trial;***

## **Amendment 15**

**Initiative by 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 – amending act**

**Article 2 – point 2**

Framework Decision 2002/584/JHA

Article 4a – paragraph 1 – point b

*Text proposed by 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*

*Amendment*

(b) after being served with the decision ***rendered in absentia*** and being expressly informed about the right to a retrial and to ***be present*** at that trial:

(b) after being ***personally*** served with the decision and being expressly informed, ***in a language which he/she understood, about the right to a retrial or to an appeal\*, in which he/she would have the right to participate, the merits of the case, including fresh evidence, would be***



(i) expressly stated that he or she does not contest the decision ***rendered in absentia***;

or

(ii) did not request a retrial in the applicable timeframe which ***was of at least [...] days***;

***(re)examined and which could lead to the original decision being quashed:***

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

or

(ii) did not request a retrial ***or an appeal*** in the applicable timeframe, which ***shall be a minimum of 10 days and a maximum of 15 days***.

**(\*This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout (each time there is a reference to a retrial the expression "or an appeal" should be added.)**

## Amendment 16

**Initiative by 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 – amending act**

### Article 2 – point 2

Framework Decision 2002/584/JHA

Article 4a – paragraph 1 – point c

*Text proposed by 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*

*Amendment*

(c) was not personally served with the decision ***rendered in absentia*** but:

(i) will be served with it ***at the latest on the fifth day*** after the surrender and will be expressly informed about the right to a retrial and to ***be present*** at that trial;

(c) was not personally served with the decision but:

(i) will be ***personally*** served with it ***immediately and in any event not later than three days*** after the surrender and will be expressly informed ***in a language which he/she understands*** about the right to a retrial ***or an appeal, in which he/she will have the right to participate and which will allow the merits of the case, including fresh evidence, to be (re)examined and which may lead to the***

and

(ii) will have *at least [...]'* days to request a retrial.

*' Period to be provided.*

*original decision being quashed;*

and

(ii) will *be informed about the timeframe, which shall be a minimum of 10 days and a maximum of 15 days within which he/she must request such a retrial or appeal;*

## Amendment 17

**Initiative by 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 – amending act**

**Article 2 – point 2**

Framework Decision 2002/584/JHA

Article 4a – paragraph 1 a (new)

*Text proposed by 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*

*Amendment*

*1a. If a European arrest warrant is issued for the purpose of executing a custodial sentence or detention order under the conditions set out in paragraph (1)(c) and the person concerned has not previously received any official information about the existence of the criminal proceedings against him or her, that person, when he or she is informed about the content of the European arrest warrant, may request a copy of the judgment before being surrendered. Immediately after having been informed of that request, the issuing judicial authority shall provide a copy of the judgment via the executing judicial authority to the person who has made the request. If the judgment is rendered in a language which the person concerned does not understand, the issuing judicial*

*authority via the executing judicial authority shall provide an extract of the judgment in a language which the person concerned understands. The provision of the judgment or an extract of the judgment to the person concerned shall be for information purposes only; it shall not be construed as constituting formal service of the judgment nor shall it activate any time-limits applicable for requesting a retrial or appeal.*

## **Amendment 18**

**Initiative by 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 – amending act**

**Article 2 – point 4**

Framework Decision 2002/584/JHA

Annex – box d – points 1 and 2

*Text proposed by the Council*

*Amendment*

(d) Indicate if the *decision was rendered in absentia*:

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

1.  *No, it was not*

1.  *Yes, the person appeared in person at the trial resulting in the decision.*

2.  *Yes, it was. If you have answered yes, please confirm that:*

2.  *No, the person did not appear in person at the trial resulting in the decision. If you answered “no” to this question, please indicate if:*

## **Amendment 19**

**Initiative by 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 – amending act**

**Article 2 – point 4**

Framework Decision 2002/584/JHA

Annex – box d – point 2.1

*Text proposed by 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*

*Amendment*

2.1 the person was summoned in person or **informed** in accordance with the national law of the issuing Member State **through a competent representative and** in due time, of the scheduled date and place of the **hearing** which led to the decision rendered *in absentia* and informed about the fact that such a decision may be handed down in case the person does not appear for the trial

2.1 the person was **directly** summoned in person or **by other means having actually received official information in due time, in a language which he /she understood,** in accordance with the national law of the issuing Member State , about the scheduled date and place of the **trial** which led to the decision **in such a manner that it was unequivocally established that the person concerned was aware of** the scheduled date and place of the trial and **was personally** informed that a decision may be handed down if he/she *did* not appear for the trial

*Time and place when and where the person was summoned or otherwise informed:*

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

.....

.....

**Language in which the information was delivered:**

*Describe how the person was informed:*

*Describe how the person was informed:*

.....

.....

**Amendment 20**

**Initiative by 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 – amending act**

**Article 2 – point 4**

Framework Decision 2002/584/JHA

Annex – box d – point 2.1 a (new)

*Text proposed by 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*

*Amendment*

***2.1a having been directly summoned in person or by other means having actually received official information about the scheduled date and place of the trial in such a manner that it was unequivocally established that he/she was aware of the trial, had given an explicit mandate to a legal counsellor who was chosen, appointed and paid by the person concerned or who was appointed and paid by the State in accordance with its national law applicable to the rights of the defence, and was indeed defended by that counsellor during the trial;***

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

.....

## **Amendment 21**

**Initiative by 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 – amending act**

**Article 2 – point 4**

Framework Decision 2002/584/JHA

Annex – box d – point 2.2

*Text proposed by 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*

*Amendment*

2.2 the person, after being served with the decision ***rendered in absentia***, expressly stated that he or she does not contest the

2.2 the person, after being personally served with the decision ***and being expressly informed, in a language which***

decision *rendered in absentia*

*he/she understood, about the right to a retrial or to an appeal, in which he/she would have the right to participate, the merits of the case, including fresh evidence, would be (re)examined and which could lead to the original decision being quashed,* expressly stated that he or she *did* not contest the decision

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

*Describe when the person was served with the decision, how he/she was informed about his/her right to a retrial or an appeal and when and how the person expressly stated that he or she did not contest the decision:*

.....

.....

## Amendment 22

**Initiative by 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 – amending act**

**Article 2 – point 4**

Framework Decision 2002/584/JHA

Annex – box d – point 2.3.1 - indent 1

*Text proposed by 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*

*Amendment*

– the person was expressly informed about the right to a retrial *and to be present at that trial;* and

– the person was expressly informed, *in a language which he/she understood,* about the right to a retrial *or an appeal, in which he/she would have the right to participate, the merits of the case, including fresh evidence, would be (re)examined and which could lead to the original decision being quashed,* and

## Amendment 23

**Initiative by 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 – amending act**

### **Article 2 – point 4**

Framework Decision 2002/584/JHA

Annex – box d – point 2.3.2

*Text proposed by 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*

*Amendment*

2.3.2 the person was not served with the decision ***rendered in absentia***, and

– the person will be served with ***the*** decision ***rendered in absentia*** within ... days after the surrender; and

– when served with ***the*** decision ***rendered in absentia***, the person will be expressly informed about the right to a retrial and to ***be present*** at that trial; and

– after being served with ***the*** decision ***rendered in absentia***, the person will have ... days to request a retrial.

2.3.2. the person was not served with the decision and

– the person will be ***personally*** served with ***this*** decision within ... days after the surrender; and

– when served with ***this*** decision, the person will be expressly informed, ***in a language which he/she understands***, about the right to a retrial ***or an appeal, in which he/she will have the right to participate, which will allow the merits of the case, including fresh evidence, to be (re)examined and which may lead to the original decision being quashed;*** and

– after being served with ***this*** decision, the person ***had*** ..... days to request a retrial ***or appeal and he/she did not make any such request it during that period.***

***If you ticked box 2.3.2, please confirm***  
 ***that if the person concerned, when being informed in the executing State about the content of the European arrest warrant, requested to a copy of the judgment before being surrendered, and was provided with a copy of the judgment or with an extract of the judgment in a language which he/she understood ..... days after the request was made via the executing judicial authority.***

## Amendment 24

**Initiative by 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 – amending act**

### Article 3 – point 1

Framework Decision 2005/214/JHA

Article 1 – point e

*Text proposed by 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*

*Amendment*

**1) the following point shall be added to  
Article 1:**

**deleted**

**"(e) 'Decision rendered in absentia' shall  
mean a decision as defined in (a) when  
the person did not personally appear in  
the proceedings resulting in that  
decision.";**

## Amendment 25

**Initiative by 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 – amending act**

### Article 3 – point 2 - point b

Framework Decision 2005/214/JHA

Article 7 – paragraph 2 – point i - introductory part

*Text proposed by 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*

*Amendment*

(i) according to the certificate provided for  
in Article 4, the decision was rendered **in  
absentia**, unless the certificate states that

(i) according to the certificate provided for  
in Article 4, the decision was rendered  
**following a trial at which the person  
concerned did not appear in person,**



the person:

unless the certificate states that the person,  
*in accordance with the national law of the  
issuing Member State:*

## Amendment 26

**Initiative by 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 – amending act**

**Article 3 – point 2 - point b**

Framework Decision 2005/214/JHA

Article 7 – paragraph 2 – point i – point i

*Text proposed by 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*

*Amendment*

(i) was summoned in person or *informed in accordance with the national law of the issuing State through a competent representative and in due time, of the scheduled date and place of the hearing which led to the decision rendered in absentia*

and

informed *about the fact that such a decision may be handed down in case the person does not appear for the trial;*

or

(i) *in due time, and in a language which he/she understood,*

(a) either was *directly* summoned in person or *by other means actually received official information about* the scheduled date and place of *that trial in such a manner that it was unequivocally established that he/she was aware of the trial,*

and

(b) *was personally* informed *that the decision may be handed down if he/she did not appear for the trial;*

or

## Amendment 27

**Initiative by 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 – amending act**

**Article 3 – point 2**

Framework Decision 2005/214/JHA

Article 7 – paragraph 2 – point i – point ia (new)

*Text proposed by 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*

*Amendment*

*(ia) having been directly summoned in person or by other means having actually received official information about the scheduled date and place of the trial in such a manner that it was unequivocally established that he/she was aware of the trial, had given an explicit mandate to a legal counsellor who was chosen, appointed and paid by the person concerned or who was appointed and paid by the State in accordance with its national law applicable to the rights of the defence, and was indeed defended by that counsellor during the trial; or*

#### **Amendment 28**

**Initiative by 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 – amending act**

**Article 3 – point 2 - point b**

Framework Decision 2005/214/JHA

Article 7 – paragraph 2 – point i – point ii

*Text proposed by 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*

*Amendment*

*(ii) expressly stated to a competent authority that he or she does not contest the case; or*

*deleted*

#### **Amendment 29**

**Initiative by 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 – amending act**  
**Article 3 – point 2**  
Framework Decision 2005/214/JHA  
Article 7 – paragraph 2 – point i – point iii

*Text proposed by 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*

(iii) after being served with the decision  
***rendered in absentia*** and being expressly  
informed about the right to a retrial ***and to  
be present at that trial***:

– expressly stated that he or she does not  
contest the decision ***rendered in absentia***;

or

– did not request a retrial in the applicable  
timeframe which ***was of at least [...] days***;

*Amendment*

(iii) after being ***personally*** served with the  
decision and being expressly informed, ***in  
a language which he/she understood***,  
about the right to a retrial ***or to an appeal***,  
***in which he/she would have the right to  
participate, the merits of the case,  
including fresh evidence, would be  
(re)examined and which could lead to the  
original decision being quashed***:

– expressly stated that he or she *did* not  
contest the decision;

or

– did not request a retrial ***or an appeal*** in  
the applicable timeframe, which ***shall be a  
minimum of 10 days and a maximum of  
15 days***;

### **Amendment 30**

**Initiative by 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 – amending act**  
**Article 3 – point 2**  
Framework Decision 2005/214/JHA  
Article 7 – paragraph 2 – point i a (new)

*Text proposed by 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*

*Amendment*

*(ia) according to the certificate provided  
for in Article 4, the person did not appear  
in person, unless the certificate states that  
the person, having been expressly  
informed about the proceedings and the  
possibility of participating in person in the  
trial, expressly waived the right to an oral  
hearing and expressly indicated that he or  
she did not contest the case.*

### **Amendment 31**

**Initiative by 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 – amending act**

#### **Article 3 – point 3**

Framework Decision 2005/214/JHA

Annex – box h – point 3 - points 1 and 2

*Text proposed by 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*

*Amendment*

3. Indicate if the ***decision was rendered in  
absentia:***

1.  ***No, it was not***
2.  ***Yes, it was. If you have answered yes,  
please confirm that:***

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.***

***If you answered “no” to this question,  
please indicate if:***

**Amendment 32**

**Initiative by 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 – amending act**

**Article 3 – point 3**

Framework Decision 2005/214/JHA

Annex – box h – point 2.1

*Text proposed by 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*

*Amendment*

2.1 the person was summoned in person or **informed** in accordance with the national law of the issuing Member State **through a competent representative and** in due time, of the scheduled date and place of the **hearing** which led to the decision **rendered in absentia** and informed about the fact that such a decision may be handed down **in case the person** does not appear for the trial

2.1 the person was **directly** summoned in person or **by other means having actually received**, in accordance with the national law of the issuing Member State, **official information in due time and in a language which he/she understood** , , about the scheduled date and place of the **trial** which led to the decision **in such a manner that it was unequivocally established that the person concerned was aware of** the scheduled date and place of the trial and **was personally** informed that a decision may be handed down **if he/she did** not appear **at** the trial

*Time and place when and where the person was summoned or otherwise informed:*

-----

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

-----

***Language in which the information was delivered:***

-----

*Describe how the person was informed:*

-----

OR

*Describe how the person was informed:*

-----

or

**Amendment 33**

**Initiative by 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 – amending act**

**Article 3 – point 3**

Framework Decision 2005/214/JHA

Annex – box h – point 2.1 a (new)

*Text proposed by 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*

*Amendment*

*2.1a. having been directly summoned in person or by other means having actually received official information about the scheduled date and place of the trial in such a manner that it was unequivocally established that he/she was aware of the trial, had given an explicit mandate to a legal counsellor who was chosen, appointed and paid by the person concerned or who was appointed and paid by the State in accordance with its national law applicable to the rights of the defence, and was indeed defended by that counsellor during the trial;  
Provide information on how this condition has been met:*

.....

**OR**

**Amendment 34**

**Initiative by 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 – amending act**

**Article 3 – point 3**

Framework Decision 2005/214/JHA

Annex – box h – point 2.2

*Text proposed by 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*

*Amendment*

2.2 the person, before or after being served with the decision **rendered in absentia**, expressly stated that he or she does not contest the decision **rendered in absentia**.

2.2 the person, before or after being personally served with the decision **and being expressly informed, in a language which he/she understood, about the right to a retrial or to an appeal, in which he/she would have the right to participate, the merits of the case, including fresh evidence, would be (re)examined and which could lead to the original decision being quashed**, expressly stated that he or she *did* not contest the decision.

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

*Describe when the person was served with the decision, how he/she was informed about his/her right to a retrial or to an appeal and when and how the person expressly stated that he or she did not contest the decision:*

.....  
OR

.....  
OR

### **Amendment 35**

**Initiative by 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 – amending act**

#### **Article 3 – point 3**

Framework Decision 2005/214/JHA

Annex – box h – point 2.3

*Text proposed by 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*

*Amendment*

2.3 the person was served with the decision **rendered in absentia** on ..... (day/month/year) and was entitled to a retrial in the issuing State

2.3 the person was **personally** served with the decision **following a trial at which the person concerned did not appear in person** on ..... (day/month/year) and

under the following conditions:

– the person was expressly informed about the right to a retrial and to be present at that trial; and

– after being informed of this right, the person had .... days to request a retrial and he or she did not request it during this period.

was entitled to a retrial *or to an appeal* in the issuing State under the following conditions:

- the person was expressly informed, *in a language which he/she understood*, about the right to a retrial *or to an appeal, in which he/she would have the right to participate, the merits of the case, including fresh evidence, would be (re)examined and which could lead to the original decision being quashed*, and

- after being informed of this right, the person had ..... days to request a retrial *or an appeal* and he or she did not request it during *that* period.

**OR**

**Amendment 36**

**Initiative by 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 – amending act**

**Article 3 – point 3**

Framework Decision 2005/214/JHA

Annex – box h – point 2.3 a (new)

*Text proposed by 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*

*Amendment*

***2.3a the person, having been expressly informed about the proceedings and the possibility of participating in person in the trial, expressly waived the right to an oral hearing and expressly indicated that he or she did not contest the case.***

***Describe when and how the person waived the right to an oral hearing and indicated that he or she did not contest the case:***

.....



### Amendment 37

**Initiative by 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 – amending act**

**Article 4 – point 1**

Framework Decision 2006/783/JHA

Article 2 – point i

*Text proposed by 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*

*Amendment*

**1) the following point shall be added to  
Article 2:**

**deleted**

**"(i) 'Decision rendered in absentia' shall  
mean a confiscation order as defined  
in (c) when the person did not personally  
appear in the proceedings resulting in  
that decision.";**

### Amendment 38

**Initiative by 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 – amending act**

**Article 4 – point 2**

Framework Decision 2006/783/JHA

Article 8 – paragraph 2 – point e – introductory part

*Text proposed by 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*

*Amendment*

(e) according to the certificate provided for  
in Article 4(2), the decision was rendered  
***in absentia***, unless the certificate states that  
the person:

(e) according to the certificate provided for  
in Article 4(2), the decision was rendered  
***following a trial at which the person  
concerned did not appear in person,***

unless the certificate states that the person,  
***in accordance with the national law of the  
issuing Member State:***

### **Amendment 39**

**Initiative by 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 – amending act**

#### **Article 4 – point 2**

Framework Decision 2006/783/JHA

Article 8 – paragraph 2 – point e – point i

*Text proposed by 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*

*Amendment*

(i) was summoned in person or ***informed in accordance with the national law of the issuing State through a competent representative and in due time, of the scheduled date and place of the hearing which led to the confiscation order rendered in absentia***

and

informed ***about the fact that such a confiscation order may be handed down in case the person*** does not appear for the trial;

or

(i) ***in due time, and in a language which he/she understood,***

***(a) either was directly*** summoned in person or ***by other means actually received official information about the scheduled date and place of that trial in such a manner that it was unequivocally established that he/she was aware of the trial,***

and

***(b) was personally informed that a confiscation order may be handed down if he/she did not appear at the trial;***

or

## Amendment 40

**Initiative by 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 – amending act**

**Article 4 – point 2**

Framework Decision 2006/783/JHA

Article 8 – paragraph 2 – point e – point i a (new)

*Text proposed by 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*

*Amendment*

*(ia) having been directly summoned in person or by other means having actually received official information about the scheduled date and place of the trial in such a manner that it was unequivocally established that he/she was aware of the trial, had given an explicit mandate to a legal counsellor who was chosen, appointed and paid by the person concerned or who was appointed and paid by the State in accordance with its national law applicable to the rights of the defence, and was indeed defended by that counsellor during the trial;*

*or*

## Amendment 41

**Initiative by 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 – amending act**

**Article 4 – point 2**

Framework Decision 2006/783/JHA

Article 8 – paragraph 2 – point e – point ii

*Text proposed by 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*

*Amendment*

(ii) after being served with the confiscation order **rendered in absentia** and being expressly informed about the right to a retrial **and to be present at that trial**:

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

or

– did not request a retrial in the applicable timeframe which **was of at least [...] days**;

(ii) after being **personally** served with the confiscation order and being expressly informed, **in a language which he/she understood**, about the right to a retrial **or to an appeal, in which he/she would have the right to participate, the merits of the case, including fresh evidence, would be (re)examined and which could lead to the original decision being quashed**:

– expressly stated that he or she *did* not contest the confiscation order;

or

– did not request a retrial **or an appeal** in the applicable timeframe, which **shall be a minimum of 10 days and a maximum of 15 days**.

## **Amendment 42**

**Initiative by 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 – amending act**

**Article 4 – point 3**

Framework Decision 2006/783/JHA

Annex – box j – points 1 and 2

*Text proposed by 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*

*Amendment*

(j) Indicate if the **decision was rendered in absentia**:

1.  **No, it was not**

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

1.  **Yes, the person appeared in person at**

2.  *Yes, it was. If you have answered yes, please confirm that:*

*the trial resulting in the confiscation order.*

2.  *No, the person did not appear in person at the trial resulting in the confiscation order.*

*If you answered “no” to this question, please indicate if:*

**Amendment 43**

**Initiative by 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 – amending act**

**Article 4 – point 3**

Framework Decision 2006/783/JHA

Annex – box j – point 2.1

*Text proposed by 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*

*Amendment*

2.1 the person was summoned in person or ***informed*** in accordance with the national law of the issuing Member State ***through a competent representative and*** in due time, of the scheduled date and place of the ***hearing*** which led to the ***decision rendered in absentia*** and informed about the fact that such a decision may be handed down ***in case the person*** does not appear for the trial

2.1 the person was ***directly*** summoned in person or ***by other means actually received official information in due time***, in accordance with the national law of the issuing Member State, ***and in a language which he/she understood***, about the scheduled date and place of the ***trial*** which led to the ***confiscation order, in such a manner that it was unequivocally established that the person concerned was aware of*** the scheduled date and place of the trial and ***was personally*** informed that a decision may be handed down ***down if he/she did*** not appear at the trial

*Time and place when and where the person was summoned or **otherwise informed**:*

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

.....

.....

***Language in which the information was delivered:***

.....

Describe how the person was informed:

Describe how the person was informed:

.....

.....

OR

OR

**Amendment 44**

**Initiative by 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 – amending act**

**Article 4 – point 3**

Framework Decision 2006/783/JHA

Annex – box j – point 2.1 a (new)

*Text proposed by 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*

*Amendment*

***2.1a having been directly summoned in person or by other means having actually received official information about the scheduled date and place of the trial in such a manner that it was unequivocally established that he/she was aware of the trial, had given an explicit mandate to a legal counsellor who was chosen, appointed and paid by the person concerned or who was appointed and paid by the State in accordance with its national law applicable to the rights of the defence, and was indeed defended by that counsellor during the trial;***

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

.....

**OR**

**Amendment 45**

**Initiative by 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 – amending act**

**Article 4 – point 3**

Framework Decision 2006/783/JHA

Annex – box j – point 2.2

*Text proposed by 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*

*Amendment*

2.2 the person, after being served with the **decision rendered in absentia**, expressly stated that he or she does not contest **the decision rendered in absentia**.

2.2 the person, after being **personally** served with the **confiscation order and being expressly informed, in a language which he/she understood, about the right to a retrial or to an appeal, in which he/she would have the right to participate, the merits of the case, including fresh evidence, would be (re)examined and which could lead to the original decision being quashed**, expressly stated that he or she **did** not contest **the order**.

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

*Describe when the person was served with the **decision**, how he/she was informed about his/her right to a retrial or to an appeal and when and how the person expressly stated that he or she did not contest the **confiscation order**:*

.....  
OR

.....  
OR

**Amendment 46**

**Initiative by 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 – amending act**

**Article 4 – point 3**

Framework Decision 2006/783/JHA

Annex – box j – point 2.3

*Text proposed by 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*

*Amendment*

□ 2.3 the person was served with the **decision rendered in absentia** on ..... (day/month/year) and was entitled to a retrial in the issuing State under the following conditions:

– the person was expressly informed about the right to a retrial and to be present at that trial; and

– after being informed of this right, the person had .... days to request a retrial and he or she did not request it during this period.

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

- the person was expressly informed, **in a language which he/she understood**, about the right to a retrial **or to an appeal, in which he/she would have the right to participate, the merits of the case, including fresh evidence, would be (re)examined and which could lead to the original decision being quashed**, and

- after being informed of *that* right, the person had ..... days to request a retrial **or an appeal** and he or she did not request it during *that* period.

#### **Amendment 47**

**Initiative by 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 – amending act**

**Article 5 – point 1**

Framework Decision 2008/.../JHA

Article 1 – point e

*Text proposed by 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*

*Amendment*

**1) the following point shall be added to Article 1:**

**deleted**

**(e) "Decision rendered in absentia" shall mean a decision as defined in (a) when**



*the person did not personally appear in the proceedings resulting in that decision."*

#### **Amendment 48**

**Initiative by 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 – amending act**

**Article 5 – point 2**

Framework Decision 2008/.../JHA

Article 9 – paragraph 1 – point f

*Text proposed by 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*

*Amendment*

(f) according to the certificate provided for in Article 4, the decision was rendered *in absentia*, unless the certificate states that the person:

(f) according to the certificate provided for in Article 4, the decision was rendered *following a trial at which the person concerned did not appear in person*, unless the certificate states that the person, *in accordance with the national law of the issuing Member State*:

#### **Amendment 49**

**Initiative by 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 – amending act**

**Article 5 – point 2**

Framework Decision 2008/.../JHA

Article 9 – paragraph 1 – point f – point i

*Text proposed by 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*

*Amendment*

(i) was summoned in person or **informed in accordance with the national law of the issuing State through a competent representative and in due time, of the scheduled date and place of the hearing which led to the decision rendered in absentia**  
and  
informed **about the fact that such a decision may be handed down in case the person** does not appear for the trial;  
or

(i) **in due time, and in a language which he/she understood,**  
(a) **either** was **directly** summoned in person or **by other means actually received official information about** the scheduled date and place of **that trial in such a manner that it was unequivocally established that he/she was aware of the trial,**  
and  
(b) **was personally** informed **that a** decision may be handed down **if he/she did** not appear for the trial;  
or

#### **Amendment 50**

**Initiative by 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 – amending act**

#### **Article 5 – point 2**

Framework Decision 2008/.../JHA

Article 9 – paragraph 1 – point f – point i a (new)

*Text proposed by 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*

*Amendment*

(ia) **having been directly summoned in person or by other means having actually received official information about the scheduled date and place of the trial in such a manner that it was unequivocally established that he/she was aware of the trial , had given an explicit mandate to a legal counsellor who was chosen,**

*appointed and paid by the person concerned or who was appointed and paid by the State in accordance with its national law applicable to the rights of the defence, and was indeed defended by that counsellor during the trial;*

*or*

## **Amendment 51**

**Initiative by 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 – amending act**

**Article 5 – point 2**

Framework Decision 2008/.../JHA

Article 9 – paragraph 1 – point f – point ii

*Text proposed by 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*

*Amendment*

(ii) after being served with the decision ***rendered in absentia*** and being expressly informed about the right to a retrial ***and to be present at that trial***:

– expressly stated that he or she does not contest the decision ***rendered in absentia***;

or

– did not request a retrial in the applicable timeframe which ***was of at least [...] days***;

(ii) after being ***personally*** served with the decision and being expressly informed, ***in a language which he/she understood, about the right to a retrial or to an appeal, in which he/she would have the right to participate, the merits of the case, including fresh evidence, would be (re)examined and which could lead to the original decision being quashed***:

– expressly stated that he or she ***did*** not contest the decision;

or

– did not request a retrial ***or an appeal*** in the applicable timeframe, which ***shall be a minimum of 10 days and a maximum of 15 days***.

## Amendment 52

**Initiative by 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 – amending act**

### Article 5 – point 3

Framework Decision 2008/.../JHA

Annex – box k – point 1 - points a and b

*Text proposed by 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*

*Amendment*

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

a.  **No, it was not**

b.  **Yes, it was. If you have answered yes, please confirm that:**

1. Indicate if the **person appeared in person at the trial resulting in the decision**:

a.  **Yes, the person appeared in person at the trial resulting in the decision.**

b.  **No, the person did not appear in person at the trial resulting in the decision.**

**If you answered “no” to this question, please indicate if:**

## Amendment 53

**Initiative by 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 – amending act**

### Article 5 – point 3

Framework Decision 2002/.../JHA

Annex – box k – point 1 - point b.1

*Text proposed by 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*

*Amendment*

b.1 the person was summoned in person or **informed** in accordance with the national law of the issuing Member State

b.1 the person was **directly** summoned in person or **by other means actually received official information in due time and in a**

*through a competent representative and* in due time, of the scheduled date and place of the *hearing* which led to the decision *rendered in absentia* and informed about the fact that such a decision may be handed down *in case the person* does not appear for the trial

*Time and place when and where the person was summoned or otherwise informed:*

.....

*Describe how the person was informed:*

.....

OR

*language which he/she understood*, in accordance with the national law of the issuing Member State, , about the scheduled date and place of the *trial* which led to the decision *in such a manner that it was unequivocally established that the person concerned was aware of* the scheduled date and place of the trial and *was personally* informed that a decision may be handed down *if he/she did* not appear *at* the trial

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

.....

*Language in which the information was delivered:*

.....

*Describe how the person was informed:*

.....

OR

#### **Amendment 54**

**Initiative by 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 – amending act**

**Article 5 – point 3**

Framework Decision 2008/.../JHA

Annex – box k – point 1 - point b.1 a (new)

*Text proposed by 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*

*Amendment*

*b.1a having been directly summoned in person or by other means having actually received official information about the scheduled date and place of the trial in*

*such a manner that it was unequivocally established that he/she was aware of the trial, had given an explicit mandate to a legal counsellor who was chosen, appointed and paid by the person concerned or who was appointed and paid by the State in accordance with its national law applicable to the rights of the defence, and was indeed defended by that counsellor during the trial;*

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

.....  
**OR**

### **Amendment 55**

**Initiative by 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 – amending act**

#### **Article 5 – point 3**

Framework Decision 2008/.../JHA

Annex – box k – point 1 - point b.2

*Text proposed by 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*

*Amendment*

b.2 the person, after being served with the decision **rendered in absentia**, expressly stated that he or she does not contest the decision **rendered in absentia**.

b.2 the person, after being personally served with the decision **and being expressly informed, in a language which he/she understood, about the right to a retrial or to an appeal, in which he/she would have the right to participate, the merits of the case, including fresh evidence, would be (re)examined and which could lead to the original decision being quashed**, expressly stated that he or she *did* not contest the decision.

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

*Describe when the person was served with the decision, how he/she was informed about his/her right to a retrial or to an appeal and when and how the person*

*expressly stated that he or she did not contest the decision:*

.....  
OR

.....  
OR

#### **Amendment 56**

**Initiative by 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 – amending act**

#### **Article 5 – point 3**

Framework Decision 2008/.../JHA

Annex – box k – point 1 - point b.3

*Text proposed by 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*

*Amendment*

b.3 the person was served with the decision ***rendered in absentia*** on ..... (day/month/year) and was entitled to a retrial in the issuing State under the following conditions:

– the person was expressly informed about the right to a retrial and to be present at that trial; and

– after being informed of this right, the person had .... days to request a retrial and he or she did not request it during this period.

b.3 the person was ***personally*** served with the decision ***following a trial at which the person concerned did not appear in person*** on ..... (day/month/year) and was entitled to a retrial ***or to an appeal*** in the issuing State under the following conditions:

- the person was expressly informed, ***in a language which he/she understood***, about the right to a retrial ***or to an appeal, in which he/she would have the right to participate, the merits of the case, including fresh evidence, would be (re)examined and which could lead to the original decision being quashed***, and

- after being informed of *that* right, the person had ..... days to request a retrial ***or an appeal*** and he or she did not ***make such a request during that*** period.

#### **Amendment 57**

**Initiative by 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 – amending act**  
**Article 5 a (new)**

*Text proposed by 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*

*Amendment*

**Article 5a**

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

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

***1) in Article ..., point .... shall be replaced  
by the following:***

***(h) according to the certificate provided  
for in Article ..., the decision was rendered  
following a trial at which the person  
concerned did not appear in person,  
unless the certificate states that the  
person, in accordance with the national  
law of the issuing Member State:***

***(a) in due time, and in a language which  
he/she understood,***

***- either was directly summoned in person  
or by other means actually received  
official information about the scheduled  
date and place of that trial in such a  
manner that it was unequivocally  
established that he/she was aware of the  
trial,***

***and***

***- was personally informed that a decision  
may be handed down if he/she did not  
appear at the trial;***

***or***

***(b) having been directly summoned in  
person or by other means having actually  
received official information about the  
scheduled date and place of the trial in  
such a manner that it was unequivocally  
established that he/she was aware of the***



*trial , had given an explicit mandate to a legal counsellor who was chosen, appointed and paid by the person concerned or who was appointed and paid by the State in accordance with its national law applicable to the rights of the defence, and was indeed defended by that counsellor during the trial; or*

*(c) after being personally served with the decision and being expressly informed, in a language which he/she understood, about the right to a retrial or to an appeal, in which he/she would have the right to participate, the merits of the case, including fresh evidence, would be (re)examined and which could lead to the original decision being quashed:*

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

*or*

*- did not request a retrial or an appeal in the applicable timeframe, which shall be a minimum of 10 days and a maximum of 15 days.*

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

*(h)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.*

*If you answered "no" to this question , please indicate if:*

*2.1 the person was directly summoned in person or in accordance with the national law of the issuing Member State by other means actually received official information, in due time and in a language which he/she understood, about the scheduled date and place of the trial which led to the decision in such a*

*manner that it was unequivocally established that the person concerned was aware of the scheduled date and place of the trial and was personally informed that a decision may be handed down if he/she did not appear for the trial*

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

.....

*Language in which the information was delivered:*

.....

*Describe how the person was informed:*

.....

**OR**

*2.2. having been directly summoned in person or by other means having actually received official information about the scheduled date and place of the trial in such a manner that it was unequivocally established that he/she was aware of the trial, had given an explicit mandate to a legal counsellor who was chosen, appointed and paid by the person concerned or who was appointed and paid by the State in accordance with its national law applicable to the rights of the defence, and was indeed defended by that counsellor during the trial;*

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

.....

**OR**

*2.3 the person, after being personally served with the decision and being expressly informed, in a language which he/she understood, about the right to a retrial or to an appeal, in which he/she would have the right to participate, the merits of the case, including fresh evidence, would be (re)examined and*

*which could lead to the original decision being quashed, expressly stated that he or she did not contest the decision.*

*Describe when the person was served with the decision, how he/she was informed about his/her right to a retrial or to an appeal and when and how the person expressly stated that he or she did not contest the decision:*

.....

**OR**

*2.4 the person was personally served with the decision following a trial at which the person concerned did not appear in person on ..... (day/month/year) and was entitled to a retrial or to an appeal in the issuing State under the following conditions:*

- the person was expressly informed, in a language which he/she understood, about the right to a retrial or to an appeal, in which he/she would have the right to participate, the merits of the case, including fresh evidence, would be (re)examined and which could lead to the original decision being quashed, and*
- after being informed of that right, the person had ..... days to request a retrial or an appeal and he or she did not make such a request during that period.*

## EXPLANATORY STATEMENT

The right to the trial is a fundamental right provided in the United Nation's International Covenant on Civil and Political Rights. However, this right is not absolute. Under certain conditions decisions could be rendered following a trial at which a person concerned did not appeared personally, so-called, judgments *in absentia*.

In application of the principle of mutual recognition, a judicial authority in one Member State shall enforce a decision issued by a judicial authority in another Member State. However, some exceptions exist and one of them is a situation when a judgment is rendered *in absentia*.

Currently there are several EU instruments (adopted or waiting adoption at the Council) which deal with the issue of judgments *in absentia*. However, they deal with this question differently and that is an obstacle for a mutual recognition of those judgments. This leads to a non-coherent system at EU level which is characterized by (unwanted) judicial uncertainty. To redress this situation, 7 Member States have come with a proposal to align the criteria for applying the grounds for non-recognition related to decisions rendered *in absentia* in the following four instruments:

- 1) Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States,
- 2) Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties,
- 3) Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders;
- 4) 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.

The rapporteur considers that there is a need to include also the fifth instrument in the scope of the proposal, namely, Framework Decision 2008/.../JHA on the recognition and supervision of suspended sentences, alternative sanctions and conditional sentences.

This alignment would result in more clear rules in respect to legal clarity and would facilitate judicial cooperation. Moreover, the proposal increases the protection of fundamental procedural rights, such as, the right to the defence and the right to the trial.

Despite the fact that the proposal aims at the alignment of grounds for non-recognition of judgments rendered *in absentia*, the objective of the proposal is not to harmonize the concepts, but rather to deal with the question of the different regimes horizontally. The proposal defines effects of judicial cooperation or common approach to situations when there is a judgment rendered *in absentia*.

## **Main points of the proposal**

### 1. Summoning of a person concerned

The proposal emphasizes the importance of the adequate way of summoning a person. It is crucial that a person concerned is informed in due time about the date and place of his/her trial. Only if those requirements are met, a decision rendered in absentia could be recognised and executed. In this way, it is ensured that the right to the trial is observed.

However, according to the rapporteur, it is important to take into account diversity of legal systems of Member States as they have their own specific forms of summoning a person. It is not only through the summoning of the defendant in person or otherwise personally that his or her rights are guaranteed. Member States have further procedural dispositions which guarantee that the person is summoned and, if there is any problem with the summoning procedure, the person can present that situation to courts.

### 2. Taking more account of a right to a retrial

The proposal emphasises the role of a retrial in safeguarding the appropriate observance of the right to a trial. If a person concerned was not present at the trial which led to a decision rendered in absentia, an executing Member State could execute such decision in a case if, *inter alia*, there is an appropriate right to a retrial in the issuing State. However, there is no 'retrial' in all Member States. According to the rapporteur, it should be clarified in the proposal that in those situations the new hearing could take form of an appeal (which should be explicitly mentioned in the text of the proposal).

### 3. Right to be represented by a legal counsellor

This is the right of a person concerned to decide to be represented by a legal counsellor. In those situations, if a legal counsellor represented a person at the trial based on a mandate of that person, the recognition and execution of such a decision should not be refused. However, according to the rapporteur, it should be clearly emphasised that the right to be represented by a legal counsellor includes counsellors appointed and paid by a State.

20.5.2008

## OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

on the 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  
(5598/2008 – C6-0075/2008 – 2008/0803(CNS))

Draftswoman: Neena Gill

### SHORT JUSTIFICATION

The rules laid down in the various Framework Decisions (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 and Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders) differ with regard the non-enforcement of judicial decisions given *in absentia* and the considerable discretion vested in the executing authorities,

This legislative proposal on the enforcement of decisions rendered *in absentia* is a significant legislative proposal, on one hand, for securing uniformity of the rules for the execution in a Member State of judicial decisions issued by another Member State following proceedings where the person was not present and, on the other hand, for providing clear and common solutions defining the grounds for refusal.

The main goal of the proposal is to limit grounds for refusal, which the draftsman welcomes. Nevertheless, she has made a number of suggestions designed to take into account the balance of interests between the fundamental rights and freedom of citizen against the need for effective judicial cooperation and mutual recognition.

## AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

### Amendment 1

#### Proposal for a decision – amending act Article 1 – paragraph 2

*Text proposed by the Council*

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, and any obligations incumbent upon judicial authorities in this respect shall remain unaffected.

*Amendment*

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 **on *European Union***, and any obligations incumbent upon judicial authorities in this respect shall remain unaffected.

*Justification*

*It is better to specify which Treaty is applicable.*

### Amendment 2

#### Proposal for a decision – amending act Article 2 – point 2 Framework Decision 2002/584/JHA Article 4 a – point a

*Text proposed by the Council*

(a) was summoned in person or ***informed in accordance with the national law of the issuing Member State through a competent representative and in due time, of the scheduled date and place of the hearing which led to the decision rendered in absentia and informed about the fact that such a decision may be handed down in case the person does not appear for the trial;***

*Amendment*

(a) was summoned in person or ***by service upon a competent representative appointed by the defendant and in contact with him;***

*Justification*

*The purpose is to avoid the danger of the service requirement being fulfilled by service on a court-appointed lawyer who may have no means of contacting the defendant.*

**Amendment 3**

**Proposal for a decision – amending act**

**Article 2 – point 2**

Framework Decision 2002/584/JHA

Article 4 a – point c – point i

*Text proposed by the Council*

*Amendment*

(i) will be served with it ***at the latest on the fifth day after*** the surrender and will be expressly informed about the right to a retrial and to be present at that trial;

(i) will be served with it ***during*** the surrender and will be expressly informed about the right to a retrial and to be present at that trial;

*Justification*

*It is fundamental to ensure the maximum protection of the person in accordance with the Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.*

**Amendment 4**

**Proposal for a decision – amending act**

**Article 2 – point 2**

Framework Decision 2002/584/JHA

Article 4 a – point c – point ii

*Text proposed by the Council*

*Amendment*

(ii) will have at least ***[...] days*** to request a retrial;

(ii) will have at least ***the period prescribed by national law or, if not prescribed by national law, a minimum of 10 days and a maximum of 15 days*** to request a retrial;

*Justification*

*It is fundamental to ensure the maximum protection to the person in accordance with the Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.*



## PROCEDURE

<b>Title</b>	Application of the principle of mutual recognition of judgments
<b>References</b>	05598/2008 – C6-0075/2008 – 2008/0803(CNS)
<b>Committee responsible</b>	LIBE
<b>Opinion by</b> Date announced in plenary	JURI 21.2.2008
<b>Drafts(wo)man</b> Date appointed	Neena Gill 5.3.2008
<b>Date adopted</b>	19.5.2008
<b>Result of final vote</b>	+: 11 -: 0 0: 0
<b>Members present for the final vote</b>	Carlo Casini, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Neena Gill, Klaus-Heiner Lehne, Katalin Lévai, Manuel Medina Ortega, Diana Wallis, Tadeusz Zwiefka
<b>Substitute(s) present for the final vote</b>	Jean-Paul Gauzès, Eva Lichtenberger

## PROCEDURE

<b>Title</b>	Application of the principle of mutual recognition of judgments
<b>References</b>	05598/2008 – C6-0075/2008 – 2008/0803(CNS)
<b>Date of consulting Parliament</b>	18.2.2008
<b>Committee responsible</b> Date announced in plenary	LIBE 21.2.2008
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	JURI 21.2.2008
<b>Rapporteur(s)</b> Date appointed	Armando França 27.2.2008
<b>Discussed in committee</b>	8.4.2008                      24.6.2008
<b>Date adopted</b>	24.6.2008
<b>Result of final vote</b>	+:                      44 -:                      1 0:                      0
<b>Members present for the final vote</b>	Alexander Alvaro, Emine Bozkurt, Philip Bradbourn, Mihael Brejc, Kathalijne Maria Buitenweg, Michael Cashman, Giusto Catania, Jean-Marie Cavada, Carlos Coelho, Esther De Lange, Panayiotis Demetriou, Gérard Deprez, Agustín Díaz de Mera García Consuegra, Armando França, Urszula Gacek, Kinga Gál, Patrick Gaubert, Roland Gewalt, Jeanine Hennis-Plasschaert, Lívia Járóka, Ewa Klant, Magda Kósáné Kovács, Stavros Lambrinidis, Henrik Lax, Roselyne Lefrançois, Baroness Sarah Ludford, Claude Moraes, Javier Moreno Sánchez, Rareș-Lucian Niculescu, Martine Roure, Inger Segelström, Csaba Sógor, Vladimir Urutchev, Ioannis Varvitsiotis, Manfred Weber, Renate Weber, Tatjana Ždanoka
<b>Substitute(s) present for the final vote</b>	Edit Bauer, Evelyne Gebhardt, Ignasi Guardans Cambó, Sophia in 't Veld, Ona Juknevičienė, Sylvia-Yvonne Kaufmann, Nicolae Vlad Popa, Johannes Voggenhuber