

## III

*(Acts adopted under the EU Treaty)*

## ACTS ADOPTED UNDER TITLE VI OF THE EU TREATY

## COUNCIL FRAMEWORK DECISION 2009/299/JHA

of 26 February 2009

**amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial**

THE COUNCIL OF THE EUROPEAN UNION,

concerned did not appear in person. This diversity could complicate the work of the practitioner and hamper judicial cooperation.

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

Having regard to the initiative of the Republic of Slovenia, the French Republic, the Czech Republic, the Kingdom of Sweden, the Slovak Republic, the United Kingdom of Great Britain and Northern Ireland and the Federal Republic of Germany <sup>(1)</sup>,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The right of an accused person to appear in person at the trial is included in the right to a fair trial provided for in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights. The Court has also declared that the right of the accused person to appear in person at the trial is not absolute and that under certain conditions the accused person may, of his or her own free will, expressly or tacitly but unequivocally, waive that right.

(2) The various Framework Decisions implementing the principle of mutual recognition of final judicial decisions do not deal consistently with the issue of decisions rendered following a trial at which the person

(3) Solutions provided by these Framework Decisions are not satisfactory as regards cases where the person could not be informed of the proceedings. Framework Decisions 2005/214/JHA on the application of the principle of mutual recognition to financial penalties <sup>(2)</sup>, 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders <sup>(3)</sup>, 2008/909/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 <sup>(4)</sup> and 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions <sup>(5)</sup> allow the executing authority to refuse the execution of such judgments. Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States <sup>(6)</sup> allows the executing authority to require the issuing authority to give an assurance deemed adequate to guarantee the person who is the subject of the European arrest warrant that he or she will have an opportunity to apply for a retrial of the case in the issuing Member State and to be present when the judgment is given. The adequacy of such an assurance is a matter to be decided by the executing authority, and it is therefore difficult to know exactly when execution may be refused.

<sup>(2)</sup> Framework Decision of 24 February 2005 (OJ L 76, 22.3.2005, p. 16).

<sup>(3)</sup> Framework Decision of 6 October 2006 (OJ L 328, 24.11.2006, p. 59).

<sup>(4)</sup> Framework Decision of 27 November 2008 (OJ L 327, 5.12.2008, p. 27).

<sup>(5)</sup> Framework Decision of 27 November 2008 (OJ L 337, 16.12.2008, p. 102).

<sup>(6)</sup> Framework Decision of 13 June 2002 (OJ L 190, 18.7.2002, p. 1).

<sup>(1)</sup> OJ C 52, 26.2.2008, p. 1.

- (4) It is therefore necessary to provide clear and common grounds for non-recognition of decisions rendered following a trial at which the person concerned did not appear in person. This Framework Decision is aimed at refining the definition of such common grounds allowing the executing authority to execute the decision despite the absence of the person at the trial, while fully respecting the person's right of defence. This Framework Decision is not designed to regulate the forms and methods, including procedural requirements, that are used to achieve the results specified in this Framework Decision, which are a matter for the national laws of the Member States.
- (5) Such changes require amendment of the existing Framework Decisions implementing the principle of mutual recognition of final judicial decisions. The new provisions should also serve as a basis for future instruments in this field.
- (6) The provisions of this Framework Decision amending other Framework Decisions set conditions under which the recognition and execution of a decision rendered following a trial at which the person concerned did not appear in person should not be refused. These are alternative conditions; when one of the conditions is satisfied, the issuing authority, by completing the corresponding section of the European arrest warrant or of the relevant certificate under the other Framework Decisions, gives the assurance that the requirements have been or will be met, which should be sufficient for the purpose of the execution of the decision on the basis of the principle of mutual recognition.
- (7) The recognition and execution of a decision rendered following a trial at which the person concerned did not appear in person should not be refused if either he or she was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or if he or she actually received, by other means, official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial. In this context, it is understood that the person should have received such information 'in due time', meaning sufficiently in time to allow him or her to participate in the trial and to effectively exercise his or her right of defence.
- (8) The right to a fair trial of an accused person is guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights. This right includes the right of the person concerned to appear in person at the trial. In order to exercise this right, the person concerned needs to be aware of the scheduled trial. Under this Framework Decision, the person's awareness of the trial should be ensured by each Member State in accordance with its national law, it being understood that this must comply with the requirements of that Convention. In accordance with the case law of the European Court of Human Rights, when considering whether the way in which the information is provided is sufficient to ensure the person's awareness of the trial, particular attention could, where appropriate, also be paid to the diligence exercised by the person concerned in order to receive information addressed to him or her.
- (9) The scheduled date of a trial may for practical reasons initially be expressed as several possible dates within a short period of time.
- (10) The recognition and execution of a decision rendered following a trial at which the person concerned did not appear in person should not be refused where the person concerned, being aware of the scheduled trial, was defended at the trial by a legal counsellor to whom he or she had given a mandate to do so, ensuring that legal assistance is practical and effective. In this context, it should not matter whether the legal counsellor was chosen, appointed and paid by the person concerned, or whether this legal counsellor was appointed and paid by the State, it being understood that the person concerned should deliberately have chosen to be represented by a legal counsellor instead of appearing in person at the trial. The appointment of the legal counsellor and related issues are a matter of national law.
- (11) Common solutions concerning grounds for non-recognition in the relevant existing Framework Decisions should take into account the diversity of situations with regard to the right of the person concerned to a retrial or an appeal. Such a retrial, or appeal, is aimed at guaranteeing the rights of the defence and is characterised by the following elements: the person concerned has the right to be present, the merits of the case, including fresh evidence are re-examined, and the proceedings can lead to the original decision being reversed.
- (12) The right to a retrial or appeal should be guaranteed when the decision has already been served as well as, in the case of the European arrest warrant, when it had not yet been served, but will be served without delay after the surrender. The latter case refers to a situation where the authorities failed in their attempt to contact the person, in particular because he or she sought to evade justice.

(13) In case a European arrest warrant is issued for the purpose of executing a custodial sentence or detention order and the person concerned has not previously received any official information about the existence of the criminal proceedings against him or her, nor has been served with the judgment, this person should, following a request in the executing Member State, receive a copy of the judgment for information purposes only. The issuing and executing judicial authorities should, where appropriate, consult each other on the need and existing possibilities to provide the person concerned with a translation of the judgment, or of essential parts thereof, in a language that the person understands. Such provision of the judgment should neither delay the surrender procedure nor delay the decision to execute the European arrest warrant.

(14) This Framework Decision is limited to refining the definition of grounds for non-recognition in instruments implementing the principle of mutual recognition. Therefore, provisions such as those relating to the right to a retrial have a scope which is limited to the definition of these grounds for non-recognition. They are not designed to harmonise national legislation. This Framework Decision is without prejudice to future instruments of the European Union designed to approximate the laws of the Member States in the field of criminal law.

(15) The grounds for non-recognition are optional. However, the discretion of Member States for transposing these grounds into national law is particularly governed by the right to a fair trial, while taking into account the overall objective of this Framework Decision to enhance the procedural rights of persons and to facilitate judicial cooperation in criminal matters,

HAS ADOPTED THIS FRAMEWORK DECISION:

#### Article 1

##### Objectives and scope

1. The objectives of this Framework Decision are to enhance the procedural rights of persons subject to criminal proceedings, to facilitate judicial cooperation in criminal matters and, in particular, to improve mutual recognition of judicial decisions between Member States.

2. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty, including the right of defence of persons subject to criminal proceedings, and any obligations incumbent upon judicial authorities in this respect shall remain unaffected.

3. This Framework Decision establishes 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 at which the person concerned was not present, pursuant to the provisions of Article 5(1) of Framework Decision 2002/584/JHA, of Article 7(2)(g) of Framework Decision 2005/214/JHA, of Article 8(2)(e) of Framework Decision 2006/783/JHA, of Article 9(1)(i) of Framework Decision 2008/909/JHA and of Article 11(1)(h) of Framework Decision 2008/947/JHA.

#### Article 2

##### Amendments to Framework Decision 2002/584/JHA

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

1. the following Article shall be inserted:

#### 'Article 4a

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

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 person did not appear in person at the trial resulting in the decision, unless the European arrest warrant states that the person, in accordance with further procedural requirements defined in the national law of the issuing Member State:

(a) in due time:

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

and

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

or

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

or

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

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

or

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

or

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

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

and

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

2. In case the European arrest warrant is issued for the purpose of executing a custodial sentence or detention order under the conditions of paragraph 1(d) and the person concerned has not previously received any official information about the existence of the criminal proceedings against him or her, he or she may, when being informed about the content of the European arrest warrant, request to receive a copy of the judgment before being surrendered. Immediately after having been informed about the request, the issuing authority shall provide the copy of the judgment via the executing authority to the person sought. The request of the person sought shall neither delay the surrender procedure nor delay the decision to execute the European arrest warrant. The provision of the judgment to the person concerned is for information purposes only; it shall neither be regarded as a formal service of the judgment nor actuate any time limits applicable for requesting a retrial or appeal.

3. In case a person is surrendered under the conditions of paragraph 1(d) and he or she has requested a retrial or appeal, the detention of that person awaiting such retrial or appeal shall, until these proceedings are finalised, be reviewed in accordance with the law of the issuing Member State, either on a regular basis or upon request of the person concerned. Such a review shall in particular include the possibility of suspension or interruption of the detention. The retrial or appeal shall begin within due time after the surrender.’;

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

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

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

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

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

3. If you have ticked the box under point 2, please confirm the existence of one of the following:

3.1a. the person was summoned in person on ... (day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

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

OR

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

OR

- 3.3. the person was served with the decision on ... (day/month/year) and was expressly informed about the right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and

the person expressly stated that he or she does not contest this decision,

OR

the person did not request a retrial or appeal within the applicable time frame;

OR

- 3.4. the person was not personally served with the decision, but
- the person will be personally served with this decision without delay after the surrender, and
  - when served with the decision, the person will be expressly informed of his or her right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and
  - the person will be informed of the time frame within which he or she has to request a retrial or appeal, which will be ... days.

4. If you have ticked the box under points 3.1b, 3.2 or 3.3 above, please provide information about how the relevant condition has been met:

.....  
 .....

#### Article 3

#### Amendments to Framework Decision 2005/214/JHA

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

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

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

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

- (b) the following points shall be added:

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

(i) in due time:

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

and

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

or

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

or

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

— expressly stated that he or she does not contest the decision,

or

— did not request a retrial or appeal within the applicable time frame;

(j) 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 to appear in person in a trial, expressly waived his or her right to an oral hearing and has expressly indicated that he or she does not contest the case.;

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

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

3. in point (h) of the Annex (CERTIFICATE), point 3 is replaced by the following:

'3. Indicate if the person concerned appeared in person at the trial resulting in the decision:

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

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

3. If you have ticked the box under point 2, please confirm the existence of one of the following:

3.1a. the person was summoned in person on ... (day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

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

OR

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

OR

- 3.3. the person was served with the decision on ... (day/month/year) and was expressly informed about the right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and

- the person expressly stated that he or she does not contest this decision,

OR

- the person did not request a retrial or appeal within the applicable time frame;

OR

- 3.4. the person, having been expressly informed about the proceedings and the possibility to appear in person in a trial, expressly waived his or her right to an oral hearing and has expressly indicated that he or she does not contest the case.

4. If you have ticked the box under points 3.1b, 3.2, 3.3 or 3.4 above, please provide information about how the relevant condition has been met:

.....  
 .....

#### Article 4

#### Amendments to Framework Decision 2006/783/JHA

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

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

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

(i) in due time:

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

and

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

or

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

or

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

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

or

- did not request a retrial or appeal within the applicable time frame.;

2. in the Annex (CERTIFICATE), point (j) shall be replaced by the following:

‘(j) Proceedings resulting in the confiscation order

Indicate if the person appeared in person at the trial resulting in the confiscation order:

1.  Yes, the person appeared in person at the trial resulting in the confiscation order.
2.  No, the person did not appear in person at the trial resulting in the confiscation order.
3. If you have ticked the box under point 2, please confirm the existence of one of the following:

- 3.1a. the person was summoned in person on ... (day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the confiscation order and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

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

OR

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

OR

<p><input type="checkbox"/> 3.3. the person was served with the confiscation order on ... (day/month/year) and was expressly informed about the right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and</p> <p><input type="checkbox"/> the person expressly stated that he or she does not contest the decision,</p> <p>OR</p> <p><input type="checkbox"/> the person did not request a retrial or appeal within the applicable time frame.</p> <p>4. If you have ticked the box under points 3.1b, 3.2, 3.3 or 3.4 above, please provide information about how the relevant condition has been met:</p> <p>.....</p> <p>.....</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Article 5

**Amendments to Framework Decision 2008/909/JHA**

Framework Decision 2008/909/JHA is hereby amended as follows:

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

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

(i) in due time:

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

and

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

or

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

or

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

— expressly stated that he or she does not contest the decision,

or

— did not request a retrial or appeal within the applicable time frame.;

2. in point (i) of Annex I (CERTIFICATE), point 1 shall be replaced by the following:

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

1.  Yes, the person appeared in person at the trial resulting in the decision.
2.  No, the person did not appear in person at the trial resulting in the decision.
3. If you have ticked the box under point 2, please confirm the existence of one of the following:
  - 3.1a. the person was summoned in person on ... (day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

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

OR

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

OR

  - 3.3. the person was served with the decision on ... (day/month/year) and was expressly informed about the right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and
    - the person expressly stated that he or she does not contest this decision,

OR

    - the person did not request a retrial or appeal within the applicable time frame.
4. If you have ticked the box under points 3.1b, 3.2 or 3.3 above, please provide information about how the relevant condition has been met:
 

.....

.....

## Article 6

**Amendments to Framework Decision 2008/947/JHA**

Framework Decision 2008/947/JHA is hereby amended as follows:

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

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

(i) in due time:

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

and

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

or

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

or

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

— expressly stated that he or she does not contest the decision,

or

— did not request a retrial or appeal within the applicable time frame.;

2. in Annex I (CERTIFICATE), point (h) 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.

3. If you have ticked the box under point 2, please confirm the existence of one of the following:

3.1a. the person was summoned in person on ... (day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the decision and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

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

OR

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

OR

3.3. the person was served with the decision on ... (day/month/year) and was expressly informed about the right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and

the person expressly stated that he or she does not contest this decision,

OR

the person did not request a retrial or appeal within the applicable time frame.

4. If you have ticked the box under points 3.1b, 3.2 or 3.3 above, please provide information about how the relevant condition has been met:

.....

.....

*Article 7***Territorial application**

This Framework Decision shall apply to Gibraltar.

*Article 8***Implementation and transitional provisions**

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 28 March 2011.

2. This Framework Decision shall apply as from the date mentioned in paragraph 1 to the recognition and enforcement

of decisions rendered in the absence of the person concerned at the trial.

3. If a Member State has declared, on the adoption of this Framework Decision, to have serious reasons to assume that it will not be able to comply with the provisions of this Framework Decision by the date referred to in paragraph 1, this Framework Decision shall apply as from 1 January 2014 at the latest to the recognition and enforcement of decisions, rendered in the absence of the person concerned at the trial which are issued by the competent authorities of that Member State. Any other Member State may require that the Member State having made such a declaration shall apply the relevant provisions of the Framework Decisions referred to in Articles 2, 3, 4, 5 and 6 in the versions in which they were adopted originally to the recognition and enforcement of decisions, rendered in the absence of the person concerned at the trial, which were issued by such other Member State.

4. Until the dates mentioned in paragraphs 1 and 3, the relevant provisions of the Framework Decisions referred to in Articles 2, 3, 4, 5 and 6 shall continue to apply in the versions in which they were adopted originally.

5. A declaration made in accordance with paragraph 3 shall be published in the *Official Journal of the European Union*. It may be withdrawn at any time.

6. Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision.

#### Article 9

##### Review

1. By 28 March 2014, the Commission shall draw up a report on the basis of the information received from the Member States pursuant to Article 8(6).

2. On the basis of the report referred to in paragraph 1, the Council shall assess:

(a) the extent to which Member States have taken the necessary measures in order to comply with this Framework Decision; and

(b) the application of this Framework Decision.

3. The report referred to in paragraph 1 shall be accompanied, where necessary, by legislative proposals.

#### Article 10

##### Entry into force

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

Done at Brussels, 26 February 2009.

For the Council

The President

I. LANGER

---