

Judicial cooperation: procedural rights of persons and the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial.

Initiative Slovenia, France, Czech Republic, Sweden, Slovakia, United Kingdom, Germany.

Framework Decision

2008/0803(CNS) - 26/02/2009 - Final act

PURPOSE: to enhance the procedural rights of persons by fostering the application of the principle of mutual recognition in respect of decisions rendered in the absence of the person concerned at the trial (trials "in absentia").

LEGISLATIVE ACT: Council Framework Decision 2009/299/JHA 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.

CONTENT; in accordance with a certain number of texts already adopted at European level, the Member States are required to enforce each others' judgments, with a certain number of safeguards. The relevant texts are as follows:

- Council Framework Decision 2002/584/JHA of 13 June 2002 on the [European arrest warrant](#) and the surrender procedures between Member States;
- Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to [financial penalties](#);
- Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to [confiscation orders](#);
- Framework Decision 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;
- Framework Decision 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.

However, these different texts do not deal consistently with the issue of decisions rendered **in the absence of the person concerned at the trial** ("in absentia"), which results in a certain **degree of legal uncertainty** as well as delays in implementing judicial decisions. This diversity complicates the work of the practitioner and hampers judicial cooperation.

In order to address these problems, this Framework Decision amends the existing instruments so as to establish precise and consistent **grounds for non-recognition** by the State of execution of decisions rendered in absentia. Therefore, 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:

(a) **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. 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;

(b) 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 (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);

(c) **the person concerned was aware of his or her right to a retrial or an appeal**, enabling his or her case to be re-examined, taking account of fresh evidence and providing the possibility for the original decision to be reversed.

The amending provisions are designed to set the conditions under which the recognition and execution of a decision rendered in absentia cannot be refused. They are 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). Technically, the issuing authority (at the origin of the judicial decision) shall complete the document that assures mutual recognition of a judicial decision (the corresponding document of the European arrest warrant or of the relevant certificate under the other Framework Decisions) to indicate to the executing authority that the requirements for the execution of a judicial decision have been met - or will be met -, even if the person concerned was not present at the trial.

Review: by 28 March 2014, the Commission shall draw up a report on the basis of the information received from the Member States. On the basis of the report, the Council shall assess the extent to which Member States have taken the necessary measures in order to comply with this Framework Decision and the application of this Framework Decision. The report shall be accompanied, where necessary, by legislative proposals.

Territorial application: this Framework Decision shall apply to Gibraltar.

ENTRY INTO FORCE: this Framework Decision shall enter into force on 28/03/2009.

TRANSPOSITION BY THE MEMBER STATES: 28/03/2011. However, 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 this date, this Framework Decision shall apply as from 1 January 2014 at the latest.