Changes to Legislation: as of 3 November 2026, this Act is up to date with all changes known to be in force.



Number 20 *of* 2019

CRIMINAL JUSTICE (MUTUAL RECOGNITION OF PROBATION JUDGMENTS AND DECISIONS) ACT 2019

REVISED

Updated to 3 May 2023

This Revised Act is an administrative consolidation of the *Criminal Justice (Mutual Recognition of Probation Judgments and Decisions) Act 2019*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including the *Patient Safety (Notifiable Incidents and Open Disclosure) Act 2023* (10/2023), enacted 2 May 2023, and all statutory instruments up to and including the *Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023 (Commencement) Order 2023* (S.I. No. 213 of 2023), made 2 May 2023, were considered in the preparation of this Revised Act.

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Number 20 *of* 2019

CRIMINAL JUSTICE (MUTUAL RECOGNITION OF PROBATION JUDGMENTS AND DECISIONS) ACT 2019

REVISED

Updated to 3 May 2023

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SCHEDULE

COUNCIL FRAMEWORK DECISION 2008/947/JHA OF 27 NOVEMBER 2008 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

ACTS REFERRED TO

Children Act 2001 (No. 24)
Criminal Justice (Community Service) Act 1983 (No. 23)
Criminal Justice (Mutual Assistance) Act 2008 (No. 7)
Criminal Justice Act 1960 (No. 27)
Criminal Justice Act 2006 (No. 26)
Misuse of Drugs Act 1977 (No. 12)
Prisons Act 1970 (No. 11)
Probation of Offenders Act 1907 (7 Edw. 7, c. 17)
Sex Offenders Act 2001 (No. 18)

Number 20 *of* 2019

CRIMINAL JUSTICE (MUTUAL RECOGNITION OF PROBATION JUDGMENTS AND DECISIONS) ACT 2019

REVISED

Updated to 3 May 2023

An Act to give effect to Council Framework Decision 2008/947/JHA of 27 November 2008[1] 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, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009[2] amending Framework Decisions 2002/584/JHA,2005/214/JHA,2006/783/JHA,2008/909/JHAand2008/947/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; and to provide for related matters.

[7*th July*, 2019]

Be it enacted by the Oireachtas as follows:

PART 1

Preliminary and General

Short title and commencement

1. (1) This Act may be cited as the Criminal Justice (Mutual Recognition of Probation Judgments and Decisions) Act 2019.

(2) This Act shall come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Annotations

Editorial Notes:

E1 Power pursuant to subs. (2) exercised (23.09.2019) by *Criminal Justice (Mutual Recognition of Probation Judgments and Decisions) Act 2019 (Commencement) Order 2019* (S.I. No. 469 of 2019).

[1] OJ No. L 337, 16.12.2008, p.102
[2] OJ No. L 81, 27.03.2009, p.24

2. The 23rd day of September 2019 is appointed as the day on which the Criminal Justice (Mutual Recognition of Probation Judgments and Decisions) Act 2019 (No. 20 of 2019) shall come into operation.

Interpretation

2. (1) In this Act—

"Act of 2006" means the Criminal Justice Act 2006;

"appropriate court" means—

(a) where an application is made under *section 23(1)(a)* in relation to a judgment and, where applicable, the probation decision in respect of an offence which would, if dealt with under the law of the State, have been required to be tried by the Central Criminal Court, the High Court, and

(b) in any other case, the Circuit Court;

"Article 6 certificate" means the certificate—

(a) provided for in Article 6 of the Framework Decision, and

(b) the standard form of which is set out in Annex I to the Framework Decision;

"Framework Decision" means Council Framework Decision 2008/947/JHA of 27 November 2008 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, as amended by 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 text of which Council Framework Decision 2008/947/JHA, as so amended, is set out for ease of reference in the *Schedule*);

"Member State competent authority", in relation to a Member State (other than the State), means the authority designated by that Member State to be the competent authority in that Member State for the purposes of the Framework Decision;

"Minister" means the Minister for Justice and Equality;

"prescribed" means prescribed by regulations made by the Minister;

"probation measure" includes a probation period;

"section 2 of the Act of 1960" means section 2 of the Criminal Justice Act 1960.

(2) A word or expression that is used in this Act and is also used in the Framework Decision has, unless the context otherwise requires, the same meaning in this Act as it has in the Framework Decision.

Application of Act

3. F1**[**(1)**]** The provisions of this Act shall not apply in relation to a judgment given before the commencement of those provisions.

F1**[**(2) Nothing in this Act shall operate to prejudice—

(a) the power of the Minister under Part 2 of the Act of 2023 to forward a judgment (within the meaning of that Act) to the competent authority of an executing state (within the meaning of that Act), and

(b) the power of the Minister to make an application under Part 3 of the Act of 2023 in respect of a judgment (within the meaning of that Act).

(3) In this section, "Act of 2023" means the Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023.**]**

Annotations

Amendments:

F1 Inserted (3.05.2023) by *Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023* (3/2023), s. 82(a), (b), S.I. No. 213 of 2023.

Designation of competent authorities

4. (1) Subject to *subsection (2)*, the Minister is designated as the competent authority in the State for the purposes of the Framework Decision.

(2) The appropriate court is designated as the competent authority in the State for the purposes of—

(a) Article 14 of the Framework Decision (but excluding any provision of that Article relating to the revocation of the decision on conditional release), and

(b) Article 20 of the Framework Decision in so far as it relates to subsequent decisions referred to in Article 14 of the Framework Decision (but excluding any provision of either Article relating to the revocation of the decision on conditional release).

(3) For the avoidance of doubt, the Minister is not acting in his or her capacity as the competent authority in the State for the purposes of the Framework Decision in performing his or her functions under *section 1(2)*, *5(1)* or *(3)*, *6* or *19(2)* or *(3)*.

Provisions supplementary to section 4

5. (1) The Minister may, by order, designate such persons as he or she considers appropriate to perform such functions for which the Minister is acting in his or her capacity as the competent authority in the State for the purposes of the Framework Decision as are specified in the order and different persons may be so designated to perform different functions for which the Minister is acting in such capacity.

(2) For so long as an order under *subsection (1)* remains in force, a reference in this Act to the Minister shall, in so far as it relates to the performance of a function specified in the order, be construed as a reference to the person designated by the order to perform the function concerned.

(3) The Minister shall, by notice in writing, inform the General Secretariat of the Council of the European Union of the making of an order under this section and of the names of the persons designated under the order.

Orders and regulations

6. (1) The Minister may by regulations provide for any matter referred to in this Act as prescribed or to be prescribed.

(2) Without prejudice to any provision of this Act, regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulation.

(3) Every order (other than an order under *section 1(2)* or an order of a court) and regulation under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House sits after the order or regulation is laid before it, the order or regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Expenses

7. Any expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

PART 2

Issuing State is Ireland

Application of Part 2

8. This Part applies where the State is the issuing state.

Definitions

9.In this Part—

"community service order" has the meaning assigned to it by section 3 of the Criminal Justice (Community Service) Act 1983;

"Director of the Probation Service" has the meaning assigned to it by section 1 of the Criminal Justice (Community Service) Act 1983;

"judgment in the State" means—

(a) an order under section 99(1) of the Act of 2006—

(i) pursuant to which a natural person enters into a recognisance referred to in that section, and

(ii) that has a condition specified in it requiring that person to be under the supervision of the Probation Service,

(b) a community service order made in respect of a natural person,

(c) an order under section 1 of the Probation of Offenders Act 1907 pursuant to which a natural person enters into a recognisance referred to in that section where such recognisance contains the condition first-mentioned in section 2(1) of that Act by virtue of a probation order referred to in such section 2(1),

(d) a recognisance referred to in section 28(2)(a) of the Misuse of Drugs Act 1977—

(i) entered into by a natural person, and

(ii) that has a condition contained in it requiring that person to be under the supervision of the Probation Service,

(e) an order imposing a community sanction (within the meaning of section 115 of the Children Act 2001) on a natural person who is a child within the meaning of section 3 of that Act,

(f) a sentence involving post-release supervision imposed on a natural person under section 29(1) of the Sex Offenders Act 2001, or

(g) a sentence referred to in section 2 of the Act of 1960 imposed on a natural person who is, in respect of such sentence, the subject of a probation decision;

"probation decision", in relation to a judgment referred to in *paragraph (g)* of the definition of "judgment in the State", means a direction referred to in section 2 of the Act of 1960 pursuant to which the sentenced person is released from prison for a period which exceeds the remainder of the sentence of imprisonment referred to in such section 2 that would, but for such release, have to be served by the person;

"Probation Service" has the meaning assigned to it by section 1 of the Criminal Justice (Community Service) Act 1983;

"sentenced person", in relation to a judgment in the State and, where applicable, the probation decision, means the natural person the subject of that judgment and, where applicable, that probation decision;

"subsequent decision", in relation to a probation measure or alternative sanction imposed by a judgment in the State and, where applicable, the probation decision, means a decision—

(a) varying or revoking an obligation or instruction imposed by the probation measure or alternative sanction,

(b) in relation to a judgment which falls within *paragraph (a)* of the definition of "judgment in the State", revoking the order concerned referred to in that paragraph,

(c) in relation to a judgment referred to in *paragraph (g)* of the definition of "judgment in the State", revoking or varying the direction concerned referred to in section 2 of the Act of 1960, or

(d) in consequence of a failure by the sentenced person to comply with the probation measure or alternative sanction—

(i) enforcing a custodial sentence, or other measure involving the deprivation of liberty, imposed on the person, or

(ii) imposing a custodial sentence, or other measure involving the deprivation of liberty, on the person.

Request for forwarding judgment in State, etc., to Member State competent authority

10. (1) The Director of the Probation Service (within the meaning of section 1 of the Criminal Justice (Community Service) Act 1983) may make a request in writing to the Minister for the forwarding, in accordance with *section*

11, to a Member State competent authority of a judgment in the State and, where applicable, the probation decision in respect of the sentenced person.

(2) The sentenced person in respect of a judgment in the State may make a request in writing to the Minister for the forwarding, in accordance with *section 11*, to a Member State competent authority of that judgment and, where applicable, the probation decision.

(3) The sentenced person in respect of a judgment in the State may make a request in writing to the Minister for the forwarding, in accordance with section 11, to a Member State competent authority of that judgment and, where applicable, the probation decision notwithstanding that that Member State is not the Member State in which that person is lawfully and ordinarily residing as construed in accordance with *section 11(10)*.

Forwarding of judgment in State, etc., to Member State competent authority

11. (1) On receipt of a request under *section 10(1)* or *(2)*, the Minister may forward, in accordance with *subsection (8)*, the judgment in the State and, where applicable, the probation decision to which the request relates to the Member State competent authority to which the request relates if the Minister is satisfied that the sentenced person—

(a) is lawfully and ordinarily residing in the other Member State,

(b) has returned, or wants to return, to that State, and

(c) one of the following has occurred:

(i) the ordinary time for bringing an appeal against the judgment has expired without any such appeal having been made;

(ii) such appeal has been withdrawn or abandoned;

(iii) on any such appeal, that judgment was upheld.

(2) On receipt of a request under *section 10(3)*, the Minister may forward, in accordance with *subsection (8)*, the judgment in the State and, where applicable, the probation decision to which the request relates to the Member State competent authority to which the request relates if the Minister is satisfied that—

(a) that Member State competent authority has consented to such forwarding, and

(b) one of the following has occurred:

(i) the ordinary time for bringing an appeal against the judgment has expired without any such appeal having been made;

(ii) such appeal has been withdrawn or abandoned;

(iii) on any such appeal, that judgment was upheld.

(3) (a) For the purposes of *paragraph (c)(i)* of *subsection (1)* or *paragraph (b)(i)* of *subsection (2)*, the Minister may request the registrar or clerk of the court which gave the judgment in the State concerned to, where the ordinary time for bringing an appeal against the judgment has expired without any such appeal having been made, provide the Minister with a certificate signed by the registrar or clerk stating that the ordinary time for making an appeal against the judgment has expired without any such appeal having been made.

(b) For the purposes of *paragraph (c)(ii)* and *(iii)* of *subsection (1)* or *paragraph (b)(ii)* or *(iii)* of *subsection (2)*, the Minister may request the registrar or clerk of the court to which an appeal against the judgment in the State concerned has been made to—

(i) advise the Minister whether—

(I) such appeal has been withdrawn or abandoned, or

(II) on such appeal, that judgment was upheld,

and

(ii) if the advice is that such is the case, provide the Minister with a certificate signed by the registrar or clerk stating that, as appropriate—

(I) such appeal has been withdrawn or abandoned, or

(II) on such appeal, that judgment was upheld.

(4) *Subsection (5)* applies if the Member State competent authority to which a judgment in the State and, where applicable, the probation decision has been forwarded under this section makes a request to the Minister to be provided with the judgment or a duly authenticated copy of the judgment.

(5) (a) The Minister shall comply with a request under *subsection (4)* as soon as is practicable.

(b) For the purposes of such compliance, the Minister may request the registrar or clerk of the court which gave the judgment in the State concerned to provide the Minister with that judgment or a duly authenticated copy of the judgment.

(6) The registrar or clerk of the court concerned the subject of a request under *subsection (3)* or *(5)(b)* shall comply with the request as soon as is practicable after he or she receives the request.

(7) The Minister shall, in deciding whether or not to forward under this section a judgment in the State and, where applicable, the probation decision to the Member State competent authority, have regard to the declarations made by the other Member State under Articles 5(4), 10(4) and 14(3) of the Framework Decision.

(8) Where the Minister has made a decision to forward under this section a judgment in the State and, where applicable, the probation decision to the Member State competent authority, the Minister shall—

(a) forward the judgment and, where applicable, the probation decision, accompanied by an Article 6 certificate (and, subject to *subsection (11)*, a translation of the Article 6 certificate in a relevant language), signed by the Minister, directly to the Member State competent authority by any means capable of producing a record in writing under conditions allowing the Member State competent authority to establish the authenticity of the 2 (or, if applicable, 3 or 4) documents, and

(b) if the Member State competent authority makes a request to the Minister to provide the Member State competent authority with the original Article 6 certificate or original probation decision, provide the Member State competent authority—

(i) with that original Article 6 certificate or original probation decision, or

(ii) with a copy of that original Article 6 certificate or original probation decision certified by the Minister to be a true copy of that original.

(9) The Minister shall not forward under this section a judgment in the State and, where applicable, the probation decision together with the accompanying Article 6 certificate to more than one Member State competent authority at any one time.

(10) (a) Subject to *paragraph (b)*, the sentenced person shall be deemed to be lawfully and ordinarily residing in another Member State if he or she were lawfully residing in that State immediately before the giving of the judgment in the State concerned.

(b) A period in which the sentenced person was remanded in custody, or serving a sentence of imprisonment or detention (in a children detention school within the meaning of section 3 of the Children Act 2001 or place provided under section 2 of the Prisons Act 1970), in the State shall be disregarded for the purposes of *paragraph (a)*.

(11) The Minister is not required to forward a translation referred to in *subsection (8)(a)* of the Article 6 certificate concerned to the Member State competent authority if the Minister knows that the Member State competent authority does not require such translation.

(12) In this section, "relevant language", in relation to a translation of an Article 6 certificate to be forwarded under this section to the Member State competent authority, means the official language or one of the official languages of the Member State.

Withdrawal of Article 6 certificate

12. (1) Where a judgment in the State and, where applicable, the probation decision has been forwarded under *section 11* to a Member State competent authority, the Minister may, at the same time as such forwarding or subsequently, make a request in writing to the Member State competent authority to inform the Minister of the maximum custodial sentence, or other measure involving the deprivation of liberty, that could be imposed on the sentenced person if he or she fails to comply with the probation measure or alternative sanction concerned.

(2) *Subsection (3)* applies where the Minister—

(a) receives information pursuant to a request under subsection (1), or

(b) after a judgment in the State and, where applicable, the probation decision has been forwarded under *section 11* to a Member State competent authority, receives notice of a decision by the Member State competent authority to make an adaptation, in accordance with Article 9 of the Framework Decision, to the probation measure or alternative sanction concerned.

(3) Subject to *subsections (4)* and *(5)*, the Minister may, after having regard to the information or adaptation referred to in *subsection (2)*, decide to withdraw the Article 6 certificate concerned if the Minister is of the opinion that it would be in the public interest or the interests of justice to do so.

(4) The Minister shall not withdraw an Article 6 certificate under *subsection (3)* if the supervision of the probation measure or alternative sanction has already commenced in the executing state.

(5) The Minister shall, as soon as is practicable after making a decision under *subsection (3)* to withdraw an Article 6 certificate but, in any case, not later than 10 days after receiving the information or notice concerned referred

to in *subsection (2)*, give notice in writing of that decision to the Member State competent authority and the sentenced person.

Consequences of recognition of judgment in State

13. (1) Subject to subsection (3) and *section 15*, *subsection (2)* applies where—

(a) the Member State competent authority recognises a judgment in the State and, where applicable, the probation decision forwarded under *section 11* to that competent authority, and

(b) the Member State competent authority has informed the Minister of such recognition.

(2) (a) The State shall no longer have competence either in relation to the supervision of the probation measure or alternative sanction imposed by the judgment in the State and, where applicable, the probation decision or to take subsequent decisions on that probation measure or alternative sanction.

(b) The executing state shall have competence in relation to the supervision of the probation measure or alternative sanction imposed by the judgment in the State and, where applicable, the probation decision and to take subsequent decisions on that probation measure or alternative sanction.

(3) The competence referred to in *subsection (2)(a)* reverts back to the State, and the competence referred to in *subsection (2)(b)* ceases, immediately upon the receipt by the Member State competent authority of a notice under *section 12(5)* of a decision under section 12(3) of the Minister to withdraw the Article 6 certificate concerned.

(4) (a) *Paragraph (b)* applies where the Minister receives a notice from the executing state that the executing state has refused to assume responsibility for a subsequent decision under Article 14(3) of the Framework Decision and, consequently, the Member State competent authority has, in so far as that subsequent decision is concerned, transferred jurisdiction back to the State in accordance with Article 14(4) of the Framework Decision.

(b) In so far as the subsequent decision is concerned, the competence referred to in *subsection (2)(a)* reverts back to the State, and the competence referred to in *subsection (2)(b)* ceases, immediately upon the receipt by the Minister of such notice.

(5) Where *subsection (2)*, *(3)* or *(4)* applies in relation to a judgment in the State and, where applicable, the probation decision, the Minister shall, as soon as is practicable after that application, give notice in writing of that application to the court which gave the judgment.

Obligation to provide certain information to Member State competent authority

14. (1) The Minister shall inform the Member State competent authority, by any means capable of producing a record in writing, as soon as the Minister becomes aware, in relation to the judgment in the State and, where applicable, the probation decision concerned, of any circumstances or findings which, in the opinion of the Minister, could, if the Member State competent authority were aware of the circumstances or findings, result in one or more than one subsequent decision being taken by the Member State competent authority in relation to the sentenced person.

(2) Subsection (3) applies where the State, pursuant to Article 14(3) of the Framework Decision, has jurisdiction for a subsequent decision in relation to a judgment in the State and, where applicable, the probation decision.

(3) The Minister shall, as soon as is practicable after a subsequent decision to which this subsection applies is taken, inform, by any means capable of leaving a record in writing, the Member State competent authority of such decision.

(4) The court which makes an order (if any) which is a subsequent decision referred to in *subsection (3)* shall cause a certified copy of the order to be given to the Minister not later than 4 working days after the order is made.

Transfer of jurisdiction back to State

15. (1) Where, whilst the probation measure or alternative sanction concerned is being supervised by the executing state, the sentenced person is charged with an offence under the law of the State, the Minister may request the Member State competent authority to transfer the competence referred to in *section 13(2)(b)*, in so far as such competence relates to that probation measure or alternative sanction, back to the State pursuant to Article 20(2) of the Framework Decision.

(2) *Subsections (3)* to *(5)* apply where the Member State competent authority transfers, in relation to the probation measure or alternative sanction concerned, the competence referred to in *section 13(2)(b)* back to the State—

(a) in accordance with Article 20(1) of the Framework Decision, or

(b) in accordance with Article 20(2) of the Framework Decision following the receipt by the Member State competent authority of a request under *subsection (1)* made by the Minister.

(3) (a) The State shall resume the competence referred to in *section 13(2)(b)* in relation to the probation measure or alternative sanction concerned.

(b) The Minister may, for the purposes of *subsection (4)*, request the Member State competent authority to provide the Minister with information relating to—

(i) the duration and degree of compliance by the sentenced person with the probation measure or alternative sanction in the executing state, and

(ii) any subsequent decisions taken by the executing state in respect of the probation measure or alternative sanction.

(4) The Minister and the appropriate court shall each take account of any information provided to the Minister pursuant to a request under *subsection (3)* for the further supervision of the probation measure or alternative sanction concerned and in respect of subsequent decisions on the probation measure or alternative sanction.

(5) Where the State has, under *subsection (3)*, resumed jurisdiction in the competence referred to in *section 13(2)(b)* in relation to the probation measure or alternative sanction concerned, the Minister shall—

(a) if the resumption is pursuant to a request under *subsection (1)*, as soon as is practicable after such resumption, give notice in writing of the resumption to the sentenced person, or

(b) if the resumption is pursuant to Article 20(1) of the Framework Decision, make all reasonable efforts to give notice in writing of such resumption to the sentenced person.

PART 3

Executing State is Ireland

Application of Part 3

16. This Part applies where—

(a) the State is the Member State to which a judgment and, where applicable, the probation decision has been forwarded by the competent authority in the issuing state in accordance with Article 5 of the Framework Decision, or

(b) the State is the executing state.

Interpretation

17. (1) In this Part—

"revenue offence", in relation to an issuing state, means an offence in connection with taxes, duties, customs or exchange control;

"sentenced person", in relation to a judgment and, where applicable, the probation decision, means the natural person the subject of that judgment and, where applicable, that probation decision.

(2) Subject to *subsections (3)* and *(5)*, a natural person who lawfully had his or her principal residence in the State for the 12 months immediately preceding the date of receipt by the Minister of a judgment and, where applicable, the probation decision in respect of that person forwarded by the competent authority in the issuing state in accordance with *section 20* is, for the purposes of this Part, taken to be lawfully and ordinarily residing in the State on the date of such receipt.

(3) Subject to *subsection (4)*, in the case of a suspended sentence or conditional release, a natural person shall not be taken to be lawfully and ordinarily residing in the State for the purposes of this Part unless the person lawfully had his or her principal residence in the State for the 12 months immediately preceding the imposition of the suspended sentence or, as the case may be, the custodial sentence to which the conditional release relates.

(4) For the purposes of determining whether a natural person had his or her principal residence in the State for the 12 months immediately preceding the imposition of a suspended sentence or, as the case may be, the custodial sentence to which a conditional release relates, any period during which the person was remanded in custody prior to the trial which gave rise to the suspended sentence or custodial sentence shall be disregarded.

(5) For the purposes of determining whether a natural person had his or her principal residence in the State for the 12 months immediately preceding the imposition, pursuant to a judgment, of a non-custodial sentence (not being a non-custodial sentence in addition to a custodial sentence imposed by the judgment), any period during which the person was remanded in custody prior to the trial which gave rise to the non-custodial sentence shall be disregarded.

Corresponding offences

18. For the purposes of this Part—

(a) an offence under the law of the issuing state corresponds to an offence under the law of the State where the act or omission constituting the offence under the law of the issuing state would, if committed or made in the State, constitute an offence under the law of the State, and

(b) an offence under the law of the State corresponds to an offence under the law of the issuing state where the act or omission constituting the offence under the law of the State would, if committed or made in the issuing state, constitute an offence under the law of the issuing state.

Probation measures and alternative sanctions to which Part 3 applies

19. (1) This Part shall apply to the following probation measures and alternative sanctions:

(a) an obligation on the sentenced person to inform a specific authority of any change of residence or working place;

(b) an obligation on the sentenced person not to enter certain localities, places or defined areas in the issuing state or the State;

(c) an obligation on the sentenced person containing limitations on leaving the territory of the State;

(d) instructions concerning the sentenced person relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity (but not including a professional disqualification imposed on the sentenced person as part of the measure or sanction);

(e) an obligation on the sentenced person to report at specified times to a specific authority;

(f) an obligation on the sentenced person to avoid contact with specific persons;

(g) an obligation on the sentenced person to avoid contact with specific objects which have been used, or are likely to be used, by the sentenced person with a view to committing an offence;

(h) an obligation on the sentenced person to compensate financially for the prejudice caused by the offence which gave rise to the judgment concerned, or an obligation to provide proof of compliance with the first-mentioned obligation, or both;

(i) an obligation on the sentenced person to carry out community service;

(j) an obligation on the sentenced person to co-operate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons;

(k) an obligation on the sentenced person to undergo therapeutic treatment or treatment for addiction;

(l) subject to *subsection (2)*, a probation measure or alternative sanction prescribed for the purposes of this paragraph.

(2) For the purposes of prescribing a probation measure or alternative sanction, the Minister shall have regard to—

(a) Article 1 of the Framework Decision, in particular facilitating the social rehabilitation of sentenced persons, and

(b) advice given by the Director of the Probation Service to the Minister that—

(i) there is such a measure or sanction in another Member State which does not presently fall within *subsection (1)*, and

(ii) the Probation Service is in a position to supervise such measure or sanction.

(3) The Minister shall, as soon as is practicable after a probation measure or alternative sanction is prescribed for the purposes of *subsection (1)(l)*, by notice in writing given to the General Secretariat of the Council of the European Union, inform the General Secretariat that the State is prepared to supervise that measure or sanction, as the case may be.

Forwarding of judgment, etc., to competent authority in State

20. (1) *Subsection (2)* applies if one or more than one of the following matters (in this section referred to as a "relevant matter") arises:

(a) a judgment and, where applicable, the probation decision forwarded to the Minister pursuant to Article 5 of the Framework Decision is not accompanied by—

(i) an Article 6 certificate, or

(ii) if the Article 6 certificate is in a language other than the Irish language or the English language, a translation of that certificate in the Irish language or the English language;

(b) the Minister considers that an Article 6 certificate accompanying a judgment and, where applicable, the probation decision forwarded to the Minister pursuant to Article 5 of the Framework Decision—

(i) is incomplete, or

(ii) obviously does not correspond to that judgment and, where applicable, that decision.

(2) The Minister shall, as soon as is practicable after a relevant matter arises, by notice in writing given to the competent authority in the issuing state—

(a) inform the competent authority in the issuing state of the relevant matter, and

(b) specify a reasonable period of time within which the competent authority in the issuing state may take the necessary remedial action in relation to the relevant matter.

(3) *Subsection (4)* applies if a document forwarded to the Minister for the purposes of this Part has been directly forwarded to the Minister by a means which has left a record in writing of that document under conditions allowing the Minister to establish the authenticity of that document.

(4) The record in writing of the document shall be deemed to be the document that was forwarded.

(5) For the purposes of this Part, a document shall be deemed to be a true copy of an original document if it has been certified as a true copy of the original document by the competent authority in the issuing state.

(6) In proceedings to which this Part applies, a document shall be received in evidence without further proof if the document purports to be—

(a) a judgment given by the competent authority in the issuing state,

(b) a probation decision taken by the competent authority in the issuing state,

(c) an Article 6 certificate issued by the competent authority in the issuing state or a translation referred to in *subsection (1)(a)(ii)* of the Article 6 certificate, or

(d) a true copy of such judgment, probation decision, Article 6 certificate or translation.

(7) In proceedings to which this Part applies, a document that purports to be a true copy of a judgment, probation decision or Article 6 certificate referred to in *subsection (6)* shall, unless the contrary is shown, be evidence of the judgment, probation decision or certificate concerned, as the case may be.

Consent to forwarding judgment, etc., where sentenced person not lawfully and ordinarily residing in State

21. Notwithstanding that the sentenced person concerned is not lawfully and ordinarily residing in the State, the Minister may consent to the forwarding by the Member State competent authority of a judgment, and where applicable, the probation decision in respect of that person in accordance with Article 5 of the Framework Decision if—

(a) the person is an Irish citizen, or

(b) in the opinion of the Minister, the person has close ties with the State and it is in the interests of the person's social rehabilitation to do so.

Forwarding of judgment, etc., to Minister

22. (1) *Subsection (2)* applies where—

(a) a court,

(b) a Minister (other than the Minister for Justice and Equality), or

(c) any person performing, on behalf of the State, any function of government or discharging, on behalf of the State, public duties in relation to public administration,

receives a relevant document directly from the competent authority of the issuing state.

(2) The court, Minister or person referred to in *subsection (1)* shall—

(a) forward the relevant document to the Minister, and

(b) as soon as is practicable, inform the competent authority of the issuing state, by any means capable of producing a record in writing, of the action taken referred to in *paragraph (a)*.

(3) In this section, "relevant document" means—

(a) a judgment,

(b) a probation decision,

(c) an Article 6 certificate, or

(d) a translation of an Article 6 certificate.

Consideration of judgment, etc.

23. (1) Subject to *subsections (2)* and *(3)*, the Minister shall, after the Minister has received a judgment and, where applicable, the probation decision pursuant to Article 5 of the Framework Decision—

(a) subject to *subsection (9)*, make an application, on notice to the sentenced person, the Probation Service and the superintendent of the Garda Síochána for the district in which the sentenced person resides or will reside, to the appropriate court for the recognition under section 24 of that judgment and, where applicable, that probation decision, or

(b) subject to *subsection (10)*, refuse to recognise, on one or more than one of the grounds specified in any of *subsections (5)* to *(7)*, that judgment and, where applicable, that probation decision for the purposes of the assumption by the State of responsibility for supervising the probation measure or alternative sanction concerned.

(2) The Minister may postpone taking action under *subsection (1)* in respect of the judgment and, where applicable, the probation decision referred to in that subsection if any necessary remedial action referred to in *section 20(2)(b)* still needs to be taken, within the reasonable period of time referred to in that section specified in the notice concerned under *section 20(2)* given to the competent authority in the issuing state, as regards the Article 6 certificate that accompanied, or that should have accompanied, that judgment and, where applicable, that probation decision.

(3) The Minister shall, before taking action under *subsection (1)*, consult with the Probation Service and the Garda Síochána.

(4) Where the Minister receives a judgment and, where applicable, the probation decision, together with the accompanying Article 6 certificate, pursuant to Articles 5 and 6 of the Framework Decision, the Minister shall, if requested to do so by the competent authority in the issuing state, inform the competent authority in the issuing state of the maximum term of imprisonment, or other deprivation of liberty, that could be imposed on the sentenced person if he or she fails to comply with the probation measure or alternative sanction concerned.

(5) Subject to *subsection (8)*, the Minister may refuse to recognise a judgment and, where applicable, the probation decision if one or more than one of the following grounds applies:

(a) a relevant matter within the meaning of *section 20(1)* applies in relation to the Article 6 certificate which accompanied, or which should have accompanied, that judgment and, where applicable, that probation decision, and the reasonable period of time specified in the notice concerned under *section 20(2)* given to the competent authority in the issuing state in respect of that matter has expired without the necessary remedial action referred to in *section 20(2)(b)* having been taken in respect of that matter;

(b) that Article 6 certificate includes a probation measure or alternative sanction that does not fall within *section 19(1)*;

(c) the sentenced person, by virtue of any Act of the Oireachtas, is, under the law of the State, immune from prosecution for an offence consisting of an act or omission that constitutes, whether in whole or in part, the

offence to which the judgment and, where applicable, the probation decision relates;

(d) the judgment and, where applicable, the probation decision provides for medical or therapeutic treatment which, in the opinion of the Minister and notwithstanding *section 24(2)*, it would be impossible or impracticable for the State to provide or supervise;

(e) subject to *subsection (6)*, the judgment and, where applicable, the probation decision relates to an offence which is regarded under the law of the State as having been committed wholly or for an essential part in the State.

(6) The Minister may refuse to recognise a judgment and, where applicable, the probation decision on the ground referred to in *subsection (5)(e)* in relation to an offence committed partly in the State only in exceptional circumstances, having regard to the specific circumstances of the case, and in particular to whether a major or essential part of the conduct concerned took place in the issuing state.

(7) Subject to *section 21* and *subsection (8)*, the Minister shall refuse to recognise a judgment and, where applicable, the probation decision if one or more than one of the following grounds applies:

(a) the sentenced person has not returned and does not want to return to the State;

(b) the Minister has not consented to the forwarding of the judgment and, where applicable, the probation decision in respect of the sentenced person where such person is not lawfully and ordinarily residing in the State;

(c) it is immediately clear from the information provided in the Article 6 certificate concerned that recognition of the judgment and, where applicable, the probation decision would infringe the *ne bis in idem* principle;

(d) the judgment and, where applicable, the probation decision relates to an offence under the law of the issuing state which does not correspond to an offence under the law of the State;

(e) the offence under the law of the issuing state to which the judgment relates corresponds to an offence under the law of the State in respect of which a person of the same age as the sentenced person could not be proceeded against by reason of his or her age at the time of the offence;

(f) the sentenced person did not appear in person at the proceedings resulting in the judgment unless the Article 6 certificate accompanying the judgment indicates the matters required by points 2, 3 and 4 of point (h) of Annex I to the Framework Decision;

(g) the probation measure or alternative sanction concerned is of less than 6 months' duration or the remaining duration of the measure or sanction is less than 6 months.

(8) In the case referred to in *subsection (5)* or *(7)*, the Minister may, by any means capable of producing a record in writing, request the competent authority in the issuing state to supply the Minister with any additional information required as soon as is practicable, before the Minister decides not to recognise a judgment and, where applicable, the probation decision for the purposes of the assumption by the State of responsibility for supervising the probation measure or alternative sanction concerned.

(9) Where the appropriate court for the purposes of an application under *subsection (1)(a)* is the Circuit Court, the application shall be made to the judge of the Circuit designated for that purpose by the President of the Circuit Court.

(10) The Minister shall not refuse to recognise a judgment and, where applicable, the probation decision on the ground that, in relation to a revenue offence—

(a) no tax or duty of the kind to which the offence relates is imposed in the State, or

(b) the rules relating to taxes, duties, customs or exchange control that apply in the issuing state differ in nature from the rules that apply in the State to taxes, duties, customs or exchange control.

Annotations

Amendments:

F2 Substituted by *Garda Síochána (Functions and Operational Areas) Act 2022* (7/2022), s. 4 and sch. 1 ref. 31, subject to transitional provisions in ss. 13, 26, not commenced as of date of revision.

Modifications (not altering text):

C1 Prospective affecting provision: subs. (1)(a) amended by *Garda Síochána (Functions and Operational Areas) Act 2022* (7/2022), s. 4 and sch. 1 ref. 31, not commenced as of date of revision, subject to transitional provisions in ss. 13, 26.

(a) subject to *subsection (9)*, make an application, on notice to the sentenced person, the Probation Service and F2**[**an inspector of the Garda Síochána in the Garda division**]** in which the sentenced person resides or will reside, to the appropriate court for the recognition under section 24 of that judgment and, where applicable, that probation decision, or

...

Endorsement of judgment, etc., by appropriate court

24. (1) *Subsection (2)* applies where an application under *section 23(1)(a)* is made to the appropriate court and the appropriate court is satisfied that the judgment and, where applicable, the probation decision the subject of the application comply with the provisions of this Part applicable to that judgment and, where applicable, that probation decision.

(2) Subject to *subsections (3)* to *(10)* and *sections 25* and *30*, the appropriate court—

(a) subject to *paragraphs (b)* and *(c)*, shall make an order endorsing the judgment and, where applicable, the probation decision for the purpose of their recognition and the assumption by the State of responsibility for supervising the probation measure or alternative sanction concerned,

(b) if it is of the opinion that the probation measure or alternative sanction concerned is, by its nature, incompatible with the law of the State, may—

(i) adapt the measure or sanction to that of a measure or sanction prescribed by the law of the State for an offence which corresponds to the offence for which the probation measure or alternative sanction was imposed, and

(ii) specify the adaptations concerned in the order referred to in *paragraph (a)*,

and

(c) if it is of the opinion that the period of duration of the probation measure or alternative sanction concerned is incompatible with the law of the State, may—

(i) adapt that period to that of a period of duration of a measure or sanction, as the case may be, prescribed by the law of the State for an offence which corresponds to the offence for which the probation measure or alternative sanction was imposed, and

(ii) specify the adaptations concerned in the order referred to in *paragraph (a)*.

(3) (a) The nature of the probation measure or alternative sanction as adapted under *subsection (2)(b)* shall, in so far as is practicable, correspond with the nature of the probation measure or alternative sanction before such adaptation.

(b) The adaptation under *subsection (2)(b)* of the probation measure or alternative sanction shall not be done in such a way as to—

(i) aggravate the probation measure or alternative sanction, or

(ii) cause the maximum penalty prescribed by the law of the State, for an offence which corresponds to the offence for which the probation measure or alternative sanction was imposed, to be exceeded.

(4) (a) The period of duration of the probation measure or alternative sanction as adapted under *subsection (2)(c)* shall, in so far as is practicable, correspond with the period of duration of the probation measure or alternative sanction before such adaptation.

(b) The adaptation under *subsection (2)(c)* of the period of duration of the probation measure or alternative sanction shall not be done in such a way as to—

(i) aggravate the probation measure or alternative sanction, or

(ii) cause the maximum penalty prescribed by the law of the State for an offence which corresponds to the offence for which the probation measure or alternative sanction was imposed to be exceeded.

(c) Where the period of duration of the probation measure or alternative sanction exceeds the maximum period of duration prescribed by the law of the State for an offence corresponding to the offence for which the probation measure or alternative sanction was imposed, the adaptation under *subsection (2)(c)* of the first-mentioned period shall be the same as the second-mentioned period.

(5) An order under *subsection (2)(a)* shall specify—

(a) the measure or sanction under the law of the State to which the probation measure or alternative sanction concerned corresponds, and

(b) the court before which any subsequent proceedings relating to the probation measure or alternative sanction are to be brought.

(6) Subject to *subsections (9)*, and *(10)*, the appropriate court may refuse to endorse a judgment and, where applicable, the probation decision if one or more than one of the following grounds applies:

(a) a relevant matter within the meaning of *section 20(1)* applies in relation to the Article 6 certificate which accompanied, or which should have accompanied, that judgment and, where applicable, that probation

decision and the reasonable period of time specified in the notice concerned under *section 20(2)* given to the competent authority in the issuing state in respect of that matter has expired without the necessary remedial action referred to in *section 20(2)(b)* having been taken in respect of that matter;

(b) that Article 6 certificate includes a probation measure or alternative sanction that does not fall within *section 19(1)*;

(c) the sentenced person, by virtue of any Act of the Oireachtas, is, under the law of the State, immune from prosecution for an offence consisting of an act or omission that constitutes, whether in whole or in part, the offence to which the judgment and, where applicable, the probation decision relates;

(d) the judgment and, where applicable, the probation decision provides for medical or therapeutic treatment which, in the opinion of the appropriate court and notwithstanding *section 24(2)*, it would be impossible or impracticable for the State to provide or supervise;

(e) subject to *subsection (7)* , the judgment and, where applicable, the probation decision relates to an offence which is regarded under the law of the State as having been committed wholly or for an essential part in the State.

(7) The appropriate court may refuse to endorse a judgment and, where applicable, the probation decision on the ground referred to in *subsection (6)(e)* in relation to an offence committed partly in the State only in exceptional circumstances, having regard to the specific circumstances of the case, and in particular to whether a major or essential part of the conduct concerned took place in the issuing state.

(8) Subject to *section 21* and *subsections (9)* and *(10)*, the appropriate court shall refuse to endorse a judgment and, where applicable, the probation decision if one or more than one of the following grounds applies:

(a) the sentenced person has not returned and does not want to return to the State;

(b) the Minister has not consented to the forwarding of the judgment and, where applicable, the probation decision in respect of the sentenced person where such person is not lawfully and ordinarily residing in the State;

(c) it is immediately clear from the information provided in the Article 6 certificate concerned that endorsement of the judgment and, where applicable, the probation decision would infringe the *ne bis in idem* principle;

(d) the judgment and, where applicable, the probation decision relates to an offence under the law of the issuing state which does not correspond to an offence under the law of the State;

(e) the offence under the law of the issuing state to which the judgment relates corresponds to an offence under the law of the State in respect of which a person of the same age as the sentenced person could not be proceeded against by reason of his or her age at the time of the offence;

(f) the sentenced person did not appear in person at the proceedings resulting in the judgment unless the Article 6 certificate accompanying the judgment indicates the matters required by points 2, 3 and 4 of point (h) of Annex I to the Framework Decision;

(g) the probation measure or alternative sanction is of less than 6 months' duration or the remaining duration of the measure or sanction is less than 6 months.

(9) In a case referred to in *subsection (6)* or *(8)*, the appropriate court may request the Minister to obtain from the competent authority in the issuing state any additional information required by the appropriate court as soon as is practicable, before the appropriate court refuses to endorse a judgment and, where applicable, the probation decision for the purposes of the assumption by the State of responsibility for supervising the probation measure or alternative sanction concerned.

(10) The appropriate court shall not refuse to endorse a judgment and, where applicable, the probation decision on the ground that, in relation to a revenue offence—

(a) no tax or duty of the kind to which the offence relates is imposed in the State, or

(b) the rules relating to taxes, duties, customs or exchange control that apply in the issuing state differ in nature from the rules that apply in the State to taxes, duties, customs or exchange control.

Provisions applicable in cases of conditional release and suspended sentences

25. (1) Without prejudice to the generality of *section 24*, where the appropriate court makes an order under *section 24(2)* in relation to a judgment and, where applicable, the probation decision relating to a suspended sentence, the order shall specify—

(a) that the suspended sentence corresponds to a suspended sentence under section 99 of the Act of 2006, and

(b) the prison to which the sentenced person is to be committed if the suspension of the sentence is revoked in accordance with section 99(10) or (17) of the Act of 2006.

(2) Without prejudice to the generality of *section 24*, where the appropriate court makes an order under *section 24(2)* in relation to a judgment and, where applicable, the probation decision relating to a conditional release, the order shall specify—

(a) that the conditional release corresponds to a direction given by the Minister under section 2 of the Act of 1960, and

(b) the place to which the sentenced person shall be taken if he or she is arrested under section 7 of the Act of 1960.

(3) Subject to *section 30*, the effect of an order under *section 24(2)* in relation to a judgment and, where applicable, the probation decision relating to a suspended sentence or conditional release shall be to authorise the enforcement by the State of the custodial sentence to which the judgment and, where applicable, the probation decision relates in its nature and duration, less the period of the sentence actually served by the sentenced person in the issuing state or elsewhere, with due regard to any remission of sentence accrued in the issuing state if—

(a) the sentenced person fails to comply with a condition of the suspended sentence or conditional release, or

(b) in the case of a suspended sentence, the sentenced person is convicted of an offence in the circumstances specified in section 99(9) of the Act of 2006.

Time limits for decision

26. (1) Subject to *subsection (3)*, the Minister shall make an application under *section 23(1)(a)* as soon as is practicable and, in any event, in sufficient time to enable the appropriate court to decide on the application—

(a) subject to *paragraph (b)*, within a period of 60 days of the receipt by the Minister of a judgment and, where applicable, the probation decision together with the accompanying Article 6 certificate, or

(b) in a case to which *section 20(1)* and *(2)* applies to the Article 6 certificate, within a period of 60 days of the remedial action concerned referred to in *section 20(2)(b)* being taken.

(2) Subject to *subsection (3)*, the Minister shall make a decision referred to in *section 23(1)(b)* as soon as is practicable and, in any event—

(a) subject to *paragraph (b)*, within a period of 60 days of the receipt by the Minister of a judgment and, where applicable, the probation decision together with the accompanying Article 6 certificate, or

(b) in a case to which *section 20(1)* and *(2)* applies to the Article 6 certificate, within a period of 60 days of the remedial action concerned referred to in *section 20(2)(b)* being taken.

(3) When, in exceptional circumstances, it is not possible for the Minister to comply with the time limit provided for in *subsection (1)* or *(2)*, the Minister shall, as soon as is practicable, inform the competent authority in the issuing state, by any means capable of producing a record in writing, of—

(a) that delay,

(b) the reasons for the delay, and

(c) the estimated time needed for a final decision to be taken on the judgment and, where applicable, the probation decision concerned.

(4) When making an application under *section 23(1)(a)*, the Minister shall inform the appropriate court of—

(a) subject to *paragraph (b)*, the date of the receipt by the Minister of the judgment and, where applicable, the probation decision together with the accompanying Article 6 certificate the subject of the application, or

(b) in a case to which *section 20(1)* and *(2)* applies to the Article 6 certificate, the date (if any) that that section ceased to apply to the certificate.

(5) Subject to *subsection (6)*, the appropriate court shall decide on an application under *section 23(1)(a)* as soon as is practicable and, in any event—

(a) subject to *paragraph (b)*, within the period of 60 days of the receipt by the Minister of the judgment and, where applicable, the probation decision together with the accompanying Article 6 certificate the subject of the application, or

(b) in a case to which *section 20(1)* and *(2)* applies to the Article 6 certificate, within the period of 60 days of the remedial action concerned referred to in *section 20(2)(b)* being taken.

(6) When, in exceptional circumstances, it is not possible for the appropriate court to comply with the time limit provided for in *subsection (5)*, it shall, as soon as is practicable, cause the Minister to be informed of—

(a) that delay,

(b) the reasons for the delay, and

(c) the estimated time needed for a final decision to be taken on the judgment and, where applicable, the probation decision concerned.

(7) The Minister shall, as soon as is practicable after the receipt of information under *subsection (6)*, by any means capable of leaving a record in writing, give that information to the competent authority in the issuing state.

Notification of endorsement of judgment and, where applicable, probation decision

27. Where the appropriate court has made an order under *section 24(2)*, it shall cause a certified copy of the order, to which is annexed a copy of the judgment and, where applicable, the probation decision the subject of the order to be sent, within 4 working days of the making of the order, to—

(a) the sentenced person,

(b) the Minister,

(c) the Director of the Probation Service, and

(d) the superintendent of the Garda Síochána for the district in which the sentenced person resides or will reside.

Annotations

Amendments:

F3 Substituted by *Garda Síochána (Functions and Operational Areas) Act 2022* (7/2022), s. 4 and sch. 1 ref. 31, subject to transitional provisions in ss. 13, 26, not commenced as of date of revision.

Modifications (not altering text):

C2 Prospective affecting provision: para. (d) amended by *Garda Síochána (Functions and Operational Areas) Act 2022* (7/2022), s. 4 and sch. 1 ref. 31, not commenced as of date of revision, subject to transitional provisions in ss. 13, 26.

(d) F3**[**an inspector of the Garda Síochána in the Garda division**]** in which the sentenced person resides or will reside.

Recognition of judgment and probation decision

28. (1) Where an order under *section 24(2)* has been made in respect of a judgment and, where applicable, the probation decision, the Minister shall—

(a) recognise, for the purposes of the assumption by the State of responsibility for supervising the probation measure or alternative sanction concerned, the judgment and, where applicable, the probation decision the subject of the order, and

(b) as soon as is practicable, take all necessary steps for the supervision of the probation measure or alternative sanction.

(2) A probation measure or alternative sanction endorsed by an order of the appropriate court under *section 24(2)* shall be deemed, for the purposes of the law of the State, to be a measure or sanction under the law of the State as specified pursuant to *section 24(5)* and shall have the same effect as if it were such a measure or sanction.

(3) Subject to section 30, any subsequent proceedings relating to a probation measure or alternative sanction endorsed by an order of the appropriate court under section 24(2) shall be brought before the court specified pursuant to *section 24(5)(b)* for the bringing of subsequent proceedings relating to the probation measure or alternative sanction.

(4) A court which makes an order in subsequent proceedings relating to a probation measure or alternative sanction endorsed by an order of the appropriate court under *section 24(2)* shall cause, within 4 working days of the date of the making of the order, a certified copy of the order to be sent to the Minister.

Obligation to provide certain information to competent authority in issuing state

29. (1) The Minister shall immediately notify the competent authority in the issuing state, by any means capable of producing a record in writing, of any of the following:

(a) the recognition by the Minister under *section 28* of a judgment and, where applicable, the probation decision for the purposes of the assumption by the State of responsibility for supervising the probation measure or alternative sanction concerned;

(b) any decision of the Minister referred to in *section 23(1)(b)*, together with the reasons for the decision;

(c) any decision of the appropriate court under *section 24* not to endorse a judgment and, where applicable, the probation decision, together with the reasons for the decision;

(d) an order of the appropriate court under *section 24(2)* adapting a probation measure or alternative sanction, together with the reasons for the adaptation;

(e) if *section 30* applies to a judgment and, where applicable, the probation decision, that the State will not assume responsibility for making a relevant decision within the meaning of *section 30(1)*.

(2) The Minister shall without delay inform the competent authority in the issuing state, by any means capable of producing a record in writing, of any of the following:

(a) the forwarding of a relevant document (within the meaning of *section 22(3)*) under *section 22* to the Minister;

(b) the non-commencement or discontinuance of the supervision of the probation measure or alternative sanction concerned due to an amnesty, pardon or remission of punishment having been granted under the law of the State or the issuing state to the sentenced person in respect of the offence to which the judgment and, where applicable, the probation decision relates.

(3) Where, because the sentenced person cannot be found in the State after the forwarding of the judgment and, where applicable, the probation decision together with the accompanying Article 6 certificate to the Minister pursuant to Articles 5 and 6 of the Framework Decision, it is in practice impossible for the probation measure or alternative sanction concerned to be supervised by the State, the Minister shall, as soon as is practicable, inform the competent authority in the issuing state, by any means capable of producing a record in writing, of that fact.

(4) Where a judgment and, where applicable, the probation decision have been recognised by the Minister under *section 28* (other than a judgment and, where applicable, the probation decision to which *section 30(1)* applies), the Minister shall, as soon as is practicable, inform the competent authority in the issuing state, by any means capable of producing a record in writing, of any subsequent decision—

(a) modifying the probation measure or alternative sanction concerned,

(b) revoking the suspension of the execution of the judgment,

(c) revoking the decision on conditional release, or

(d) in consequence of a failure by a sentenced person to comply with the probation measure or alternative sanction—

(i) enforcing a custodial sentence, or other measure involving the deprivation of liberty, on the person, or

(ii) imposing a custodial sentence, or other measure involving the deprivation of liberty, on the person.

(5) Subject to *subsections (6)* and *(7)*, the Minister shall, as soon as is practicable, notify the competent authority in the issuing state which has jurisdiction for a relevant decision within the meaning of *section 30(1)*, pursuant to the application of *section 30*, of—

(a) any finding which is likely to result in the revocation of the decision on conditional release,

(b) all further facts and circumstances which the competent authority in the issuing state requests to be provided, or

(c) all further facts and circumstances, knowledge of which is essential in order to allow the competent authority in the issuing state to take such relevant decision in accordance with its national law.

(6) The Minister shall give notice of the finding referred to in *subsection (5)(a)* using the form set out in Annex II to the Framework Decision.

(7) The Minister shall give notice of the facts and circumstances referred to in *paragraph (b)* or *(c)* of *subsection (5)* by any means which is capable of producing a record in writing (including, if practicable, by using the form set out in Annex II to the Framework Decision).

No jurisdiction to take subsequent decisions in certain cases

30. (1) This section applies where—

(a) the judgment and, where applicable, the probation decision relates to a conditional release to which *section 25(2)* applies, and

(b) under the law of the issuing state, the sentenced person must be given a judicial hearing before a decision (in this section referred to as a "relevant decision") is taken on the revocation of the decision on the conditional release.

(2) Where the appropriate court makes an order under *section 24(2)*, it shall specify in the order that the State shall not assume responsibility for taking a relevant decision.

(3) The Minister shall transfer jurisdiction back to the competent authority in the issuing state where the Minister is of the opinion that—

(a) the sentenced person has not complied with the probation measure or alternative sanction endorsed by an order under *section 24(2)* and to which this section applies, and

(b) a relevant decision needs to be taken.

(4) This section shall not affect the operation of *section 28*.

(5) Where the sentenced person is to give evidence at a judicial hearing in the issuing state, sections 68 to 72 of the Criminal Justice (Mutual Assistance) Act 2008 shall, with all necessary notifications, apply for the purposes of such hearing.

Judgment not reviewable

31. A person may not appeal in the State against a judgment which forms the basis for a probation measure or alternative sanction to which this Part applies.

Transfer of jurisdiction back to competent authority in issuing state

32. (1) The Minister may transfer jurisdiction in respect of the supervision of the probation measure or alternative sanction concerned and in respect of all subsequent decisions referred to in Article 14 of the Framework Decision relating thereto back to the competent authority in the issuing state if—

(a) the Minister is satisfied on reasonable grounds that the sentenced person has absconded or is no longer lawfully and ordinarily residing in the State, or

(b) new criminal proceedings are brought against the sentenced person in the issuing state and the competent authority in the issuing state so requests.

(2) On and from the date of the transfer of jurisdiction back to the competent authority in the issuing state under *subsection (1)*, the State shall no longer have jurisdiction in respect of the supervision of the probation measure or alternative sanction concerned or in respect of any subsequent decisions referred to in Article 14 of the Framework Decision relating thereto.

(3) The Minister shall notify the court specified in *section 24(5)(b)* of the transfer of jurisdiction under subsection (1) within 4 working days of the transfer having been effected.

SCHEDULE

Council Framework Decision 2008/947/JHA of 27 November 2008 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

(OJ L 337, 16.12.2008, p. 102)

Amended by Council Framework Decision 2009/299/JHA of 26 February 2009

(OJ L 81, 27.3.2009, p. 24)

COUNCIL FRAMEWORK DECISION 2008/947/JHA

of 27 November 2008

on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the initiative of the Federal Republic of Germany and of the French Republic ([1]),

Having regard to the Opinion of the European Parliament ([2]),

Whereas:

(1) The European Union has set itself the objective of developing an area of freedom, security and justice. This presupposes that there is an understanding of freedom, security and justice on the part of the Member States which is identical in its essential elements and based on the principles of freedom, democracy, respect for human rights and fundamental freedoms, as well as the rule of law.

(2) The aim of police and judicial cooperation in the European Union is to provide a high degree of security for all citizens. One of the cornerstones for this is the principle of mutual recognition of judicial decisions, established in the conclusions of the European Council meeting in Tampere on 15 and 16 October 1999 and reaffirmed in the Hague Programme of 4 and 5 November 2004 for strengthening freedom, security and justice in the European Union ([3]). In the programme of measures of 29 November 2000 adopted for the purpose of implementing the principle of mutual recognition of decisions in criminal matters, the Council pronounced itself in favour of cooperation in the area of suspended sentences and parole.

(3) Council Framework Decision 2008/909/JHA of 27 November 2008 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 ([4]) concerns the mutual recognition and enforcement of custodial sentences or measures involving deprivation of liberty. Further common rules are required, in particular where a non-custodial sentence involving the supervision of probation measures or alternative sanctions has been

[1] OJ C 147, 30.6.2007, p. 1.
[2] Opinion of 25 October 2007 (not yet published in the Official Journal).
[3] OJ C 53, 3.3.2005, p. 1.
[4] OJ L 327, 5.12.2008, p. 27.

imposed in respect of a person who does not have his lawful and ordinary residence in the State of conviction.

(4) The Council of Europe Convention of 30 November 1964 on the Supervision of Conditionally Sentenced or Conditionally Released Offenders has been ratified by only 12 Member States, with, in some cases, numerous reservations. The present Framework Decision provides for a more effective instrument because it is based on the principle of mutual recognition and all Member States participate.

(5) This Framework Decision respects fundamental rights and adheres to the principles recognised in Article 6 of the Treaty on European Union, which are also expressed in the Charter of Fundamental Rights of the European Union, especially in Chapter VI thereof. No provision of this Framework Decision should be interpreted as prohibiting refusal to recognise a judgment and/or supervise a probation measure or alternative sanction if there are objective reasons to believe that the probation measure or alternative sanction was imposed to punish a person because of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation or that this person might be disadvantaged for one of these reasons.

(6) This Framework Decision should not prevent any Member State from applying its constitutional rules relating to entitlement to due process, freedom of association, freedom of the press, freedom of expression in other media and freedom of religion.

(7) The provisions of this Framework Decision should be applied in conformity with the right of the Union's citizens to move and reside freely within the territory of the Member States, pursuant to Article 18 of the Treaty establishing the European Community.

(8) The aim of mutual recognition and supervision of suspended sentences, conditional sentences, alternative sanctions and decisions on conditional release is to enhance the prospects of the sentenced person's being reintegrated into society, by enabling that person to preserve family, linguistic, cultural and other ties, but also to improve monitoring of compliance with probation measures and alternative sanctions, with a view to preventing recidivism, thus paying due regard to the protection of victims and the general public.

(9) There are several types of probation measures and alternative sanctions which are common among the Member States and which all Member States are in principle willing to supervise. The supervision of these types of measures and sanctions should be obligatory, subject to certain exceptions provided for in this Framework Decision. Member States may declare that, in addition, they are willing to supervise other types of probation measures and/or other types of alternative sanctions.

(10) The probation measures and alternative sanctions that are, in principle, obligatory to supervise include, *inter alia*, orders relating to behaviour (such as an obligation to stop the consumption of alcohol), residence (such as an obligation to change residence for reasons of domestic violence), education and training (such as an obligation to follow a 'safe-driving course'), leisure activities (such as an obligation to cease playing or attending a certain sport) and limitations on or modalities of carrying out a professional activity (such as an obligation to seek a professional activity in a different working environment; this obligation does not include the supervision of compliance with any professional disqualifications imposed on the person as part of the sanction).

(11) Where appropriate, electronic monitoring could be used with a view to supervising probation measures or alternative sanctions, in accordance with national law and procedures.

(12) The Member State where the person concerned is sentenced may forward a judgment and, where applicable, a probation decision to the Member State where the sentenced person is lawfully and ordinarily resident with a view to the recognition thereof and to the supervision of probation measures or alternative sanctions contained therein.

(13) The decision on whether to forward the judgment and, where applicable, the probation decision to another Member State should be taken in each individual case by the competent authority of the issuing Member State, taking into account, *inter alia*, the declarations made in accordance with Articles 5(4), 10(4) and 14(3).

(14) The judgment and, where applicable, the probation decision may also be forwarded to a Member State other than that where the sentenced person is residing, if the competent authority of that executing State, taking account of any conditions set out in the relevant declaration made by that State in accordance with this Framework Decision, consents to such forwarding. In particular, consent may be given, with a view to social rehabilitation, where the sentenced person, without losing his/her right of residence, intends to move to another Member State because he/she is granted an employment contract, if he/she is a family member of a lawful and ordinary resident person of that Member State, or if he/she intends to follow a study or training in that Member State, in accordance with Community law.

(15) Member States should apply their own national law and procedures for the recognition of a judgment and, where applicable, a probation decision. In the case of a conditional sentence or alternative sanction where the judgment does not contain a custodial sentence or measure involving deprivation of liberty to be enforced in case of non-compliance with the obligations or instructions concerned, this could imply that having made the relevant declaration in accordance with this Framework Decision, Member States, when deciding to recognise, agree to supervise the probation measures or alternative sanctions concerned and to assume no other responsibility than just for taking the subsequent decisions consisting of the modification of obligations or instructions contained in the probation measure or alternative sanction, or modification of the duration of the probation period. Consequently, the recognition has, in such cases, no further effect than to enable the executing State to take those types of subsequent decisions.

(16) A Member State may refuse to recognise a judgment and, where applicable, a probation decision, if the judgment concerned was issued against a person who has not been found guilty, such as in the case of a mentally ill person, and the judgment or, where applicable, the probation decision provides for medical/therapeutic treatment which the executing State cannot supervise in respect of such persons under its national law.

(17) The ground for refusal relating to territoriality should be applied only in exceptional cases and with a view to cooperating to the greatest extent possible under the provisions of this Framework Decision, while taking into account of the objectives thereof. Any decision to apply this ground for refusal should be based on a case-by-case analysis and on consultations between the competent authorities of the issuing and executing States.

(18) If the probation measures or alternative sanctions include community service, then the executing State should be entitled to refuse to recognise

the judgment and, where applicable, the probation decision if the community service would normally be completed in less than six months.

(19) The form of the certificate is drafted in such a way so that essential elements of the judgment and, where applicable, of the probation decision are comprised in the certificate, which should be translated into the official language or one of the official languages of the executing State. The certificate should assist the competent authorities in the executing State in taking decisions under this Framework Decision, including decisions on recognition and assumption of responsibility for supervision of probation measures and alternative sanctions, decisions on adaptation of probation measures and alternative sanctions, and subsequent decisions in case, notably, of non-compliance with a probation measure or alternative sanction.

(20) In view of the principle of mutual recognition, on which this Framework Decision is based, issuing and executing Member States should promote direct contact between their competent authorities in the application of this Framework Decision.

(21) All Member States should ensure that sentenced persons, in respect of whom decisions under this Framework Decision are taken, are subject to a set of legal rights and remedies in accordance with their national law, regardless of whether the competent authorities designated to take decisions under this Framework Decision are of a judicial or a non-judicial nature.

(22) All subsequent decisions relating to a suspended sentence, a conditional sentence or an alternative sanction which result in the imposition of a custodial sentence or measure involving deprivation of liberty should be taken by a judicial authority.

(23) Since all Member States have ratified the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, personal data processed when implementing this Framework Decision should be protected in accordance with the principles laid down in that Convention.

(24) Since the objectives of this Framework Decision, namely facilitating the social rehabilitation of sentenced persons, improving the protection of victims and of the general public, and facilitating the application of suitable probation measures and alternative sanctions in case of offenders who do not live in the State of conviction, cannot be sufficiently achieved by the Member States themselves in view of the cross-border nature of the situations involved and can therefore, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as defined in Article 5 of the Treaty establishing the European Community as applied by the second paragraph of Article 2 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in Article 5 of the Treaty establishing the European Community, this Framework Decision does not go beyond what is necessary in order to achieve those objectives,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Objectives and scope

1. This Framework Decision aims at facilitating the social rehabilitation of sentenced persons, improving the protection of victims and of the general public, and facilitating the application of suitable probation measures and

alternative sanctions, in case of offenders who do not live in the State of conviction. With a view to achieving these objectives, this Framework Decision lays down rules according to which a Member State, other than the Member State in which the person concerned has been sentenced, recognises judgments and, where applicable, probation decisions and supervises probation measures imposed on the basis of a judgment, or alternative sanctions contained in such a judgment, and takes all other decisions relating to that judgment, unless otherwise provided for in this Framework Decision.

2. This Framework Decision shall apply only to:

(a) the recognition of judgments and, where applicable, probation decisions;

(b) the transfer of responsibility for the supervision of probation measures and alternative sanctions;

(c) all other decisions related to those under (a) and (b) ;

as described and provided for in this Framework Decision.

3. This Framework Decision shall not apply to:

(a) the execution of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty which fall within the scope of Framework Decision 2008/909/JHA;

(b) recognition and execution of financial penalties and confiscation orders which fall within the scope of Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties ([5]) and Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders ([6]).

4. 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.

Article 2

Definitions

For the purposes of this Framework Decision:

1. 'judgment' shall mean a final decision or order of a court of the issuing State, establishing that a natural person has committed a criminal offence and imposing:

(a) a custodial sentence or measure involving deprivation of liberty, if a conditional release has been granted on the basis of that judgment or by a subsequent probation decision;

(b) a suspended sentence;

(c) a conditional sentence;

(d) an alternative sanction;

2. 'suspended sentence' shall mean a custodial sentence or measure involving deprivation of liberty, the execution of which is conditionally suspended, wholly or in part, when the sentence is passed by imposing one or more probation measures. Such probation measures may be included in the judgment

[5] OJ L 76, 22.3.2005, p. 16.
[6] OJ L 328, 24.11.2006, p. 59

itself or determined in a separate probation decision taken by a competent authority;

3. 'conditional sentence' shall mean a judgment in which the imposition of a sentence has been conditionally deferred by imposing one or more probation measures or in which one or more probation measures are imposed instead of a custodial sentence or measure involving deprivation of liberty. Such probation measures may be included in the judgment itself or determined in a separate probation decision taken by a competent authority;

4. 'alternative sanction' shall mean a sanction, other than a custodial sentence, a measure involving deprivation of liberty or a financial penalty, imposing an obligation or instruction;

5. 'probation decision' shall mean a judgment or a final decision of a competent authority of the issuing State taken on the basis of such judgment:

(a) granting a conditional release; or

(b) imposing probation measures;

6. 'conditional release' shall mean a final decision of a competent authority or stemming from the national law on the early release of a sentenced person after part of the custodial sentence or measure involving deprivation of liberty has been served by imposing one or more probation measures;

7. 'probation measures' shall mean obligations and instructions imposed by a competent authority on a natural person, in accordance with the national law of the issuing State, in connection with a suspended sentence, a conditional sentence or a conditional release;

8. 'issuing State' shall mean the Member State in which a judgment is delivered;

9. 'executing State' shall mean the Member State in which the probation measures and alternative sanctions are supervised following a decision in accordance with Article 8.

Article 3

Designation of competent authorities

1. Each Member State shall inform the General Secretariat of the Council which authority or authorities, under its national law, are competent to act according to this Framework Decision in the situation where that Member State is the issuing State or the executing State.

2. Member States may designate non-judicial authorities as the competent authorities for taking decisions under this Framework Decision, provided that such authorities have competence for taking decisions of a similar nature under their national law and procedures.

3. If a decision under Article 14(1)(b) or (c) is taken by a competent authority other than a court, the Member States shall ensure that, upon request of the person concerned, such decision may be reviewed by a court or by another independent court-like body.

4. The General Secretariat of the Council shall make the information received available to all Member States and to the Commission.

Article 4

Types of probation measures and alternative sanctions

1. This Framework Decision shall apply to the following probation measures or alternative sanctions:

(a) an obligation for the sentenced person to inform a specific authority of any change of residence or working place;

(b) an obligation not to enter certain localities, places or defined areas in the issuing or executing State;

(c) an obligation containing limitations on leaving the territory of the executing State;

(d) instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity;

(e) an obligation to report at specified times to a specific authority;

(f) an obligation to avoid contact with specific persons;

(g) an obligation to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence;

(h) an obligation to compensate financially for the prejudice caused by the offence and/or an obligation to provide proof of compliance with such an obligation;

(i) an obligation to carry out community service;

(j) an obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons;

(k) an obligation to undergo therapeutic treatment or treatment for addiction.

2. Each Member State shall notify the General Secretariat of the Council, when implementing this Framework Decision, which probation measures and alternative sanctions, apart from those referred to in paragraph 1, it is prepared to supervise. The General Secretariat of the Council shall make the information received available to all Member States and to the Commission.

Article 5

Criteria for forwarding a judgment and, where applicable, a probation decision

1. The competent authority of the issuing State may forward a judgment and, where applicable, a probation decision to the competent authority of the Member State in which the sentenced person is lawfully and ordinarily residing, in cases where the sentenced person has returned or wants to return to that State.

2. The competent authority of the issuing State may, upon request of the sentenced person, forward the judgment and, where applicable, the probation decision to a competent authority of a Member State other than the Member State in which the sentenced person is lawfully and ordinarily residing, on condition that this latter authority has consented to such forwarding.

3. When implementing this Framework Decision, Member States shall determine under which conditions their competent authorities may consent to the forwarding of a judgment and, where applicable, a probation decision under paragraph 2.

4. Each Member State shall make a declaration to the General Secretariat of the Council of the determination made under paragraph 3. Member States may modify such a declaration at any time. The General Secretariat shall make the information received available to all Member States and to the Commission.

Article 6

Procedure for forwarding a judgment and, where applicable, a probation decision

1. When, in application of Article 5(1) or (2), the competent authority of the issuing State forwards a judgment and, where applicable, a probation decision to another Member State, it shall ensure that it is accompanied by a certificate, the standard form for which is set out in Annex I.

2. The judgment and, where applicable, the probation decision, together with the certificate referred to in paragraph 1, shall be forwarded by the competent authority of the issuing State directly to the competent authority of the executing State by any means which leaves a written record under conditions allowing the executing State to establish their authenticity. The original of the judgment and, where applicable, the probation decision, or certified copies thereof, as well as the original of the certificate, shall be sent to the competent authority of the executing State if it so requires. All official communications shall also be made directly between the said competent authorities.

3. The certificate referred to in paragraph 1 shall be signed and its content certified as accurate by the competent authority of the issuing State.

4. Apart from the measures and sanctions referred to in Article 4(1), the certificate referred to in paragraph 1 of this Article shall include only such measures or sanctions as notified by the executing State in accordance with Article 4(2).

5. The competent authority of the issuing State shall forward the judgment and, where applicable, the probation decision, together with the certificate referred to in paragraph 1 only to one executing State at any one time.

6. If the competent authority of the executing State is not known to the competent authority of the issuing State, the latter shall make all necessary inquiries, including via the contact points of the European Judicial Network created by Council Joint Action 98/428/JHA ([7]), in order to obtain the information from the executing State.

7. When an authority of the executing State which receives a judgment and, where applicable, a probation decision, together with the certificate referred to in paragraph 1, has no competence to recognise it and take the ensuing necessary measures for the supervision of the probation measure or alternative sanction, it shall, *ex officio*, forward it to the competent authority and shall without delay inform the competent authority of the issuing State accordingly by any means which leaves a written record.

Article 7

Consequences for the issuing State

1. Once the competent authority of the executing State has recognised the judgment and, where applicable, the probation decision forwarded to it and has informed the competent authority of the issuing State of such recognition, the issuing State shall no longer have competence in relation to the supervision of the probation measures or alternative sanctions imposed, nor to take subsequent measures referred to in Article 14(1).

[7] OJ L 191, 7.7.1998, p. 4.

2. The competence referred to in paragraph 1 shall revert to the issuing State:

(a) as soon as its competent authority has notified withdrawal of the certificate referred to in Article 6(1), pursuant to Article 9(4), to the competent authority of the executing State;

(b) in cases referred to in Article 14(3) in combination with 14(5) ; and

(c) in cases referred to in Article 20.

Article 8

Decision of the executing State

1. The competent authority of the executing State shall recognise the judgment and, where applicable, the probation decision forwarded in accordance with Article 5 and following the procedure laid down in Article 6 and shall without delay take all necessary measures for the supervision of the probation measures or alternative sanctions, unless it decides to invoke one of the grounds for refusing recognition and supervision referred to in Article 11.

2. The competent authority of the executing State may postpone the decision on recognition of the judgment and, where applicable, the probation decision in the situation where the certificate referred to in Article 6(1) is incomplete or obviously does not correspond to the judgment or, where applicable, the probation decision, until such reasonable deadline set for the certificate to be completed or corrected.

Article 9

Adaptation of the probation measures or alternative sanctions

1. If the nature or duration of the relevant probation measure or alternative sanction, or the duration of the probation period, are incompatible with the law of the executing State, the competent authority of that State may adapt them in line with the nature and duration of the probation measures and alternative sanctions, or duration of the probation period, which apply, under the law of the executing State, to equivalent offences. The adapted probation measure, alternative sanction or duration of the probation period shall correspond as far as possible to that imposed in the issuing State.

2. Where the probation measure, the alternative sanction or the probation period has been adapted because its duration exceeds the maximum duration provided for under the law of the executing State, the duration of the adapted probation measure, alternative sanction or probation period shall not be below the maximum duration provided for equivalent offences under the law of the executing State.

3. The adapted probation measure, alternative sanction or probation period shall not be more severe or longer than the probation measure, alternative sanction or probation period which was originally imposed.

4. Following receipt of the information referred to in Articles 16(2) or 18(5), the competent authority of the issuing State may decide to withdraw the certificate referred to in Article 6(1) provided that supervision in the executing State has not yet begun. In such cases, the decision shall be taken and communicated as soon as possible and within ten days of the receipt of the information.

Article 10

Double criminality

1. The following offences, if they are punishable in the issuing State by a custodial sentence or a measure involving deprivation of liberty for a maximum period of at least three years, and as they are defined by the law of the issuing State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to recognition of the judgment and, where applicable, the probation decision and to supervision of probation measures and alternative sanctions:

— participation in a criminal organisation,

—terrorism,

— trafficking in human beings,

— sexual exploitation of children and child pornography,

— illicit trafficking in narcotic drugs and psychotropic substances,

— illicit trafficking in weapons, munitions and explosives,

— corruption,

— fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests ([8]),

— laundering of the proceeds of crime,

— counterfeiting currency, including of the euro,

— computer-related crime,

— environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,

— facilitation of unauthorised entry and residence,

— murder, grievous bodily injury,

— illicit trade in human organs and tissue,

— kidnapping, illegal restraint and hostage-taking,

— racism and xenophobia,

— organised or armed robbery,

—illicit trafficking in cultural goods, including antiques and works of art,

— swindling,

— racketeering and extortion,

— counterfeiting and piracy of products,

— forgery of administrative documents and trafficking therein,

— forgery of means of payment,

— illicit trafficking in hormonal substances and other growth promoters,

— illicit trafficking in nuclear or radioactive materials,

— trafficking in stolen vehicles,

[8] OJ C 316, 27.11.1995, p. 49.

— rape,

— arson,

— crimes within the jurisdiction of the International Criminal Court,

— unlawful seizure of aircraft/ships,

— sabotage.

2. The Council may decide to add other categories of offences to the list provided for in paragraph 1 of this Article at any time, acting unanimously after consultation of the European Parliament under the conditions laid down in Article 39(1) of the Treaty on European Union. The Council shall examine, in the light of the report submitted to it pursuant to Article 26(1) of this Framework Decision, whether the list should be extended or amended.

3. For offences other than those covered by paragraph 1, the executing State may make the recognition of the judgment and, where applicable, the probation decision and the supervision of probation measures and of alternative sanctions subject to the condition that the judgment relates to acts which also constitute an offence under the law of the executing State, whatever its constituent elements or however it is described.

4. Each Member State may, on the adoption of this Framework Decision or later, by a declaration notified to the General Secretariat of the Council, declare that it will not apply paragraph 1. Any such declaration may be withdrawn at any time. Such declarations or withdrawals of declarations shall be published in the *Official Journal of the European Union*.

Article 11

Grounds for refusing recognition and supervision

1. The competent authority of the executing State may refuse to recognise the judgment or, where applicable, the probation decision and to assume responsibility for supervising probation measures or alternative sanctions if:

(a) the certificate referred to in Article 6(1) is incomplete or manifestly does not correspond to the judgment or to the probation decision and has not been completed or corrected within a reasonable period set by the competent authority of the executing State;

(b) the criteria set forth in Articles 5(1), 5(2) or 6(4) are not met;

(c) recognition of the judgment and assumption of responsibility for supervising probation measures or alternative sanctions would be contrary to the principle of *ne bis in idem*;

(d) in a case referred to in Article 10(3) and, where the executing State has made a declaration under Article 10(4), in a case referred to in Article 10(1), the judgment relates to acts which would not constitute an offence under the law of the executing State. However, in relation to taxes or duties, customs and exchange, execution of the judgment or, where applicable, the probation decision may not be refused on the grounds that the law of the executing State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes or duties, customs and exchange regulations as the law of the issuing State;

(e) the enforcement of the sentence is statute-barred according to the law of the executing State and relates to an act which falls within its competence according to that law;

(f) there is immunity under the law of the executing State, which makes it impossible to supervise probation measures or alternative sanctions;

(g) under the law of the executing State, the sentenced person cannot, owing to his or her age, be held criminally liable for the acts in respect of which the judgment was issued;

(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;

(i) the judgment or, where applicable, the probation decision provides for medical/therapeutic treatment which, notwithstanding Article 9, the executing State is unable to supervise in view of its legal or health-care system;

(j) the probation measure or alternative sanction is of less than six months' duration; or

(k) the judgment relates to criminal offences which under the law of the executing State are regarded as having been committed wholly or for a major or essential part within its territory, or in a place equivalent to its territory.

2. Any decision under paragraph 1(k) in relation to offences committed partly within the territory of the executing State, or in a place equivalent to its territory, shall be taken by the competent authority of the executing State only in exceptional circumstances and on a case-by case basis, having regard

to the specific circumstances of the case, and in particular to whether a major or essential part of the conduct in question has taken place in the issuing State.

3. In the cases referred to in paragraph 1(a), (b), (c), (h), (i), (j) and (k), before deciding not to recognise the judgment or, where applicable, the probation decision and to assume responsibility for supervising probation measures and alternative sanctions, the competent authority of the executing State shall communicate, by appropriate means, with the competent authority of the issuing State and shall, as necessary, ask it to supply all additional information required without delay.

4. Where the competent authority of the executing State has decided to invoke a ground for refusal referred to in paragraph 1 of this Article, in particular the grounds referred to under paragraph 1(d) or (k), it may nevertheless, in agreement with the competent authority of the issuing State, decide to supervise the probation measures or alternative sanctions that are imposed in the judgment and, where applicable, the probation decision forwarded to it, without assuming the responsibility for taking any of the decisions referred to in Article 14(1)(a), (b) and (c).

Article 12

Time limit

1. The competent authority of the executing State shall decide as soon as possible, and within 60 days of receipt of the judgment and, where applicable, the probation decision, together with the certificate referred to in Article 6(1), whether or not to recognise the judgment and, where applicable, the probation decision and assume responsibility for supervising the probation measures or alternative sanctions. It shall immediately inform the competent authority of the issuing State, by any means which leaves a written record, of its decision.

2. When in exceptional circumstances it is not possible for the competent authority of the executing State to comply with the time limit provided for in paragraph 1, it shall immediately inform the competent authority of the issuing State by any means, giving the reasons for the delay and indicating the estimated time needed for the final decision to be taken.

Article 13

Governing law

1. The supervision and application of probation measures and alternative sanctions shall be governed by the law of the executing State.

2. The competent authority of the executing State may supervise an obligation as referred to in Article 4(1)(h) by requiring the sentenced person to provide proof of compliance with an obligation to compensate for the prejudice caused by the offence.

Article 14

Jurisdiction to take all subsequent decisions and governing law

1. The competent authority of the executing State shall have jurisdiction to take all subsequent decisions relating to a suspended sentence, conditional release, conditional sentence and alternative sanction, in particular in case of non-compliance with a probation measure or alternative sanction or if the sentenced person commits a new criminal offence.

Such subsequent decisions include notably:

(a) the modification of obligations or instructions contained in the probation measure or alternative sanction, or the modification of the duration of the probation period;

(b) the revocation of the suspension of the execution of the judgment or the revocation of the decision on conditional release; and

(c) the imposition of a custodial sentence or measure involving deprivation of liberty in case of an alternative sanction or conditional sentence.

2. The law of the executing State shall apply to decisions taken pursuant to paragraph 1 and to all subsequent consequences of the judgment including, where applicable, the enforcement and, if necessary, the adaptation of the custodial sentence or measure involving deprivation of liberty.

3. Each Member State may, at the time of adoption of this Framework Decision or at a later stage, declare that as an executing State it will refuse to assume the responsibility provided for in paragraph 1(b) and (c) in cases or categories of cases to be specified by that Member State, in particular:

(a) in cases relating to an alternative sanction, where the judgment does not contain a custodial sentence or measure involving deprivation of liberty to be enforced in case of non-compliance with the obligations or instructions concerned;

(b) in cases relating to a conditional sentence;

(c) in cases where the judgment relates to acts which do not constitute an offence under the law of the executing State, whatever its constituent elements or however it is described.

4. When a Member State makes use of any of the possibilities referred to in paragraph 3, the competent authority of the executing State shall transfer jurisdiction back to the competent authority of the issuing State in case of non-compliance with a probation measure or alternative sanction if the competent authority of the executing State is of the view that a subsequent decision as referred to in paragraph 1(b) or (c) needs to be taken.

5. In the cases referred to in paragraph 3 of this Article, the obligation to recognise the judgment and, where applicable, the probation decision, as well as the obligation to take without delay all necessary measures for the supervision of the probation measures or alternative sanctions, as referred to in Article 8(1), shall not be affected.

6. Declarations as mentioned in paragraph 3 shall be made by notification to the General Secretariat of the Council. Any such declaration may be withdrawn at any time. The declarations and withdrawals mentioned in this Article shall be published in the *Official Journal of the European Union*.

Article 15

Consultations between competent authorities

Where and whenever it is felt appropriate, competent authorities of the issuing State and of the executing State may consult each other with a view to facilitating the smooth and efficient application of this Framework Decision.

Article 16

Obligations of the authorities involved where the executing State has jurisdiction for subsequent decisions

1. The competent authority of the executing State shall without delay inform the competent authority of the issuing State, by any means which leaves a written record, of all decisions on the:

(a) modification of the probation measure or alternative sanction;

(b) revocation of the suspension of the execution of the judgment or revocation of the decision on conditional release;

(c) enforcement of a custodial sentence or measure involving deprivation of liberty, because of non-compliance with a probation measure or alternative sanction;

(d) lapsing of the probation measure or alternative sanction.

2. If so requested by the competent authority of the issuing State, the competent authority of the executing State shall inform it of the maximum duration of deprivation of liberty that is foreseen in the national law of the executing State for the offence which gave rise to the judgment and that could be imposed on the sentenced person in case of breach of the probation measure or alternative sanction. This information shall be provided immediately after reception of the judgment and, where applicable, the probation decision, together with the certificate referred to in Article 6(1).

3. The competent authority of the issuing State shall immediately inform the competent authority of the executing State, by any means which leaves a written record, of any circumstances or findings which, in its opinion, could entail one or more of the decisions referred to in paragraph 1(a), (b) or (c) being taken.

Article 17

Obligations of the authorities involved where the issuing State has jurisdiction for subsequent decisions

1. If the competent authority of the issuing State has jurisdiction for the subsequent decisions mentioned in Article 14(1) pursuant to the application of Article 14(3), the competent authority of the executing State shall immediately notify it of:

(a) any finding which is likely to result in revocation of the suspension of the execution of the judgment or revocation of the decision on conditional release;

(b) any finding which is likely to result in the imposition of a custodial sentence or measure involving deprivation of liberty;

(c) all further facts and circumstances which the competent authority of the issuing State requests to be provided and which are essential in order to allow it to take subsequent decisions in accordance with its national law.

2. When a Member State has made use of the possibility referred to in Article 11(4), the competent authority of that State shall inform the competent authority of the issuing State in case of non-compliance by the sentenced person with a probation measure or alternative sanction.

3. Notice of the findings mentioned in paragraph 1(a) and (b) and in paragraph 2 shall be given using the standard form set out in Annex II. Notice of the facts and circumstances mentioned in paragraph 1(c) shall be given by any means which leaves a written record, including, where possible, through the form set out in Annex II.

4. If, under the national law of the issuing State, the sentenced person must be given a judicial hearing before a decision is taken on the imposition of a sentence, this requirement may be met by following *mutatis mutandis* the procedure contained in instruments of international or European Union law that provide the possibility of using video links for hearing persons.

5. The competent authority of the issuing State shall without delay inform the competent authority of the executing State of all decisions on:

(a) the revocation of the suspension of the execution of the judgment or the revocation of the decision on conditional release;

(b) the enforcement of the custodial sentence or measure involving deprivation of liberty, where such measure is contained in the judgment;

(c) the imposition of a custodial sentence or measure involving deprivation of liberty, where such measure is not contained in the judgment;

(d) the lapsing of the probation measure or alternative sanction.

Article 18

Information from the executing State in all cases

The competent authority of the executing State shall without delay inform the competent authority of the issuing State, by any means which leaves a written record of:

1. the transmission of the judgment and, where applicable, the probation decision, together with the certificate referred to in Article 6(1) to the competent authority responsible for its recognition and for taking the ensuing measures for the supervision of the probation measures or alternative sanctions in accordance with Article 6(7);

2. the fact that it is in practice impossible to supervise the probation measures or alternative sanctions for the reason that, after transmission of the judgment and, where applicable, the probation decision, together with the certificate referred to in Article 6(1) to the executing State, the sentenced person cannot be found in the territory of the executing State, in which case the executing State shall be under no obligation to supervise the probation measures or alternative sanctions;

3. the final decision to recognise the judgment and, where applicable, the probation decision and to assume responsibility for supervising the probation measures or alternative sanctions;

4. any decision not to recognise the judgment and, where applicable, the probation decision and to assume responsibility for supervising the probation measures or alternative sanctions in accordance with Article 11, together with the reasons for the decision;

5. any decision to adapt the probation measures or alternative sanctions in accordance with Article 9, together with the reasons for the decision;

6. any decision on amnesty or pardon which leads to not supervising the probation measures or alternative sanctions for the reasons referred to in Article 19(1), together, where applicable, with the reasons for the decision.

Article 19

Amnesty, pardon, review of judgment

1. An amnesty or pardon may be granted by the issuing State and also by the executing State.

2. Only the issuing State may decide on applications for review of the judgment which forms the basis for the probation measures or alternative sanctions to be supervised under this Framework Decision.

Article 20

End of jurisdiction of the executing State

1. If the sentenced person absconds or no longer has a lawful and ordinary residence in the executing State, the competent authority of the executing State may transfer the jurisdiction in respect of the supervision of the probation measures or alternative sanctions and in respect of all further decisions relating to the judgment back to the competent authority of the issuing State.

2. If new criminal proceedings against the person concerned are taking place in the issuing State, the competent authority of the issuing State may request the competent authority of the executing State to transfer jurisdiction in respect of the supervision of the probation measures or alternative sanctions and in respect of all further decisions relating to the judgment back to the competent authority of the issuing State. In such a case, the competent authority of the executing State may transfer jurisdiction back to the competent authority of the issuing State.

3. When, in application of this Article, jurisdiction is transferred back to the issuing State, the competent authority of that State shall resume jurisdiction. For the further supervision of the probation measures or alternative sanctions, the competent authority of the issuing State shall take account of the duration and degree of compliance with the probation measures or alternative sanctions in the executing State, as well as of any decisions taken by the executing State in accordance with Article 16(1).

Article 21

Languages

The certificate referred to in Article 6(1) shall be translated into the official language or one of the official languages of the executing State. Any Member State may, on adoption of this Framework Decision or later, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one of more other official languages of the institutions of the European Union.

Article 22

Costs

Costs resulting from the application of this Framework Decision shall be borne by the executing State, except for costs arising exclusively within the territory of the issuing State.

Article 23

Relationship with other agreements and arrangements

1. This Framework Decision shall, in relations between the Member States, from 6 December 2011, replace the corresponding provisions of the Council of Europe Convention of 30 November 1964 on the Supervision of Conditionally Sentenced or Conditionally Released Offenders.

2. Member States may continue to apply bilateral or multilateral agreements or arrangements in force after 6 December 2008, in so far as they allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for the supervision of probation measures and alternative sanctions.

3. Member States may conclude bilateral or multilateral agreements or arrangements after 6 December 2008, in so far as such agreements or arrangements allow the provisions of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for the supervision of probation measures and alternative sanctions.

4. Member States shall, by 6 March 2009, notify the Council and the Commission of the existing agreements and arrangements referred to in paragraph 2 which they wish to continue applying. Member States shall also notify the Council and the Commission of any new agreement or arrangement as referred to in paragraph 3, within three months of signing it.

Article 24

Territorial application

This Framework Decision shall apply to Gibraltar.

Article 25

Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 6 December 2011.

2. 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 26

Review

1. By 6 December 2014, the Commission shall draw up a report on the basis of the information received from Member States under Article 25(2).

2. On the basis of this report, the Council shall assess:

(a) the extent to which the 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 shall be accompanied, if necessary, by legislative proposals.

Article 27

Entry into force

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

Done at Brussels, 27 November 2008.

For the Council

The President

M. ALLIOT-MARIE

ANNEX I

CERTIFICATE

referred to in Article 6 of Council Framework Decision 2008/947/JHA of 27 November 2008 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 [1]

(a) Issuing State:

Executing State:

(b) Court which issued the judgment imposing a suspended sentence, conditional sentence or alternative sanction

Official name:

Please indicate whether any additional information concerning the judgment is to be obtained from:

☐ the court specified above

☐ the central authority: if you ticked this box, please provide the official name of this central authority:

☐ another competent authority: if you ticked this box, please provide the official name of this authority:

Contact details of the court/central authority/other competent authority

Address:

Tel. (country code) (area/city code)

Fax (country code) (area/city code)

Details of the person(s) to be contacted

Surname:

Forename(s) :

Position (title/grade):

Tel. (country code) (area/city code)

Fax (country code) (area/city code)

E-mail (if any):

Languages that may be used for communication:

(c) Authority which issued the probation decision (where applicable)

Official name:

Please indicate whether any additional information concerning the probation decision is to be obtained from:

☐ the authority specified above

[1] This certificate must be written in, or translated into, the official language or one of the official languages of the executing Member State, or any other official language of the institutions of the European Union that is accepted by that State.

☐ the central authority: if you ticked this box, please provide the official name of this central authority if this information has not yet been provided under point (b):

☐ another competent authority; if you ticked this box, please provide the official name of this authority:

Contact details of the authority, the central authority or other competent authority, if this information has not yet been provided under point (b)

Address:

Tel. (country code) (area/city code)

Fax (country code) (area/city code)

Details of the person(s) to be contacted

Surname:

Forename(s) :

Position (title/grade):

Tel. (country code) (area/city code)

Fax (country code) (area/city code)

E-mail (if any):

Languages that may be used for communication:

(d) Competent authority for supervision of the probation measures or alternative sanctions

Authority which has competence in the issuing State for supervising the probation measures or alternative sanctions:

☐ the court/authority referred to in point (b)

☐ the authority referred to in point (c)

☐ another authority (please provide its official name):

Please indicate which authority is to be contacted if any additional information is to be obtained for the purposes of supervising the probation measures or alternative sanctions:

☐ the authority specified above

☐ the central authority: if you ticked this box, please provide the official name of this central authority if this information has not yet been provided under point (b) or (c) :

Contact details of the authority, or of the central authority if this information has not yet been provided under point (b) or (c)

Address:

Tel. (country code) (area/city code)

Fax (country code) (area/city code)

Details of the person(s) to be contacted

Surname:

Forename(s) :

Position (title/grade):

Tel. (country code) (area/city code)

Fax (country code) (area/city code)

E-mail (if any):

Languages that may be used for communication:

(e) Information regarding the natural person in respect of whom the judgment and, where applicable, the probation decision has been issued

Surname:

Forename(s) :

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Last known addresses/residences (if any):

— in the issuing State:

— in the executing State:

— elsewhere:

Language(s) understood (if known):

If available, please provide the following information:

— Type and number of the identity document(s) of the sentenced person (ID card, passport):

— Type and number of the residence permit of the sentenced person in the executing State:

(f) Information regarding the Member State to which the judgment and, where applicable, the probation decision, together with the certificate are being forwarded

The judgment and, where applicable, the probation decision, together with the certificate are being forwarded to the executing State indicated in point (a) for the following reason:

☐ the sentenced person has his/her lawful and ordinary residence in the executing State and has returned or wants to return to that State

☐ the sentenced person has moved or intends to move to the executing State for the following reason(s) (please tick the relevant box):

☐ the sentenced person has been granted an employment contract in the executing State:

☐ the sentenced person is a family member of a lawful and ordinary resident person of the executing State:

☐ the sentenced person intends to follow a study or training in the executing State;

☐ other reason (please specify):

(g) Indications regarding the Judgment and, where applicable, the probation decision

The judgment was issued on (date: DD-MM-YYYY):

Where applicable, the probation decision was issued on (date: DD-MM-YYYY):

The judgment became final on (date: DD-MM-YYYY):

Where applicable, the probation decision became final on (date: DD-MM-YYYY):

The execution of the judgment started on (if different from the date on which the judgment became final) (date: DD-MM-YYYY):

Where applicable, the execution of the probation decision started on (if different from the date on which the probation decision became final) (date: DD-MM-YYYY):

File reference of the judgment (if available):

Where applicable, file reference of the probation decision (if available):

1. The judgment covers in total:..... offences,

Summary of the facts and description of the circumstances in which the offence(s) was (were) committed, including the time and place, and the nature of the involvement of the sentenced person:

Nature and legal classification of the offence(s) and applicable statutory provisions on the basis of which the judgment was issued:

2. If the offence(s) referred to in point 1 constitute(s) one or more of the following offences, as defined in the law of the issuing State which are punishable in the issuing State by a custodial sentence or measure involving deprivation of liberty of a maximum of at least three years, please confirm by ticking the relevant box(es) :

☐ participation in a criminal organisation

☐ terrorism

☐ trafficking in human beings

☐ sexual exploitation of children and child pornography

☐ illicit trafficking in narcotic drugs and psychotropic substances

☐ illicit trafficking in weapons, munitions and explosives

☐ corruption

☐ fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests

☐ laundering of the proceeds of crime

☐ counterfeiting of currency, including of the euro

☐ computer-related crime

☐ environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties

☐ facilitation of unauthorised entry and residence

☐ murder, grievous bodily injury

- illicit trade in human organs and tissue
- kidnapping, illegal restraint and hostage-taking
- racism and xenophobia
- organised or armed robbery
- illicit trafficking in cultural goods, including antiques and works of art
- swindling
- racketeering and extortion
- counterfeiting and piracy of products
- forgery of administrative documents and trafficking therein
- forgery of means of payment
- illicit trafficking in hormonal substances and other growth promoters
- illicit trafficking in nuclear or radioactive materials
- trafficking in stolen vehicles
- rape
- arson
- crimes within the jurisdiction of the International Criminal Court
- unlawful seizure of aircraft/ships
- sabotage

3. To the extent that the offence(s) identified under point 1 is (are) not covered by point 2 or if the judgment and, where applicable, the probation decision, as well as the certificate are forwarded to a Member State, which has declared that it will verify the double criminality (Article 10(4) of the Framework Decision), please give a full description of the offence(s) concerned:

(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 following:

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

OR

☐ 3.1 b. the person was not summoned in person but by other means actually rece official information of the scheduled date and place of the trial which resulted in decision, in such a manner that it was unequivocally established that he or she aware of the scheduled trial, and was informed that a decision may be handed dov 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 l counsellor, who was either appointed by the person concerned or by the State defend him or her at the trial, and was indeed defended by that counsellor at the t

OR

☐ 3.3. the person was served with the decision on... (day/month/year) and was expre
informed about the right to a retrial or appeal, in which he or she has the righ
participate and which allows the merits of the case, including fresh evidence, to be
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 pro
information about how the relevant condition has been met:

☒.....

☒.....

(i) Indications regarding the nature of the sentence imposed by the judgment or, where applicable, the probation decision

1. This certificate is related to a:

☐ suspended sentence(= custodial sentence or measure involving deprivation of liberty, the execution of which is conditionally suspended, wholly or in part, when the sentence is passed)

☐ conditional sentence:

☐ the imposition of a sentence has been conditionally deferred by imposing one or more probation measures

☐ one or more probation measures have been imposed instead of a custodial sentence or measure involving deprivation of liberty

☐ alternative sanction:

☐ the judgment contains a custodial sentence or measure involving deprivation of liberty to be enforced in case of non-compliance with the obligation(s) or instruction(s) concerned

☐ the judgment does not contain a custodial sentence or measure involving deprivation of liberty to be enforced in case of non-compliance with the obligation(s) or instruction(s) concerned

☐ conditional release (= early release of a sentenced person after part of the custodial sentence or measure involving deprivation of liberty has been served)

2. Additional information

2.1. The sentenced person was in pre-trial detention during the following period:

2.2. The person was serving a custodial sentence or measure involving deprivation of liberty during the following period (to be filled in only in case of conditional release):

2.3. In case of a suspended sentence

—duration of the custodial period imposed that was conditionally suspended:

—duration of the period of suspension:

2.4. If known, length of deprivation of liberty to be served upon

—revocation of suspension of the execution of the judgment;

—revocation of the decision on conditional release; or

—breach of the alternative sanction (if the judgment contains a custodial sentence or measure involving deprivation of liberty to be enforced in case of such a breach):

(j) Indications regarding the duration and nature of the probation measure(s) or alternative sanction(s)

1. Total duration of the supervision of the probation measure(s) or alternative sanction(s) :

2. Where applicable, duration of each individual obligation imposed as part of the probation measure(s) or alternative sanction(s) :

3. Duration of the total probation period (if different from the duration indicated under point 1:

4. Nature of the probation measure(s) or alternative sanction(s) (it is possible to tick multiple boxes):

☐ an obligation for the sentenced person to inform a specific authority of any change of residence or working place

☐ an obligation not to enter certain localities, places or defined areas in the issuing or executing State

☐ an obligation containing limitations on leaving the territory of the executing State

☐ instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity

☐ an obligation to report at specified times to a specific authority

☐ an obligation to avoid contact with specific persons

☐ an obligation to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence

☐ an obligation to compensate financially for the prejudice caused by the offence and/or an obligation to provide proof of compliance with such an obligation

☐ an obligation to carry out community service

☐ an obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons

☐ an obligation to undergo therapeutic treatment or treatment for addiction

☐ other measures that the executing State is prepared to supervise in accordance with a notification under Article 4(2) of the Framework Decision

5. Please provide a detailed description of the probation measure(s) or alternative sanction(s) indicated under 4:

6. Please tick the following box if relevant probation reports are available:

☐ If you ticked this box, please indicate in which language(s) these reports are drawn up ([1]):

[1] The issuing State is not obliged to provide translations of these reports.

(k) Other circumstances relevant to the case, including relevant information on previous convictions or specific reasons for the imposition of the probation measure(s) or alternative sanction(s) (optional information):

The text of the judgment and, where applicable, the probation decision is attached to the certificate.

Signature of the authority issuing the certificate and/or of its representative to confirm the accuracy of the content of the certificate:

Name:

Position (title/grade):

Date:

File reference (if any):

(Where appropriate) Official stamp:

ANNEX II

FORM

referred to in Article 17 of Council Framework Decision 2008/947/JHA of 27 November 2008 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

REPORT OF A BREACH OF A PROBATION MEASURE OR ALTERNATIVE SANCTION, OR OF ANY OTHER FINDINGS

(a) Details of the identity of the person subject to supervision:

Surname:

Forename(s) :

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Address:

Language(s) understood (if known):

(b) Details of the judgment and, where applicable, the probation decision concerning the suspended sentence, conditional sentence, alternative sanction or conditional release:

Judgment issued on:

File reference (if any):

Where applicable, probation decision issued on:

File reference (if any):

Court which issued the judgment

Official name:

Address:

Where applicable, authority which issued the probation decision

Official name:

Address:

Certificate issued on:

Authority which issued the certificate:

File reference (if any):

(c) Details of the authority responsible for supervising the probation measure(s) or alternative sanction(s) :

Official name of the authority:

Name of the person to be contacted:

Position (title/grade):

Address:

Tel. (country code) (area code)

Fax (country code) (area code)

E-mail:

(d) Probation measure(s) or alternative sanction(s) :

The person referred to in (a) is in breach of the following obligation(s) or instruction(s) :

- an obligation for the sentenced person to inform a specific authority of any change of residence or working place
- an obligation not to enter certain localities, places or defined areas in the issuing or executing State
- an obligation containing limitations on leaving the territory of the executing State
- instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity
- an obligation to report at specified times to a specific authority
- an obligation to avoid contact with specific persons
- an obligation to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence
- an obligation to compensate financially for the prejudice caused by the offence and/or an obligation to provide proof of compliance with such an obligation
- an obligation to carry out community service

- an obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons
- an obligation to undergo therapeutic treatment or treatment for addiction
- other measures:

(e) Description of the breach(es) (place, date and specific circumstances):

(f) Other findings (if any)

Description of the findings:

(g) Details of the person to be contacted if additional information is to be obtained concerning the breach:

Surname:

Forename(s) :

Address:

Tel. (country code) (area/city code)

Fax (country code) (area/city code)

E-mail (if any):

Signature of the authority issuing the form and/or its representative, to confirm that the contents of the form are correct:

Name:

Position (title/grade):

Date:

Official stamp (where applicable):

Number 20 *of* 2019

CRIMINAL JUSTICE (MUTUAL RECOGNITION OF PROBATION JUDGMENTS AND DECISIONS) ACT 2019

REVISED

Updated to 3 May 2023

About this Revised Act

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

This Act is not collectively cited with any other Act.

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1972, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023* (3/2023)
- *Garda Síochána (Functions and Operational Areas) Act 2022* (7/2022)

All Acts up to and including *Patient Safety (Notifiable Incidents and Open Disclosure) Act 2023* (10/2023), enacted 2 May 2023, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *Criminal Justice (Mutual Recognition of Probation Judgments and Decisions) Act 2019 (Commencement) Order 2019* (S.I. No. 469 of 2019)

All statutory instruments up to and including *Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023 (Commencement) Order 2023* (S.I. No. 213 of 2023), made 2 May 2023, were considered in the preparation of this revision.