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COVER NOTE

From:	Mr Jean Mafart, Head of the Justice and Home Affairs Department, Justice and Home Affairs Department
date of receipt:	20 February 2020
To:	Ms Christine Roger, Director-General for Justice and Home Affairs, General Secretariat of the Council

Subject:	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 - Notifications/declarations by France
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Please find attached the note from the French authorities on the above subject.

(complimentary close)

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

Preamble:

The French authorities would point out that any certificate addressed to their authorities **must be translated into French**.

Article 3, Designation of competent authorities:

Paragraph 1 provides that 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 the Framework Decision in the situation where that Member State is the issuing State or the executing State.

- *We propose the following declaration:*

When France is the executing State or the issuing State, the competent authority is the public prosecutor's office (ministère public).

Article 4, Types of probation measures and alternative sanctions:

Paragraph 2 provides that each Member State shall notify the General Secretariat of the Council, when implementing the Framework Decision, which probation measures and alternative sanctions, apart from those referred to in paragraph 1, it is prepared to supervise.

- *We propose the following declaration:*

France is prepared to supervise the following measures:

- ***a ban on carrying out any professional or volunteer activity which involves regular contact with minors;***
- ***a driving ban;***
- ***a ban on possessing or carrying a weapon for which a licence is required.***

Article 5, Criteria for forwarding a judgment and, where applicable, a probation decision:

Paragraph 4 provides that each Member State shall make a declaration to the General Secretariat of the Council to inform it of the decision it has taken determining under which conditions its competent authorities may consent to the forwarding of a judgment or a probation decision to the competent authority of a Member State other than the Member State in which the person is lawfully and ordinarily residing.

- *We therefore propose the following declaration concerning this Article:*

Where recognition of the decision is subject to the consent of the executing State:

- ***Where the person concerned has French nationality, it is for the public prosecutor (procureur de la République) to notify France's consent.***
- ***In other cases, consent is a matter for the Minister for Justice, who determines whether there are exceptional grounds justifying the execution of the decision in France. To that end, the Minister shall take into account the extent to which his or her decision is in the interests of the proper administration of justice, the existence of any personal or family ties in France, and the absence of a risk of disruption of public order.***

Article 10, Double criminality:

Paragraph 4 provides that each Member State **may**, on the adoption of the Framework Decision, by a declaration notified to the General Secretariat of the Council, declare that it will not apply paragraph 1 [recognition of the judgment and, where applicable, the probation decision and supervision of probation measures and alternative sanctions, without verification of the double criminality of the act].

- *We propose the following declaration:*

France will not agree to execute a sentence or probation decision if it is based on acts that are not criminalised in France.

Article 14, Jurisdiction to take all subsequent decisions and governing law:

Paragraph 3 provides that each Member State **may**, at the time of adoption of the 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.

- *We propose the following declaration:*

France declares that, as an executing State, it will not assume responsibility for taking decisions where the judgment does not contain a custodial sentence or measure involving deprivation of liberty to be enforced in case of non-compliance with that sentence, and where non-compliance with the alternative sanction does not in itself constitute an offence under French law.

France declares that, as an executing State, it will not assume responsibility for taking decisions where the conditional sentence does not have a fixed deadline for compliance with the conditions.

Article 21, Languages:

This Article provides that any Member State **may**, on adoption of the Framework Decision or later, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation [of the certificate] in one or more other official languages of the institutions of the European Union.

- **We do not propose any declaration.**
