



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 30 April 2009 (05.05)
(OR. en,nl)**

9265/09

COPEN 79

NOTE

from :	E.M.H. Hirsch Ballin, Minister for Justice, Ministry of Justice of the Netherlands
to :	Council of the European Union
Date of receipt :	7 April 2009
Subject :	Council Framework Decision 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 – Declaration by the Netherlands

Delegations will find attached a declaration by the Netherlands concerning the above mentioned Framework Decision.

From:

Ministry of Justice
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Directorate for Legislation
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2511 EX The Hague

To:

The President of the Council of Ministers of the European Union
Rue de la Loi 175
1048 Brussels

Date: 24 March 2009

Our ref.: 5588143/09/6

Subject: Declaration pursuant to Article 28(2) of Framework Decision 2008/909/JHA

On 27 November 2008 the Council of Ministers of the European Union established, as an "A" item, the Framework Decision 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 (2008/909/JHA, OJ L 327).

Article 28(2) of the Framework Decision provides that any Member State may, on the adoption of the Framework Decision, make a declaration indicating that the new arrangements laid down in that Decision will apply only to custodial sentences handed down after the implementation deadline has expired.

In the negotiations on this Framework Decision, the Netherlands has always argued in favour of the possibility of the Decision applying to future cases only. The possibility enshrined in Article 28(2) is partly the result of a request made by the Netherlands, which considers that the inclusion of that possibility played an important role in the achievement of political agreement on the Framework Decision at the JHA Council on 4 December 2006 and 15 February 2007.

The Framework Decision was placed on the agenda as an "A" item at such short notice before the JHA Council on 27 November 2008 that it was not possible to follow the internal procedure for preparing the Council in that connection. Consequently, the Netherlands did not submit a declaration pursuant to Article 28(2) when the Framework Decision was adopted by the JHA Council on 27 November 2008. However, when political agreement was reached at the JHA Council on 4 December 2006, the Netherlands announced that it would make the relevant declaration. In my opinion, that declaration may be considered to have taken effect at the moment the Framework Decision was adopted on 27 November 2008. I hereby send you the text of the declaration with a view to its obligatory publication in the Official Journal of the European Union.

Declaration by the Netherlands concerning Article 28 of the Framework Decision

In accordance with Article 28(2), the Netherlands hereby declares that, in cases where the final judgment has been issued within three years following the date on which the Framework Decision enters into force, the Netherlands will, as an issuing and an executing State, continue to apply the legal instruments on the transfer of sentenced persons applicable prior to this Framework Decision.

The Minister for Justice
(Signature)