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NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	14328/16
Subject:	Implementation of 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 - Information about the state of implementation

DRAFT Delegations will find attached information about the state of play concerning the implementation of Council Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union ("Transfer of prisoners/Custodial sentences", OJ L 327, 5.12.2008, p. 27). This information is based on notifications by Member States to the Council General Secretariat, to which reference is made in the last column.

In accordance with Article 29, the Framework Decision should have been implemented by 5 December 2011.

According to the information received, up to now 25 Member States (BE, BG, CZ, DK, DE, EE, ES, FR, EL, HR, IE, IT, CY, LV, LT, HU, MT, NL, AT, PL, RO, SI, SK, FI and SE) have implemented the Framework Decision in their national legal order.¹ The UK has also implemented the Framework Decision.

The information in the table is a summary of the notified information: delegations are invited to consult the documents referred to in the last column in order to obtain more detailed information.

The information provided in the table is up-to-date as at [29 January 2020]. Any comments or suggestions for improvement should be sent to steven.cras@consilium.europa.eu.

Please note that all information relating to the implementation of the Framework Decision can also be found on the website of the European Judicial Network (EJN):

https://www.ejn-crimjust.europa.eu/ejn/EJN_Library_StatusOfImpByCat/EN/36

¹ From the website of the EJN, it appears that the Member States that have not yet provided notifications/declarations, have already implemented the Framework Decision:

- LU by Law of 28 February 2011;
- PT by Law 158/2015 of 17 September 2015.

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

Member State	State/date of implementation of Framework Decision	Notification re Art. 2(1) (competent authorities)	Notification re Art. 4(7) (consent for forwarding)	Notification re Art. 7(4) (double criminality)	Notification re Art. 23 (languages)	Notification re Art. 26(4) (agreements)	Notification re Art. 28(2) (transitional provision)	Notification re Art. 29(2) (implem.) + Doc Nrs.
BELGIUM	Implemented. Entry into force of legislation: 18 June 2012	BE as issuing State: 1) the Minister of Justice, when the person is detained in BE; 2) the competent public prosecutor, when the person is not detained in BE. Minister of Justice is competent for giving prior consent for a judgment to be forwarded. BE as executing State: public prosecutor of Brussels (address in 12509/12)			Dutch French German English			12509/12

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BULGARIA	Implemented. Entry into force of legislation: 1 January 2020	BG as issuing State: Court of first instance which issued the judgment. BG as executing State: District court which is territorially competent (see list in 5570/20)	The prior consent of the Bulgarian authorities is required.		Bulgarian (this concerns the certificate; the judgment does not have to be translated)	Not relevant for BG		5570/20 (NB: doc also contains info on transit issues)
CZECH REPUBLIC	Implemented. Entry into force of legislation: 1 January 2014	CZ as issuing State: District courts, area courts, regional courts, Prague Municipal Court and Brno Municipal Court. CZ as executing State: The regional courts with local jurisdiction (for detailed list see 10079/1/14 REV1)		CZ will not apply Art. 7(1)	Czech or translated into Czech. In relation to the Slovak Republic, the Czech Republic will accept certificates produced in Slovak.			10079/1/14 REV 1

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		CZ as transit State: Ministry of Justice						

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DENMARK	Implemented. Entry into force of legislation: 5 December 2011	DK as issuing and executing State: Minister of Justice (or the person authorised by the Minister)			Danish	Continuing application in relation to FI and SE of existing DK legislation on cooperation between the Nordic countries regarding the enforcement of sentences		6298/12
DEUTSCHLAND / GERMANY	Implemented Entry into force of legislation: 25 July 2015	DE as issuing and executing State: the public prosecutors' offices in the regional courts In respect of juveniles (children) the local courts are competent if the youth court judge is the enforcement officer pursuant to DE law.	The consent of the competent DE authority is not required in relation to MS which have submitted a corresponding notification if the sentenced person is lawfully and ordinarily residing in Germany and no proceedings have been initiated to end that residence.	DE will not apply Art. 7(1)	German			15305/15

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ESTONIA	Implemented Entry into force of legislation: 1 January 2015	EE as issuing and executing State: Ministry of Justice			Estonian English			6663/16
ELLAS / GREECE	Implemented Entry into force of legislation: 15 November 2014	EL as issuing State: The public prosecutor of the court that issues the decision EL as executing State: public prosecutor in whose territory the sentenced person has the habitual residence.		EL will not apply Art. 7(1).	Greek	Council of Europe Transfer of sentenced persons of 1983 European Agreement of 1970 on penal decisions European Agreement of 1981 on recognition of criminal decisions	Where a judgment imposing a custodial sentence has been issued before 15/11/2014, EL will continue to apply the legal instruments on the transfer of sentenced persons applicable prior to this FD.	(no doc)
ESPANA / SPAIN	Implemented Entry into force of legislation: 21 November 2014	ES as issuing state: The judges responsible for the execution of sentences; judges for children, if the convicted person is a juvenile.			Spanish			8138/15 8714/15

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		ES as executing state: The Central Criminal Court or the Central Juvenile Court judge, if the person concerned is a minor						

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FRANCE	Implemented. Entry into force of legislation: 5 August 2013	FR as issuing State: public prosecutor's office at the court that imposed the sentence FR as executing State: public prosecutor in whose jurisdiction lies the last known residence of the sentenced person, his or her place of detention or, if the acts were carried out in part on French territory, the place where the offence was committed	Prior consent is required in order to enforce a sentence in FR where the sentenced person is neither a French national with his or her habitual residence on FR territory nor a FR national who, on the basis of the sentence or any other legal or administrative decision, will be deported to France once released	FR will not apply Art. 7(1)	French			11299/14
HRVATSKA / CROATIA	Implemented (as part of the <i>acquis</i>).	HR as issuing State: courts competent under domestic law HR as executing State: county courts (see list in doc. 12335/14)		HR will not apply Art. 7(1)	Croatian English on reciprocal basis.			12335/14

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IRELAND	Implemented Entry into force of legislation: ??	??		IE will not apply Art. 7(1)			In cases where the final judgement has been issued prior to the date on which the FD entered into force, IE will continue to apply the legal instruments on the transfer of sentenced persons applicable prior to this FD.	5421/12
ITALY	Implemented. Entry into force of legislation: 5 December 2011	Ministry of Justice				In relation to Romania, Italy intends to continue to apply existing bilateral agreement on cooperation for transfer of sentenced persons to custodial sentences (see doc. 7504/09)		5710/12 7504/09

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KYPROS / CYPRUS	Implemented. Entry into force of legislation: 23 May 2014	CY as issuing State: The assize court or district court which issued the judgment. CY as executing State: The district court within the territorial jurisdiction of which the person against whom another member State has issued a judgment has his or her habitual residence. Ministry of Justice is central authority (see for contact details doc. 11298/14).			Greek English			11298/14
LATVIA	Implemented. Entry into force of legislation: 1 July 2012	A "municipal (district) court" Ministry of Justice is central authority			Latvian			14363/13

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LITHUANIA	Implemented. Entry into force of legislation: 1 April 2015	LT as issuing and executing State: the district courts (see for more info 5798/1/15 REV 1)		LT will not apply Art. 7(1)	Lithuanian		Where a judgment imposing a custodial sentence has been issued before 5 December 2011, LT will continue to apply Art. 365 of its Criminal Procedure Code and the relevant provisions of international agreements (see doc 15413/1/08 REV 1).	5798/1/15 REV 1 12824/15
LUXEMBOURG								
HUNGARY	Implemented			HU will not apply Art. 7(1)	Hungarian			14413/16

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MALTA	Implemented.	MT as issuing State: Court of Criminal Jurisdiction MT as executing State: Office of the Attorney General			Maltese English		In cases where the final judgment has been issued before 5 December 2011, MT will continue to apply the existing legal instruments on the transfer of sentenced persons	7638/12
NETHERLANDS	Implemented Entry into force of legislation: 1 November 2012	NL as issuing and executing State: Minister for Security and Justice		NL will not apply Art. 7(1)	Dutch English		(notification withdrawn, see 9755/18 and OJ 163, 28.6.2018, p. 19)	14427/12
OSTERREICH / AUSTRIA	Implemented.	AT as issuing State: Federal Ministry of Justice AT as executing State: Regional Courts	Where MS have given the same notification, prior consent is not required if the sentenced person lives in and has been legally residing continuously for at least five	AT will not apply Art. 7(1)	German			5698/12

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			years in AT and will retain a permanent right of residence.					
POLAND	Implemented.	PL as issuing and executing State: Regional Courts		PL will not apply Art. 7(1)	Polish		Where the final judgment is issued within 3 years following the date of entry into force, PL will continue to apply the legal instruments on the transfer of sentenced persons applicable prior to entry into force of the FD (<i>OJ L 146/21 of 1.06.2011</i>)	5650/12

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PORTUGAL								
ROMANIA	Implemented. Entry into force of legislation: 26 December 2013	RO as issuing State: Ministry of Justice RO as executing State: Request should be send to the Ministry of Justice The courts of appeal are competent to decide on the requests The competence for provisional arrest lays with the Prosecution Office of the Court of Appeal of Bucharest Competent for transit decisions is the Ministry of Justice (see contact details for all bodies in 5762/14)		RO will not apply Art. 7(1)	Romanian			5762/14

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SLOVENIA	Implemented. Entry into force of legislation: 20 September 2013	SI as issuing State: District Courts SI as executing State: District Courts or the District Court in Ljubljana. For transit: Ministry of Justice and District courts		SI will not apply Art. 7(1)	Slovenian English			5507/14
SLOVAKIA	Implemented. Entry into force of legislation: 1 February 2012	SK as issuing State: Court which issued the judgment imposing a sentence involving deprivation of liberty. SK as executing State: Regional Courts / Regional Court in Bratislava.			Slovak (as regards CZ:) Czech (doc. 6883/14)	Protocol of 29 October 2012 of cooperation between SK on CZ (entry into force on 1 December 2014). (doc. 11321/15)		6883/14 10654/15 11321/15

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FINLAND	Implemented.	FI as issuing and executing State: The central administrative office of the Criminal Sanctions Agency, the Ministry of Justice or the District Courts (see 5493/13)			Finnish Swedish English	Nordic cooperation will continue to apply		5493/12
SWEDEN	Implemented Entry into force of legislation : 1 April 2015	As issuing or executing state: The Prison and Probation Service If a permission to transit pursuant to Art. 16 is concerned: the police authorities (for contact details see doc. 9822/1/15 REV 1)	If the sentenced person lives and has been residing in SE for the last 5 years, no prior consent is required		Swedish Danish Norwegian English.			9822/1/15 REV 1

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UNITED KINGDOM	Implemented. Entry into force of legislation : 5 December 2011	UK as issuing and executing state: England and Wales The Cross Border Transfer Section National Offender Management Service Ministry of Justice Scotland Scottish Prison Service Headquarters Northern Ireland The Northern Ireland Prison Service (see contact details for all bodies in 12975/12)			English			12975/12