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⁽¹⁾ Text with EEA relevance

I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COUNCIL REGULATION (EC) No 1207/2008

of 28 November 2008

**amending Regulation (EC) No 639/2004 on the management of fishing fleets registered in the
Community outermost regions**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 and Article 299(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas:

(1) Council Regulation (EC) No 639/2004 of 30 March 2004 on the management of fishing fleets registered in the Community outermost regions ⁽²⁾ allows derogations from Article 13 of Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy ⁽³⁾. That Article provides for a general scheme to manage entries into the fleet as well as exits from the fleet.

(2) Article 2(5) of Regulation (EC) No 639/2004 fixes the period of validity of the derogation from the entry/exit scheme for fishing vessels having received public aid for renewal. That period was originally set at 31 December 2007 and was then extended until 31 December 2008 following the political agreement reached in the Council on 19 June 2006 concerning the European Fisheries Fund.

(3) The Commission act allowing the Member States concerned to grant State aid was adopted later than foreseen. Given the fact that the interested shipyards have a limited capacity, a full implementation of the

political agreement reached in the Council on 19 June 2006 becomes impossible within the deadline of 31 December 2008.

(4) It is, therefore, appropriate to extend the deadline to 2011 for the derogation set out in Article 2(5) of Regulation (EC) No 639/2004.

(5) Regulation (EC) No 639/2004 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 639/2004 is hereby amended as follows:

1. Article 2(5) shall be replaced by the following:

‘5. Notwithstanding paragraph 3, for fishing vessels having received public aid for renewal, the derogation in paragraph 1(a) will cease to apply three years after the public aid for renewal has been granted and in any case not later than 31 December 2011.’

2. Article 6 shall be replaced by the following:

‘Article 6

Reporting

The Commission shall submit to the European Parliament and the Council a report on the implementation of this Regulation no later than 30 June 2012.’

⁽¹⁾ Opinion delivered on 21 October 2008 (not yet published in the Official Journal).

⁽²⁾ OJ L 102, 7.4.2004, p. 9.

⁽³⁾ OJ L 358, 31.12.2002, p. 59.

Article 2

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 28 November 2008.

For the Council
The President
M. BARNIER

COMMISSION REGULATION (EC) No 1208/2008**of 4 December 2008****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules for Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector ⁽²⁾, and in particular Article 138(1) thereof,

Whereas:

Regulation (EC) No 1580/2007 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XV, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 138 of Regulation (EC) No 1580/2007 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 5 December 2008.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 4 December 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 350, 31.12.2007, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	MA	67,0
	TR	79,7
	ZZ	73,4
0707 00 05	JO	167,2
	MA	60,3
	TR	89,0
	ZZ	105,5
0709 90 70	JO	230,6
	MA	79,8
	TR	87,5
	ZZ	132,6
0805 10 20	BR	44,6
	MA	68,4
	TR	54,6
	UY	34,6
	ZA	43,6
	ZW	43,5
	ZZ	48,2
0805 20 10	MA	64,3
	TR	65,0
	ZZ	64,7
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	AR	62,9
	HR	49,2
	IL	85,6
	TR	58,9
	ZZ	64,2
0805 50 10	MA	64,0
	TR	57,7
	ZA	79,4
	ZZ	67,0
0808 10 80	CA	89,4
	CL	67,1
	CN	80,0
	MK	34,8
	US	107,7
	ZA	113,0
	ZZ	82,0
0808 20 50	AR	73,4
	CL	48,4
	CN	41,3
	TR	110,3
	US	122,0
	ZZ	79,1

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 1209/2008**of 4 December 2008****amending the representative prices and additional import duties for certain products in the sugar sector fixed by Regulation (EC) No 945/2008 for the 2008/2009 marketing year**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (single CMO Regulation) ⁽¹⁾,

Having regard to Commission Regulation (EC) No 951/2006 of 30 June 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 318/2006 as regards trade with third countries in the sugar sector ⁽²⁾, and in particular Article 36(2), second subparagraph, second sentence thereof,

Whereas:

- (1) The representative prices and additional duties applicable to imports of white sugar, raw sugar and certain syrups

for the 2008/2009 marketing year are fixed by Commission Regulation (EC) No 945/2008 ⁽³⁾. These prices and duties have been last amended by Commission Regulation (EC) No 1149/2008 ⁽⁴⁾.

- (2) The data currently available to the Commission indicate that those amounts should be amended in accordance with the rules and procedures laid down in Regulation (EC) No 951/2006,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties applicable to imports of the products referred to in Article 36 of Regulation (EC) No 951/2006, as fixed by Regulation (EC) No 945/2008 for the 2008/2009, marketing year, are hereby amended as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 5 December 2008.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 4 December 2008.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 178, 1.7.2006, p. 24.

⁽³⁾ OJ L 258, 26.9.2008, p. 56.

⁽⁴⁾ OJ L 309, 20.11.2008, p. 3.

ANNEX

Amended representative prices and additional import duties applicable to white sugar, raw sugar and products covered by CN code 1702 90 95 from 5 December 2008

(EUR)

CN code	Representative price per 100 kg net of the product concerned	Additional duty per 100 kg net of the product concerned
1701 11 10 ⁽¹⁾	23,24	4,68
1701 11 90 ⁽¹⁾	23,24	9,91
1701 12 10 ⁽¹⁾	23,24	4,49
1701 12 90 ⁽¹⁾	23,24	9,48
1701 91 00 ⁽²⁾	25,79	12,35
1701 99 10 ⁽²⁾	25,79	7,82
1701 99 90 ⁽²⁾	25,79	7,82
1702 90 95 ⁽³⁾	0,26	0,39

⁽¹⁾ For the standard quality defined in point III of Annex IV to Regulation (EC) No 1234/2007.⁽²⁾ For the standard quality defined in point II of Annex IV to Regulation (EC) No 1234/2007.⁽³⁾ Per 1 % sucrose content.

DIRECTIVES

DIRECTIVE 2008/103/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 19 November 2008

amending Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators as regards placing batteries and accumulators on the market

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE
EUROPEAN UNION,

HAVE ADOPTED THIS DIRECTIVE:

Having regard to the Treaty establishing the European
Community, and in particular Article 95(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and
Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in
Article 251 of the Treaty ⁽²⁾,

Whereas:

(1) Article 6(2) of Directive 2006/66/EC ⁽³⁾ should be clarified in order that batteries and accumulators which were legally placed on the market anywhere in the Community before 26 September 2008 and which do not comply with that Directive can remain on the market in the Community after this date. This clarification would provide legal certainty for batteries placed on the market in the Community and would ensure the smooth functioning of the internal market. The clarification is in line with the principle of waste minimisation and would contribute to reducing administrative burdens.

(2) Directive 2006/66/EC should therefore be amended accordingly,

⁽¹⁾ Opinion delivered on 9 July 2008 (not yet published in the Official Journal).

⁽²⁾ Opinion of the European Parliament of 9 July 2008 (not yet published in the Official Journal) and Council Decision of 20 October 2008.

⁽³⁾ OJ L 266, 26.9.2006, p. 1.

*Article 1***Amendment to Directive 2006/66/EC**

Article 6(2) of Directive 2006/66/EC shall be replaced by the following:

‘2. Member States shall take the necessary measures to ensure that batteries or accumulators which do not meet the requirements of this Directive are not placed on the market after 26 September 2008.

Batteries and accumulators which do not meet the requirements of this Directive and which are placed on the market after this date shall be withdrawn from the market.’

*Article 2***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 5 January 2009.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 3***Entry into force**

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

*Article 4***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 19 November 2008.

For the European Parliament
The President
H.-G. PÖTTERING

For the Council
The President
J.-P. JOUYET

DIRECTIVE 2008/104/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 19 November 2008
on temporary agency work

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 137(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

(1) This Directive respects the fundamental rights and complies with the principles recognised by the Charter of Fundamental Rights of the European Union ⁽³⁾. In particular, it is designed to ensure full compliance with Article 31 of the Charter, which provides that every worker has the right to working conditions which respect his or her health, safety and dignity, and to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

(2) The Community Charter of the Fundamental Social Rights of Workers provides, in point 7 thereof, *inter alia*, that the completion of the internal market must lead to an improvement in the living and working conditions of workers in the European Community; this process will be achieved by harmonising progress on these conditions, mainly in respect of forms of work such as fixed-term contract work, part-time work, temporary agency work and seasonal work.

(3) On 27 September 1995, the Commission consulted management and labour at Community level in accordance with Article 138(2) of the Treaty on the course of action to be adopted at Community level with regard to flexibility of working hours and job security of workers.

(4) After that consultation, the Commission considered that Community action was advisable and on 9 April 1996, further consulted management and labour in accordance with Article 138(3) of the Treaty on the content of the envisaged proposal.

(5) In the introduction to the framework agreement on fixed-term work concluded on 18 March 1999, the signatories indicated their intention to consider the need for a similar agreement on temporary agency work and decided not to include temporary agency workers in the Directive on fixed-term work.

(6) The general cross-sector organisations, namely the Union of Industrial and Employers' Confederations of Europe (UNICE) ⁽⁴⁾, the European Centre of Enterprises with Public Participation and of Enterprises of General Economic Interest (CEEP) and the European Trade Union Confederation (ETUC), informed the Commission in a joint letter of 29 May 2000 of their wish to initiate the process provided for in Article 139 of the Treaty. By a further joint letter of 28 February 2001, they asked the Commission to extend the deadline referred to in Article 138(4) by one month. The Commission granted this request and extended the negotiation deadline until 15 March 2001.

(7) On 21 May 2001, the social partners acknowledged that their negotiations on temporary agency work had not produced any agreement.

(8) In March 2005, the European Council considered it vital to relaunch the Lisbon Strategy and to refocus its priorities on growth and employment. The Council approved the Integrated Guidelines for Growth and Jobs 2005-2008, which seek, *inter alia*, to promote flexibility combined with employment security and to reduce labour market segmentation, having due regard to the role of the social partners.

⁽¹⁾ OJ C 61, 14.3.2003, p. 124.

⁽²⁾ Opinion of the European Parliament of 21 November 2002 (OJ C 25 E, 29.1.2004, p. 368), Council Common Position of 15 September 2008 and Position of the European Parliament of 22 October 2008 (not yet published in the Official Journal).

⁽³⁾ OJ C 303, 14.12.2007, p. 1.

⁽⁴⁾ UNICE changed its name to BUSINESSEUROPE in January 2007.

- (9) In accordance with the Communication from the Commission on the Social Agenda covering the period up to 2010, which was welcomed by the March 2005 European Council as a contribution towards achieving the Lisbon Strategy objectives by reinforcing the European social model, the European Council considered that new forms of work organisation and a greater diversity of contractual arrangements for workers and businesses, better combining flexibility with security, would contribute to adaptability. Furthermore, the December 2007 European Council endorsed the agreed common principles of flexicurity, which strike a balance between flexibility and security in the labour market and help both workers and employers to seize the opportunities offered by globalisation.
- (10) There are considerable differences in the use of temporary agency work and in the legal situation, status and working conditions of temporary agency workers within the European Union.
- (11) Temporary agency work meets not only undertakings' needs for flexibility but also the need of employees to reconcile their working and private lives. It thus contributes to job creation and to participation and integration in the labour market.
- (12) This Directive establishes a protective framework for temporary agency workers which is non-discriminatory, transparent and proportionate, while respecting the diversity of labour markets and industrial relations.
- (13) Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship⁽¹⁾ establishes the safety and health provisions applicable to temporary agency workers.
- (14) The basic working and employment conditions applicable to temporary agency workers should be at least those which would apply to such workers if they were recruited by the user undertaking to occupy the same job.
- (15) Employment contracts of an indefinite duration are the general form of employment relationship. In the case of workers who have a permanent contract with their temporary-work agency, and in view of the special protection such a contract offers, provision should be made to permit exemptions from the rules applicable in the user undertaking.
- (16) In order to cope in a flexible way with the diversity of labour markets and industrial relations, Member States may allow the social partners to define working and employment conditions, provided that the overall level of protection for temporary agency workers is respected.
- (17) Furthermore, in certain limited circumstances, Member States should, on the basis of an agreement concluded by the social partners at national level, be able to derogate within limits from the principle of equal treatment, so long as an adequate level of protection is provided.
- (18) The improvement in the minimum protection for temporary agency workers should be accompanied by a review of any restrictions or prohibitions which may have been imposed on temporary agency work. These may be justified only on grounds of the general interest regarding, in particular the protection of workers, the requirements of safety and health at work and the need to ensure that the labour market functions properly and that abuses are prevented.
- (19) This Directive does not affect the autonomy of the social partners nor should it affect relations between the social partners, including the right to negotiate and conclude collective agreements in accordance with national law and practices while respecting prevailing Community law.
- (20) The provisions of this Directive on restrictions or prohibitions on temporary agency work are without prejudice to national legislation or practices that prohibit workers on strike being replaced by temporary agency workers.
- (21) Member States should provide for administrative or judicial procedures to safeguard temporary agency workers' rights and should provide for effective, dissuasive and proportionate penalties for breaches of the obligations laid down in this Directive.
- (22) This Directive should be implemented in compliance with the provisions of the Treaty regarding the freedom to provide services and the freedom of establishment and without prejudice to Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services⁽²⁾.

⁽¹⁾ OJ L 206, 29.7.1991, p. 19.

⁽²⁾ OJ L 18, 21.1.1997, p. 1.

- (23) Since the objective of this Directive, namely to establish a harmonised Community-level framework for protection for temporary agency workers, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Community level by introducing minimum requirements applicable throughout the Community, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Scope

1. This Directive applies to workers with a contract of employment or employment relationship with a temporary-work agency who are assigned to user undertakings to work temporarily under their supervision and direction.

2. This Directive applies to public and private undertakings which are temporary-work agencies or user undertakings engaged in economic activities whether or not they are operating for gain.

3. Member States may, after consulting the social partners, provide that this Directive does not apply to employment contracts or relationships concluded under a specific public or publicly supported vocational training, integration or retraining programme.

Article 2

Aim

The purpose of this Directive is to ensure the protection of temporary agency workers and to improve the quality of temporary agency work by ensuring that the principle of equal treatment, as set out in Article 5, is applied to temporary agency workers, and by recognising temporary-work agencies as employers, while taking into account the need to establish a suitable framework for the use of temporary agency work with a view to contributing effectively to the creation of jobs and to the development of flexible forms of working.

Article 3

Definitions

1. For the purposes of this Directive:

- (a) 'worker' means any person who, in the Member State concerned, is protected as a worker under national employment law;
- (b) 'temporary-work agency' means any natural or legal person who, in compliance with national law, concludes contracts of employment or employment relationships with temporary agency workers in order to assign them to user undertakings to work there temporarily under their supervision and direction;
- (c) 'temporary agency worker' means a worker with a contract of employment or an employment relationship with a temporary-work agency with a view to being assigned to a user undertaking to work temporarily under its supervision and direction;
- (d) 'user undertaking' means any natural or legal person for whom and under the supervision and direction of whom a temporary agency worker works temporarily;
- (e) 'assignment' means the period during which the temporary agency worker is placed at the user undertaking to work temporarily under its supervision and direction;
- (f) 'basic working and employment conditions' means working and employment conditions laid down by legislation, regulations, administrative provisions, collective agreements and/or other binding general provisions in force in the user undertaking relating to:
 - (i) the duration of working time, overtime, breaks, rest periods, night work, holidays and public holidays;
 - (ii) pay.

2. This Directive shall be without prejudice to national law as regards the definition of pay, contract of employment, employment relationship or worker.

Member States shall not exclude from the scope of this Directive workers, contracts of employment or employment relationships solely because they relate to part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary-work agency.

*Article 4***Review of restrictions or prohibitions**

1. Prohibitions or restrictions on the use of temporary agency work shall be justified only on grounds of general interest relating in particular to the protection of temporary agency workers, the requirements of health and safety at work or the need to ensure that the labour market functions properly and abuses are prevented.
2. By 5 December 2011, Member States shall, after consulting the social partners in accordance with national legislation, collective agreements and practices, review any restrictions or prohibitions on the use of temporary agency work in order to verify whether they are justified on the grounds mentioned in paragraph 1.
3. If such restrictions or prohibitions are laid down by collective agreements, the review referred to in paragraph 2 may be carried out by the social partners who have negotiated the relevant agreement.
4. Paragraphs 1, 2 and 3 shall be without prejudice to national requirements with regard to registration, licensing, certification, financial guarantees or monitoring of temporary-work agencies.
5. The Member States shall inform the Commission of the results of the review referred to in paragraphs 2 and 3 by 5 December 2011.

CHAPTER II

EMPLOYMENT AND WORKING CONDITIONS*Article 5***The principle of equal treatment**

1. The basic working and employment conditions of temporary agency workers shall be, for the duration of their assignment at a user undertaking, at least those that would apply if they had been recruited directly by that undertaking to occupy the same job.

For the purposes of the application of the first subparagraph, the rules in force in the user undertaking on:

- (a) protection of pregnant women and nursing mothers and protection of children and young people; and
- (b) equal treatment for men and women and any action to combat any discrimination based on sex, race or ethnic origin, religion, beliefs, disabilities, age or sexual orientation;

must be complied with as established by legislation, regulations, administrative provisions, collective agreements and/or any other general provisions.

2. As regards pay, Member States may, after consulting the social partners, provide that an exemption be made to the principle established in paragraph 1 where temporary agency workers who have a permanent contract of employment with a temporary-work agency continue to be paid in the time between assignments.

3. Member States may, after consulting the social partners, give them, at the appropriate level and subject to the conditions laid down by the Member States, the option of upholding or concluding collective agreements which, while respecting the overall protection of temporary agency workers, may establish arrangements concerning the working and employment conditions of temporary agency workers which may differ from those referred to in paragraph 1.

4. Provided that an adequate level of protection is provided for temporary agency workers, Member States in which there is either no system in law for declaring collective agreements universally applicable or no such system in law or practice for extending their provisions to all similar undertakings in a certain sector or geographical area, may, after consulting the social partners at national level and on the basis of an agreement concluded by them, establish arrangements concerning the basic working and employment conditions which derogate from the principle established in paragraph 1. Such arrangements may include a qualifying period for equal treatment.

The arrangements referred to in this paragraph shall be in conformity with Community legislation and shall be sufficiently precise and accessible to allow the sectors and firms concerned to identify and comply with their obligations. In particular, Member States shall specify, in application of Article 3(2), whether occupational social security schemes, including pension, sick pay or financial participation schemes are included in the basic working and employment conditions referred to in paragraph 1. Such arrangements shall also be without prejudice to agreements at national, regional, local or sectoral level that are no less favourable to workers.

5. Member States shall take appropriate measures, in accordance with national law and/or practice, with a view to preventing misuse in the application of this Article and, in particular, to preventing successive assignments designed to circumvent the provisions of this Directive. They shall inform the Commission about such measures.

*Article 6***Access to employment, collective facilities and vocational training**

1. Temporary agency workers shall be informed of any vacant posts in the user undertaking to give them the same opportunity as other workers in that undertaking to find permanent employment. Such information may be provided by a general announcement in a suitable place in the undertaking for which, and under whose supervision, temporary agency workers are engaged.

2. Member States shall take any action required to ensure that any clauses prohibiting or having the effect of preventing the conclusion of a contract of employment or an employment relationship between the user undertaking and the temporary agency worker after his assignment are null and void or may be declared null and void.

This paragraph is without prejudice to provisions under which temporary agencies receive a reasonable level of recompense for services rendered to user undertakings for the assignment, recruitment and training of temporary agency workers.

3. Temporary-work agencies shall not charge workers any fees in exchange for arranging for them to be recruited by a user undertaking, or for concluding a contract of employment or an employment relationship with a user undertaking after carrying out an assignment in that undertaking.

4. Without prejudice to Article 5(1), temporary agency workers shall be given access to the amenities or collective facilities in the user undertaking, in particular any canteen, child-care facilities and transport services, under the same conditions as workers employed directly by the undertaking, unless the difference in treatment is justified by objective reasons.

5. Member States shall take suitable measures or shall promote dialogue between the social partners, in accordance with their national traditions and practices, in order to:

- (a) improve temporary agency workers' access to training and to child-care facilities in the temporary-work agencies, even in the periods between their assignments, in order to enhance their career development and employability;
- (b) improve temporary agency workers' access to training for user undertakings' workers.

*Article 7***Representation of temporary agency workers**

1. Temporary agency workers shall count, under conditions established by the Member States, for the purposes of calcu-

lating the threshold above which bodies representing workers provided for under Community and national law and collective agreements are to be formed at the temporary-work agency.

2. Member States may provide that, under conditions that they define, temporary agency workers count for the purposes of calculating the threshold above which bodies representing workers provided for by Community and national law and collective agreements are to be formed in the user undertaking, in the same way as if they were workers employed directly for the same period of time by the user undertaking.

3. Those Member States which avail themselves of the option provided for in paragraph 2 shall not be obliged to implement the provisions of paragraph 1.

*Article 8***Information of workers' representatives**

Without prejudice to national and Community provisions on information and consultation which are more stringent and/or more specific and, in particular, Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community ⁽¹⁾, the user undertaking must provide suitable information on the use of temporary agency workers when providing information on the employment situation in that undertaking to bodies representing workers set up in accordance with national and Community legislation.

CHAPTER III

FINAL PROVISIONS

*Article 9***Minimum requirements**

1. This Directive is without prejudice to the Member States' right to apply or introduce legislative, regulatory or administrative provisions which are more favourable to workers or to promote or permit collective agreements concluded between the social partners which are more favourable to workers.

2. The implementation of this Directive shall under no circumstances constitute sufficient grounds for justifying a reduction in the general level of protection of workers in the fields covered by this Directive. This is without prejudice to the rights of Member States and/or management and labour to lay down, in the light of changing circumstances, different legislative, regulatory or contractual arrangements to those prevailing at the time of the adoption of this Directive, provided always that the minimum requirements laid down in this Directive are respected.

⁽¹⁾ OJ L 80, 23.3.2002, p. 29.

*Article 10***Penalties**

1. Member States shall provide for appropriate measures in the event of non-compliance with this Directive by temporary-work agencies or user undertakings. In particular, they shall ensure that adequate administrative or judicial procedures are available to enable the obligations deriving from this Directive to be enforced.

2. Member States shall lay down rules on penalties applicable in the event of infringements of national provisions implementing this Directive and shall take all necessary measures to ensure that they are applied. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify these provisions to the Commission by 5 December 2011. Member States shall notify to the Commission any subsequent amendments to those provisions in good time. They shall, in particular, ensure that workers and/or their representatives have adequate means of enforcing the obligations under this Directive.

*Article 11***Implementation**

1. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive by 5 December 2011, or shall ensure that the social partners introduce the necessary provisions by way of an agreement, whereby the Member States must make all the necessary arrangements to enable them to guarantee at any time that the objectives of this Directive are being attained. They shall forthwith inform the Commission thereof.

2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

*Article 12***Review by the Commission**

By 5 December 2013, the Commission shall, in consultation with the Member States and social partners at Community level, review the application of this Directive with a view to proposing, where appropriate, the necessary amendments.

*Article 13***Entry into force**

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

*Article 14***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 19 November 2008.

For the European Parliament
The President
H.-G. PÖTTERING

For the Council
The President
J.-P. JOUYET

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COUNCIL

COUNCIL DECISION

of 27 November 2008

on the full application of the provisions of the Schengen *acquis* in the Swiss Confederation

(2008/903/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Schengen Information System applicable to the Swiss Confederation from 14 August 2008.

Having regard to the Agreement between the European Union, the European Community and the Swiss Confederation concerning the Swiss Confederation's association with the implementation, application, and development of the Schengen *acquis* (hereinafter referred to as the Agreement) ⁽¹⁾, which was signed on 26 October 2004 ⁽²⁾ and entered into force on 1 March 2008 ⁽³⁾, and in particular Article 15(1) thereof,

Whereas:

(1) Article 15(1) of the Agreement provides that the provisions of the Schengen *acquis* shall apply in the Swiss Confederation only pursuant to a Council Decision to that effect after verification that the necessary conditions for the application of that *acquis* have been met.

(2) The Council, having verified that the necessary conditions for the application of the data protection part of the Schengen *acquis* concerned had been met by the Swiss Confederation, rendered, by its Decision 2008/421/EC ⁽⁴⁾, the provisions of the Schengen *acquis* related to the

(3) The Council has verified, in accordance with the applicable Schengen evaluation procedures as set out in the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen (SCH/Com-ex (98) 26 def.) ⁽⁵⁾, that the necessary conditions for the application of the Schengen *acquis* — Land Borders, Police Cooperation, the Schengen Information System, and Visas — in the Swiss Confederation.

(4) On 27 November 2008, the Council concluded that the conditions in each of the areas mentioned had been fulfilled by the Swiss Confederation.

(5) As regards the evaluation and implementation of the Schengen *acquis* at air borders, further evaluation visits should be carried out at a later stage.

(6) It is therefore possible to set dates for the application of the Schengen *acquis* in full, i.e. dates from which checks on persons at the internal borders with the Swiss Confederation should be lifted. Were the further evaluation visits at air borders to prove unsuccessful, the date set for the application of the Schengen *acquis* regulating the abolition of checks on persons at air borders should be reconsidered.

⁽¹⁾ OJ L 53, 27.2.2008, p. 52.

⁽²⁾ Council Decisions 2004/849/EC (OJ L 368, 15.12.2004, p. 26) and 2004/860/EC (OJ L 370, 17.12.2004, p. 78).

⁽³⁾ Council Decisions 2008/146/EC (OJ L 53, 27.2.2008, p. 1) and 2008/149/JHA (OJ L 53, 27.2.2008, p. 50).

⁽⁴⁾ OJ L 149, 7.6.2008, p. 74.

⁽⁵⁾ OJ L 239, 22.9.2000, p. 138.

- (7) From the earliest such date, the restrictions on the use of the Schengen Information System, provided for in Decision 2008/421/EC, should be lifted.
- (8) In accordance with Article 15(4) of the Agreement and with Article 14(1) of the Agreement between the Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland ⁽¹⁾, the latter Agreement should be implemented from 12 December 2008.
- (9) The Agreement between the Swiss Confederation and the Kingdom of Denmark on the creation of rights and obligations between Denmark and the Swiss Confederation as regards the provisions of the Schengen *acquis* which come under Title IV of the Treaty establishing the European Community stipulates that it shall be put into effect in respect of the implementation, application and development of the Schengen *acquis* on the same date as the Agreement is put into effect.
- (10) In accordance with the second subparagraph of Article 15(1) of the Agreement and as a result of the partial application of the Schengen *acquis* by the United Kingdom of Great Britain and Northern Ireland provided for in Council Decision 2004/926/EC of 22 December 2004 on the putting into effect of parts of the Schengen *acquis* by the United Kingdom of Great Britain and Northern Ireland ⁽²⁾, and in particular the first subparagraph of Article 1 thereof, only part of the provisions of the Schengen *acquis* applicable to the Swiss Confederation in its relations with Member States applying the Schengen *acquis* in full should apply in the relations of the Swiss Confederation with the United Kingdom of Great Britain and Northern Ireland.
- (11) In accordance with the third subparagraph of Article 15(1) of the Agreement and as a result of the partial application of the Schengen *acquis* by Cyprus on the one hand, and Bulgaria and Romania on the other, as provided for in Article 3(2) of the 2003 Act of Accession and Article 4(2) of the 2005 Act of Accession respectively, only the part of the Schengen *acquis* applicable in these Member States should also be applicable to the Swiss Confederation in its relations with these Member States.

- (12) The Agreement between the Swiss Confederation, the Republic of Iceland and the Kingdom of Norway concerning the implementation, application and development of the Schengen *acquis* and concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in Switzerland, Iceland or Norway stipulates that it shall be put into effect in respect of the implementation, application and development of the Schengen *acquis* on the same date as the Agreement is put into effect,

HAS DECIDED AS FOLLOWS:

Article 1

1. All the provisions referred to in Annexes A and B to the Agreement and any act constituting a further development of one or more of these provisions, shall apply to the Swiss Confederation, in its relations with Kingdom of Belgium, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, and the Kingdom of Sweden as from 12 December 2008.

To the extent that those provisions regulate the abolition of checks on persons at internal borders, they shall apply as from 29 March 2009 to air borders. The Council may decide to defer this date, acting by a simple majority of the Members of the Council representing the governments of the Member States to which the provisions of the Schengen *acquis* regulating the abolition of checks on persons at internal borders apply. In that case, a new date shall be set by the Council, acting by unanimity of those Members.

All restrictions on the use of the Schengen Information System by the Member States concerned shall be lifted as from 8 December 2008.

2. The provisions of the Schengen *acquis* put into effect by the United Kingdom of Great Britain and Northern Ireland on the basis of Article 1 of Decision 2004/926/EC and any act constituting a further development of one or more of those provisions, shall apply to the Swiss Confederation, in its relations with the United Kingdom of Great Britain and Northern Ireland as from 12 December 2008.

⁽¹⁾ OJ L 53, 27.2.2008, p. 5.

⁽²⁾ OJ L 395, 31.12.2004, p. 70.

3. The provisions of the Schengen *acquis* applicable to Cyprus on the one hand, and Bulgaria and Romania on the other on the basis of Article 3(1) of the 2003 Act of Accession and Article 4(1) of the 2005 Act of Accession respectively and any act constituting a further development of one or more of those provisions, shall apply to the Swiss Confederation, in its relations with Cyprus, Bulgaria and Romania as from 12 December 2008.

Article 2

By way of derogation to Annex II of Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement ⁽¹⁾, Switzerland is authorised to maintain the visa exemption for Antigua and Barbuda, the Bahamas,

Barbados and Saint Kitts and Nevis from 12 December 2008 until the entry into force of the visa waiver agreements between the European Community and each of these countries.

Article 3

This 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

⁽¹⁾ OJ L 81, 21.3.2001, p. 1.

COUNCIL DECISION
of 27 November 2008
appointing a Dutch member and two Dutch alternate members of the Committee of the Regions
(2008/904/EC)

THE COUNCIL OF THE EUROPEAN UNION,

(a) as member:

Having regard to the Treaty establishing the European Community, and in particular Article 263 thereof,

— Mr Bas VERKERK, Burgemeester van Delft (change of mandate);

Having regard to the proposal of the Dutch Government,

and

Whereas:

(1) On 24 January 2006 the Council adopted Decision 2006/116/EC appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2006 to 25 January 2010 ⁽¹⁾.

(b) as alternate members:

— Mr Job COHEN, Burgemeester van Amsterdam,

(2) A member's seat on the Committee of the Regions has become vacant following the resignation of Mr Nico SCHOOFF. One alternate member's seat has become vacant following the resignation of Mr Lodewijk ASSCHER. Another alternate member's seat becomes vacant following the appointment, by this Decision, of Mr Bas VERKERK as a member of the Committee of the Regions,

— Mr Hans KOK, Burgemeester van Hof van Twente.

Article 2

This Decision shall take effect on the date of its adoption.

HAS DECIDED AS FOLLOWS:

Done at Brussels, 27 November 2008.

Article 1

The following are hereby appointed to the Committee of the Regions for the remainder of the current term of office, which runs until 25 January 2010:

For the Council
The President
L. CHATEL

⁽¹⁾ OJ L 56, 25.2.2006, p. 75.

COUNCIL DECISION
of 27 November 2008
amending Annex 13 to the Common Consular Instructions on filling in visa stickers
(2008/905/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Council Regulation (EC) No 789/2001 of 24 April 2001 reserving to the Council implementing powers with regard to certain detailed provisions and practical procedures for examining visa applications ⁽¹⁾, and in particular Article 1(1) thereof,

Having regard to the initiative of France,

Whereas:

- (1) It is necessary to update the Common Consular Instructions in order to reflect the full application of the provisions of the Schengen *acquis* in the Swiss Confederation by virtue of Decision 2008/903/EC ⁽²⁾.
- (2) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Decision, and is not bound by it or subject to its application. Given that this Decision builds upon the Schengen *acquis* under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark shall, in accordance with Article 5 of the said Protocol, decide within a period of six months after the Council has adopted this Decision, whether it will implement it in its national law.
- (3) As regards Iceland and Norway, this Decision constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* which fall within the area referred to in Article 1, point B of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement ⁽³⁾.
- (4) This Decision constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* ⁽⁴⁾. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (5) This Decision constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* ⁽⁵⁾. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (6) As regards Switzerland, this Decision constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded between the European Union, the European Community and the Swiss Confederation concerning the association of the Swiss Confederation with the implementation, application and development of the Schengen *acquis* ⁽⁶⁾, which fall within the area referred to in Article 1, point B, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC ⁽⁷⁾.
- (7) As regards Liechtenstein, this Decision constitutes a development of provisions of the Schengen *acquis* within the meaning of the Protocol signed between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* ⁽⁸⁾, which fall within the area referred to in Article 1, point B, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/261/EC ⁽⁹⁾.

⁽¹⁾ OJ L 116, 26.4.2001, p. 2.

⁽²⁾ See page 15 of this Official Journal.

⁽³⁾ OJ L 176, 10.7.1999, p. 31.

⁽⁴⁾ OJ L 131, 1.6.2000, p. 43.

⁽⁵⁾ OJ L 64, 7.3.2002, p. 20.

⁽⁶⁾ OJ L 53, 27.2.2008, p. 52.

⁽⁷⁾ OJ L 53, 27.2.2008, p. 1.

⁽⁸⁾ Council document 16462/06; accessible on <http://register.consilium.europa.eu>

⁽⁹⁾ OJ L 83, 26.3.2008, p. 3.

- (8) As regards Cyprus, this Decision constitutes an act building on the Schengen *acquis* or otherwise related to it within the meaning of Article 3(2) of the 2003 Act of Accession.
- (9) This Decision constitutes an act building on the Schengen *acquis* or otherwise related to it within the meaning of Article 4(2) of the 2005 Act of Accession,

HAS ADOPTED THIS DECISION:

Article 1

The following code shall be added to the list of country codes set out in Annex 13, examples 11 and 14, to the Common Consular Instructions:

'Swiss Confederation: CH'

Article 2

This Decision shall apply from the date set out in the first subparagraph of Article 1(1) of Decision 2008/903/EC on the full application of the provisions of the Schengen *acquis* in the Swiss Confederation ⁽¹⁾.

Article 3

This Decision is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 27 November 2008.

For the Council

The President

M. ALLIOT-MARIE

⁽¹⁾ See page 15 of this Official Journal.

COUNCIL DECISION
of 27 November 2008
appointing two Danish members and two alternate members of the Committee of the Regions
(2008/906/EC)

THE COUNCIL OF THE EUROPEAN UNION,

(a) as members:

Having regard to the Treaty establishing the European Community, and in particular Article 263 thereof,

Ms Helene LUND, Byrådsmedlem, Furesø Kommune (change of mandate),

Having regard to the proposal of the Danish Government,

Ms Mona HEIBERG, 1. Næstformand for Borgerrepræsentationen, Københavns Kommune (change of mandate),

Whereas:

(b) as alternate members:

(1) On 24 January 2006, the Council adopted Decision 2006/116/EC appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2006 to 25 January 2010 ⁽¹⁾.

Mr Jens Christian GJESING, 1. Viceborgmester, Haderslev Kommune (change of mandate),

(2) Two members' seats on the Committee of the Regions have become vacant following the expiry of the mandates of Ms Mona HEIBERG and Ms Helene LUND. Two alternate members' seats have become vacant following the expiry of the mandates of Mr Jens Christian GJESING and Ms Tove LARSEN,

Ms Tove LARSEN, Borgmester, Aabenraa Kommune (change of mandate).

Article 2

This Decision shall take effect on the day of its adoption.

HAS ADOPTED THIS DECISION:

Done at Brussels, 27 November 2008.

Article 1

The following are hereby appointed to the Committee of the Regions for the remainder of the current term of office, which runs until 25 January 2010:

For the Council
The President
L. CHATEL

⁽¹⁾ OJ L 56, 25.2.2006, p. 75.

COMMISSION

COMMISSION DECISION

of 3 November 2008

laying down health guarantees for the transport of equidae from one third country to another in accordance with Article 9(1)(c) of Council Directive 91/496/EEC

*(notified under document number C(2008) 6296)***(Text with EEA relevance)***(2008/907/EC)*

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organization of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC ⁽¹⁾, and in particular Article 9(1)(c) thereof,

Whereas:

- (1) Commission Decision 94/467/EC of 13 July 1994 laying down health guarantees for the transport of equidae from one third country to another in accordance with Article 9(1)(c) of Directive 91/496/EEC ⁽²⁾ has been substantially amended several times ⁽³⁾. In the interests of clarity and rationality the said Decision should be codified.
- (2) In accordance with Article 9(1)(c) of Directive 91/496/EEC, health guarantees must be laid down for the transport of animals from one third country to another. Certain problems have been encountered as regards movements of equidae from one third country to another.
- (3) Commission Decision 92/260/EEC ⁽⁴⁾ lays down the animal health conditions and veterinary certification required for temporary admission of registered horses. Those conditions provide all the necessary guarantees

as regards the Community's health status. For the health guarantees applicable to movements of equidae from one third country to another, reference should therefore be made to the health conditions laid down in Decision 92/260/EEC. That Decision requires, among others, a certain residence in the country of dispatch. The residence in Member States or certain listed third countries may, however, count for the calculation of the period considered, provided that at least the same health requirements are fulfilled.

- (4) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

Article 1

1. Equidae on their way from one third country to another must come from a third country listed in Annex I to Decision 92/260/EEC.

2. Equidae as referred to in paragraph 1 must be accompanied by a certificate entitled 'Transit certificate for the transport of equidae from one third country to another'. This certificate must comprise Sections I, II and III with the exception of point (e)(v) of the health certificate, corresponding to the third country of provenance listed in Annex II to Decision 92/260/EEC. It must in addition comprise the following sections:

IV. Equidae coming from:
(country)

and proceeding to:
(country)

V. Stamp and signature of official veterinarian:

⁽¹⁾ OJ L 268, 24.9.1991, p. 56.

⁽²⁾ OJ L 190, 26.7.1994, p. 28.

⁽³⁾ See Annex I.

⁽⁴⁾ OJ L 130, 15.5.1992, p. 67.

3. By way of derogation from paragraph 2 and only in the case of registered equidae, the list of countries in the third indent in point (d) of Section III of the certificates A, B, C, D and E in Annex II to Decision 92/260/EEC shall be replaced by the list of third countries in Groups A to E in Annex I to that Decision.

Article 2

Decision 94/467/EC is repealed.

References to the repealed Decision shall be construed as references to this Decision and shall be read in accordance with the correlation table in Annex II.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 3 November 2008.

For the Commission
The President

José Manuel BARROSO

ANNEX I

REPEALED DECISION WITH LIST OF ITS SUCCESSIVE AMENDMENTS

Commission Decision 94/467/EC
(OJ L 190, 26.7.1994, p. 28)

Commission Decision 96/81/EC
(OJ L 19, 25.1.1996, p. 53)

Only Article 4

Commission Decision 2001/662/EC
(OJ L 232, 30.8.2001, p. 28)

ANNEX II

CORRELATION TABLE

Decision 94/467/EC	This Decision
Article 1	Article 1
—	Article 2
Article 2	Article 3
—	Annex I
—	Annex II

COMMISSION DECISION**of 28 November 2008****authorising certain Member States to revise their annual BSE monitoring programme***(notified under document number C(2008) 7288)***(Only the texts in Spanish, Danish, German, Greek, English, French, Italian, Dutch, Portuguese, Finnish and Swedish are authentic)****(2008/908/EC)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 999/2001 of the European Parliament and of the Council of 22 May 2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies ⁽¹⁾, and in particular the second subparagraph of Article 6(1b) thereof,

Whereas:

- (1) Regulation (EC) No 999/2001 lays down rules for the prevention, control and eradication of transmissible spongiform encephalopathies (TSEs) in animals. It provides that each Member State is to carry out an annual monitoring programme for TSEs based on active and passive surveillance, in accordance with Annex III to that Regulation.
- (2) Article 6(1b) of Regulation (EC) No 999/2001 provides that Member States which can demonstrate the improvement of the epidemiological situation of the country, according to certain criteria to be laid down in accordance with the procedure referred to in that Article, may apply for their annual monitoring programmes to be revised.
- (3) Point 7 of Part I of Chapter A of Annex III to Regulation (EC) No 999/2001 lays down information that has to be submitted to the Commission and epidemiological criteria that have to be complied with by Members States wishing to revise their annual monitoring programmes.
- (4) On 17 July 2008, the European Food Safety Authority released two scientific opinions relating to the revision of the BSE monitoring regime in some Member States. Those opinions provide an assessment on the level of additional risk to human and animal health following the implementation of a revised BSE monitoring regime in the 15 Member States of the Community before

1 May 2004, and conclude that less than one BSE case would be missed annually in those Member States if the age of the bovine animal covered by the BSE monitoring was increased from 24 months to 48 months.

- (5) On 17 July 2008, Italy submitted to the Commission an application to revise its annual BSE monitoring programme.
- (6) On 7 August 2008, Ireland submitted to the Commission an application to revise its annual BSE monitoring programme.
- (7) On 13 August 2008, Austria submitted to the Commission an application to revise its annual BSE monitoring programme.
- (8) On 13 August 2008, Denmark submitted to the Commission an application to revise its annual BSE monitoring programme.
- (9) On 15 August 2008, the United Kingdom submitted to the Commission an application to revise its annual BSE monitoring programme.
- (10) On 20 August 2008, Luxembourg submitted to the Commission an application to revise its annual BSE monitoring programme.
- (11) On 28 August 2008, Germany submitted to the Commission an application to revise its annual BSE monitoring programme.
- (12) On 28 August 2008, the Netherlands submitted to the Commission an application to revise its annual BSE monitoring programme.
- (13) On 29 August 2008, Finland submitted to the Commission an application to revise its annual BSE monitoring programme.
- (14) On 29 August 2008, Sweden submitted to the Commission an application to revise its annual BSE monitoring programme.

⁽¹⁾ OJ L 147, 31.5.2001, p. 1.

- (15) On 4 September 2008, Portugal submitted to the Commission an application to revise its annual BSE monitoring programme.
- (16) On 8 September 2008, France submitted to the Commission an application to revise its annual BSE monitoring programme.
- (17) On 9 September 2008, Spain submitted to the Commission an application to revise its annual BSE monitoring programme.
- (18) On 11 September 2008, Belgium submitted to the Commission an application to revise its annual BSE monitoring programme.
- (19) On 17 September 2008, Greece submitted to the Commission an application to revise its annual BSE monitoring programme.
- (20) On 18 September 2008, applications submitted by those 15 Member States were assessed by an ad-hoc working group of experts which concluded that the risk analyses provided by the Member States in support of their applications were suitable and would ensure the protection of human and animal health. All the requirements laid down in the third subparagraph of Article 6(1b) and all the epidemiological criteria set out in point 7 of Part I of Chapter A of Annex III to Regulation (EC) No 999/2001 that Member States have to comply with for demonstrating the improvement of their epidemiological situation were also checked and found to be met.
- (21) It is therefore appropriate to authorise the 15 Member States whose applications have been favourably evaluated to revise their annual monitoring programme and to retain 48 months as the new age limit for BSE testing in those Member States.
- (22) Some Member States who joined the Community from 1 May 2004 but started the compliance effort during their pre-accession years also submitted to the Commission applications to revise their annual BSE monitoring programmes. In addition to the scientific assessment and in order to verify compliance with the epidemiological criteria, the Food and Veterinary Office (FVO) is expected to carry out an inspection in these Member States and also in those who will apply for a review of their programme. The Commission has received review requests from Slovenia and Cyprus.

- (23) For practical reasons, it is appropriate that the commencement date of the revised annual monitoring programmes coincides with the Community budgetary year.
- (24) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

Article 1

From 1 January 2009, the Member States listed in the Annex hereto may revise their annual monitoring programme as provided for in Article 6(1) of Regulation (EC) No 999/2001 (the revised annual monitoring programmes).

Article 2

The revised annual monitoring programmes shall apply only to the national bovine population of the concerned Member State and shall cover at least all bovine animals above 48 months of age belonging to the following subpopulations:

- (a) animals as referred to in point 2.2 of Part I of Chapter A of Annex III to Regulation (EC) No 999/2001;
- (b) animals as referred to in point 2.1 of Part I of Chapter A of Annex III to Regulation (EC) No 999/2001;
- (c) animals as referred to in point 3.1 of Part I of Chapter A of Annex III to Regulation (EC) No 999/2001.

Article 3

This Decision is addressed to the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 28 November 2008.

For the Commission

Androulla VASSILIOU

Member of the Commission

ANNEX

List of Member States

- Belgium
 - Denmark
 - Germany
 - Ireland
 - Greece
 - Spain
 - France
 - Italy
 - Luxembourg
 - Netherlands
 - Austria
 - Portugal
 - Finland
 - Sweden
 - United Kingdom
-

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE VI OF THE EU TREATY

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

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the initiative of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition, which should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union.
- (2) On 29 November 2000 the Council, in accordance with the Tampere conclusions, adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters⁽¹⁾, in which it called for an assessment of the need for modern mechanisms for the mutual recognition of final sentences involving deprivation of liberty (Measure 14) and for extended application of the principle of the transfer of sentenced persons to cover persons resident in a Member State (Measure 16).

- (3) The Hague Programme on strengthening freedom, security and justice in the European Union⁽²⁾ requires Member States to complete the programme of measures, in particular in the field of enforcing final custodial sentences.

- (4) All the Member States have ratified the Council of Europe Convention on the Transfer of Sentenced Persons of 21 March 1983. Under that Convention, sentenced persons may be transferred to serve the remainder of their sentence only to their State of nationality and only with their consent and that of the States involved. The Additional Protocol to that Convention of 18 December 1997, which allows transfer without the person's consent, subject to certain conditions, has not been ratified by all the Member States. Neither instrument imposes any basic duty to take charge of sentenced persons for enforcement of a sentence or order.

- (5) Procedural rights in criminal proceedings are a crucial element for ensuring mutual confidence among the Member States in judicial cooperation. Relations between the Member States, which are characterised by special mutual confidence in other Member States' legal systems, enable recognition by the executing State of decisions taken by the issuing State's authorities. Therefore, a further development of the cooperation provided for in the Council of Europe instruments concerning the enforcement of criminal judgments should be envisaged, in particular where citizens of the Union were the subject of a criminal judgment and were sentenced to a custodial sentence or a measure involving deprivation of liberty in another Member State. Notwithstanding the need to provide the sentenced person with adequate safeguards, his or her involvement in the proceedings should no longer be dominant by requiring in all cases his or her consent to the forwarding of a judgment to another Member State for the purpose of its recognition and enforcement of the sentence imposed.

⁽¹⁾ OJ C 12, 15.1.2001, p. 10.

⁽²⁾ OJ C 53, 3.3.2005, p. 1.

- (6) This Framework Decision should be implemented and applied in a manner which allows general principles of equality, fairness and reasonableness to be respected.
- (7) Article 4(1)(c) contains a discretionary provision which enables the judgment and the certificate to be forwarded, for example, to the Member State of nationality of the sentenced person, in cases other than those provided for in paragraphs 1(a) and (b) or to the Member State in which the sentenced person lives and has been legally residing continuously for at least five years and will retain a permanent right of residence there.
- (8) In cases referred to in Article 4(1)(c) the forwarding of the judgment and the certificate to the executing State is subject to consultations between the competent authorities of the issuing and the executing States, and the consent of the competent authority of the executing State. The competent authorities should take into account such elements as, for example, duration of the residence or other links to the executing State. In cases where the sentenced person could be transferred to a Member State and to a third country under national law or international instruments, the competent authorities of the issuing and executing States should, in consultations, consider whether enforcement in the executing State would enhance the aim of social rehabilitation better than enforcement in the third country.
- (9) Enforcement of the sentence in the executing State should enhance the possibility of social rehabilitation of the sentenced person. In the context of satisfying itself that the enforcement of the sentence by the executing State will serve the purpose of facilitating the social rehabilitation of the sentenced person, the competent authority of the issuing State should take into account such elements as, for example, the person's attachment to the executing State, whether he or she considers it the place of family, linguistic, cultural, social or economic and other links to the executing State.
- (10) The opinion of the sentenced person referred to in Article 6(3) may be useful mainly in applying Article 4(4). The words 'in particular' are intended to cover also cases where the opinion of the sentenced person would include information which might be of relevance in relation to the grounds for non-recognition and non-enforcement. Provisions of Articles 4(4) and 6(3) do not constitute a ground for refusal on social rehabilitation.
- (11) Poland needs more time than the other Member States to face the practical and material consequences of transfer of Polish citizens convicted in other Member States, especially in the light of an increased mobility of Polish citizens within the Union. For that reason, a temporary derogation of limited scope for a maximum period of five years should be foreseen.
- (12) This Framework Decision should also, *mutatis mutandis*, apply to the enforcement of sentences in the cases under Articles 4(6) and 5(3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States⁽¹⁾. This means, *inter alia*, that, without prejudice to that Framework Decision, the executing State could verify the existence of grounds for non-recognition and non-enforcement as provided in Article 9 of this Framework Decision, including the checking of double criminality to the extent that the executing State makes a declaration under Article 7(4) of this Framework Decision, as a condition for recognising and enforcing the judgment with a view to considering whether to surrender the person or to enforce the sentence in cases pursuant to Article 4(6) of Framework Decision 2002/584/JHA.
- (13) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected by the Charter of Fundamental Rights of the European Union, in particular Chapter VI thereof. Nothing in this Framework Decision should be interpreted as prohibiting refusal to execute a decision when there are objective reasons to believe that the sentence was imposed for the purpose of punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced on any one of those grounds.
- (14) This Framework Decision should not prevent any Member State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media.

⁽¹⁾ OJ L 190, 18.7.2002, p. 1.

- (15) This Framework Decision should be applied in accordance with the right of citizens of the Union to move and reside freely within the territory of the Member States conferred by Article 18 of the Treaty establishing European Community.
- (16) This Framework Decision should be applied in accordance with applicable Community legislation, including in particular Council Directive 2003/86/EC ⁽¹⁾, Council Directive 2003/109/EC ⁽²⁾ and Directive 2004/38/EC of the European Parliament and of the Council ⁽³⁾.
- (17) Where in this Framework Decision reference is made to the State in which the sentenced person 'lives', this indicates the place to which that person is attached based on habitual residence and on elements such as family, social or professional ties.
- (18) When applying Article 5(1), it should be possible to transmit a judgment or a certified copy thereof and a certificate to the competent authority in the executing State by any means which leaves a written record, for example e-mail and fax, under conditions allowing the executing State to establish authenticity.
- (19) In cases referred to in Article 9(1)(k), the executing State should consider the possibility of adapting the sentence in accordance with this Framework Decision before it refuses to recognise and enforce the sentence involving a measure other than a custodial sentence.
- (20) The ground for refusal provided for in Article 9(1)(k) may be applied also in cases where the person has not been found guilty of a criminal offence although the competent authority applied the measure involving the deprivation of liberty other than a custodial sentence as a consequence of a criminal offence.
- (21) 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 its purpose. Any decision to apply this ground for refusal, should be based on a case-by-case analysis and consultations between the competent authorities of the issuing and executing States.
- (22) The time limit referred to in Article 12(2) should be implemented by the Member States in such a way that

as a general rule, the final decision, including an appeal procedure is completed within a period of 90 days.

- (23) Article 18(1) states that, subject to the exceptions listed in paragraph 2, the specialty rule applies only where the person has been transferred to the executing State. It should therefore not be applicable where the person has not been transferred to the executing State, for example where the person has fled to the executing State,

HAS ADOPTED THIS FRAMEWORK DECISION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Definitions

For the purposes of this Framework Decision:

- (a) 'judgment' shall mean a final decision or order of a court of the issuing State imposing a sentence on a natural person;
- (b) 'sentence' shall mean any custodial sentence or any measure involving deprivation of liberty imposed for a limited or unlimited period of time on account of a criminal offence on the basis of criminal proceedings;
- (c) 'issuing State' shall mean the Member State in which a judgment is delivered;
- (d) 'executing State' shall mean the Member State to which a judgment is forwarded for the purpose of its recognition and enforcement.

Article 2

Determination of the competent authorities

1. Each Member State shall inform the General Secretariat of the Council which authority or authorities, under its national law, are competent in accordance with this Framework Decision, when that Member State is the issuing State or the executing State.

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

⁽¹⁾ OJ L 251, 3.10.2003, p. 12.

⁽²⁾ OJ L 16, 23.1.2004, p. 44.

⁽³⁾ OJ L 158, 30.4.2004, p. 77.

Article 3

Purpose and scope

1. The purpose of this Framework Decision is to establish the rules under which a Member State, with a view to facilitating the social rehabilitation of the sentenced person, is to recognise a judgment and enforce the sentence.

2. This Framework Decision shall apply where the sentenced person is in the issuing State or in the executing State.

3. This Framework Decision shall apply only to the recognition of judgments and the enforcement of sentences within the meaning of this Framework Decision. The fact that, in addition to the sentence, a fine and/or a confiscation order has been imposed, which has not yet been paid, recovered or enforced, shall not prevent a judgment from being forwarded. The recognition and enforcement of such fines and confiscation orders in another Member State shall be based on the instruments applicable between the Member States, in particular Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties ⁽¹⁾ and Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders ⁽²⁾.

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.

CHAPTER II

RECOGNITION OF JUDGMENTS AND ENFORCEMENT OF SENTENCES

Article 4

Criteria for forwarding a judgment and a certificate to another Member State

1. Provided that the sentenced person is in the issuing State or in the executing State, and provided that this person has given his or her consent where required under Article 6, a judgment, together with the certificate for which the standard form is given in Annex I, may be forwarded to one of the following Member States:

- (a) the Member State of nationality of the sentenced person in which he or she lives; or
- (b) the Member State of nationality, to which, while not being the Member State where he or she lives, the sentenced

person will be deported, once he or she is released from the enforcement of the sentence on the basis of an expulsion or deportation order included in the judgment or in a judicial or administrative decision or any other measure taken consequential to the judgment; or

- (c) any Member State other than a Member State referred to in (a) or (b), the competent authority of which consents to the forwarding of the judgment and the certificate to that Member State.

2. The forwarding of the judgment and the certificate may take place where the competent authority of the issuing State, where appropriate after consultations between the competent authorities of the issuing and the executing States, is satisfied that the enforcement of the sentence by the executing State would serve the purpose of facilitating the social rehabilitation of the sentenced person.

3. Before forwarding the judgment and the certificate, the competent authority of the issuing State may consult, by any appropriate means, the competent authority of the executing State. Consultation shall be obligatory in the cases referred to in paragraph 1(c). In such cases the competent authority of the executing State shall promptly inform the issuing State of its decision whether or not to consent to the forwarding of the judgment.

4. During such consultation, the competent authority of the executing State may present the competent authority of the issuing State with a reasoned opinion, that enforcement of the sentence in the executing State would not serve the purpose of facilitating the social rehabilitation and successful reintegration of the sentenced person into society.

Where there has been no consultation, such an opinion may be presented without delay after the transmission of the judgment and the certificate. The competent authority of the issuing State shall consider such opinion and decide whether to withdraw the certificate or not.

5. The executing State may, on its own initiative, request the issuing State to forward the judgment together with the certificate. The sentenced person may also request the competent authorities of the issuing State or of the executing State to initiate a procedure for forwarding the judgment and the certificate under this Framework Decision. Requests made under this paragraph shall not create an obligation of the issuing State to forward the judgment together with the certificate.

⁽¹⁾ OJ L 76, 22.3.2005, p. 16.

⁽²⁾ OJ L 328, 24.11.2006, p. 59.

6. In implementing this Framework Decision, Member States shall adopt measures, in particular taking into account the purpose of facilitating social rehabilitation of the sentenced person, constituting the basis on which their competent authorities have to take their decisions whether or not to consent to the forwarding of the judgment and the certificate in cases pursuant to paragraph 1(c).

7. Each Member State may, either on adoption of this Framework Decision or later, notify the General Secretariat of the Council that, in its relations with other Member States that have given the same notification, its prior consent under paragraph 1(c) is not required for the forwarding of the judgment and the certificate:

- (a) if the sentenced person lives in and has been legally residing continuously for at least five years in the executing State and will retain a permanent right of residence in that State, and/or
- (b) if the sentenced person is a national of the executing State in cases other than those provided for in paragraph 1(a) and (b).

In cases referred to in point (a), permanent right of residence shall mean that the person concerned:

- has a right of permanent residence in the respective Member State in accordance with the national law implementing Community legislation adopted on the basis of Article 18, 40, 44 and 52 of the Treaty establishing the European Community, or
- possesses a valid residence permit, as a permanent or long-term resident, for the respective Member State, in accordance with the national law implementing Community legislation adopted on the basis of Article 63 of the Treaty establishing the European Community, as regards Member States to which such Community legislation is applicable, or in accordance with national law, as regards Member States to which it is not.

Article 5

Forwarding of the judgment and the certificate

1. The judgment or a certified copy of it, together with the certificate, 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 its

authenticity. The original of the judgment, or a certified copy of it, and the original of the certificate, shall be sent to the executing State if it so requires. All official communications shall also be made directly between the said competent authorities.

2. The certificate, shall be signed, and its content certified as accurate, by the competent authority of the issuing State.

3. The issuing State shall forward the judgment together with the certificate to only one executing State at any one time.

4. 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 set up by Council Joint Action 98/428/JHA ⁽¹⁾, in order to obtain the information from the executing State.

5. When an authority of the executing State which receives a judgment together with a certificate has no competence to recognise it and take the necessary measures for its enforcement, it shall, *ex officio*, forward the judgment together with the certificate to the competent authority of the executing State and inform the competent authority of the issuing State accordingly.

Article 6

Opinion and notification of the sentenced person

1. Without prejudice to paragraph 2, a judgment together with a certificate may be forwarded to the executing State for the purpose of its recognition and enforcement of the sentence only with the consent of the sentenced person in accordance with the law of the issuing State.

2. The consent of the sentenced person shall not be required where the judgment together with the certificate is forwarded:

- (a) to the Member State of nationality in which the sentenced person lives;
- (b) to the Member State to which the sentenced person will be deported once he or she is released from the enforcement of the sentence on the basis of an expulsion or deportation order included in the judgment or in a judicial or administrative decision or any other measure consequential to the judgment;

⁽¹⁾ OJ L 191, 7.7.1998, p. 4.

(c) to the Member State to which the sentenced person has fled or otherwise returned in view of the criminal proceedings pending against him or her in the issuing State or following the conviction in that issuing State.

3. In all cases where the sentenced person is still in the issuing State, he or she shall be given an opportunity to state his or her opinion orally or in writing. Where the issuing State considers it necessary in view of the sentenced person's age or his or her physical or mental condition, that opportunity shall be given to his or her legal representative.

The opinion of the sentenced person shall be taken into account when deciding the issue of forwarding the judgement together with the certificate. Where the person has availed him or her self of the opportunity provided in this paragraph, the opinion of the sentenced person shall be forwarded to the executing State, in particular with a view to Article 4(4). If the sentenced person stated his or her opinion orally, the issuing State shall ensure that the written record of such statement is available to executing State.

4. The competent authority of the issuing State shall inform the sentenced person, in a language which he or she understands, that it has decided to forward the judgment together with the certificate by using the standard form of the notification set out in Annex II. When the sentenced person is in the executing State at the time of that decision, that form shall be transmitted to the executing State which shall inform the sentenced person accordingly.

5. Paragraph 2(a) shall not apply to Poland as an issuing State and as an executing State in cases where the judgement was issued before the lapse of five years from 5 December 2011. Poland may at any time notify the General Secretariat of the Council that it will no longer avail itself of this derogation.

Article 7

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 enforcement of the sentence imposed:

- 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 ⁽¹⁾,
- 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,

⁽¹⁾ OJ C 316, 27.11.1995, p. 49.

- 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.

2. The Council may decide to add other categories of offences to the list provided for in paragraph 1 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 29(5) 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 enforcement of the sentence subject to the condition that it 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 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 8

Recognition of the judgment and enforcement of the sentence

1. The competent authority of the executing State shall recognise a judgment which has been forwarded in accordance with Article 4 and following the procedure under Article 5, and shall forthwith take all the necessary measures for the enforcement of the sentence, unless it decides to invoke one of the grounds for non-recognition and non-enforcement provided for in Article 9.

2. Where the sentence is incompatible with the law of the executing State in terms of its duration, the competent authority of the executing State may decide to adapt the sentence only where that sentence exceeds the maximum penalty provided for similar offences under its national law. The adapted sentence shall not be less than the maximum penalty provided for similar offences under the law of the executing State.

3. Where the sentence is incompatible with the law of the executing State in terms of its nature, the competent authority of the executing State may adapt it to the punishment or measure provided for under its own law for similar offences. Such a punishment or measure shall correspond as closely as possible to the sentence imposed in the issuing State and therefore the sentence shall not be converted into a pecuniary punishment.

4. The adapted sentence shall not aggravate the sentence passed in the issuing State in terms of its nature or duration.

Article 9

Grounds for non-recognition and non-enforcement

1. The competent authority of the executing State may refuse to recognise the judgment and enforce the sentence, if:

(a) the certificate referred to in Article 4 is incomplete or manifestly does not correspond to the judgment and has not been completed or corrected within a reasonable deadline set by the competent authority of the executing State;

(b) the criteria set forth in Article 4(1) are not met;

(c) enforcement of the sentence would be contrary to the principle of *ne bis in idem*;

- (d) in a case referred to in Article 7(3) and, where the executing State has made a declaration under Article 7(4), in a case referred to in Article 7(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 a judgment may not be refused on the ground 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, duties and 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;
- (f) there is immunity under the law of the executing State, which makes it impossible to enforce the sentence;
- (g) the sentence has been imposed on a person who, under the law of the executing State, owing to his or her age, could not have been held criminally liable for the acts in respect of which the judgment was issued;
- (h) at the time the judgment was received by the competent authority of the executing State, less than six months of the sentence remain to be served;
- (i) the judgment was rendered *in absentia*, unless the certificate states that the person was summoned personally or informed via a representative competent according to the national law of the issuing State of the time and place of the proceedings which resulted in the judgment being rendered *in absentia*, or that the person has indicated to a competent authority that he or she does not contest the case;
- (j) the executing State, before a decision is taken in accordance with Article 12(1), makes a request, in accordance with Article 18(3), and the issuing State does not consent, in accordance with Article 18(2)(g), to the person concerned being prosecuted, sentenced or otherwise deprived of his or her liberty in the executing State for an offence committed prior to the transfer other than that for which the person was transferred;
- (k) the sentence imposed includes a measure of psychiatric or health care or another measure involving deprivation of liberty, which, notwithstanding Article 8(3), cannot be executed by the executing State in accordance with its legal or health care system;
- (l) 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(l) 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 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), (i), (k) and (l), before deciding not to recognise the judgment and enforce the sentence, the competent authority of the executing State shall consult the competent authority of the issuing State, by any appropriate means, and shall, where appropriate, ask it to supply any necessary additional information without delay.

Article 10

Partial recognition and enforcement

1. If the competent authority of the executing State could consider recognition of the judgment and enforcement of the sentence in part, it may, before deciding to refuse recognition of the judgment and enforcement of the sentence in whole, consult the competent authority of the issuing State with a view to finding an agreement, as provided for in paragraph 2.

2. The competent authorities of the issuing and the executing States may agree, on a case-by-case basis, to the partial recognition and enforcement of a sentence in accordance with the conditions set out by them, provided such recognition and enforcement does not result in the aggravation of the duration of the sentence. In the absence of such agreement, the certificate shall be withdrawn.

Article 11

Postponement of recognition of the judgment

The recognition of the judgment may be postponed in the executing State where the certificate referred to in Article 4 is incomplete or manifestly does not correspond to the judgment, until such reasonable deadline set by the executing State for the certificate to be completed or corrected.

Article 12

Decision on the enforcement of the sentence and time limits

1. The competent authority in the executing State shall decide as quickly as possible whether to recognise the judgment and enforce the sentence and shall inform the issuing State thereof, including of any decision to adapt the sentence in accordance with Article 8(2) and (3).

2. Unless a ground for postponement exists under Article 11 or Article 23(3), the final decision on the recognition of the judgment and the enforcement of the sentence shall be taken within a period of 90 days of receipt of the judgment and the certificate.

3. When in exceptional cases it is not practicable for the competent authority of the executing State to comply with the period provided for in paragraph 2, it shall without delay inform the competent authority of the issuing State by any means, giving the reasons for the delay and the estimated time needed for the final decision to be taken.

Article 13

Withdrawal of the certificate

As long as the enforcement of the sentence in the executing State has not begun, the issuing State may withdraw the certificate from that State, giving reasons for doing so. Upon withdrawal of the certificate, the executing State shall no longer enforce the sentence.

Article 14

Provisional arrest

Where the sentenced person is in the executing State, the executing State may, at the request of the issuing State, before the arrival of the judgment and the certificate, or before the decision to recognise the judgment and enforce the sentence, arrest the sentenced person, or take any other measure to ensure that the sentenced person remains in its territory, pending a decision to recognise the judgment and enforce the sentence. The duration of the sentence shall not be aggravated as a result of any period spent in custody by reason of this provision.

Article 15

Transfer of sentenced persons

1. If the sentenced person is in the issuing State, he or she shall be transferred to the executing State at a time agreed between the competent authorities of the issuing and the executing States, and no later than 30 days after the final decision of the executing State on the recognition of the judgment and enforcement of the sentence has been taken.

2. If the transfer of the sentenced person within the period laid down in paragraph 1 is prevented by unforeseen circumstances, the competent authorities of the issuing and executing States shall immediately contact each other. Transfer shall take place as soon as these circumstances cease to exist. The competent authority of the issuing State shall immediately inform the competent authority of the executing State and

agree on a new transfer date. In that event, transfer shall take place within 10 days of the new date thus agreed.

Article 16

Transit

1. Each Member State shall, in accordance with its law, permit the transit through its territory of a sentenced person who is being transferred to the executing State, provided that a copy of the certificate referred to in Article 4 has been forwarded to it by the issuing State together with the transit request. The transit request and the certificate may be transmitted by any means capable of producing a written record. Upon request of the Member State to permit transit, the issuing State shall provide a translation of the certificate into one of the languages, to be indicated in the request, which the Member State requested to permit transit accepts.

2. When receiving a request to permit transit, the Member State requested to permit transit shall inform the issuing State if it cannot guarantee that the sentenced person will not be prosecuted, or, except as provided in paragraph 1, detained or otherwise subjected to any restriction of his or her liberty in its territory for any offence committed or sentence imposed before his or her departure from the territory of the issuing State. In such a case, the issuing State may withdraw its request.

3. The Member State requested to permit transit shall notify its decision, which shall be taken on a priority basis and not later than one week after having received the request, by the same procedure. Such a decision may be postponed until the translation has been transmitted to the Member State requested to permit transit, where such translation is required under paragraph 1.

4. The Member State requested to permit transit may hold the sentenced person in custody only for such time as transit through its territory requires.

5. A transit request shall not be required in the case of transport by air without a scheduled stopover. However, if an unscheduled landing occurs, the issuing State shall provide the information provided for in paragraph 1 within 72 hours.

Article 17

Law governing enforcement

1. The enforcement of a sentence shall be governed by the law of the executing State. The authorities of the executing State alone shall, subject to paragraphs 2 and 3, be competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for early or conditional release.

2. The competent authority of the executing State shall deduct the full period of deprivation of liberty already served in connection with the sentence in respect of which the judgment was issued from the total duration of the deprivation of liberty to be served.

3. The competent authority of the executing State shall, upon request, inform the competent authority of the issuing State of the applicable provisions on possible early or conditional release. The issuing State may agree to the application of such provisions or it may withdraw the certificate.

4. Member States may provide that any decision on early or conditional release may take account of those provisions of national law, indicated by the issuing State, under which the person is entitled to early or conditional release at a specified point in time.

Article 18

Specialty

1. A person transferred to the executing State pursuant to this Framework Decision shall not, subject to paragraph 2, be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed before his or her transfer other than that for which he or she was transferred.

2. Paragraph 1 shall not apply in the following cases:

- (a) when the person having had an opportunity to leave the territory of the executing State has not done so within 45 days of his or her final discharge, or has returned to that territory after leaving it;
- (b) when the offence is not punishable by a custodial sentence or detention order;
- (c) when the criminal proceedings do not give rise to the application of a measure restricting personal liberty;
- (d) when the sentenced person could be liable to a penalty or a measure not involving deprivation of liberty, in particular a financial penalty or a measure *in lieu* thereof, even if the penalty or measure *in lieu* may give rise to a restriction of his or her personal liberty;
- (e) when the sentenced person consented to the transfer;
- (f) when the sentenced person, after his or her transfer, has expressly renounced entitlement to the specialty rule with regard to specific offences preceding his or her transfer. Renunciation shall be given before the competent judicial authorities of the executing State and shall be recorded in accordance with that State's national law. The renunciation

shall be drawn up in such a way as to make clear that the person has given it voluntarily and in full awareness of the consequences. To that end, the person shall have the right to legal counsel;

- (g) for cases other than those mentioned under points (a) to (f), where the issuing State gives its consent in accordance with paragraph 3.

3. A request for consent shall be submitted to the competent authority of the issuing State, accompanied by the information mentioned in Article 8(1) of Framework Decision 2002/584/JHA and a translation as referred to in Article 8(2) thereof. Consent shall be given where there is an obligation to surrender the person under that Framework Decision. The decision shall be taken no later than 30 days after receipt of the request. For the situations mentioned in Article 5 of that Framework Decision, the executing State shall give the guarantees provided for therein.

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 imposing the sentence to be enforced under this Framework Decision.

Article 20

Information from the issuing State

- 1. The competent authority of the issuing State shall forthwith inform the competent authority of the executing State of any decision or measure as a result of which the sentence ceases to be enforceable immediately or within a certain period of time.
- 2. The competent authority of the executing State shall terminate enforcement of the sentence as soon as it is informed by the competent authority of the issuing State of the decision or measure referred to in paragraph 1.

Article 21

Information to be given by the executing State

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:

- (a) of the forwarding of the judgment and the certificate to the competent authority responsible for its execution in accordance with Article 5(5);

- (b) of the fact that it is in practice impossible to enforce the sentence because after transmission of the judgment and the certificate to the executing State, the sentenced person cannot be found in the territory of the executing State, in which case there shall be no obligation on the executing State to enforce the sentence;
- (c) of the final decision to recognise the judgment and enforce the sentence together with the date of the decision;
- (d) of any decision not to recognise the judgment and enforce the sentence in accordance with Article 9, together with the reasons for the decision;
- (e) of any decision to adapt the sentence in accordance with Article 8(2) or (3), together with the reasons for the decision;
- (f) of any decision not to enforce the sentence for the reasons referred to in Article 19(1) together with the reasons for the decision;
- (g) of the beginning and the end of the period of conditional release, where so indicated in the certificate by the issuing State;
- (h) of the sentenced person's escape from custody;
- (i) of the enforcement of the sentence as soon as it has been completed.

Article 22

Consequences of the transfer of the sentenced person

1. Subject to paragraph 2, the issuing State shall not proceed with the enforcement of the sentence once its enforcement in the executing State has begun.
2. The right to enforce the sentence shall revert to the issuing State upon its being informed by the executing State of the partial non-enforcement of the sentence pursuant to Article 21(h).

Article 23

Languages

1. The certificate 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 Secre-

tariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the European Union.

2. Subject to paragraph 3, no translation of the judgment shall be required.

3. Any Member State may, on adoption of this Framework Decision or later, in a declaration deposited with the General Secretariat of the Council state that it, as an executing State, may without delay after receiving the judgment and the certificate, request, in cases where it finds the content of the certificate insufficient to decide on the enforcement of the sentence, that the judgment or essential parts of it be accompanied by a translation into the official language or one of the official languages of the executing State or into one or more other official languages of the Institutions of the European Union. Such a request shall be made, after consultation, where necessary, to indicate the essential parts of the judgments to be translated, between the competent authorities of the issuing and the executing States.

The decision on recognition of the judgment and enforcement of the sentence may be postponed until the translation has been transmitted by the issuing State to the executing State or, where the executing State decides to translate the judgment at its own expenses, until the translation has been obtained.

Article 24

Costs

Costs resulting from the application of this Framework Decision shall be borne by the executing State, except for the costs of the transfer of the sentenced person to the executing State and those arising exclusively in the sovereign territory of the issuing State.

Article 25

Enforcement of sentences following a European arrest warrant

Without prejudice to Framework Decision 2002/584/JHA, provisions of this Framework Decision shall apply, *mutatis mutandis* to the extent they are compatible with provisions under that Framework Decision, to enforcement of sentences in cases where a Member State undertakes to enforce the sentence in cases pursuant to Article 4(6) of that Framework Decision, or where, acting under Article 5(3) of that Framework Decision, it has imposed the condition that the person has to be returned to serve the sentence in the Member State concerned, so as to avoid impunity of the person concerned.

CHAPTER III

FINAL PROVISIONS

Article 26

Relationship with other agreements and arrangements

1. Without prejudice to their application between Member States and third States and their transitional application according to Article 28, this Framework Decision shall, from 5 December 2011, replace the corresponding provisions of the following conventions applicable in relations between the Member States:

- The European Convention on the transfer of sentenced persons of 21 March 1983 and the Additional Protocol thereto of 18 December 1997;
- The European Convention on the International Validity of Criminal Judgements of 28 May 1970;
- Title III, Chapter 5, of the Convention of 19 June 1990 implementing the Schengen Convention of 14 June 1985 on the gradual abolition of checks at common borders;
- The Convention between the Member States of the European Communities on the Enforcement of Foreign Criminal Sentences of 13 November 1991.

2. Member States may continue to apply bilateral or multilateral agreements or arrangements in force after 27 November 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 enforcement of sentences.

3. Member States may conclude bilateral or multilateral agreements or arrangements after 5 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 enforcement of sentences.

4. Member States shall by 5 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 27

Territorial application

This Framework Decision shall apply to Gibraltar.

Article 28

Transitional provision

1. Requests received before 5 December 2011 shall continue to be governed in accordance with the existing legal instruments on the transfer of sentenced persons. Requests received after that date shall be governed by the rules adopted by Member States pursuant to this Framework Decision.

2. However, any Member State may, on the adoption of this Framework Decision, make a declaration indicating that, in cases where the final judgment has been issued before the date it specifies, it will as an issuing and an executing State, continue to apply the existing legal instruments on the transfer of sentenced persons applicable before 5 December 2011. If such a declaration is made, those instruments shall apply in such cases in relation to all other Member States irrespective of whether or not they have made the same declaration. The date in question may not be later than 5 December 2011. The said declaration shall be published in the *Official Journal of the European Union*. It may be withdrawn at any time.

Article 29

Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 5 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. On the basis of a report established using this information by the Commission, the Council shall, no later than 5 December 2012, assess the extent to which Member States have complied with the provisions of this Framework Decision.

3. The General Secretariat of the Council shall notify the Member States and the Commission of the notifications or declarations made pursuant to Article 4(7) and Article 23(1) or (3).

4. Without prejudice to Article 35(7) of the Treaty on European Union, a Member State which has experienced repeated difficulties in the application of Article 25 of this Framework Decision, which have not been solved through bilateral consultations, shall inform the Council and the Commission of its difficulties. The Commission shall, on the basis of this information and any other information available to it, establish a report, accompanied by any initiatives it may deem appropriate, with a view to resolving these difficulties.

5. By 5 December 2013, the Commission shall establish a report on the basis of the information received, accompanied by any initiatives it may deem appropriate. The Council shall on the basis of any report from the Commission and any initiative, review, in particular Article 25, with a view to considering whether it is to be replaced by more specific provisions.

Article 30

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 4 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 ⁽¹⁾

(a) * Issuing State:
* Executing State:

(b) The court which delivered the judgment imposing the sentence that became final:
Official name:
The judgment was delivered on (give date: dd-mm-yyyy):
The judgment became final on (give date: dd-mm-yyyy):
Reference number of the judgment (if available):

(c) Information related to the authority that may be contacted for any question related to the certificate:

1. Type of authority: Please tick the relevant box:

☐ Central authority

☐ Court

☐ Other authority

2. Contact details of the authority indicated under point (c) 1:

Official name:
.....
Address:
.....
Tel.: (country code) (area/city code)
Fax: (country code) (area/city code)
E-mail address (if available):

3. Languages in which it is possible to communicate with the authority:

4. Contact details of person(s) to be contacted to obtain additional information for the purposes of enforcement of the judgment or agreement on the transfer procedures (name, title/grade, telephone No, fax, e-mail address), if different from 2:
.....
.....

⁽¹⁾ This certificate must be written in, or translated into, one of the official languages of the executing Member State or any other language accepted by that State.

(d) Information regarding the person on whom the sentence has been imposed:

Name:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if available):

Date of birth:

Place of birth:

Last known addresses/residences:

Language(s) which the person understands (if known):

.....

The sentenced person is:

☐ in the issuing State and is to be transferred to the executing State.

☐ in the executing State and enforcement is to take place in that State.

Additional information to be provided, if available and if appropriate:

1. Photo and fingerprints of the person, and/or contact details of the person to be contacted in order to obtain such information:

.....

2. Type and reference number of the sentenced person's identity card or passport:

.....

3. Type and reference number of the sentenced person's residence permit:

.....

4. Other relevant information about the sentenced person's family, social or professional ties to the executing State:

.....

.....

(e) Request for provisional arrest by the issuing State (where the sentenced person is in the executing State):

☐ The issuing State requests the executing State to arrest the sentenced person, or to take any other measure to ensure that the sentenced person remains in its territory, pending a decision to recognise and enforce the sentence.

☐ The issuing State has already requested the executing State to arrest the sentenced person, or to take any other measure to ensure that the sentenced person remains in its territory, pending a decision to recognise and enforce the sentence. Please provide the name of the authority in the executing State that has taken the decision on the request to arrest the person (if applicable and available):

.....

.....

.....

(f) Relation to any earlier European Arrest Warrant (EAW):

- ☐ An EAW has been issued for the purpose of the execution of a custodial sentence or detention order and the executing Member State undertakes to execute the sentence or detention order (Article 4(6) of the EAW Framework Decision).

Date of issue of the EAW and, if available, reference number:

.....

Name of the authority that issued the EAW:

Date of decision to undertake execution and, if available, reference number:

.....

Name of the authority that issued the decision to undertake execution of the sentence:

.....

- ☐ An EAW has been issued for the purpose of prosecution of a person who is a national or resident of the executing State and the executing State has surrendered the person under the condition that the person is to be returned to the executing State in order to serve there the custodial sentence or detention order passed against him or her in the issuing Member State (Article 5(3) of the EAW Framework Decision).

Date of the decision to surrender the person:

Name of the authority that issued the decision to surrender:

Reference number of the decision, if available:

Date of the surrender of the person, if available:

(g) Reasons for forwarding the judgment and the certificate (if you have filled in Box (f), there is no need to fill in this box):

The judgment and the certificate are forwarded to the executing State because the issuing authority is satisfied that the enforcement of the sentence by the executing State would serve the purpose of facilitating the social rehabilitation of the sentenced person and:

- ☐ (a) The executing State is the State of nationality of the sentenced person in which he or she lives.
- ☐ (b) The executing State is the State of nationality of the sentenced person, to which the sentenced person will be deported, once he or she is released from the enforcement of the sentence on the basis of an expulsion or deportation order included in the judgment or in a judicial or administrative decision or any other measure taken consequential to the judgment. If the expulsion or deportation order is not included in the judgment, please provide the name of the authority that issued the order, the date of issue, and, if available, the reference number:
- ☐ (c) The executing State is a State, other than a State referred to in (a) or (b), the competent authority of which consents to the forwarding of the judgment and the certificate to that State.
- ☐ (d) The executing State has given a notification under Article 4(7) of the Framework Decision, and:
- ☐ it is confirmed that, to the knowledge of the competent authority of the issuing State, the sentenced person lives and has been legally residing continuously for at least five years in the executing State and will retain a permanent right of residence in that state, or
- ☐ it is confirmed that the sentenced person is a national of the executing State.

(h) Judgment imposing the sentence:

1. The judgment covers offences in total.

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

.....

.....

.....

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

.....

.....

.....

2. To the extent that the offence(s) identified under point (h) 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 detention order 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 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 the certificate is forwarded to the Member State, which has declared that it will verify the double criminality (Article 7(4) of the Framework Decision), please give a full description of the offence(s) concerned:

.....

.....

.....

(i) Status of the judgment imposing the sentence:

1. Indicate if the judgement was rendered in absentia:

- ☐ No, it was not.
- ☐ Yes, it was; it is confirmed that:
- ☐ the person was informed in person, or via a representative competent according to the national law of the issuing State, of the time and place of the proceedings which led to the judgment in absentia or
- ☐ the person has indicated to a competent authority that he/she does not contest the decision.

2. Details of the length of the sentence:

2.1. Total length of the sentence (in days):

2.2. The full period of deprivation of liberty already served in connection with the sentence in respect of which the judgment was issued (in days):

..... as per (...) (give date on which calculation was made: dd-mm-yyyy):

2.3. Number of days to be deducted from total length of the sentence for reasons other than the one referred to under 2.2 (e.g. amnesties, pardons or clemencies, etc. already granted with respect to the sentence):
..... as per (give date on which calculation was made: dd-mm-yyyy):

2.4. Sentence expiry date in the issuing State:

- ☐ Not applicable, because the person is currently not in custody
- ☐ The person is currently in custody and the sentence, under the law of the issuing State, would be fully served by (give date: dd-mm-yyyy) ⁽¹⁾:

3. Type of sentence:

- ☐ custodial sentence
- ☐ measure involving deprivation of liberty (please specify):
-

(j) Information related to early or conditional release:

1. Under the law of the issuing State the sentenced person is entitled to early or conditional release, having served:

- ☐ half the sentence
- ☐ two-thirds of the sentence
- ☐ another portion of the sentence (please indicate):

2. The competent authority of the issuing State requests to be informed of:

- ☐ The applicable provisions of the law of the executing State on early or conditional release of the sentenced person;
- ☐ The beginning and the end of the period of early or conditional release.

⁽¹⁾ Please insert here the date by which the sentence would be fully served (not taking into account the possibilities of any form of early and/or conditional release) if the person were to stay in the issuing State.

(k) Opinion of the sentenced person:

1. ☐ The sentenced person could not be heard because he/she is already in the executing State.
2. ☐ The sentenced person is in the issuing State and:
- a. ☐ has requested the forwarding of the judgment and the certificate
- ☐ consented to the forwarding of the judgment and the certificate
- ☐ did not consent to the forwarding of the judgment and the certificate (state reasons given by the sentenced person):
-
-
- b. ☐ Opinion of the sentenced person is attached.
- ☐ Opinion of the sentenced person was forwarded to the executing State on (give date: dd-mm-yyyy):
-

(l) Other circumstances relevant to the case (optional information):

.....

.....

(m) Final information:

The text of the judgment(s) is (are) attached to the certificate ⁽¹⁾.

Signature of the authority issuing the certificate and/or its representative certifying the content of the certificate as accurate

.....

Name:

Post held (title/grade):

Date:

Official stamp (if available)

⁽¹⁾ The competent authority of the issuing State must attach all judgments related to the case which are necessary to have all the information on the final sentence to be enforced. Any available translation of the judgment(s) may also be attached.

ANNEX II

NOTIFICATION OF THE SENTENCED PERSON

You are hereby notified of the decision of (competent authority of the issuing State) to forward the judgment of (competent court of the issuing State) dated (date of judgment) (reference number; if available) to (executing State) for the purpose of its recognition and enforcement of the sentence imposed therein in accordance with the national law implementing Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.

The enforcement of the sentence will be governed by the law of (executing State). The authorities of that State will be competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for early or conditional release.

The competent authority of (executing State) has to deduct the full period of deprivation of liberty already served in connection with the sentence from the total duration of deprivation of liberty to be served. An adaptation of the sentence by the competent authority of (executing State) may take place only if it is incompatible with the law of that State in terms of its duration or nature. The adapted sentence must not aggravate the sentence passed in (issuing State) by its nature or duration.

CORRIGENDA**Corrigendum to Council Directive 93/92/EEC of 29 October 1993 on the installation of lighting and light-signalling devices on two or three-wheel motor vehicles**

(Official Journal of the European Communities L 311 of 14 December 1993)

On page 50, Annex V, point 6.1.10:

for: '6.1.10. Circuit-closed telltale: optional.'

read: '6.1.10. Circuit-closed telltale: compulsory.'

On page 52, Annex V, point 6.3.10:

for: '6.3.10. Operational telltale: optional.'

read: '6.3.10. Operational telltale: compulsory.'

On page 63, Annex VI, point 6.1.10:

for: '6.1.10. Circuit-closed telltale: optional.'

read: '6.1.10. Circuit-closed telltale: compulsory.'

On page 65, Annex VI, point 6.3.10:

for: '6.3.10. Operational telltale: optional.'

read: '6.3.10. Operational telltale: compulsory.'

NOTE TO THE READER

The institutions have decided no longer to quote in their texts the last amendment to cited acts.

Unless otherwise indicated, references to acts in the texts published here are to the version of those acts currently in force.