

## III

(Acts adopted under the EU Treaty)

## ACTS ADOPTED UNDER TITLE VI OF THE EU TREATY

## COUNCIL FRAMEWORK DECISION 2009/829/JHA

of 23 October 2009

**on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament <sup>(1)</sup>,

Whereas:

- (1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice.
- (2) According to the Conclusions of the European Council meeting in Tampere on 15 and 16 October 1999, and in particular point 36 thereof, the principle of mutual recognition should apply to pre-trial orders. The programme of measures to implement the principle of mutual recognition in criminal matters addresses mutual recognition of supervision measures in its measure 10.
- (3) The measures provided for in this Framework Decision should aim at enhancing the protection of the general public through enabling a person resident in one Member State, but subject to criminal proceedings in a second Member State, to be supervised by the authorities in the State in which he or she is resident whilst awaiting trial. As a consequence, the present Framework Decision

has as its objective the monitoring of a defendants' movements in the light of the overriding objective of protecting the general public and the risk posed to the public by the existing regime, which provides only two alternatives: provisional detention or unsupervised movement. The measures will therefore give further effect to the right of law-abiding citizens to live in safety and security.

- (4) The measures provided for in this Framework Decision should also aim at enhancing the right to liberty and the presumption of innocence in the European Union and at ensuring cooperation between Member States when a person is subject to obligations or supervision pending a court decision. As a consequence, the present Framework Decision has as its objective the promotion, where appropriate, of the use of non-custodial measures as an alternative to provisional detention, even where, according to the law of the Member State concerned, a provisional detention could not be imposed *ab initio*.
- (5) As regards the detention of persons subject to criminal proceedings, there is a risk of different treatment between those who are resident in the trial state and those who are not: a non-resident risks being remanded in custody pending trial even where, in similar circumstances, a resident would not. In a common European area of justice without internal borders, it is necessary to take action to ensure that a person subject to criminal proceedings who is not resident in the trial state is not treated any differently from a person subject to criminal proceedings who is so resident.
- (6) The certificate, which should be forwarded together with the decision on supervision measures to the competent authority of the executing State, should specify the address where the person concerned will stay in the executing State, as well as any other relevant information which might facilitate the monitoring of the supervision measures in the executing State.

<sup>(1)</sup> Opinion not yet published in the Official Journal.

- (7) The competent authority in the executing State should inform the competent authority in the issuing State of the maximum length of time, if any, during which the supervision measures could be monitored in the executing State. In Member States in which the supervision measures have to be periodically renewed, this maximum length of time has to be understood as the total length of time after which it is legally not possible anymore to renew the supervision measures.
- (8) Any request by the competent authority in the executing State for confirmation of the necessity to prolong the monitoring of supervision measures should be without prejudice to the law of the issuing State, which applies to the decision on renewal, review and withdrawal of the decision on supervision measures. Such a request for confirmation should not oblige the competent authority in the issuing State to take a new decision to prolong the monitoring of supervision measures.
- (9) The competent authority in the issuing State should have jurisdiction to take all subsequent decisions relating to a decision on supervision measures, including ordering a provisional detention. Such provisional detention might, in particular, be ordered following a breach of the supervision measures or a failure to comply with a summons to attend any hearing or trial in the course of criminal proceedings.
- (10) In order to avoid unnecessary costs and difficulties in relation to the transfer of a person subject to criminal proceedings for the purposes of a hearing or a trial, Member States should be allowed to use telephone- and videoconferences.
- (11) Where appropriate, electronic monitoring could be used for monitoring supervision measures in accordance with national law and procedures.
- (12) This Framework Decision should make it possible that supervision measures imposed on the person concerned are monitored in the executing State, while ensuring the due course of justice and, in particular, that the person concerned will be available to stand trial. In case the person concerned does not return to the issuing State voluntarily, he or she may be surrendered to the issuing State in accordance with Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States<sup>(1)</sup> (hereinafter referred to as the 'Framework Decision on the European Arrest Warrant').
- (13) While this Framework Decision covers all crimes and is not restricted to particular types or levels of crime, supervision measures should generally be applied in case of less serious offences. Therefore all the provisions of the Framework Decision on the European Arrest Warrant, except Article 2(1) thereof, should apply in the situation when the competent authority in the executing State has to decide on the surrender of the person concerned. As a consequence, also Article 5(2) and (3) of the Framework Decision on the European Arrest Warrant should apply in that situation.
- (14) Costs relating to the travel of the person concerned between the executing and issuing States in connection with the monitoring of supervision measures or for the purpose of attending any hearing are not regulated by this Framework Decision. The possibility, in particular for the issuing State, to bear all or part of such costs is a matter governed by national law.
- (15) Since the objective of this Framework Decision, namely the mutual recognition of decisions on supervision measures in the course of criminal proceedings, cannot be sufficiently achieved by the Member States acting unilaterally and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 2 of the Treaty on European Union and Article 5 of the Treaty establishing the European Community. In accordance with the principle of proportionality, as set out in that Article, this Framework Decision does not go beyond what is necessary in order to achieve that objective.
- (16) This Framework Decision respects fundamental rights and observes the principles recognised, in particular, by Article 6 of the Treaty on European Union and reflected by the Charter of Fundamental Rights of the European Union. Nothing in this Framework Decision should be interpreted as prohibiting refusal to recognise a decision on supervision measures if there are objective indications that it was imposed to punish a person because of his or her sex, race, religion, ethnic origin, nationality, language, political convictions or sexual orientation or that this person might be disadvantaged for one of these reasons.
- (17) This Framework Decision should not prevent any Member State from applying its constitutional rules relating to entitlement to due process, freedom of association, freedom of the press, freedom of expression in other media and freedom of religion.
- (18) The provisions of this Framework Decision should be applied in conformity with the right of the Union's citizens to move and reside freely within the territory of the Member States, pursuant to Article 18 of the Treaty establishing the European Community.

<sup>(1)</sup> OJ L 190, 18.7.2002, p. 1.

(19) Personal data processed when implementing this Framework Decision should be protected in accordance with Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters <sup>(1)</sup> and in accordance with the principles laid down in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which all Member States have ratified,

HAS ADOPTED THIS FRAMEWORK DECISION:

#### Article 1

##### Subject matter

This Framework Decision lays down rules according to which one Member State recognises a decision on supervision measures issued in another Member State as an alternative to provisional detention, monitors the supervision measures imposed on a natural person and surrenders the person concerned to the issuing State in case of breach of these measures.

#### Article 2

##### Objectives

1. The objectives of this Framework Decision are:

- (a) to ensure the due course of justice and, in particular, that the person concerned will be available to stand trial;
- (b) to promote, where appropriate, the use, in the course of criminal proceedings, of non-custodial measures for persons who are not resident in the Member State where the proceedings are taking place;
- (c) to improve the protection of victims and of the general public.

2. This Framework Decision does not confer any right on a person to the use, in the course of criminal proceedings, of a non-custodial measure as an alternative to custody. This is a matter governed by the law and procedures of the Member State where the criminal proceedings are taking place.

#### Article 3

##### Protection of law and order and the safeguarding of internal security

This Framework Decision is without prejudice to the exercise of the responsibilities incumbent upon Member States with regard to the protection of victims, the general public and the safeguarding of internal security, in accordance with Article 33 of the Treaty on European Union.

<sup>(1)</sup> OJ L 350, 30.12.2008, p. 60.

#### Article 4

##### Definitions

For the purposes of this Framework Decision:

- (a) 'decision on supervision measures' means an enforceable decision taken in the course of criminal proceedings by a competent authority of the issuing State in accordance with its national law and procedures and imposing on a natural person, as an alternative to provisional detention, one or more supervision measures;
- (b) 'supervision measures' means obligations and instructions imposed on a natural person, in accordance with the national law and procedures of the issuing State;
- (c) 'issuing State' means the Member State in which a decision on supervision measures has been issued;
- (d) 'executing State' means the Member State in which the supervision measures are monitored.

#### Article 5

##### Fundamental rights

This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.

#### Article 6

##### Designation of competent authorities

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

2. As an exception to paragraph 1 and without prejudice to paragraph 3, Member States may designate non-judicial authorities as the competent authorities for taking decisions under this Framework Decision, provided that such authorities have competence for taking decisions of a similar nature under their national law and procedures.

3. Decisions referred to under Article 18(1)(c) shall be taken by a competent judicial authority.

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

*Article 7***Recourse to a central authority**

1. Each Member State may designate a central authority or, where its legal system so provides, more than one central authority to assist its competent authorities.
2. A Member State may, if it is necessary as a result of the organisation of its internal judicial system, make its central authority(ies) responsible for the administrative transmission and reception of decisions on supervision measures, together with the certificates referred to in Article 10, as well as for all other official correspondence relating thereto. As a consequence, all communications, consultations, exchanges of information, enquiries and notifications between competent authorities may be dealt with, where appropriate, with the assistance of the central authority(ies) of the Member State concerned.
3. Member States wishing to make use of the possibilities referred to in this Article shall communicate to the General Secretariat of the Council information relating to the designated central authority or central authorities. These indications shall be binding upon all the authorities of the issuing Member State.

*Article 8***Types of supervision measures**

1. This Framework Decision shall apply to the following supervision measures:
  - (a) an obligation for the person to inform the competent authority in the executing State of any change of residence, in particular for the purpose of receiving a summons to attend a hearing or a trial in the course of criminal proceedings;
  - (b) an obligation not to enter certain localities, places or defined areas in the issuing or executing State;
  - (c) an obligation to remain at a specified place, where applicable during specified times;
  - (d) an obligation containing limitations on leaving the territory of the executing State;
  - (e) an obligation to report at specified times to a specific authority;
  - (f) an obligation to avoid contact with specific persons in relation with the offence(s) allegedly committed.

2. Each Member State shall notify the General Secretariat of the Council, when transposing this Framework Decision or at a

later stage, which supervision measures, apart from those referred to in paragraph 1, it is prepared to monitor. These measures may include in particular:

- (a) an obligation not to engage in specified activities in relation with the offence(s) allegedly committed, which may include involvement in a specified profession or field of employment;
- (b) an obligation not to drive a vehicle;
- (c) an obligation to deposit a certain sum of money or to give another type of guarantee, which may either be provided through a specified number of instalments or entirely at once;
- (d) an obligation to undergo therapeutic treatment or treatment for addiction;
- (e) an obligation to avoid contact with specific objects in relation with the offence(s) allegedly committed.

3. The General Secretariat of the Council shall make the information received under this Article available to all Member States and to the Commission.

*Article 9***Criteria relating to the Member State to which the decision on supervision measures may be forwarded**

1. A decision on supervision measures may be forwarded to the competent authority of the Member State in which the person is lawfully and ordinarily residing, in cases where the person, having been informed about the measures concerned, consents to return to that State.
2. The competent authority in the issuing State may, upon request of the person, forward the decision on supervision measures to the competent authority of a Member State other than the Member State in which the person is lawfully and ordinarily residing, on condition that the latter authority has consented to such forwarding.
3. When implementing this Framework Decision, Member States shall determine under which conditions their competent authorities may consent to the forwarding of a decision on supervision measures in cases pursuant to paragraph 2.
4. Each Member State shall make a statement to the General Secretariat of the Council of the determination made under paragraph 3. Member States may modify such a statement at any time. The General Secretariat shall make the information received available to all Member States and to the Commission.

### Article 10

#### Procedure for forwarding a decision on supervision measures together with the certificate

1. When, in application of Article 9(1) or (2), the competent authority of the issuing State forwards a decision on supervision measures to another Member State, it shall ensure that it is accompanied by a certificate, the standard form of which is set out in Annex I.

2. The decision on supervision measures or a certified copy of it, together with the certificate, shall be forwarded by the competent authority in the issuing State directly to the competent authority in the executing State by any means which leaves a written record under conditions allowing the executing State to establish their authenticity. The original of the decision on supervision measures, 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.

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

4. The certificate referred to in paragraph 1 of this Article shall include, apart from the measures referred to in Article 8(1), only such measures as notified by the executing State in accordance with Article 8(2).

5. The competent authority in the issuing State shall specify:

(a) where applicable, the length of time to which the decision on supervision measures applies and whether a renewal of this decision is possible;

and

(b) on an indicative basis, the provisional length of time for which the monitoring of the supervision measures is likely to be needed, taking into account all the circumstances of the case that are known when the decision on supervision measures is forwarded.

6. The competent authority in the issuing State shall forward the decision on supervision measures together with the certificate only to one executing State at any one time.

7. If the competent authority in the executing State is not known to the competent authority in 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 of 29 June 1998 on the creation of a European Judicial Network<sup>(1)</sup>, in order to obtain the information from the executing State.

8. When an authority in the executing State which receives a decision on supervision measures together with a certificate has no competence to recognise that decision, this authority shall, ex officio, forward the decision together with the certificate to the competent authority.

### Article 11

#### Competence over the monitoring of the supervision measures

1. As long as the competent authority of the executing State has not recognised the decision on supervision measures forwarded to it and has not informed the competent authority of the issuing State of such recognition, the competent authority of the issuing State shall remain competent in relation to the monitoring of the supervision measures imposed.

2. If competence for monitoring the supervision measures has been transferred to the competent authority of the executing State, such competence shall revert back to the competent authority of the issuing State:

(a) where the person concerned has established his/her lawful and ordinary residence in a State other than the executing State;

(b) as soon as the competent authority in the issuing State has notified withdrawal of the certificate referred to in Article 10(1), pursuant to Article 13(3), to the competent authority of the executing State;

(c) where the competent authority in the issuing State has modified the supervision measures and the competent authority in the executing State, in application of Article 18(4)(b), has refused to monitor the modified supervision measures because they do not fall within the types of supervision measures referred to in Article 8(1) and/or within those notified by the executing State concerned in accordance with Article 8(2);

(d) when the period of time referred to in Article 20(2)(b) has elapsed;

(e) where the competent authority in the executing State has decided to stop monitoring the supervision measures and has informed the competent authority in the issuing State thereof, in application of Article 23.

3. In cases referred to in paragraph 2, the competent authorities of the issuing and executing States shall consult each other so as to avoid, as far as possible, any discontinuance in the monitoring of the supervision measures.

<sup>(1)</sup> OJ L 191, 7.7.1998, p. 4.



## Article 12

**Decision in the executing State**

1. The competent authority in the executing State shall, as soon as possible and in any case within 20 working days of receipt of the decision on supervision measures and certificate, recognise the decision on supervision measures forwarded in accordance with Article 9 and following the procedure laid down in Article 10 and without delay take all necessary measures for monitoring the supervision measures, unless it decides to invoke one of the grounds for non-recognition referred to in Article 15.

2. If a legal remedy has been introduced against the decision referred to in paragraph 1, the time limit for recognition of the decision on supervision measures shall be extended by another 20 working days.

3. If it is not possible, in exceptional circumstances, for the competent authority in the executing State to comply with the time limits laid down in paragraphs 1 and 2, it shall immediately inform the competent authority in the issuing State, by any means of its choosing, giving reasons for the delay and indicating how long it expects to take to issue a final decision.

4. The competent authority may postpone the decision on recognition of the decision on supervision measures where the certificate provided for in Article 10 is incomplete or obviously does not correspond to the decision on supervision measures, until such reasonable time limit set for the certificate to be completed or corrected.

## Article 13

**Adaptation of the supervision measures**

1. If the nature of the supervision measures is incompatible with the law of the executing State, the competent authority in that Member State may adapt them in line with the types of supervision measures which apply, under the law of the executing State, to equivalent offences. The adapted supervision measure shall correspond as far as possible to that imposed in the issuing State.

2. The adapted supervision measure shall not be more severe than the supervision measure which was originally imposed.

3. Following receipt of information referred to in Article 20(2)(b) or (f), the competent authority in the issuing State may decide to withdraw the certificate as long as monitoring in the executing State has not yet begun. In any case, such a decision shall be taken and communicated as soon as possible and within ten days of the receipt of the relevant notification at the latest.

## Article 14

**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 decision on supervision measures:

- 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 <sup>(1)</sup>,
- 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,

<sup>(1)</sup> OJ C 316, 27.11.1995, p. 49.

- 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.

2. The Council may decide to add other categories of offences to the list 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 27 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 decision on supervision measures subject to the condition that the decision relates to acts which also constitute an offence under the law of the executing State, whatever the constituent elements or however it is described.

4. Member States may, for constitutional reasons, on the adoption of this Framework Decision, by a declaration notified to the General Secretariat of the Council, declare that they will not apply paragraph 1 in respect of some or all of the offences referred to in that paragraph. 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 15

#### Grounds for non-recognition

1. The competent authority in the executing State may refuse to recognise the decision on supervision measures if:

- (a) the certificate referred to in Article 10 is incomplete or obviously does not correspond to the decision on supervision measures and is not completed or corrected within a reasonable period set by the competent authority in the executing State;
- (b) the criteria laid down in Article 9(1), 9(2) or 10(4) are not met;
- (c) recognition of the decision on supervision measures would contravene the *ne bis in idem* principle;
- (d) the decision on supervision measures relates, in the cases referred to in Article 14(3) and, where the executing State has made a declaration under Article 14(4), in the cases referred to in Article 14(1), to an act which would not constitute an offence under the law of the executing State; in tax, customs and currency matters, however, execution of the decision may not be refused on the grounds that the law of the executing State does not prescribe any taxes of the same kind or does not contain any tax, customs or currency provisions of the same kind as the law of the issuing State;
- (e) the criminal prosecution is statute-barred under the law of the executing State and relates to an act which falls within the competence of the executing State under its national law;
- (f) there is immunity under the law of the executing State, which makes it impossible to monitor supervision measures;
- (g) under the law of the executing State, the person cannot, because of his age, be held criminally responsible for the act on which the decision on supervision measures is based;
- (h) it would, in case of breach of the supervision measures, have to refuse to surrender the person concerned in accordance with Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States<sup>(1)</sup> (hereinafter referred to as the 'Framework Decision on the European Arrest Warrant').

<sup>(1)</sup> OJ L 190, 18.7.2002, p. 1.

2. In the cases referred to in paragraph 1(a), (b) and (c), before deciding not to recognise the decision on supervision measures, the competent authority in the executing State shall communicate, by appropriate means, with the competent authority in the issuing State and, as necessary, request the latter to supply without delay all additional information required.

3. Where the competent authority in the executing State is of the opinion that the recognition of a decision on supervision measures could be refused on the basis of paragraph 1 under (h), but it is nevertheless willing to recognise the decision on supervision measures and monitor the supervision measures contained therein, it shall inform the competent authority in the issuing State thereof providing the reasons for the possible refusal. In such a case, the competent authority in the issuing State may decide to withdraw the certificate in accordance with the second sentence of Article 13(3). If the competent authority in the issuing State does not withdraw the certificate, the competent authority in the executing State may recognise the decision on supervision measures and monitor the supervision measures contained therein, it being understood that the person concerned might not be surrendered on the basis of a European Arrest Warrant.

#### Article 16

##### Law governing supervision

The monitoring of supervision measures shall be governed by the law of the executing State.

#### Article 17

##### Continuation of the monitoring of supervision measures

Where the time period referred to in Article 20(2)(b) is due to expire and the supervision measures are still needed, the competent authority in the issuing State may request the competent authority in the executing State to extend the monitoring of the supervision measures, in view of the circumstances of the case at hand and the foreseeable consequences for the person if Article 11(2)(d) would apply. The competent authority in the issuing State shall indicate the period of time for which such an extension is likely to be needed.

The competent authority in the executing State shall decide on this request in accordance with its national law, indicating, where appropriate, the maximum duration of the extension. In these cases, Article 18(3) may apply.

#### Article 18

##### Competence to take all subsequent decisions and governing law

1. Without prejudice to Article 3, the competent authority in the issuing State shall have jurisdiction to take all subsequent

decisions relating to a decision on supervision measures. Such subsequent decisions include notably:

- (a) renewal, review and withdrawal of the decision on supervision measures;
- (b) modification of the supervision measures;
- (c) issuing an arrest warrant or any other enforceable judicial decision having the same effect.

2. The law of the issuing State shall apply to decisions taken pursuant to paragraph 1.

3. Where required by its national law, a competent authority in the executing State may decide to use the procedure of recognition set out in this Framework Decision in order to give effect to decisions referred to in paragraph 1(a) and (b) in its national legal system. Such a recognition shall not lead to a new examination of the grounds of non-recognition.

4. If the competent authority in the issuing State has modified the supervision measures in accordance with paragraph 1(b), the competent authority in the executing State may:

- (a) adapt these modified measures in application of Article 13, in case the nature of the modified supervision measures is incompatible with the law of the executing State;

or

- (b) refuse to monitor the modified supervision measures if these measures do not fall within the types of supervision measures referred to in Article 8(1) and/or within those notified by the executing State concerned in accordance with Article 8(2).

5. The jurisdiction of the competent authority in the issuing State pursuant to paragraph 1 is without prejudice to proceedings that may be initiated in the executing State against the person concerned in relation with criminal offences committed by him/her other than those on which the decision on supervision measures is based.

#### Article 19

##### Obligations of the authorities involved

1. At any time during the monitoring of the supervision measures, the competent authority in the executing State may invite the competent authority in the issuing State to provide information as to whether the monitoring of the measures is still needed in the circumstances of the particular case at hand. The competent authority in the issuing State shall, without delay, reply to such an invitation, where appropriate by taking a subsequent decision referred to in Article 18(1).



2. Before the expiry of the period referred to in Article 10(5), the competent authority in the issuing State shall specify, ex officio or at the request of the competent authority in the executing State, for which additional period, if any, it expects that the monitoring of the measures is still needed.

3. The competent authority in the executing State shall immediately notify the competent authority in the issuing State of any breach of a supervision measure, and any other finding which could result in taking any subsequent decision referred to in Article 18(1). Notice shall be given using the standard form set out in Annex II.

4. With a view to hearing the person concerned, the procedure and conditions contained in instruments of international and European Union law that provide for the possibility of using telephone- and videoconferences for hearing persons may be used *mutatis mutandis*, in particular where the legislation of the issuing State provides that a judicial hearing must be held before a decision referred to in Article 18(1) is taken.

5. The competent authority in the issuing State shall immediately inform the competent authority in the executing State of any decision referred to in Article 18(1) and of the fact that a legal remedy has been introduced against a decision on supervision measures.

6. If the certificate relating to the decision on supervision measures has been withdrawn, the competent authority of the executing State shall end the measures ordered as soon as it has been duly notified by the competent authority of the issuing State.

#### Article 20

##### Information from the executing State

1. The authority in the executing State which has received a decision on supervision measures, which it has no competence to recognise, together with a certificate, shall inform the competent authority in the issuing State to which authority it has forwarded this decision, together with the certificate, in accordance with Article 10(8).

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

- (a) of any change of residence of the person concerned;
- (b) of the maximum length of time during which the supervision measures can be monitored in the executing State, in case the law of the executing State provides such a maximum;

- (c) of the fact that it is in practice impossible to monitor the supervision measures for the reason that, after transmission of the decision on supervision measures and the certificate to the executing State, the person cannot be found in the territory of the executing State, in which case there shall be no obligation of the executing State to monitor the supervision measures;
- (d) of the fact that a legal remedy has been introduced against a decision to recognise a decision on supervision measures;
- (e) of the final decision to recognise the decision on supervision measures and take all necessary measures for the monitoring of the supervision measures;
- (f) of any decision to adapt the supervision measures in accordance with Article 13;
- (g) of any decision not to recognise the decision on supervision measures and to assume responsibility for monitoring of the supervision measures in accordance with Article 15, together with the reasons for the decision.

#### Article 21

##### Surrender of the person

1. If the competent authority of the issuing State has issued an arrest warrant or any other enforceable judicial decision having the same effect, the person shall be surrendered in accordance with the Framework Decision on the European Arrest Warrant.

2. In this context, Article 2(1) of the Framework Decision on the European Arrest Warrant may not be invoked by the competent authority of the executing State to refuse to surrender the person.

3. Each Member State may notify the General Secretariat of the Council, when transposing this Framework Decision or at a later stage, that it will also apply Article 2(1) of the Framework Decision on the European Arrest Warrant in deciding on the surrender of the person concerned to the issuing State.

4. The General Secretariat of the Council shall make the information received under paragraph 3 available to all Member States and to the Commission.

#### Article 22

##### Consultations

1. Unless impracticable, the competent authorities of the issuing State and of the executing State shall consult each other:

- (a) during the preparation, or, at least, before forwarding a decision on supervision measures together with the certificate referred to in Article 10;

(b) to facilitate the smooth and efficient monitoring of the supervision measures;

(c) where the person has committed a serious breach of the supervision measures imposed.

2. The competent authority in the issuing State shall take due account of any indications communicated by the competent authority of the executing State on the risk that the person concerned might pose to victims and to the general public.

3. In application of paragraph 1, the competent authorities of the issuing State and of the executing State shall exchange all useful information, including:

(a) information allowing verification of the identity and place of residence of the person concerned;

(b) relevant information extracted from criminal records in accordance with applicable legislative instruments.

#### Article 23

##### Unanswered notices

1. Where the competent authority in the executing State has transmitted several notices referred to in Article 19(3) in respect of the same person to the competent authority in the issuing State, without this latter authority having taken any subsequent decision referred to in Article 18(1), the competent authority in the executing State may invite the competent authority in the issuing State to take such a decision, giving it a reasonable time limit to do so.

2. If the competent authority in the issuing State does not act within the time limit indicated by the competent authority in the executing State, the latter authority may decide to stop monitoring the supervision measures. In such case, it shall inform the competent authority in the issuing State of its decision, and the competence for the monitoring of the supervision measures shall revert back to the competent authority in the issuing State in application of Article 11(2).

3. Where the law of the executing State requires a periodic confirmation of the necessity to prolong the monitoring of the supervision measures, the competent authority in the executing State may request the competent authority in the issuing State to provide such confirmation, giving it a reasonable time limit to reply to such a request. In case the competent authority in the issuing State does not answer within the time limit concerned, the competent authority in the executing State may send a new request to the competent authority in the issuing State, giving it a reasonable time limit to reply to such a request and indicating that it may decide to stop monitoring the supervision measures if no reply is received within that time limit. Where the competent authority in the executing State does not receive a reply to such a new request within the time limit set, it may act in accordance with paragraph 2.

#### Article 24

##### Languages

Certificates shall be translated into the official language or one of the official languages of the executing State. Any Member State may, either when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the European Union.

#### Article 25

##### Costs

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

#### Article 26

##### Relation to other agreements and arrangements

1. In so far as such agreements or arrangements allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the mutual recognition of decisions on supervision measures, Member States may:

(a) continue to apply bilateral or multilateral agreements or arrangements in force when this Framework Decision enters into force;

(b) conclude bilateral or multilateral agreements or arrangements after this Framework Decision has entered into force.

2. The agreements and arrangements referred to in paragraph 1 shall in no case affect relations with Member States which are not parties to them.

3. Member States shall, by 1 March 2010, notify the Commission and the Council of the existing agreements and arrangements referred to in paragraph 1(a) which they wish to continue applying.

4. Member States shall also notify the Commission and the Council of any new agreement or arrangement as referred to in paragraph 1(b), within three months of signing any such arrangement or agreement.

#### Article 27

##### Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 1 December 2012.

2. By the same date Member States shall transmit to the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision.

*Article 28*

**Report**

1. By 1 December 2013 the Commission shall draw up a report on the basis of the information received from Member States under Article 27(2).

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

(a) the extent to which the Member States have taken the necessary measures in order to comply with this Framework Decision; and

(b) the application of this Framework Decision.

3. The report shall be accompanied, if necessary, by legislative proposals.

*Article 29*

**Entry into force**

This Framework Decision shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Done at Luxembourg, 23 October 2009.

*For the Council*

*The President*

T. BILLSTRÖM

## ANNEX I

## CERTIFICATE

referred to in Article 10 of Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention <sup>(1)</sup>

(a) Issuing State:

Executing State:

(b) Authority which issued the decision on supervision measures:

Official name:

Please indicate whether any additional information concerning the decision on supervision measures is to be obtained from:

the authority specified above

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

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

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

Address:

Tel. No: (country code) (area/city code)

Fax No: (country code) (area/city code)

Details of the person(s) to be contacted

Surname:

Forename(s):

Position (title/grade):

Tel. No: (country code) (area/city code)

Fax No: (country code) (area/city code)

E-mail (if any):

Languages that may be used for communication:

<sup>(1)</sup> This certificate must be written in, or translated into, the official language or one of the official languages of the executing Member State, or any other official language of the Institutions of the European Union that is accepted by that State.

(c) Please indicate which authority is to be contacted if any additional information is to be obtained for the purposes of monitoring the supervision measures:

the authority referred to in point (b)

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

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

Address:

Tel. No: (country code) (area/city code)

Fax No: (country code) (area/city code)

Details of the person(s) to be contacted

Surname:

Forename(s):

Position (title/grade):

Tel. No: (country code) (area/city code)

Fax No: (country code) (area/city code)

E-mail (if any):

Languages that may be used for communication:

(d) Information regarding the natural person in respect of whom the decision on supervision measures has been issued:

Surname:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Addresses/residences:

— in the issuing State:



— in the executing State:

— elsewhere:

Language(s) understood (if known):

If available, please provide the following information:

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

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

- (e) Information regarding the Member State to which the decision on supervision measures, together with the certificate are being forwarded

The decision on supervision measures, together with the certificate are being forwarded to the executing State indicated in point (a) for the following reason:

the person concerned has his/her lawful and ordinary residence in the executing State and, having been informed about the measures concerned, consents to return to that State

the person concerned has requested to forward the decision on supervision measures to the Member State other than that in which the person is lawfully and ordinarily residing, for the following reason(s):

- (f) Indications regarding the decision on supervision measures:

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

The decision became enforceable on (date: DD-MM-YYYY):

If, at the time of transmission of this certificate, a legal remedy has been introduced against the decision on supervision measures, please tick this box .....

File reference of the decision (if available):

The person concerned was in provisional detention during the following period (where applicable):

1. The decision covers in total: ..... alleged offences.

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

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

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

participation in a criminal organisation

terrorism

trafficking in human beings

sexual exploitation of children and child pornography

- illicit trafficking in narcotic drugs and psychotropic substances
- illicit trafficking in weapons, munitions and explosives
- corruption
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests
- laundering of the proceeds of crime
- counterfeiting of currency, including 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 alleged offence(s) identified under point 1 is (are) not covered by point 2 or if the decision, as well as the certificate are forwarded to a Member State, which has declared that it will verify the double criminality (Article 14(4) of the Framework Decision), please give a full description of the alleged offence(s) concerned:

(g) Indications regarding the duration and nature of the supervision measure(s)

1. Length of time to which the decision on supervision measures applies and whether a renewal of this decision is possible (where applicable):

2. Provisional length of time for which the monitoring of the supervision measures is likely to be needed, taking into account all the circumstances of the case that are known when the decision on supervision measures is forwarded (indicative information)

3. Nature of the supervision measure(s)(it is possible to tick multiple boxes):

an obligation for the person to inform the competent authority in the executing State of any change of residence, in particular for the purpose of receiving a summons to attend a hearing or a trial in the course of criminal proceedings;

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

an obligation to remain at a specified place, where applicable during specified times;

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

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

an obligation to avoid contact with specific persons in relation with the offence(s) allegedly committed;

other measures that the executing State is prepared to supervise in accordance with a notification under Article 8(2) of the Framework Decision:

If you ticked the box regarding 'other measures', please specify which measure is concerned by ticking the appropriate box(es):

an obligation not to engage in specified activities in relation with the offence(s) allegedly committed, which may include involvement in a specified profession or field of employment;

an obligation not to drive a vehicle;

an obligation to deposit a certain sum of money or to give another type of guarantee, which may either be provided through a specified number of instalments or entirely at once;

an obligation to undergo therapeutic treatment or treatment for addiction;

an obligation to avoid contact with specific objects in relation with the offence(s) allegedly committed;

other measure (please specify):

4. Please provide a detailed description of the supervision measure(s) indicated under 3:

(h) Other circumstances relevant to the case, including specific reasons for the imposition of the supervision measure(s) (optional information):

The text of the decision is attached to the certificate.

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

Name:

Position (title/grade):

Date:

File reference (if any):

(Where appropriate) Official stamp:

## ANNEX II

## FORM

referred to in Article 19 of Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention

REPORT OF A BREACH OF A SUPERVISION MEASURE AND/OR ANY OTHER FINDINGS WHICH COULD RESULT IN TAKING ANY SUBSEQUENT DECISION

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

Surname:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Address:

Language(s) understood (if known):

(b) Details of the decision on supervision measure(s):

Decision issued on:

File reference (if any):

Authority which issued the decision

Official name:

Address:

Certificate issued on:

Authority which issued the certificate:

File reference (if any):



(c) Details of the authority responsible for monitoring the supervision measure(s):

Official name of the authority:

Name of the person to be contacted:

Position (title/grade):

Address:

Tel. (country code) (area code)

Fax (country code) (area code)

E-mail:

Languages that may be used for communication:

(d) Breach of supervision measure(s) and/or other findings which could result in taking any subsequent decision:

The person referred to in (a) is in breach of the following supervision measure(s):

- an obligation for the person to inform the competent authority in the executing State of any change of residence, in particular for the purpose of receiving a summons to attend a hearing or a trial in the course of criminal proceedings;
- an obligation not to enter certain localities, places or defined areas in the issuing or executing State;
- an obligation to remain at a specified place, where applicable during specified times;
- an obligation containing limitations on leaving the territory of the executing State;
- an obligation to report at specified times to a specific authority;
- an obligation to avoid contact with specific persons in relation with the offence(s) allegedly committed.
- other measures (please specify):

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

— other findings which could result in taking any subsequent decision

Description of the findings:

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

Surname:

Forename(s):

Address:

Tel. No: (country code) (area/city code)

Fax No: (country code) (area/city code)

E-mail:

Languages that may be used for communication:

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

Name:

Position (title/grade):

Date:

Official stamp (where applicable):

**DECLARATION BY GERMANY**

*'The Federal Republic of Germany hereby gives notification, pursuant to Article 14(4) of the Council Framework Decision on the application of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention, that it will not apply Article 14(1) in respect of all of the offences referred to in that paragraph.'*

This declaration will be published in the *Official Journal of the European Union*.

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**DECLARATION BY POLAND**

*'Pursuant to Article 14(4) of the EU Council Framework Decision on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention, the Republic of Poland declares that it will not apply paragraph (1) of the aforementioned Article 14 in respect of all of the offences referred to in that paragraph.'*

This declaration will be published in the *Official Journal of the European Union*.

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**DECLARATION BY HUNGARY**

*'Pursuant to Article 14(4) of the EU Council Framework Decision on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention, the Republic of Hungary declares that it will not apply paragraph (1) of Article 14 of the above Framework Decision in respect of the offences referred to in that paragraph.'*

This declaration will be published in the *Official Journal of the European Union*.

Referring to the 'constitutional reasons' mentioned in Article 14(4), Hungary provided the following explanation:

*'Following the ratification of the Lisbon Treaty, Hungary amended its Constitution in order to comply with the obligations referred to therein, including the necessity not to apply the double criminality condition in criminal matters. This constitutional provision will enter into force at the same time as the Lisbon Treaty. Nevertheless, until the entry into force of the Treaty, double criminality remains an important constitutional issue and — as a constitutional principle enshrined by Article 57 of the Constitution — cannot be, shall not be disregarded. Therefore, Article 14(1) of the Framework Decision shall not be applied to any of the offences listed (or as formulated by the relevant article: shall not be applied "in respect of all of the offences").'*

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**DECLARATION BY LITHUANIA**

*'Pursuant to Article 14(4) of the Council Framework Decision on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention, the Republic of Lithuania declares that for constitutional reasons it will not apply Article 14(1) in respect of any of the offences referred to therein.'*

This declaration will be published in the *Official Journal of the European Union*.

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