

# CrossBes-Roadmap

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# CrossBES Roadmap

## A Step-by-Step Guide to:

- Prisoner transfers pursuant to EU Framework Decision 2008/909/JHA
- Transfer of judgments or probation decisions pursuant to EU Framework Decision 2008/947/JHA
- Applying the principle of mutual recognition to confiscation orders pursuant to EU Framework Decision 2006/783/JHA
- Applying the principle of mutual recognition to financial penalties pursuant to EU Framework Decision 2005/214/JHA

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## 1. Introduction

The Cross-BES Roadmap is a step-by-step guidance tool to execute various sentences (prison sentences, financial penalties, confiscation, alternative sanctions, etc.) within EU borders. It is based on a comparative legal study between the criminal law systems of Belgium, The Netherlands and Germany and on empirical research conducted in all three countries. The empirical research comprised semi-structured interviews with experts and practitioners in the field of cross-border cooperation in criminal matters, the analysis of all relevant EU framework decisions and extensive feedback during three tri-national workshops comprising various topics of cross-border cooperation.

The Roadmap is designed to support practitioners in the field of cross-border cooperation to handle a variety of outgoing and incoming requests related to prisoner transfers, probation decisions, confiscation orders and financial penalties. Besides its guidance in relevant legal procedures, it provides information from daily practice in all three countries. Its goal is to support swift and correct procedures in the field of cross border cooperation and the execution of sentences.

For each of the four relevant EU Framework Decision the roadmap provides a step-by-step guide for outgoing and incoming requests. In addition each of the step-by-step guides is visualized in a flow chart providing a quick overview of all relevant procedural steps to be taken (see annex). The roadmap is designed to be used for daily practice as well as for training purposes. It can be easily integrated into an IT-Application; a respective pilot has been successfully tested with practitioners.

## 2. Prisoner transfers pursuant to EU FD 2008/909/JHA

Outgoing: How to initiate and implement a prisoner transfer?

<b>Step 1: Eligibility of the prisoner for a transfer to the executing State</b>	Yes	No
<p><b>Does the Person to be transferred fulfil the requirements of nationality and place of living?</b></p> <p>According to Art 4, one of the three criteria (a-c) below must be fulfilled:</p>		
<p>a) Is the prisoner to be transferred a national of the executing State <b>and</b> lives there? (Art 4 (1) (a))</p> <p><b>Remember:</b> How to assess where someone lives?            - place of family, linguistic, cultural, social or economic and other links (lit 9)            - habitual residence, family, social or professional ties (lit 17)</p> <p>Information can be gathered from a variety of sources            - Self-reporting of the prisoner            - The underlying judgement            - Information from family members            - Immigration authorities</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>b) Is the person a national of the executing State, 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? (Art 4 (1) (b))</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>c) Is there any other Member State than referred to in a and b where the competent authority has consented to the forwarding of the judgement? (Art 4 (1) (c))</p> <p><b>Remember:</b> This option requires the consent of the transferred person as well unless he/she has resided continuously for at least five years in the executing State (Art 4 (7) (a)) or is a national of the executing State (Art 4 (7) (b)). Also, consultations with the executing State are obligatory in this case before a certificate is issued (Art 4 (3)).</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Is the committed offence one of the offences punishable by at least three years and an offence enlisted in Art 7 (1)?</b></p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Is the prisoner to serve at least 6 months in prison by the time the judgement reaches the competent authority in the executing State?</b></p> <p>According to Art. 9 (1) (h) the competent authority of the executing state may refuse to recognize the judgement and enforce the sentence if less than six months of the sentence have to be served. This is, however, a facultative</p>	<input type="checkbox"/>	<input type="checkbox"/>

ground for refusal. Dutch authorities, for example, also recognize sentences shorter than six months under certain circumstances.		
<p><b>Have you consulted with the competent authority of the executing State before issuing the certificate?</b></p> <p>Consulting the competent authorities in the executing State before issuing a certificate is not a mandatory requirement for a transfer. However, the Framework decision recommends engaging in consultations before issuing a certificate (Art 4 (3)). In cases of Art. 4 (1) (c) when the transferred person is not a citizen of the executing state consultations are obligatory. If for any reasons a consultation has not taken place beforehand the executing State may present an opinion why the execution of the sentence in the executing State would not serve the purpose of social rehabilitation without delay after the transmission of the certificate. This opinion should be considered carefully and a decision should be made if the certificate will be withdrawn (Art 4 (4)).</p> <p><b>Remember:</b> In practice, consultations often may not take place before a transfer since it is not considered necessary.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Does the transfer serve the goal of social rehabilitation?</b></p> <p>After consultations with the responsible authorities in the executing State are you sure a transfer would serve social rehabilitation (Art 4 (2))? Criteria for this may be related to culture, communication, access to services, such as work, medical, and legal services, and contact with families and friends.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Does the sentence imposed include a measure of psychiatric or health care pursuant to Art 9 (1) (k)?</b></p> <p>This may lead to grounds of refusal if the executing State cannot execute such a measure in accordance with his health care system. However, the executing State may also consider adapting the sentence (lit 19).</p>	<input type="checkbox"/>	<input type="checkbox"/>

<b>Step 2: Eligibility of the executing State for a transfer</b>	Yes	No
<p><b>Are the prison conditions in the executing State in accordance with fundamental rights?</b></p> <p>According to Art 3 (4), fundamental rights of the transferred person have to be respected. This includes that prison condition in the executing State have to meet EU Standards as otherwise, a transfer may risk the violation of Art 3 ECHR. Therefore, an assessment of prison conditions in the executing State should be made before a transfer takes place.</p> <p><b>Remember:</b> The issue of prison conditions is currently a controversially discussed topic and there seems to be not much consent among Member States on how to deal with this issue. A closely related and still open question is on how</p>	<input type="checkbox"/>	<input type="checkbox"/>

<p>to deal with prisoners that are fully aware of low prison conditions in their countries of origin but still actively opt for a transfer. The assessment of prison conditions can be based on all available and reliable sources. We recommend a two-step assessment comprised of an <i>in abstracto</i> and an <i>in concreto</i> test based on the Dutch system.</p> <p><b>a) In abstracto test:</b> The general detention conditions in the executing State are assessed. Make sure information is reliable, objective and updated. Sources can be government reports or of independent organization, ECtHR decisions, and even decision of foreign courts. There is no strict hierarchy between sources.</p> <p><b>b) In concreto test:</b> This concerns the specific situation of the transferred person, both in terms of detention facilities and conditions. Here, information on where specifically the person will serve its sentence play a crucial role. During consultations with the competent authorities, this information should be requested. If no consultation takes place, this information may be requested separately. If no specific information is or can be provided after a reasonable amount of time you may conclude that there is the risk of a human rights violation. You may decide to postpone or even to cancel a transfer.</p>		
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<b>Step 3: Consent of the transferred person</b>	Yes	No
<p><b>Is the consent of the transferred person required?</b></p> <p>Art 6 (1) states that judgement and a certificate may only be forwarded to the executing State if the person has consented to a transfer. There are, however, three exceptions to this rule where consent is <b>not</b> required (Art 6 (2)):</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>a) Is the executing State the State of nationality in which the sentenced person lives?</p> <p><b>Remember:</b> See Step 1 for more information on how to assess where a person lives.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>b) Is the executing State the 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?</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>c) Is the executing State the 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?</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Remember:</b> If the person is present in the issuing State, he or she should be given the opportunity to state his or her opinion on being transferred orally or in writing (Art 6 (3)). This opinion should be taken into account when deciding whether a certificate will be issued. Also, this opinion of the sentenced person should be forwarded with the certificate to the executing State. To ensure an</p>		

<p>informed opinion the person should be provided with easily understandable information on the prison system and conditions in the executing State.</p> <p>If you decide a transfer should take place use Annex II of the Framework Decision to inform the person in a language he or she understands (Art 6 (4)). If the prisoner requests a transfer proactively you are not obliged to initiate a transfer if the requirements aren't met. The same counts if another Member States on its own initiative requests the forwarding of a judgement and a certificate (Art 4 (5)).</p>		
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<b>Step 4: Formal requirements for certificates</b>	Yes	No
<p><b>Is the certificate complete?</b></p> <p>Send a complete certificate as it otherwise might be refused and delay the transfer process (Art 9 (1)). If the certificate is incomplete or does not correspond to the judgement you have the opportunity to correct it in a reasonable deadline set by the executing State. For the grounds of refusal see Art 9 (1) (a)-(l). However, before deciding to not recognizing a judgment and refusing a transfer the competent authority of the executing State should consult with the competent authority of the issuing State (Art 9 (3)). The same counts if the judgement is only recognized in parts (Art 10 (1)).</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Is the certificate in the correct language?</b></p> <p>The executing State might only accept certain languages (Art 23). You can find an overview of accepted languages in the Member States <u>on the internet</u>. The judgement, however, is not generally required to be translated unless on request of the executing State during consultations (Art 23 (3)).</p> <p><b>Remember:</b></p> <ul style="list-style-type: none"> <li>- NL accepts Dutch and English</li> <li>- BE accepts Dutch, English, French and German</li> <li>- DE accepts German.</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Is a copy of the underlying judgement included?</b></p> <p>According to Art 5 (1) the judgement or a certified copy of it together with the certificate shall be forwarded to the competent authority of the executing state. The executing State may require the original of the judgement or certified copy of it or the original of the certificate. If this is the case, you shall comply with that request (Art 5 (1)).</p> <p><b>Remember:</b> Lit 18 states that transmitting a judgement and certificate (Art 5(1)) to the competent authority in the executing State should be possible by any means leaves a written record, for example e-mail and fax, under conditions allowing the executing State to establish authenticity. Be aware that the email option is frequently used by Dutch authorities it has proven difficult or even</p>	<input type="checkbox"/>	<input type="checkbox"/>

impossible when corresponding with German authorities. This issue can be addressed during preliminary consultations.		
<p><b>Is the competent authority in the executing state identified?</b></p> <p>If the competent authority is unknown you can contact the EJM to obtain that information (Art 5 (4)). Be aware that the EJM Website might not be up to date. In cases where the certificate has been sent to the wrong authority these are obliged to forward it to the competent authority (Art 5 (5)).</p> <p>DE: In most cases, the local prosecutor's office where the prisoner has its residence is responsible in cooperation with the criminal prosecution chambers of the local county courts</p> <p>NL: Ministry of Security and Justice, IOS (Internationale Overdracht Strafvonnissen)</p> <p>BE: In most cases, the local prosecutor's office where the prisoner has its residence is responsible.</p> <p>Remember: The decentralized structure in DE and BE can make it difficult to identify the competent authorities. The BES Bureau at the Openbaar Ministerie in Maastricht may be able to provide further support.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Is the remaining time the person has to spend in prison correctly calculated?</b></p> <p>The calculation and cumulation of the (remaining) time of the sentencing decision is a crucial aspect. The simple difference of calculating months (each with 30 days) or years (with 365 days) can lead to discrepancies in the amount of prison time. We recommend to include the sentence start and end date, an anticipated release date where applicable as well as the length of the sentence in the certificate. Issuing States may use section (j) of the certificate to elaborate on information relevant to understanding the sentence and early release arrangements in their country. Where possible, this should include information on how time on remand is accounted for, the effect of other sentences and whether early release arrangements are mandatory or discretionary and if that would entail release on licence or a full discharge.</p> <p>Also, keep in mind that depending on the penal system in the executing State the time actually spent in prison may be considerably shorter or longer than in the issuing State. The principle of mutual recognition does not apply to terms of conditional release. Also, the executing State may decide to adapt the sentence where that sentence exceeds the maximum penalty provided for similar offences under its national law (Art 8 (2)). This issue is best addressed during consultations with the competent authorities of the executing State.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Was the underlying judgement issued in absentia?</b></p> <p>Under certain circumstances, this may lead to a refusal by the executing State (Art 9 (1) (i)). Important criteria are if and how the sentenced person was informed about the judgement. This information should be included in the certificate.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Does the person to be transferred has other convictions he or she may serve?</b></p> <p>This might be a case falling under the speciality principle codified in Art 18.</p>	<input type="checkbox"/>	<input type="checkbox"/>

<p><b>Is a fine or confiscation order imposed into the judgement?</b></p> <p>If this is the case, this should not prevent the judgement from being forwarded (Art3 (3)).</p>	<input type="checkbox"/>	<input type="checkbox"/>
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<p>Frequently Asked Questions (FAQ)</p>		
<p><b>Can the certificate be forwarded to multiple Member States at the same time?</b> No. According to Art 5 (3), the judgement and the certificate shall be forwarded only to one executing State at a time.</p>		
<p><b>If the person that should be transferred is already present in the executing State can a certificate still be issued?</b> Yes, the Framework Decision explicitly refers to this case (e.g. Art 6 (4)). Also, keep in mind that upon request of the issuing State the executing State can arrest that person or take any other measure to ensure that the person remains in its territory before even the arrival of the certificate (Art 14).</p>		
<p><b>What if I want to transfer a person who has committed an offence <u>not</u> enlisted in Art 7 (1)?</b> For other offences Art 7 (3) declares 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.</p>		
<p><b>Can a sentence be aggravated by the executing State?</b> No, see Art 8 (4).</p>		
<p><b>For how long can I withdraw an issued certificate?</b> An issued certificate can be withdrawn as long as the enforcement of the sentence in the executing State has not begun (Art 13).</p>		
<p><b>How long will the transfer procedure take?</b> Art 12 (2) states that a final decision on the recognition of the judgement and enforcement of the sentence should be reached within 90 days after receiving the judgement by the executing State. When a decision takes longer the executing State should inform the issuing State immediately with an estimation of the time needed for a decision (Art 12 (3)). In practice, it has shown that depending on the case the procedure might take longer. The bottleneck is often the local prosecution offices where the certificates have to be filled in but where often the expertise and due to high caseloads the capacities for an expedient procedure are lacking. Keep this in mind when initiating a transfer process as the time left to be served by the transferred person may be significantly shorter at the end of the process.</p>		
<p><b>Does the principle of double criminality pursuant to Art 7 (1) apply in every case?</b> This depends. DE and NL for example have made a declaration of not applying paragraph 1 meaning that they will assess in every case if the offense laid out in the certificate is punishable under national law.</p>		

## Country-specific issues

### DE

- The sentenced person has the right of being heard by a judge.
- Judgements in absentia only rarely exist in the German penal system and therefore are only recognized under certain circumstances.
- A working sentence is not considered a main sentence and only applicable under special circumstance to juvenile offenders.
- Practitioners from other countries often have problems to identify the competent authorities in Germany that are responsible for the transfer. Generally spoken the competence lays within the prosecutor's office in whose district the transferred person has its residence or place of living. However, to find out the competent prosecution office can be a challenge in any case so it is recommended to contact the ministry of justice of the Bundesland the person has its residence, the federal ministry of justice or the federal foreign office in Berlin or the Bundesamt für Justiz based in five locations in Germany. Also, consider contacting the BES Bureau to establish initial contact.
- Sending official documents via email is only a very limited practice in Germany. Most documents should be either send via postal service or via fax.
- In Germany within the local prosecution offices, the Rechtspfleger (legal clerks) are responsible for the implementation of transfers.

### BE

- Prison sentences under three years are mainly executed with an electronic tag at home.

Incoming: How to process an incoming request for a prisoner transfer?

<p><b>Step 1: Are you the competent authority in the executing State to process the transfer?</b></p> <p>If you are not, you are obliged to forward the case to the competent authority (Art 5 (5)).</p>	<p>Yes <input type="checkbox"/></p>	<p>No <input type="checkbox"/></p>
<p><b>Step 2: Eligibility of the prisoner for a transfer to the executing State</b></p>	<p>Yes</p>	<p>No</p>
<p><b>Does the Person to be transferred fulfil the requirements of nationality and place of living?</b></p> <p>According to Art 4 One of the three criteria a-c below must be fulfilled:</p>	<p><input type="checkbox"/></p>	<p><input type="checkbox"/></p>
<p>a) Is the prisoner to be transferred a national of the executing State <b>and</b> lives there? (Art 4 (1) (a))</p> <p><b>Remember:</b> How to assess where someone lives?          - place of family, linguistic, cultural, social or economic and other links (lit 9)          - habitual residence, family, social or professional ties (lit 17)</p> <p>Information can be gathered from a variety of sources          - Self-reporting of the prisoner          - The underlying judgement          - Information from family members          - Immigration authorities</p>	<p><input type="checkbox"/></p>	<p><input type="checkbox"/></p>
<p>b) Is the person a national of the executing State, 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? (Art 4 (1) (b))?</p>	<p><input type="checkbox"/></p>	<p><input type="checkbox"/></p>
<p>c) Neither (a) nor (b) are fulfilled but you as competent authority has consented to the forwarding of the judgement? (Art 4 (1) (c))</p> <p><b>Remember:</b> This option requires the consent of the transferred person as well unless he/she has resided continuously for at least five years in the executing State (Art 4 (7) (a)) or is a national of the executing State (Art 4 (7) (b)). Also, consultations with the executing State are obligatory in this case before a certificate is issued (Art 4 (3)).</p>	<p><input type="checkbox"/></p>	<p><input type="checkbox"/></p>
<p><b>Is the committed offence one of the offences punishable by at least three years and an offence enlisted in Art 7 (1)?</b></p>		

<p><b>Is the prisoner to serve at least 6 months in prison by the time the judgement reaches the competent authority in the executing State according to Art. 9 (1) (h)?</b></p> <p>According to Art. 9 (1) (h) the competent authority of the executing state may refuse to recognize the judgement and enforce the sentence if less than six months of the sentence have to be served. This is, however, a facultative ground for refusal. Dutch authorities, for example, also recognize sentences shorter than six months under certain circumstances.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Have the authorities of the issuing State consulted with you before issuing the certificate?</b></p> <p>Consulting the competent authorities in the executing State before issuing a certificate is not a mandatory requirement for a transfer. However, the Framework decision recommends engaging in consultations before issuing a certificate (Art 4 (3)). In cases of Art. 4 (1) (c) when the transferred person is not a citizen of the executing state consultations are obligatory. If for any reasons a consultation has not taken place beforehand you may present an opinion why an execution of the sentence in the executing State would not serve the purpose of social rehabilitation without delay after the transmission of the certificate. This opinion should be considered carefully by the issuing State and a decision should be made if the certificate will be withdrawn (Art 4 (4)).</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Does the Transfer serve the Goal of social rehabilitation?</b></p> <p><b>Remember:</b> After consultations with the responsible authorities from the issuing State are you sure a transfer would serve social rehabilitation (Art 4 (2))? Criteria for this may be related to culture, communication, access to services, such as work, medical, and legal services, and contact with families and friends.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Does the sentence imposed include a measure of psychiatric or health care pursuant to Art 9 (1) (k)?</b></p> <p>This may lead to grounds of refusal if the executing State cannot execute such a measure in accordance with his health care system. However, the executing State may also consider adapting the sentence (lit 19).</p>	<input type="checkbox"/>	<input type="checkbox"/>

<b>Step 3: Consent of the transferred person</b>	<b>Yes</b>	<b>No</b>
<p><b>Is the consent of the transferred person required?</b></p> <p>Art 6 (1) states that a judgement and a certificate may only be forwarded to the executing State if the person has consented to a transfer. There are, however, three exceptions to this rule where consent is <b>not</b> required (Art 6 (2)):</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>a) Is the executing State the State of nationality in which the sentenced person lives?</p>	<input type="checkbox"/>	<input type="checkbox"/>

See Step one for more information on how to assess where a person lives.		
b) Is the executing State the 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?	<input type="checkbox"/>	<input type="checkbox"/>
c) Is the executing State the 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?	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Remember:</b> If the person is present in the issuing State he or she should have been given the opportunity to state his or her opinion orally or in writing (Art 6 (3)). This opinion should be taken into account when deciding whether a certificate will be issued. Also, this opinion of the sentenced person should be forwarded with the certificate to the executing State. To ensure an informed opinion the person should be provided with easily understandable information on the prison system and conditions in the executing State. Make sure to provide this information to the issuing State if required.</p> <p>If the transferred person has other convictions to be served these may fall under the speciality principle codified in Art 18. The person's consent is then required in order to serve other sentences.</p>		

<b>Step 4: Formal requirements of the certificate</b>	Yes	No
<p><b>Is the certificate complete?</b></p> <p>The certificate should be complete (Art 9 (1)). If the certificate is incomplete or does not correspond to the judgement you should give the issuing State the opportunity to correct and complete the certificate within a reasonable amount of time. Set a deadline for this. For the grounds of refusal see Art 9 (1) (a)-(l). However, before deciding not to recognize a judgment or certificate and refusing a transfer you should consult with the competent authority of the issuing State (Art 9 (3)). The same counts if you only are willing to recognize the judgement in parts (Art 10 (1)).</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Is the certificate in the correct language?</b></p> <p>The issuing State is obliged to send the certificate in the correct language. You may decide to not accept a certificate which does not comply with this requirement (Art 23). The judgement, however, is not generally required to be translated unless you have specifically requested this to the issuing State during consultations (Art 23 (3)). Keep in mind that the language criteria should be handled flexible and in a cooperative manner. If you have no difficulties to understand the certificate in a certain language that is not officially recognized, you may consider accepting it anyways. Also, if you deem it necessary to have a</p>	<input type="checkbox"/>	<input type="checkbox"/>

translation of the judgement as well, consider initiating a translation instead of sending it back. This might expedite the transfer procedure.		
<p><b>Is a copy of the underlying judgement included?</b></p> <p>You can require a certified copy of the judgement or the original of the certificate. (Art 5 (1)).</p> <p><b>Remember:</b> Lit 18 states that transmitting a judgement and certificate (Art 5(1)) to the competent authority in the executing State should be possible by any means leaves a written record, for example e-mail and fax, under conditions allowing the executing State to establish authenticity. Be aware that the email option is frequently used by Dutch authorities it has proven difficult or even impossible when corresponding with German authorities. This issue can be addressed during preliminary consultations.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Is the sentence compatible with regards to its duration and national law in terms of maximum penalties?</b></p> <p>Pursuant to Art. 8 (2) the prison sentence may be adapted if it exceeds the maximum penalty provided for similar offences under national law.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Was the underlying judgement issued in absentia?</b></p> <p>Under special circumstances, this may lead to a refusal by the executing State (Art 9 (1) (i)).</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Is a fine or confiscation order imposed into the judgement?</b></p> <p>If this is the case, this should not prevent the judgement from being forwarded (Art3 (3)).</p>	<input type="checkbox"/>	<input type="checkbox"/>

Frequently Asked Questions (FAQ)
<p><b>If the person that should be transferred is already present in the executing State can a certificate still be issued?</b></p> <p>Yes, the Framework Decision explicitly refers to this case (e.g. Art 6 (4)). Also, keep in mind that the upon request of the issuing State the executing State can arrest that person or take any other measure to ensure that the person remains in its territory before even the arrival of the certificate (Art 14).</p>
<p><b>What if I want to transfer a person who has committed an offence <u>not</u> enlisted in Art 7 (1)?</b></p> <p>For other offences Art 7 (3) declares 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.</p>
<p><b>Can a sentence be aggravated by the executing State?</b></p> <p>No, see Art 8 (4).</p>

**For how long can I withdraw an issued certificate?**

An issued certificate can be withdrawn as long as the enforcement of the sentence in the executing State has not begun (Art 13).

**How long will the transfer procedure take?**

Art 12 (2) states that a final decision on the recognition of the judgement and enforcement of the sentence should be reached within 90 days after receiving the judgement by the executing State. When a decision takes longer the executing State should inform the issuing State immediately with an estimation of the time needed for a decision (Art 12 (3)). In practice, it has shown that depending on the case the procedure might take much longer. For example, Dutch authorities estimate an average duration of 1.5 years for a prisoner transfer from the request of the prisoner to the actual transfer to another Member States. The bottleneck is often the local prosecution offices where the certificates have to be filled in but where often the expertise and due to high caseloads the capacities for an expedient procedure are lacking. Keep this in mind when initiating a transfer process as the time left to be served by the transferred person may be significantly shorter at the end of the process.

### 3. Transfer of judgments or probation decisions pursuant to EU FD 2008/947/JHA

Outgoing: How to initiate the transfer of judgment or probation decision?

<b>Step 1: Applicability of the Framework Decision</b>	Yes	No
<p data-bbox="204 562 963 591"><b>Is Framework Decision 947 applicable to the case in question?</b></p> <p data-bbox="204 629 1046 658">The Framework Decision 947 is pursuant to Art 1 (2) only applicable to</p> <p data-bbox="204 712 1118 741">(a) the recognition of judgments and, where applicable, probation decisions;</p> <p data-bbox="204 786 1094 882">(b) the transfer of responsibility for the supervision of probation measures and alternative sanctions; (For an enlisting of probation measures and alternative sanctions see Art 4 (1) (a)-(k))</p> <p data-bbox="204 927 871 956">(c) all other decisions related to those under (a) and (b);</p> <p data-bbox="204 1001 1126 1061"><b>Remember:</b> Pursuant to Art 2 (1) ‘judgement’ means a final decision or order of a court imposing</p> <p data-bbox="204 1106 1094 1202">(a) a custodial sentence or measure involving deprivation of liberty, if a conditional release has been granted on the basis of that judgment or by a subsequent probation decision (Art 2 (5))</p> <p data-bbox="204 1247 628 1276">(b) a suspended sentence (Art 2(2))</p> <p data-bbox="204 1321 635 1350">(c) a conditional sentence (Art 2 (3))</p> <p data-bbox="204 1395 641 1424">(d) an alternative sanction (Art 2 (3))</p> <p data-bbox="204 1469 1066 1498">For a detailed description of the types of final decisions see Art 2 (2)- (7)</p>	<input data-bbox="1201 562 1225 591" type="checkbox"/>	<input data-bbox="1321 562 1345 591" type="checkbox"/>

<b>Step 2: Eligibility of the person for a transfer to the executing State</b>	Yes	No
<p data-bbox="204 1666 927 1695"><b>Is the executing State the State of residence of the person?</b></p> <p data-bbox="204 1740 1129 1910">Pursuant to Art 5 (1) The issuing state may forward a judgement or probation decision to the competent authority of the Member State</p> <ul data-bbox="204 1809 986 1910" style="list-style-type: none"> <li>- in which the sentenced person is lawfully and ordinarily residing</li> <li>- where the person has returned</li> <li>- where the person wants to return.</li> </ul> <p data-bbox="204 1955 1102 2016"><b>Remember:</b> FD 947 does not explicitly require the consent of the person to transfer the judgement. However, the consent of the person serves as an</p>	<input data-bbox="1211 1666 1235 1695" type="checkbox"/>	<input data-bbox="1326 1666 1350 1695" type="checkbox"/>

<p>important indicator and facilitator to achieve the goal of social rehabilitation (see below)</p> <p>Upon request of the sentenced person, the judgment or probation decision may be forwarded to another Member State than the Member State in which the sentenced person is lawfully and ordinarily residing, if the competent authority in that Member State has consented to such forwarding (Art 5 (2)). According to lit 14 in particular, consent may be given, with a view to social rehabilitation, where the sentenced person, without losing his/her right of residence, intends to move to another Member State because he/she is granted an employment contract, if he/she is a family member of a lawful and ordinary resident person of that Member State, or if he/she intends to follow a study or training in that Member State, in accordance with Community law.</p>		
<p><b>Are there reasons to refuse to recognize a judgment or probation decision?</b></p> <p>In some circumstances the competent authority may refuse to recognize the judgment or probation decision (Art 11 (a)-(k)). Additional reasons are:</p> <p>a) Pursuant to lit 16 this might be the case if the judgment concerned was issued against a person who has not been found guilty, such as in the case of a mentally ill person, and the judgment or, where applicable, the probation decision provides for medical/therapeutic treatment which the executing State cannot supervise in respect of such persons under its national law.</p> <p>b) Pursuant to lit 18 the executing state is entitled to refuse if the probation measures or alternative sanctions include community service if the community service would normally be completed in less than six months.</p> <p>c) Pursuant to Art 11 (h) 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.</p> <p><b>Remember:</b> Before deciding to refuse the judgment or the probation decision the competent authority of the executing State shall communicate, by appropriate means, with the competent authority of the issuing State and shall, as necessary, ask it to supply all additional information required without delay ((Art 11 (3)).</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Have you consulted with the competent authority of the executing State before issuing the certificate?</b></p> <p>Consulting the competent authorities in the executing state before issuing a certificate is not a mandatory requirement for a transfer. However, in view of the principle of mutual recognition whenever it is felt appropriate the competent authorities of the issuing State and of the executing State may consult each other with a view to facilitating the smooth and efficient application of the Framework Decision (Art 15).</p>	<input type="checkbox"/>	<input type="checkbox"/>

<p>DE: In most cases, the local prosecutor's office where the person has its residence is responsible in cooperation with the criminal prosecution chambers of the local county courts.</p> <p>NL: IRC Noord-Holland, afd. WETS-ETM Centrale Autoriteit Postbus 6079 2001 HB Haarlem Email: wets-etm@om.nl</p> <p>BE: In most cases, the local prosecutor's office where the prisoner has its residence is responsible.</p>		
<p><b>Does the Transfer serve the goal of social rehabilitation?</b></p> <p>The aim of the Framework Decision is to enhance the prospects of the sentenced person's being reintegrated into society, by enabling that person to preserve family, linguistic, cultural and other ties, but also to improve monitoring of compliance with probation measures and alternative sanctions, with a view to preventing recidivism, thus paying due regard to the protection of victims and the general public. (Lit (8))</p>	<input type="checkbox"/>	<input type="checkbox"/>

<b>Step 3: Formal requirements of the certificate</b>	Yes	No
<p><b>Is the certificate in the correct language?</b></p> <p>The Executing state might only accept certain languages (Art 21). You can find an overview of accepted languages in the Member States <a href="#">here</a>. The underlying judgement and probation decision, however, is not generally required to be translated.</p> <p>NL accepts Dutch and English BE accepts Dutch, English, French and German DE accepts German.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Is a certified copy or the original of the underlying judgement or probation decision included?</b></p> <p>Make sure that the executing State is able to establish the authenticity of the underlying judgement or probation decision (Art 6 (2)). If the certificate is incomplete or obviously does not correspond to the judgement or probation decision it may postpone a decision on the recognition. The executing state may set a reasonable deadline until the certificate can be corrected or completed (Art 8 (2)).</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Have you found the competent authority in the executing State?</b></p> <p>If you having trouble finding the competent authority you can contact the EJM to obtain that information (Art 6 (6)). Don't worry if you have sent the certificate to</p>	<input type="checkbox"/>	<input type="checkbox"/>

the wrong authority. They are obliged to forward it to the competent authority (Art 6 (7)).		
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## Frequently Asked Questions (FAQ)

### **Do the competent authorities which take a decision under this Framework Decision have to be judicial authorities?**

This depends on the decision. According to lit (22), all subsequent decisions relating to a suspended sentence, a conditional sentence or an alternative sanction which result in the imposition of a custodial sentence or measure involving deprivation of liberty should be taken by a judicial authority.

According to Art 3 (2) under certain circumstances, Member States may designate non-judicial authorities as the competent authorities. However, if a non-judicial authority makes subsequent decisions upon request of the person concerned such decision may be reviewed by a court or by another independent

court-like body (Art 3 (3)). Such decisions include pursuant to Art 14 (1) (b) and (c):

- the revocation of the suspension of the execution of the judgment or the revocation of the decision on conditional release;
- the imposition of a custodial sentence or measure involving deprivation of liberty in case of an alternative sanction or conditional sentence

### **At what point does the issuing state lose the competence in relation to the supervision of the probation measures or alternative sanctions Imposed?**

Once the competent authority of the executing State has recognised the judgment or the probation decision forwarded to it and has informed the competent authority of the issuing State of such recognition the issuing state loses its competence (Art 7(1)). However, Art 7 (2) states that a certificate can be withdrawn by the competent authority. As soon as the executing state is notified of this withdrawal the competence reverts to the issuing state.

### **If the person that should be transferred is already present in the executing state can a certificate still be issued?**

Yes, the Framework Decision explicitly refers to this case (Art 5 (1)).

### **What if I want to transfer a person who has committed an offence not enlisted in Art 10 (1)?**

For other offences Art 10 (3) declares the executing State may make the recognition of the judgment and probation decision and the supervision of probation measures and of alternative sanctions subject to the condition that the judgment relates to acts which also constitute an offence under the law of the executing State, whatever its constituent elements or however it is described.

### **Can a probation measure or alternative sanction be adapted by the executing state?**

Yes. According to Art 9 (1) if the nature or duration of the relevant probation measure or alternative sanction, or the duration of the probation period, are incompatible with the law of the

executing State, the competent authority of that State may adapt them in line with the nature and duration of the probation measures and alternative sanctions, or duration of the probation period, which apply, under the law of the executing State, to equivalent offences. However, the adapted probation measure, alternative sanction or duration of the probation period shall correspond as far as possible to that imposed in the issuing State. The adapted probation measure, alternative sanction or probation period shall not be more severe or longer than the probation measure, alternative sanction or probation period which was originally imposed.

**Which law is applicable to the application of probation measures and alternative sanctions?**

The law of the executing State, Art 13 (1).

**Are there any obligations for the executing State concerning informing the issuing State after taken over the judgement or probation measure?**

Yes. Pursuant to Art 16 the competent authority of the executing State without delay inform the competent authority of the issuing State, by any means which leaves a written record about

- (a) modification of the probation measure or alternative sanction;
- (b) revocation of the suspension of the execution of the judgment or revocation of the decision on conditional release;
- (c) enforcement of a custodial sentence or measure involving deprivation of liberty, because of non-compliance with a probation measure or alternative sanction;
- (d) lapsing of the probation measure or alternative sanction.

In addition If requested by the competent authority of the issuing State, the executing State should inform it of the maximum duration of deprivation of liberty that is foreseen in the national law of the executing State for the offence which gave rise to the judgment and that could be imposed on the sentenced person in case of breach of the probation measure or alternative sanction. This information shall be provided immediately after reception of the judgment and probation decision, together with the certificate. (Art 16 (2)) Other obligation to inform the issuing state are enlisted in Art 18.

**Are there any obligations for the issuing State concerning informing the execution State after taking over the judgement or probation measure?**

There are a number of obligation if the competent authority of the issuing state has jurisdiction for subsequent decisions pursuant to Art 14 (1).  
All obligations are enlisted in Art 17.

**What happens when the sentenced person absconds or no longer has a lawful and ordinary residence in the executing State?**

In these cases, competent authority of the executing State may transfer the jurisdiction in respect of the supervision of the probation measures or alternative sanctions and in respect of all further decisions relating to the judgment back to the competent authority of the issuing State. (Art 20 (1))

**What if new criminal proceedings against the person concerned are taking place in the issuing State?**

In that case, the competent authority of the issuing State may request the competent authority of the executing State to transfer jurisdiction in respect of the supervision of the probation measures or alternative sanctions and in respect of all further decisions relating to the judgment back to the competent authority of the issuing State. (Art 20 (2))

Incoming: How to process an incoming transfer of judgment or probation decision?

<b>Step 1: Are you the competent authority in the executing State to process the transfer?</b>	Yes	No
If you are not, you are obliged to forward the case to the competent authority (Art 6 (7))	<input type="checkbox"/>	<input type="checkbox"/>

<b>Step 2: Do you have reasons to believe, that the probation measure or alternative sanction was imposed to punish a person because of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation or that this person might be disadvantaged for one of these reasons?</b>	Yes	No
If this is the case, you may consider refusing to recognize a judgment and/or supervise a probation measure or alternative sanction (Lit (5))	<input type="checkbox"/>	<input type="checkbox"/>

<b>Step 3: Eligibility of the person for a transfer to the executing State</b>	Yes	No
<b>Does the Person to be transferred fulfil the requirements of residence?</b>  The issuing state may forward a judgement or probation decision to the competent authority of the Member State in which the sentenced person is lawfully and ordinarily residing (Art 5 (1)).  <b>Remember:</b> The consent of the sentenced person is required. The issuing state may forward a judgement or probation decision to the competent authority of the Member State in which the sentenced person is lawfully and ordinarily residing if the sentenced person has returned or wants to return (Art 5 (1)). Upon request of the sentenced person, the judgment or probation decision may be forwarded to another Member State than the Member State in which the sentenced person is lawfully and ordinarily residing, if the competent authority in that Member State has consented to such forwarding (Art 5 (2)).	<input type="checkbox"/>	<input type="checkbox"/>
<b>Are there reasons to refuse to recognize a judgment or probation decision?</b>  In some circumstances you may refuse to recognize the judgment or probation decision (Art 1 (a)-(k)) The most important reasons are:	<input type="checkbox"/>	<input type="checkbox"/>

<p>a) Pursuant to lit 16 this might be the case if the judgment concerned was issued against a person who has not been found guilty, such as in the case of a mentally ill person, and the judgment or, where applicable, the probation decision provides for medical/therapeutic treatment which the executing State cannot supervise in respect of such persons under its national law.</p> <p>b) Pursuant to lit 18 the executing state is entitled to refuse if the probation measures or alternative sanctions include community service if the community service would normally be completed in less than six months.</p> <p>c) Pursuant to Art 11 (h) 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.</p> <p><b>Remember:</b> Before deciding to refuse the judgment or the probation decision the competent authority of the executing State shall communicate, by appropriate means, with the competent authority of the issuing State and shall, as necessary, ask it to supply all additional information required without delay.</p>		
<p><b>Have the authorities of the issuing state consulted with you before issuing the certificate?</b></p> <p>Consulting the competent authorities in the executing state before issuing a certificate is not a mandatory requirement for a transfer. However, in view of the principle of mutual recognition whenever it is felt appropriate the competent authorities of the issuing State and of the executing State may consult each other with a view to facilitating the smooth and efficient application of the Framework Decision (Art 15).</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Does the Transfer serve the Goal of social rehabilitation?</b></p> <p>The aim of the Framework Decision is to enhance the prospects of the sentenced person's being reintegrated into society, by enabling that person to preserve family, linguistic, cultural and other ties, but also to improve monitoring of compliance with probation measures and alternative sanctions, with a view to preventing recidivism, thus paying due regard to the protection of victims and the general public. (Lit (8))</p>		

<b>Step 4: Formal requirements of the certificate</b>	Yes	No
Is the certificate complete?	<input type="checkbox"/>	<input type="checkbox"/>

<p>Make sure that a certified copy or the original of the underlying judgement or probation decision is included in the certificate to establish their authenticity (Art 6 (2)).</p> <p>If the certificate is incomplete or obviously does not correspond to the judgement or probation decision you may postpone a decision on the recognition. You may set a reasonable deadline until the certificate can be corrected or completed (Art 8 (2)).</p> <p><b>Remember:</b> The certificate can be sent via email or fax as long as the executing state can establish authenticity (lit 18)</p>		
<p><b>Is the certificate in the correct language?</b></p> <p>The issuing State is obliged to send the certificate in the correct language. You may decide to not accept a certificate which does not comply with this requirement (Art 21). Keep in mind that the language criteria should be handled flexible and in a cooperative manner. If you have no difficulties to understand the certificate in a certain language that is not officially recognized, you may consider accepting it anyways.</p>	<input type="checkbox"/>	<input type="checkbox"/>

<p>Frequently Asked Questions (FAQ)</p>
<p><b>Have the competent authorities which take a decision under this Framework Decision to be judicial authorities?</b></p> <p>This depends on the decision. According to lit (22), all subsequent decisions relating to a suspended sentence, a conditional sentence or an alternative sanction which result in the imposition of a custodial sentence or measure involving deprivation of liberty should be taken by a judicial authority.</p> <p>According to Art 3 (2) under certain circumstances, Member States may designate non-judicial authorities as the competent authorities. However, if a non-judicial authority makes subsequent decisions upon request of the person concerned such decision may be reviewed by a court or by another independent court-like body (Art 3 (3)). Such decisions include pursuant to Art 14 (1) (b) and (c):</p> <ul style="list-style-type: none"> <li>- the revocation of the suspension of the execution of the judgment or the revocation of the decision on conditional release;</li> <li>- the imposition of a custodial sentence or measure involving deprivation of liberty in case of an alternative sanction or conditional sentence</li> </ul>
<p><b>At what point does the issuing state lose the competence in relation to the supervision of the probation measures or alternative sanctions imposed?</b></p> <p>Once the competent authority of the executing State has recognised the judgment or the probation decision forwarded to it and has informed the competent authority of the issuing State of such recognition the issuing state loses its competence (Art 7(1)). However, Art 7 (2) states that a certificate can be withdrawn by the competent authority. As soon as the executing state is notified of this withdrawal the competence reverts to the issuing state.</p>

**If the person that should be transferred is already present in the executing state can a certificate still be issued?**

Yes, the Framework Decision explicitly refers to this case (Art 5 (1)).

**What if I want to transfer a person who has committed an offence not enlisted in Art 10 (1)?**

For other offences Art 10 (3) declares the executing State may make the recognition of the judgment and probation decision and the supervision of probation measures and of alternative sanctions subject to the condition that the judgment relates to acts which also constitute an offence under the law of the executing State, whatever its constituent elements or however it is described.

**Can a probation measure or alternative sanction be adapted by the executing state?**

Yes. According to Art 9 (1) if the nature or duration of the relevant probation measure or alternative sanction, or the duration of the probation period, are incompatible with the law of the executing State, the competent authority of that State may adapt them in line with the nature and duration of the probation measures and alternative sanctions, or duration of the probation period, which apply, under the law of the executing State, to equivalent offences. However, the adapted probation measure, alternative sanction or duration of the probation period shall correspond as far as possible to that imposed in the issuing State. The adapted probation measure, alternative sanction or probation period shall not be more severe or longer than the probation measure, alternative sanction or probation period which was originally imposed.

**Which law is applicable to the application of probation measures and alternative sanctions?**

The law of the executing State, Art 13 (1).

**Are there any obligations for the executing State concerning informing the issuing State after taken over the judgement or probation measure?**

Yes. Pursuant to Art 16 the competent authority of the executing State without delay inform the competent authority of the issuing State, by any means which leaves a written record about

- (a) modification of the probation measure or alternative sanction;
- (b) revocation of the suspension of the execution of the judgment or revocation of the decision on conditional release;
- (c) enforcement of a custodial sentence or measure involving deprivation of liberty, because of non-compliance with a probation measure or alternative sanction;
- (d) lapsing of the probation measure or alternative sanction.

In addition - if requested by the competent authority of the issuing State - the executing State should inform it of the maximum duration of deprivation of liberty that is foreseen in the national law of the executing State for the offence which gave rise to the judgment and that could be imposed on the sentenced person in case of breach of the probation measure or alternative sanction. This information shall be provided immediately after reception of the judgment and probation decision, together with the certificate. (Art 16 (2)) Other obligation to inform the issuing state are enlisted in Art 18.

**Are there any obligations for the issuing State concerning informing the execution State after taking over the judgement or probation measure?**

There are a number of obligation if the competent authority of the issuing state has jurisdiction for subsequent decisions pursuant to Art 14 (1).

All obligations are enlisted in Art 17.

**What happens when the sentenced person absconds or no longer has a lawful and ordinary residence in the executing State?**

In these cases, competent authority of the executing State may transfer the jurisdiction in respect of the supervision of the probation measures or alternative sanctions and in respect of all further decisions relating to the judgment back to the competent authority of the issuing State. (Art 20 (1))

**What if new criminal proceedings against the person concerned are taking place in the issuing State?**

In that case, the competent authority of the issuing State may request the competent authority of the executing State to transfer jurisdiction in respect of the supervision of the probation measures or alternative sanctions and in respect of all further decisions relating to the judgment back to the competent authority of the issuing State. (Art 20 (2))

#### 4. Applying the principle of mutual recognition to confiscation orders pursuant to EU FD 2006/783/JHA

Outgoing: How to issue a confiscation order pursuant to FD 2006/783/JHA?<sup>1</sup>

<b>Step 1: Eligibility of the confiscation order</b>	Yes	No
<p><b>Is the confiscation order issued by a court competent in criminal matters of another Member State?</b></p> <p>Art 1 (1) states that the confiscation order must be issued by a court competent in criminal matters of another Member State.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Is the transmitted order a confiscation order?</b></p> <p>In case of doubts Art 2 (c) clarifies that ‘confiscation’ means a final penalty or measure imposed by a court following proceedings in relation to a criminal offence or offences, resulting in the definitive deprivation of property. Property means property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents and instruments evidencing title to or interest in such property which the court in the issuing State has decided:</p> <p>(i) is the proceeds of an offence, or equivalent to either the full value or part of the value of such proceeds, or (ii) constitutes the instrumentalities of such an offence or (iii) is liable to confiscation resulting from the application in the issuing State of any of the extended powers of confiscation specified in Article 3(1) and (2) of Framework Decision 2005/212/JHA,<sup>2</sup> or (iv) is liable to confiscation under any other provisions relating to extended powers of confiscation under the law of the issuing State;</p>	<input type="checkbox"/>	<input type="checkbox"/>

<b>Step 2: Transmitting a confiscation order</b>	Yes	No

<sup>1</sup> NOTE: the FD is the instrument for issuing a confiscation order between MS until 19-12-2020 (Luxemburg and Ireland excepted, for those countries a MLA request is required.). After 19-12-2020 the Regulation (EU) 2018/1805 applies between Member States (Denmark and Ireland excepted as for both the Framework Decision remains the instrument for issuing a confiscation order).

<sup>2</sup> NOTE: Article 3(1) and (2) of FD 2005/212/JHA have been replaced by Art 5 and 6 Directive 2014/42/EU (see Art 14 of the Directive 2014/42/EU)

<p><b>Have you identified the correct executing state?</b></p> <p>Identifying the right executing state is depending on the confiscation order. Pursuant to Art 4 (1) the following differentiations are made:</p> <ul style="list-style-type: none"> <li>- In the case of a confiscation order concerning an amount of money the order can be transmitted to the Member State where there are reasonable grounds to believe that the natural or legal person against whom the confiscation order has been issued has property or income.</li> <li>- In the case of a confiscation order concerning specific items of property, the certificate may be transmitted to a Member State where there are reasonable grounds to believe that property covered by the confiscation order is located.</li> <li>- If none of the above is the case the confiscation order may be transmitted to the Member State where the natural or legal person against whom the confiscation order has been issued is normally resident or has its registered seat respectively.</li> </ul>		
<p><b>Have you identified the correct instrument for transmitting a confiscation order to the respective executing state?</b></p> <p>All Member States have implemented FD 2006/783/JHA (with the exception of Luxemburg for which the enforcement of a confiscation order can be transmitted via a MLA request)</p> <p><b>Remember:</b> From 19/12/2020 all Member State are bound by EU Regulation 2018/1805 (with the exception of Denmark and Ireland where FD 2006/783/JHA still applies)</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Which is the competent authority in the executing state?</b></p> <p>To find the competent or central authority the EJN<sup>3</sup> may be of help (Art 4 (4)). If you have sent the certificate to the wrong authority. The Member State are obliged to forward it to the competent authority (Art 4 (5)).</p> <p>The Netherlands has appointed a central authority:  Central Fine Collection Agency / Centraal Justitieel Incassobureau (CJIB)  Department of Crossborder Enforcement / Afdeling Europese Juridische Zaken  Postbus 185  8900 AD Leeuwarden, Nederland  T: +31 58 253 3700  F: + 31 58 253 3030  @: <a href="mailto:centralauthority@cjib.nl">centralauthority@cjib.nl</a></p> <p>In Belgium, the '<i>Procureur des Konings</i>' of the different Public Prosecutors Offices are the competent authorities.</p> <p>In Germany, the Local Prosecutors Offices (Staatsanwaltschaften) are the competent authorities.</p>	<input type="checkbox"/>	<input type="checkbox"/>

<sup>3</sup> [https://www.ejn-crimjust.europa.eu/ejn/EJN\\_Home.aspx](https://www.ejn-crimjust.europa.eu/ejn/EJN_Home.aspx)

<p>In order to determine which state/authority should be addressed information about the whereabouts of convicted person and/or his income/assets is needed. The following instruments/networks might be useful in that respect:</p> <p>Pursuant to Council Decision 2007/845/JHA EU Member States have set up or designate national Asset Recovery Offices (AROs) as national central contact points which facilitate, through enhanced cooperation, the EU-wide tracing of assets derived from crime. The Decision allows the AROs to exchange information and best practices, both upon request and spontaneously, regardless of their status (administrative, law enforcement or judicial authority).<sup>4</sup> A number of states are organized in the Camden Asset Recovery Inter-agency Network (CARIN). Here more detailed information concerning asset recovery can be obtained.<sup>5</sup></p> <p>DE:<sup>6</sup> Bundeskriminalamt (SO 35) Thaerstr. 11 65173 Wiesbaden Germany Email: so35@bka.bund.de</p> <p>Bundesamt für Justiz (BfJ - Division III1). Adenauerallee 99-103 53113 Bonn Germany</p> <p><b>Remember:</b> Both agencies are competent to initiate first investigations for the purpose of recovering assets. Generally, the local prosecution offices remain responsible for all confiscations and investigation measures (certain measures can only be ordered by an investigative judge)<sup>7</sup>. The sharing of personal data over the ARO Network is limited.</p> <p>NL<sup>8</sup>: ARO Police NL PO BOX 264 The Hague 2501 CG The Netherlands Email: pol.aro.irc@politie.nl</p> <p>ARO Judicial NL PO BOX 9164 Rotterdam 3007 AD The Netherlands Email: just.aro.fp@om.nl</p>		
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<sup>4</sup> For an overview of all AROs see <https://www.assetrecoveryoffice.eu/memberstates>

<sup>5</sup> <https://www.carin.network/presidency>

<sup>6</sup> <https://www.assetrecoveryoffice.eu/germany>

<sup>7</sup> For more information on the procedure see this link (only in German):

[https://www.bmjv.de/SharedDocs/Publikationen/DE/Vermoegensabschoepfung\\_im\\_deutschen\\_Recht.pdf?\\_\\_blob=publicationFile&v=17](https://www.bmjv.de/SharedDocs/Publikationen/DE/Vermoegensabschoepfung_im_deutschen_Recht.pdf?__blob=publicationFile&v=17)

<sup>8</sup> <https://www.assetrecoveryoffice.eu/netherlands>

<p><b>Remember:</b> Dutch prosecutors may start a Criminal Execution Investigation (Strafrechtelijk Executieonderzoek; SEO) and/or may order a number of investigative measures such as e.g. requesting bank statements, systematic observations and wiretapping (the latter by the order of an investigative judge). It may be of added-value to ask the Dutch authorities to consult the ICOV-system (National Infobox for Criminal and Unaccountable Assets)</p> <p>BE: Central Office for Seizure and Confiscation (COSC).<sup>9</sup>  Wolstraat 66, bus 2  BRUSSELS  1000  Belgium  Email: COIV-OCSC-AROCARIN@just.fgov.be</p> <p><b>Remember:</b> In general, the local prosecution offices are responsible for confiscations and all related investigative measures. The later includes observations, searches of vehicles and bank investigations. For specific measures such as house searches and wiretapping, the order of an investigative judge is necessary. If a specific measure, such as a bank investigation, in Belgium is required, this can be initiated by either sending a European Investigation Order or a Request for Mutual legal assistance, based on the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism. The Belgian authorities seem to have a preference for the latter. Both EIO and MLA requests for measures such as a bank investigation are in Belgium not possible in the enforcement phase of a confiscation order. Only ARO requests (prior to transmitting the irrevocable confiscation order) are possible. Further investigation or requests for information are not possible without transferring the enforcement of the confiscation order to Belgium first. Also, in the final phase of the confiscation order it is no longer possible to freeze property in Belgium before Belgium has recognized the confiscation order and the order has become enforceable in Belgium.</p>		
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<b>Step 3: Formal requirements</b>	Yes	No
<p><b>Is your request for recognition and enforcement of the confiscation order drawn up in accordance with art. 4 and 5 of the Framework Decision?</b>  - have you filled out the prescribed certificate in the correct manner?</p> <p>a. Fill out the country of destination and the country where the decision has been made.</p> <p>b. Fill out the authority (court) that has taken the decision</p> <p>c. If another authority in your country is responsible for the enforcement of the confiscation order, give that information in part. C.</p> <p>d. If there has been appointed a central authority in your country, fill out the information of this authority in part. D</p>		

<sup>9</sup> <https://www.assetrecoveryoffice.eu/belgium>

<p>e. Please indicate which authority can be contacted for what type of questions. If part c and e are not filled, you can skip part e as well.</p> <p>f. Any information about freezing orders should be filled out here (date, reference numbers, names of requesting authority, name of executing authority, location, etc.). TIP1: when possible also attach documents regarding the execution of the freezing order to this request. TIP2: if there was no freezing order, but objects have been frozen in response to a ,traditional request for legal assistance (MLA)' you could put that information in this part of the certificate as well.</p> <p>g. If more than one Member State is requested at the same time to execute (part of) the confiscation order, fill out part g. of the certificate. Describe what action is requested from which country/authority (confiscation of which objects/what amount) NOTE: if after transmission of the confiscation order you receive information based on which you wish to transfer part of the confiscation order to a second MS before the MS that was requested first is finished with the enforcement in that MS, you fill out this part of the certificate addressed to the second MS, but also inform the first MS by letter of the request made to the second MS.</p> <p>h. If the confiscation order concerns a natural person, fill out part h.1 of the certificate, if it concerns a legal person, fill out part h.2 of the certificate. Be as complete as possible, in order to identify the correct person in the executing state. Also fill out on what grounds/indication the confiscation order is being transmitted (income/residence (1.1/2.1) and/or objects/residence (1.2/2.2) in the requested state. NOTE: both parts (1.1/2.1 concerning a sum of money – and – 1.2/2.2 concerning confiscated objects) can be applicable if the confiscation order concerns both the confiscation of an amount of money and specific objects.</p> <p>i. Always fill out the date of the decision holding the confiscation order, the date on which that decision has become final and the decision number. Further, always fill out (1.1) if the confiscation order concerns a sum of money (and what the amount of the confiscation order is, as well as what amount should be enforced in the requested state. NOTE: deduct amounts already collected from the total of the decision, as well as the value of seizure in the issuing State or other Member States. The total of the enforcement cannot exceed the total amount of the confiscation order.) and/or if the confiscation order concerns a specific object (and give a description of the object(s) and the location of the object(s).) NOTE: both options can be applicable if the confiscation order concerns both an amount of money and specific objects. Also fill out i.1.2 concerning what type of confiscation it concerns. Again, more than one option can be applicable. If more than one option is applicable, explain which option applies to which amount/object.</p> <p>i.2.1. Fill out the summary of facts leading to the confiscation order. Please be brief, but complete. NOTE: do not forget to fill out the date/period on/in which the facts have been committed and the place/location where the facts took place. If more than one fact has led to the confiscation order, make a numbered list and give this information per fact.</p> <p>i.2.2 give the qualification and the relevant articles of law concerning the criminal acts described under i.2.1. If the confiscation order concerns more than one fact, make a numbered list and give this information per named fact.</p> <p>i.2.3 if one or more of the listed facts apply, please tick the relevant box(es).</p>		
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<p>i.2.4 If concerning one or more facts/offences named under i.2.2. no offence listed in i.2.3 is applicable, give all additional information concerning that fact that could be necessary for the requested state to check double criminality.</p> <p>k. In this part, please indicate if it is possible to require that a sum of money is paid instead of a specific item of property (k.1) – or – instead of a sum of money property obtained from the execution may be transferred to the issuing State (k.2). NOTE: if the confiscation order concerns both a sum of money and specific objects, both k.1 and k.2 should be filled. NOTE2: if nothing is filled out under k. The Netherlands will consider the answer to k.1 and k.2 to be ‘no’.</p> <p>l. In this part should be indicated if it is possible and allowed for the executing State to apply alternative sanctions if it is not possible to execute the confiscation order, either totally or in part. If under l.1 ‘yes’ is indicated, also fill l.2 concerning which sanctions may be applied and to what maximum. NOTE: transferring of alternative sanctions does not automatically mean these will be executed in the executing State. This is only possible if the law of the executing State also has the possibility for the same type of alternative sanction. NOTE2: when the confiscation order concerns an amount of money, the Dutch law does not know alternative sanctions. When the confiscation order concerns specific objects Dutch law has the possibility to take over alternative custody.</p> <p>m. All additional information that is relevant for the recognition and enforcement of the confiscation order should be added in this part of the certificate. For instance, information about to, in accordance with art. 16 FD, what bank account, under what reference number money obtained from the enforcement may be transferred to the issuing State. But also information about relatives/third parties in who’s name property might be hidden and what is the final date until when enforcement of the confiscation order is possible. NOTE: If not given, the Netherlands will always ask for the ‘expiration date’ for the enforcement. Putting this information directly in the certificate under m. is therefore more efficient.</p> <p>n. When everything is filled out correctly in the certificate, the certificate should be signed in part n.</p> <p><b>Have you attached (a certified copy of) the decision to the certificate?</b></p> <p>If the request is transmitted in accordance with art. 4 and 5 of the FD Art 7 (1) states the executing State shall without further formality recognise a confiscation order and shall forthwith take all the necessary measures for its execution. Unless, however, the competent authorities decide to invoke one of the grounds for non-recognition or non-execution provided for in Art 8 or one of the grounds for postponement of execution provided for in Art 10.</p> <p><b>Remember:</b> The administration and registration of assets that are frozen or seized as part of a confiscation procedure have to be accurate and up-to-date. Special attention has to be paid to the terms that are applicable. It is useful to send all relevant information/documents together with your request concerning, for instance, earlier legal assistance or ‘execution pieces’ with regards to frozen property, information you have about the whereabouts of property/income of the person concerned.</p>		
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<p><b>Is the certificate in the correct language?</b></p> <p>Art 19 (1) states that the certificate shall be translated into the official language of the executing state.</p> <p>NL accepts Dutch and English BE accepts Dutch, English, French and German DE accepts German.</p> <p><b>Remember:</b> The confiscation order itself does not have to be translated, however, you do have to attach a (certified copy) of the confiscation order to your request.</p>		
<p><b>Are there obligations to inform the executing state after a confiscation order has been transmitted?</b></p> <p>Art 14 (3) enumerates various instances when the issuing state shall inform the executing state immediately by any means capable of producing a written record. This is for example the case when it considers that there is the risk that execution beyond the maximum amount may occur (a) or if an authority of the issuing State receives any sum of money which the person concerned has paid voluntarily in respect of the confiscation order (c).</p> <p>Art 15 states that the issuing state shall inform the executing state of any decision or measure as a result of which the order ceases to be enforceable (f.i. if a pardon/amnesty is granted).</p>		

<p><b>Step 4: How to proceed after a successful confiscation</b></p>		
<p><b>If confiscation was successful, how will the confiscated property or money be disposed between the issuing and the executing state?</b></p> <p>Art 16 determines that in cases of confiscated money 50 % of the amount which has been obtained from the execution of the confiscation order shall be transferred by the executing State to the issuing State. This is unless the amount obtained from the execution of the confiscation order is below EUR 10 000, or the equivalent to that amount, the amount shall accrue to the executing State.</p> <p>In cases of property the executing state may decide if it will be sold and the proceeds of the sale shall be disposed of in accordance with the rules above or the property may be transferred to the issuing State. If the confiscation order covers an amount of money, the property may only be transferred to the issuing State when that State has given its consent.</p> <p><b>Remember:</b> The executing State shall not be required to sell or return specific items covered by the confiscation order which constitute cultural objects forming part of the national heritage of that State (Art 16 (3)). Also, there might be an agreement existing between the issuing State and the executing State containing additional or different provisions (Art 16 (4)).</p>		

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Frequently Asked Questions (FAQ)

**May a certificate concerning specific items of property or money be transmitted to more than one executing State at a time?**

The FD differentiates between specific items of property and money. Pursuant to Art 5 (2) certificates can be transmitted to more than one executing State at the same time in cases where:

- the competent authority of the issuing State has reasonable grounds to believe that different items of property covered by the confiscation order are located in different executing States,
- the confiscation of a specific item of property covered by the confiscation order involves action in more than one executing State,
- the competent authority of the issuing State has reasonable grounds to believe that a specific item of property covered by the confiscation order is located in one of two or more specified executing States.

Concerning confiscations of an amount of money a certificate may be transmitted to more than one executing State at the same time in cases where

- the property concerned has not been frozen under Council Framework Decision 2003/577/JHA or,
- the value of the property which may be confiscated in the issuing State and any one executing State is not likely to be sufficient for the execution of the full amount covered by the confiscation order.

**Is the underlying criminal act for the confiscation order of relevance?**

It depends. Art 6 (1) gives a list of offences that are also included in the certificate. It states that if the acts giving rise to the confiscation order constitute one or more of the enlisted offences and is punishable by a custodial sentence of a maximum of at least three years, the confiscation order shall give rise to execution without verification of double criminality. Hence, one can deduce from this provision that other underlying offences may be subject to verification by the executing state.

**If a request for confiscation concerns a specific item of property can instead a sum of money be paid?**

Yes. According to Art 7 (2) the competent authorities of the issuing and the executing States may, if provided for under the law of those States, agree that confiscation in the executing State may take the form of a requirement to pay a sum of money corresponding to the value of the property.

**What if a confiscation order concerns an amount of money but a payment cannot be obtained?**

According to Art 7 (3) the competent authorities of the executing State shall, if payment is not obtained, execute the confiscation order in accordance with paragraph 1 on any item of property available for that purpose.

**If a confiscation order concerns an amount of money on basis of which currency should the order be executed?**

According to Art 7 (4) the competent authorities of the executing State shall, if necessary, convert the amount to be confiscated into the currency of the executing State at the rate of exchange obtaining at the time when the confiscation order was issued.

**What if the execution of the confiscation order is impossible to be executed?**

According to Art 8 (5) where it is impossible to execute the confiscation order for the reason that the property to be confiscated has already been confiscated, has disappeared, has been destroyed, cannot be found in the location indicated in the certificate or the location of the property has not been indicated in a sufficiently precise manner, even after consultation with the issuing State, the competent authority of the issuing State shall be notified forthwith.

**Can an interested party challenge the confiscation order before a court in the executing state?**

Pursuant to Art 9 (2) the substantial reasons for issuing the confiscation order cannot be challenged before a court in the executing State. However, if action is brought before a court in the executing State, the competent authority of the issuing State shall be informed thereof. It is however possible to appeal (in the executing state) the decision to recognize and enforce the confiscation order. In Germany and Belgium the person concerned is heard during the procedure for recognition at the competent court. In the Netherlands the public prosecutor first takes the decision concerning recognition and enforcement of the confiscation order and the person concerned has the possibility to appeal that decision (within 7 days) after he is notified of the recognition decision.

**What if the executing state considers the risk that the total value derived from its execution of an amount of money may exceed the amount specified in the confiscation order because of simultaneous execution of the confiscation order in more than one Member State?**

In cases like this, Art 10 (1a) gives the possibility to the executing state to postpone the execution of the confiscation order. Always contact the issuing state in situations like this.

**In cases where two or more confiscation orders concerning an amount of money are processed by the executing state who decides which order should be executed when the person concerned does not have sufficient means?**

Pursuant to Art 11 the decision shall be taken by the competent authority of the executing State according to the law of the executing State, with due consideration of all the circumstances, which may include the involvement of frozen assets, the relative seriousness and the place of the offence, the dates of the respective orders and the dates of transmission of the respective orders. The same counts when two or more confiscation orders concerning the same specific item of property are processed.

**By which law shall the execution of the confiscation order be governed?**

Pursuant to Art 12 (1) the confiscation order shall be governed by the law of the executing State and its authorities alone shall be competent to decide on the procedures for execution and to determine all the measures relating thereto.

**What if a person concerned is able to furnish proof of confiscation, totally or in part, in any other State?**

In a case like this Art 12 (2) rules that the competent authority of the executing State shall consult the competent authority of the issuing State by any appropriate means. Any part of the amount, in the case of confiscation of proceeds, that is recovered pursuant to the confiscation order in any State other than the executing State shall be deducted in full from the amount to be confiscated in the executing State.

**What if a confiscation order is issued against a legal person but the executing state does not recognise the principle of criminal liability of legal persons?**

According to Art 12 (3) the confiscation order shall be executed anyways.

**May the executing State impose measures as an alternative to the confiscation order, including custodial sanctions or any other measure limiting a person's freedom?**

Yes, but only if the issuing State has given its consent (Art 12 (4)). A corresponding box where this consent may be given can be found in the certificate under (I).

**Can an application for review of a confiscation order be made? If so, who decides on it?**

Yes, but pursuant to Art 13 (2) only the issuing State may determine any application for review of a confiscation order. A pardon or amnesty can be granted both in the issuing State as in the executing State. If a pardon or amnesty is granted, the other state is to be informed as soon as possible.

**If a confiscation order is transmitted to the executing state does this restrict the right of the issuing state to execute the confiscation order itself?**

No. Pursuant to Art 14 (1) the transmission of a confiscation order to one or more executing States in accordance with Articles 4 and 5 does not restrict the right of the issuing State to execute the confiscation order itself.

**What if a person is injured caused by the execution of a confiscation order?**

Pursuant to Art 18 the issuing State shall reimburse to the executing State any sums paid in damages by virtue of that responsibility to the said party except if, and to the extent that, the injury or any part of it is exclusively due to the conduct of the executing State. This is without prejudice to Article 9(2).

**Who is taking over costs resulting from the application of the framework decision?**

Pursuant to Art 20 Member States may not claim from each other the refund of costs resulting from application of the Framework Decision. However, where the executing State has had costs which it considers large or exceptional, it may propose to the issuing State that the costs be shared. The issuing State shall take into account any such proposal on the basis of detailed specifications given by the executing State.



Incoming: How to process an incoming confiscation order pursuant to FD 2006/783/JHA?<sup>10</sup>

<b>Step 1: Eligibility of the confiscation order</b>	Yes	No
<p><b>Are you the competent authority in the right state?</b></p> <p>Identifying the right executing state is depending on the confiscation order. Pursuant to Art 4 (1) the following differentiations are made</p> <ul style="list-style-type: none"> <li>- In the case of a confiscation order concerning an amount of money the order can be transmitted to the state where there are reasonable grounds to believe that the natural or legal person against whom the confiscation order has been issued has property or income.</li> <li>- In the case of a confiscation order concerning specific items of property, the certificate may be transmitted to a Member State where you have reasonable grounds to believe that property covered by the confiscation order is located.</li> <li>- If none of the above is the case the confiscation order may be transmitted to the Member State where the natural or legal person against whom the confiscation order has been issued is normally resident or has its registered seat respectively.</li> </ul> <p><b>Remember:</b> If you are not the competent authority to process the confiscation order in your state you are obliged to forward it to the competent authority (Art 4 (5)).</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Is the confiscation order issued by a court competent in criminal matters?</b></p> <p>Art 1 (1) states that the confiscation order must be issued by a court competent in criminal matters of another Member State. Art 2 (2) specifies that the confiscation order must have been issued by a court within a criminal proceeding.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>Is the transmitted order a confiscation order?</b></p> <p>In case of doubts Art 2 (c) clarifies that ‘confiscation’ means a final penalty or measure imposed by a court following proceedings in relation to a criminal offence or offences, resulting in the definitive deprivation of property. Property means property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents and instruments evidencing title to or interest in such property which the court in the issuing State has decided:</p> <p>(i) is the proceeds of an offence, or equivalent to either the full value or part of the value of such proceeds, or</p>	<input type="checkbox"/>	<input type="checkbox"/>

<sup>10</sup> NOTE: the FD is the instrument for issuing a confiscation order between MS until 19-12-2020 (Luxembourg and Ireland excepted, for those countries a MLA request is required.). After 19-12-2020, the Regulation (EU) 2018/1805 applies between Member States (Denmark and Ireland excepted as for both the Framework Decision remains the instrument for issuing a confiscation order).

<p>(ii) constitutes the instrumentalities of such an offence or (iii) is liable to confiscation resulting from the application in the issuing State of any of the extended powers of confiscation specified in Article 3(1) and (2) of Framework Decision 2005/212/JHA,<sup>11</sup> or (iv) is liable to confiscation under any other provisions relating to extended powers of confiscation under the law of the issuing State;</p>		
<p><b>Is the certificate in the correct language?</b></p> <p>Art 19 (1) states that the certificate shall be translated into the official language of the executing state.</p> <p>NL accepts Dutch and English BE accepts Dutch, English, French and German DE accepts German.</p> <p>Remember: Although (a certified copy of) the confiscation order should be attached to the certificate, it is not required to translate the confiscation order itself.</p>	<input type="checkbox"/>	<input type="checkbox"/>

<b>Step 2: Grounds for refusal to recognize or to postpone the execution of a confiscation order</b>	Yes	No
<p><b>Is the confiscation order in question eligible for processing?</b></p> <p>Art 7 (1) states the executing State shall without further formality recognise a confiscation order which has been transmitted in accordance with Articles 4 and 5, and shall forthwith take all the necessary measures for its execution. An exception, however, is made when the competent authorities decide to invoke one of the grounds for non-recognition or non-execution provided for in Article 8 or one of the grounds for postponement of execution provided for in Article 10.</p> <p>Art 8 enumerates a number of reasons that justify a refusal. For a complete enumeration of all reasons for refusal see Art 8 of the framework decision. One of the most important reasons may be if the execution of the confiscation order would be contrary to the principle of ne bis in idem, in cases referred to in Article 6(3). However, it should be kept in mind that according to Art 8 (2b) in relation to taxes, duties, customs duties and exchange activities, execution of a confiscation order 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 types of rules concerning taxes, duties, customs duties and exchange activities as the law of the issuing State. These grounds for refusal have been implemented in national law.</p>	<input type="checkbox"/>	<input type="checkbox"/>

<sup>11</sup> NOTE: article 3(1) and (2) of FD 2005/212/JHA has been replaced by articles 5 and 6 Directive 2014/42/EU (see art. 14 of the Directive 2014/42/EU)

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Step 3: How to proceed after a successful confiscation	Yes	No
<p data-bbox="201 365 1150 432"><b>If confiscation was successful, how will the confiscated property or money be disposed between the issuing and the executing state?</b></p> <p data-bbox="201 472 1166 824">Art 16 determines that in cases of confiscated money 50 % of the amount which has been obtained from the execution of the confiscation order shall be transferred by the executing State to the issuing State. This is unless the amount obtained from the execution of the confiscation order is below EUR 10 000, or the equivalent to that amount, the amount shall accrue to the executing State. In cases of property the executing state may decide if it will be sold and the proceeds of the sale shall be disposed of in accordance with the rules above or the property may be transferred to the issuing State. If the confiscation order covers an amount of money, the property may only be transferred to the issuing State when that State has given its consent.</p> <p data-bbox="201 864 1134 965"><b>Remember:</b> The executing State shall not be required to sell or return specific items covered by the confiscation order which constitute cultural objects forming part of the national heritage of that State (Art 16 (3)).</p>	<input data-bbox="1225 365 1249 398" type="checkbox"/>	<input data-bbox="1331 365 1355 398" type="checkbox"/>

Frequently Asked Questions (FAQ)
<p data-bbox="201 1131 1374 1198"><b>What to do if a certificate concerning specific items of property is transmitted to more than one executing State at the same time?</b></p> <p data-bbox="201 1238 1385 1305">Pursuant to Art 5 (2) certificates can be transmitted to more than one executing State at the same time in cases where:</p> <ul data-bbox="201 1310 1390 1552" style="list-style-type: none"> <li>- the competent authority of the issuing State has reasonable grounds to believe that different items of property covered by the confiscation order are located in different executing States,</li> <li>- the confiscation of a specific item of property covered by the confiscation order involves action in more than one executing State,</li> <li>- the competent authority of the issuing State has reasonable grounds to believe that a specific item of property covered by the confiscation order is located in one of two or more specified executing States.</li> </ul> <p data-bbox="201 1592 1350 1659">Concerning confiscations of an amount of money a certificate may be transmitted to more than one executing State at the same time in cases where</p> <ul data-bbox="201 1664 1369 1832" style="list-style-type: none"> <li>- the property concerned has not been frozen under Council Framework Decision 2003/577/JHA or,</li> <li>- the value of the property which may be confiscated in the issuing State and any one executing State is not likely to be sufficient for the execution of the full amount covered by the confiscation order.</li> </ul> <p data-bbox="201 1872 1286 1939">The issuing authority has to describe in the certificate which action is requested from each member state. If this is not clear, consult the issuing state.</p> <p data-bbox="201 2018 1046 2047"><b>Is the underlying criminal act for the confiscation order of relevance?</b></p>

It depends. Art 6 (1) gives a list of offences that are also included in the certificate. It states that the acts giving rise to the confiscation order constitute or more of the enlisted offences and is punishable by a custodial sentence of a maximum of at least three years, the confiscation order shall give rise to execution without verification of double criminality. Hence, one can deduce from this provision that other underlying offences may be subject to verification by the executing state. Also, in case of the refusal ground concerning territoriality (the underlying offences have been committed partly or in full in the executing state and/or outside the issuing state) the executing state can verify if these offences would lead to similar conviction (thus with confiscation) in the executing state. If not, the executing state may refuse to recognize and enforce the confiscation order.

**If a request for confiscation concerns a specific item of property can instead a sum of money be payed?**

Yes. According to Art 7 (2) the competent authorities of the issuing and the executing States may, if provided for under the law of those States, agree that confiscation in the executing State may take the form of a requirement to pay a sum of money corresponding to the value of the property.

**What if a confiscation order concerns an amount of money but a payment cannot be obtained?**

According to Art 7 (3) the competent authorities of the executing State shall, if payment is not obtained, execute the confiscation order in accordance with paragraph 1 on any item of property available for that purpose.

**If a confiscation order concerns an amount of money on basis of which currency should the order be executed?**

According to Art 7 (4) the competent authorities of the executing State shall, if necessary, convert the amount to be confiscated into the currency of the executing State at the rate of exchange obtaining at the time when the confiscation order was issued.

**What if the execution of the confiscation order is impossible to be executed?**

According to Art 8 (5) where it is impossible to execute the confiscation order for the reason that the property to be confiscated has already been confiscated, has disappeared, has been destroyed, cannot be found in the location indicated in the certificate or the location of the property has not been indicated in a sufficiently precise manner, even after consultation with the issuing State, the competent authority of the issuing State shall be notified forthwith.

**Can an interested party challenge the confiscation order before a court in the executing state?**

Pursuant to Art 9 (2) the substantial reasons for issuing the confiscation order cannot be challenged before a court in the executing State. However, if action is brought before a court in the executing State, the competent authority of the issuing State shall be informed thereof.

**What if the executing state considers the risk that the total value derived from its execution of an amount of money may exceed the amount specified in the confiscation order because of simultaneous execution of the confiscation order in more than one Member State?**

In cases like this, Art 10 (1a) gives the possibility to the executing state to postpone the execution order.

**In cases where two or more confiscation orders concerning an amount of money are processed by the executing state who decides which order should be executed when the person concerned does not have sufficient means?**

Pursuant to Art 11 the decision shall be taken by the competent authority of the executing State according to the law of the executing State, with due consideration of all the circumstances, which may include the involvement of frozen assets, the relative seriousness and the place of the offence, the dates of the respective orders and the dates of transmission of the respective orders. The same counts when two or more confiscation orders concerning the same specific item of property are processed.

**By which law shall the execution of the confiscation order be governed?**

Pursuant to Art 12 (1) the confiscation order shall be governed by the law of the executing State and its authorities alone shall be competent to decide on the procedures for execution and to determine all the measures relating thereto.

**What if a person concerned is to furnish proof of confiscation, totally or in part, in any other State?**

In a case like this Art 12 (2) rules that the competent authority of the executing State shall consult the competent authority of the issuing State by any appropriate means. Any part of the amount, in the case of confiscation of proceeds, that is recovered pursuant to the confiscation order in any State other than the executing State shall be deducted in full from the amount to be confiscated in the executing State.

**What if a confiscation order is issued against a legal person but the executing state does not recognise the principle of criminal liability of legal persons?**

According to Art 12 (3) the confiscation order shall be executed anyways.

**May the executing State impose measures as an alternative to the confiscation order, including custodial sanctions or any other measure limiting a person's freedom?**

Yes, but only if the issuing State has given its consent (Art 12 (4)). A corresponding box where this consent may be given can be found in the certificate under (I).

**Can an application for review of a confiscation order be made? If so, who decides on it?**

Yes, but pursuant to Art 13 (2) only the issuing State may determine any application for review of a confiscation order.

**If a confiscation order is transmitted to the executing state does this restrict the right of the issuing state to execute the confiscation order itself?**

No. Pursuant to Art 14 (2) the transmission of a confiscation order to one or more executing States in accordance with Articles 4 and 5 does not restrict the right of the issuing State to execute the confiscation order itself.

**What if a person is injured caused by the execution of a confiscation order?**

Pursuant to Art 18 the issuing State shall reimburse to the executing State any sums paid in damages by virtue of that responsibility to the said party except if, and to the extent that, the injury or any part of it is exclusively due to the conduct of the executing State. This is without prejudice to Article 9(2).

**Who is taken over costs resulting from the application of the framework decision?**

Pursuant to Art 20 Member States may not claim from each other the refund of costs resulting from application of the Framework Decision. However, where the executing State has had costs which it considers large or exceptional, it may propose to the issuing State that the costs be shared. The issuing State shall take into account any such proposal on the basis of detailed specifications given by the executing State.

## 5. Applying the principle of mutual recognition to financial penalties pursuant to EU FD 2005/214/JHA

Outgoing: How to issue a financial penalty pursuant to FD 2005/214/JHA?

<b>Step 1: Eligibility of the financial penalty</b>	Yes	No
<p data-bbox="201 517 767 546"><b>Is the decision in question a financial penalty?</b></p> <p data-bbox="201 589 999 618">According to Art 1 b financial penalty means the obligation to pay:</p> <p data-bbox="201 660 1142 936">(i) a sum of money on conviction of an offence imposed in a decision;            (ii) compensation imposed in the same decision for the benefit of victims, where the victim may not be a civil party to the proceedings and the court is acting in the exercise of its criminal jurisdiction;            (iii) a sum of money in respect of the costs of court or administrative proceedings leading to the decision;            (iv) a sum of money to a public fund or a victim support organisation, imposed in the same decision.</p> <p data-bbox="201 981 1142 1189">Remember: A financial penalty shall not include            — orders for the confiscation of instrumentalities or proceeds of crime,            — orders that have a civil nature and arise out of a claim for damages and restitution and which are enforceable in accordance with Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.</p>	<input data-bbox="1209 517 1233 546" type="checkbox"/>	<input data-bbox="1313 517 1337 546" type="checkbox"/>

<b>Step 2: Is the financial penalty issued by a competent authority?</b>	Yes	No
<p data-bbox="201 1368 807 1397"><b>Will the right state execute the financial penalty?</b></p> <p data-bbox="201 1440 1142 1503">According to Art 1 the final decision requiring a financial penalty to be paid by a natural or legal person where the decision was made by:</p> <p data-bbox="201 1545 1158 2002">(i) a court of the issuing State in respect of a criminal offence under the law of the issuing State;            (ii) an authority of the issuing State other than a court in respect of a criminal offence under the law of the issuing State, provided that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters;            (iii) an authority of the issuing State other than a court in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law, provided that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters;            (iv) a court having jurisdiction in particular in criminal matters, where the decision was made regarding a decision as referred to in point (iii);</p>	<input data-bbox="1209 1368 1233 1397" type="checkbox"/>	<input data-bbox="1313 1368 1337 1397" type="checkbox"/>

<b>Step 3: Execution of financial penalty?</b>	Yes	No
<p data-bbox="199 383 810 416"><b>Will the right state execute the financial penalty?</b></p> <p data-bbox="199 456 1150 595">Pursuant to Art 4 (1) a decision may be transmitted to the competent authorities of a Member State in which the natural or legal person against whom a decision has been passed has property or income, is normally resident or, in the case of a legal person, has its registered seat.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p data-bbox="199 636 946 669"><b>Is the competent authority in the executing state identified?</b></p> <p data-bbox="199 710 1134 987">Art 4 (5) and (6) state that if the competent authority in the executing State is not known all necessary inquiries should be made including via the contact points of the European Judicial Network in order to obtain the information from the executing State. When an authority in the executing State which receives a decision has no jurisdiction to recognise it and take the necessary measures for its execution, it shall, ex officio, transmit the decision to the competent authority and shall inform the competent authority in the issuing State accordingly.</p> <p data-bbox="199 1028 727 1167">DE: Bundesamt für Justiz (BfJ - Division III1). Adenauerallee 99-103 53113 Bonn Germany</p> <p data-bbox="199 1207 1126 1272">The Bundesamt für Justiz in Bonn is the central authority for all incoming and outgoing financial penalties.</p> <p data-bbox="199 1350 1102 1489">NL: Ministry of Justice and Security, Centraal Justitieel Incassobureau (CJIB) T.a.v. Europese Juridische Zaken Postbus 185NL -8900 AD Leeuwarden Email: <a href="mailto:centralauthority@cjib.minvenj.nl">centralauthority@cjib.minvenj.nl</a></p> <p data-bbox="199 1529 1078 1594">The CJIB cooperates with the prosecution office of Northern Netherlands concerning the recognition of a financial penalty.</p> <p data-bbox="199 1635 788 1809">BE: Federale Overheidsdienst (FOD)<sup>12</sup> Koning Albert II laan 33 PO box 22 1030 Brussels Belgium Email: <a href="mailto:international.coordination@minfin.fed.be">international.coordination@minfin.fed.be</a></p> <p data-bbox="199 1850 1110 1915">Belgium has designated the Federal Public Service Finance as a central body responsible for assistance in questions regarding financial penalties.</p>	<input type="checkbox"/>	<input type="checkbox"/>

<sup>12</sup> In practice and given the high number of issued penalties Dutch authorities transmit penalties directly to the local prosecution offices that is responsible.

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<b>Step 4: Obligations of the issuing state</b>	Yes	No
<p data-bbox="201 365 839 398"><b>Are there obligations to inform the executing state?</b></p> <p data-bbox="201 439 1150 645">Art 12 (1) dictates that 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 decision ceases to be enforceable or is withdrawn from the executing State for any other reason. In these cases, the executing State shall terminate enforcement of the decision as soon as it is informed of that decision or measure (Art 12 (2)).</p> <p data-bbox="201 685 1158 824">Pursuant to Art 15 (3), if, after transmission of a certificate, an authority of the issuing State receives any sum of money which the sentenced person has paid voluntarily in respect of the decision, that authority shall inform the competent authority in the executing State without delay.</p>	<input data-bbox="1209 365 1233 398" type="checkbox"/>	<input data-bbox="1321 365 1345 398" type="checkbox"/>

Frequently asked Questions (FAQ)
<p data-bbox="201 1055 1342 1122"><b>Does the framework decision also cover financial penalties imposed in respect of road traffic offences?</b></p> <p data-bbox="201 1162 1350 1229">Yes, lit 4 states that the framework decision also cover financial penalties imposed in respect of road traffic offences.</p>
<p data-bbox="201 1270 987 1303"><b>Can a decision be transmitted to more than one state at a time?</b></p> <p data-bbox="201 1344 1139 1411">No. Pursuant to Art 4 (4) the issuing State shall only transmit a decision to one Executing State at any one time.</p>
<p data-bbox="201 1485 1067 1518"><b>By which law shall the execution of the financial penalty be governed?</b></p> <p data-bbox="201 1559 1378 1697">Pursuant to Art 9(1) the financial penalty shall be governed by the law of the executing State and in the same way as a financial penalty of the executing State. The authorities of the executing State alone shall be competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for termination of enforcement.</p>
<p data-bbox="201 1744 1378 1812"><b>What if the sentenced person concerned is able to furnish proof of a payment, totally or in part, in any State?</b></p> <p data-bbox="201 1852 1374 1991">In this case Art 9 (2) rules that the competent authority of the executing State shall consult the competent authority of the Issuing State by any appropriate means. Any part of the penalty recovered in whatever manner in any State shall be deducted in full from the amount, which is to be enforced in the executing State.</p>

**What if a financial penalty is imposed on a legal person but the executing state does not recognise the principle of criminal liability of legal persons?**

According to Art 9 (3) the financial penalty shall be executed anyways.

**May the executing State impose measures as an alternative to the financial penalty, including custodial sanctions?**

No, unless the laws of the executing state provides for such measure and the issuing State has allowed for the application of such alternative sanctions in the certificate (Art 10). The severity of the alternative sanction shall be determined in accordance with the law of the executing State, but shall not exceed any maximum level stated in the certificate transmitted by the issuing State.

**To which state shall monies accrue that have been obtained?**

Pursuant to Art 13 monies obtained from the enforcement of decisions shall accrue to the executing State unless otherwise agreed between the issuing and the executing State, in particular in the cases referred to in Article 1(b)(ii).

**When does the right of execution of the decision revert to the issuing State?**

Pursuant to Art 15 the right of execution of the decision shall revert to the issuing state

(a) upon it being informed by the executing State of the total or partial non-execution or the non-recognition or the non-enforcement of the decision in the case of Article 7 (for exceptions see Art 7(2)(a), in the case of Article 11(1), and in the case of Article 20(3))

(b) when the executing State has been informed by the issuing State that the decision has been withdrawn from the executing State pursuant to Article 12.

**May the executing state claim any costs resulting from the application of the framework decision?**

No, Art 17 clearly states that Member States shall not claim any costs.

Incoming: How to process an incoming financial penalty pursuant to FD 2005/214/JHA?

<b>Step 1: Eligibility of the financial penalty</b>	Yes	No
<p><b>Is the decision in question a financial penalty?</b></p> <p>According to Art 1 a financial penalty means the obligation to pay:</p> <p>(i) a sum of money on conviction of an offence imposed in a decision;            (ii) compensation imposed in the same decision for the benefit of victims, where the victim may not be a civil party to the proceedings and the court is acting in the exercise of its criminal jurisdiction;            (iii) a sum of money in respect of the costs of court or administrative proceedings leading to the decision;            (iv) a sum of money to a public fund or a victim support organisation, imposed in the same decision.</p> <p>Remember: A financial penalty shall not include</p> <ul style="list-style-type: none"> <li>— orders for the confiscation of instrumentalities or proceeds of crime,</li> <li>— orders that have a civil nature and arise out of a claim for damages and restitution and which are enforceable in accordance with Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.</li> </ul>		

<b>Step 2: Issued by competent authority</b>	Yes	No
<p><b>Is the financial penalty in question eligible for processing?</b></p> <p>According to Art 1, the final decision requiring a financial penalty has to be paid by a natural or legal person where the decision was made by a</p> <p>(i) a court of the issuing State in respect of a criminal offence under the law of the issuing State;</p> <p>(ii) an authority of the issuing State other than a court in respect of a criminal offence under the law of the issuing State, provided that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters;</p> <p>(iii) an authority of the issuing State other than a court in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law, provided that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters;</p> <p>(iv) a court having jurisdiction in particular in criminal matters, where the decision was made regarding a decision as referred to in point (iii);</p>	<input type="checkbox"/>	<input type="checkbox"/>

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<b>Step 3: Execution of the financial penalty</b>	Yes	No
<p><b>Are you the competent authority in the right state?</b></p> <p>Pursuant to Art 4 (1) a decision may be transmitted to the competent authorities of a Member State in which the natural or legal person against whom a decision has been passed has property or income, is normally resident or, in the case of a legal person, has its registered seat.</p> <p>Art 4 (5) and (6) state that if the competent authority in the executing State is not known all necessary inquiries should be made including via the contact points of the European Judicial Network in order to obtain the information from the executing State. When an authority in the executing State which receives a decision has no jurisdiction to recognise it and take the necessary measures for its execution, it shall, ex officio, transmit the decision to the competent authority and shall inform the competent authority in the issuing State accordingly.</p>	<input type="checkbox"/>	<input type="checkbox"/>

<b>Step 4: Grounds for refusal to recognize or to postpone the execution of a financial penalty and further obligations</b>	Yes	No
<p><b>Is the certificate produced correctly?</b></p> <p>Pursuant to Art. 7 (1) the competent authorities in the executing State may refuse to recognise and execute the decision if the certificate provided for in Article 4 is not produced, is incomplete or manifestly does not correspond to the decision.</p> <p>Other grounds for refusal are enumerated in Art 7.</p> <p>(a) decision against the sentenced person in respect of the same acts has been delivered in the executing State or in any State other than the issuing or the executing State, and, in the latter case, that decision has been executed;</p> <p>(b) in one of the cases referred to in Article 5(3), the decision relates to acts which would not constitute an offence under the law of the executing State;</p> <p>(c) the execution of the decision is statute-barred according to the law of the executing State and the decision relates to acts which fall within the jurisdiction of that State under its own law.</p> <p>(d) the decision relates to acts which:</p> <p>(i) are regarded by the law of the executing State as having been committed in whole or in part in the territory of the executing State or in a place treated as such, or</p> <p>(ii) have been committed outside the territory of the issuing</p>	<input type="checkbox"/>	<input type="checkbox"/>

<p>State and the law of the executing State does not allow prosecution for the same offences when committed outside its territory;</p> <p>(e) there is immunity under the law of the executing State, which makes it impossible to execute the decision;</p> <p>(f) the decision has been imposed on a natural person who under the law of the executing State due to his or her age could not yet have been held criminally liable for the acts in respect of which the decision was passed;</p> <p>g) according to the certificate provided for in Article 4, the person concerned</p> <p>(i) in case of a written procedure was not, in accordance with the law of the issuing State, informed personally or via a representative, competent according to national law, of his right to contest the case and of time limits of such a legal remedy, or</p> <p>(ii) did not appear personally, unless the certificate states:</p> <ul style="list-style-type: none"> <li>— that the person was informed personally, or via a representative, competent according to national law, of the proceedings in accordance with the law of the issuing State, or</li> <li>— that the person has indicated that he or she does not contest the case;</li> </ul> <p>(h) the financial penalty is below EUR 70 or the equivalent to that amount.<sup>13</sup></p> <p><b>Remember:</b> Art 7(3) mentions three cases (Art 7(1), 2(c) and (g)) where the competent authority in the executing state before deciding not to recognise and to execute a decision, either totally or in part, shall consult the competent authority in the issuing State, by any appropriate means, and shall, where appropriate, ask it to supply any necessary information without delay.</p>		
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<p><b>Are there obligations to inform the issuing state?</b></p> <p>Art 14 enumerates a number of obligations to inform competent authority of the issuing state without delay by any means which leaves a written record. The most relevant being</p> <p>(b) of any decision not to recognise and execute a decision, according to Articles 7 or 20(3), together with the reasons for the decision;</p> <p>(c) of the total or partial non-execution of the decision for the reasons referred to in Article 8, Article 9(1) and (2), and Article 11(1);</p> <p>(d) of the execution of the decision as soon as the execution has been completed;</p> <p>(e) of the application of alternative sanction, according to Article 10.</p>	<input type="checkbox"/>	<input type="checkbox"/>
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<sup>13</sup> NOTE: Some Member States do not make use of this ground for refusal in practice such as NL.

<p><b>Remember:</b> There are obligations to inform for the issuing state as well. Art 12 (1) dictates that 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 decision ceases to be enforceable or is withdrawn from the executing State for any other reason. In these cases the executing State shall terminate enforcement of the decision as soon as it is informed of that decision or measure (Art 12 (2)).</p>		
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<p>Frequently asked Questions (FAQ)</p>		
<p><b>Does the framework decision also cover financial penalties imposed in respect of road traffic offences?</b></p> <p>Yes, lit 4 states that the framework decision also cover financial penalties imposed in respect of road traffic offences.</p>		
<p><b>Can a decision be transmitted to more than one state at a time?</b></p> <p>No. Pursuant to Art 4 (4) the issuing State shall only transmit a decision to one Executing State at any one time.</p>		
<p><b>By which law shall the execution of the financial penalty be governed?</b></p> <p>Pursuant to Art 9(1) the financial penalty shall be governed by the law of the executing State and in the same way as a financial penalty of the executing State. The authorities of the executing State alone shall be competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for termination of enforcement.</p>		
<p><b>What if the sentenced person concerned is able to furnish proof of a payment, totally or in part, in any State?</b></p> <p>In this case Art 9 (2) rules that the competent authority of the executing State shall consult the competent authority of the Issuing State by any appropriate means. Any part of the penalty recovered in whatever manner in any State shall be deducted in full from the amount, which is to be enforced in the executing State.</p>		
<p><b>What if a financial penalty is imposed on a legal person but the executing state does not recognise the principle of criminal liability of legal persons?</b></p> <p>According to Art 9 (3) the financial penalty shall be executed anyways.</p>		
<p><b>May the executing State impose measures as an alternative to the financial penalty, including custodial sanctions?</b></p> <p>No, unless the laws of the executing state provides for such measure and the issuing State has allowed for the application of such alternative sanctions in the certificate (Art 10). The severity of the alternative sanction shall be determined in accordance with the law of the executing State, but shall not exceed any maximum level stated in the certificate transmitted by the issuing State.</p>		

**To which state shall monies accrue that have been obtained?**

Pursuant to Art 13 monies obtained from the enforcement of decisions shall accrue to the executing State unless otherwise agreed between the issuing and the executing State, in particular in the cases referred to in Article 1(b)(ii).

**When does the right the right of execution of the decision revert to the issuing State?**

Pursuant to Art 15 the right of execution of the decision shall revert to the issuing state

(a) upon it being informed by the executing State of the total or partial non-execution or the non-recognition or the non-enforcement of the decision in the case of Article 7 (for exceptions see Art 7(2)(a), in the case of Article 11(1), and in the case of Article 20(3))

(b) when the executing State has been informed by the issuing State that the decision has been withdrawn from the executing State pursuant to Article 12.

**May the executing state claim any costs resulting from the application of the framework decision?**

No, Art 17 clearly states that Member States shall not claim any costs.

**May the person concerned contest the transferred financial penalty in the executing state?**

No, under FD 2005/214/JHA the penalties transferred are irrevocable decisions. Prior to the transfer of the decision the person concerned has had the possibility to contest the decision. It is not possible in the executing state to refuse to execute the financial penalty because the person concerned objects the initial decision.

6. ANNEX

# Prisoner Transfers pursuant to Framework Decision 909

## Outgoing Transfers

If certificate not complete grounds for refusal Art 9(1) (a-l). Consultations before refusal (Art 9 (3)) and reasonable deadline for corrections 9(1)(a).

### Step 1: Eligibility of the prisoner for a transfer to the executing State

Requirements of nationality and place of living (Art 4)

Offence punishable by at least three years and enlisted in Art 7(1)

At least 6 months to be served in prison (Art 9(1) (h)) Also consider the duration of the transfer procedure which may easily take 3 months.

Consultations with the competent authority of executing State (recommended in Art 4(3) but not mandatory)

Transfer serves rehabilitation of prisoner ( Art 4(2))

Prisoner is national of executing state and lives there (Art 4(1)(a))

Prisoner is national of executing state and will be deported (Art 4(1)(b))

Other MS has consented to forwarding of judgement

Criteria: Place of family, linguistic, cultural, social or economic and other links (lit 17)

For information consult e.g.:  
- immigration authorities  
- family members  
- underlying judgement

Criteria: Culture, communication, access to services incl work, medical and legal, contact with family and friends

### Step 2: Eligibility of executing State for transfer

Especially Fundamental Rights have to be respected (Art 3(4))

Assessing Prison Conditions

In abstracto test: General detention conditions

In concreto test: specific situation of transferred person (based on consultations)

Opportunity for sentenced person to give opinion orally or in writing (Art 6(3)). Should be forwarded with certificate.

#### Competent Authorities

Contact EJM to achieve detailed information (Art 5 (4)).

**DE:** In most cases, the local prosecutor's office where the prisoner has its residence is responsible.

**NL:** Ministry of Security and Justice, IOS (Internationale Overdracht Strafvonnissen)

**BE:** In most cases, the local prosecutor's office where the prisoner has its residence is responsible.

### Step 3: Consent of the transferred person (Art 6(1))

a) Except. Art 6(2): Executing state is state of nationality of prisoner where he/she lives

b) Except. Art 6(2): Executing state is state where he/she will be deported.

c) Except. Art 6(2): Sentenced person has fled to Executing State

### Step 4: Formal requirements

Art 9(1): Complete certificate corresponding to judgment.

Art 23: Certificate in correct language

Art 5(1): Copy of underlying judgement included

Art 5(4): Transmitted to competent authority

Calculation of remaining prison time (section (j) certificate)

Other issues that might impact the transfer procedure

Lit 18: fax/email are permitted as long as authenticity can be established

DE: German  
BE: Dutch, English, French, German  
NL: Dutch, English

Wrong authority  
Executing State obliged to forward to competent authority (Art 5(5))

Absentia Judgements Art 9(1) (i)

Other convictions/specialty principle (Art 18)

Measure of psychiatric or health care (Art 9(1) (k) and lit 19)

Fine or Confiscation order imposed in judgement (Art 3(3))

# Prisoner Transfers pursuant to Framework Decision 909

## Incoming Transfers

Step 1: Are you the competent authority?

If you are not competent authority, there is obligation to forward the certificate to the competent authority (Art 5(5))

Given that the transfer procedure itself can take up to three months it is recommended to consider a minimum remaining sentence of 9 months.

Criteria: Culture, communication, access to services incl work, medical and legal, contact with family and friends

Step 2: Eligibility of the prisoner for a transfer to the executing State

Requirements of nationality and place of living (Art 4)

Offence punishable by at least three years and enlisted in Art 7(1)

At least 6 months to be served in prison (Art 9(1) (h))

Consultations with the competent authority of executing State (recommended in Art 4(3) but not mandatory)

Transfer serves rehabilitation of prisoner (Art 4(2))

Prisoner is national of executing state and lives there (Art 4(1)(a))

Prisoner is national of executing state and will be deported (Art 4(1)(b))

Other MS has consented to forwarding of judgement

Criteria: Place of family, linguistic, cultural, social or economic and other links (lit 17)

For information consult e.g.:  
- immigration authorities  
- family members  
- underlying judgement

Step 3: Consent of the transferred person (Art 6(1))

a) Except. Art 6(2): Executing state is state of nationality of prisoner where he/she lives

b) Except. Art 6(2): Executing state is state where he/she will be deported.

c) Except. Art 6(2): Sentenced person has fled to Executing State

Opportunity for sentenced person to give opinion orally or in writing (Art 6(3)). Should be forwarded with certificate.

Grounds for refusal Art 9(1) (a-l). Consultations before refusal (Art 9 (3))

Step 4: Formal requirements

Art 9(1): Complete certificate corresponding to judgment.

Art 23: Certificate in correct language

Art 5(1): Copy of underlying judgement included

Calculation of remaining prison time (section (j) certificate)

Other Issues that might impact the transfer procedure

Art 12(3): Time limit for a decision 90 days. If more time inform the Issuing State

Lit 18: fax/email are permitted as long as authenticity can be established

DE: German  
BE: Dutch, English, French, German  
NL: Dutch, English

Absentia Judgements Art 9(1) (i)

Other convictions/specialty principle (Art 18)

Measure of psychiatric or health care (Art 9(1) (k) and lit 19)

Fine or Confiscation order imposed in judgement (Art 3(3))

If the certificate incomplete: reasonable deadline to correct it (Art 9(1)(a))

# Judgements and probation decisions pursuant to Framework Decision 947

## Outgoing

### Step 1: Applicability of the Framework Decision

The Framework Decision 947 is pursuant to Art 1 (2) only applicable to

(a) the recognition of judgments and, where applicable, probation decisions.

(b) the transfer of responsibility for the supervision of probation measures and alternative sanctions;

(c) all other decisions related to those under (a) and (b);

Pursuant to Art 2 (1) 'judgement' means a final decision or order of a court imposing

- (a) a custodial sentence or measure involving deprivation of liberty, if a conditional release has been granted on the basis of that judgment or by a subsequent probation decision (Art 2 (5))
- (b) a suspended sentence (Art 2(2))
- (c) a conditional sentence (Art 2 (3))
- (d) an alternative sanction (Art 2 (3))

### Step 2: Eligibility of the person for a transfer to the executing State

Upon request of the sentenced person, the judgment or probation decision may be forwarded to another Member State (Art 5(2))

Judgement against mentally ill person including medical/therapeutic treatment that cannot be supervised by executing state (lit 16)

Judgement includes community service that will be completed within 6 months (lit 16)

Right state pursuant to Art 5(1)

Reasons that may lead to refusal Art 11 (a)-(k)

Before refusing judgement/probation decision competent authorities should communicate (Art 11(3))

**Social Rehabilitation: Reintegration into society, by enabling that person to**

- preserve family, linguistic, cultural and other ties
- to improve monitoring of compliance with probation measures and alternative sanctions (lit 8)
- granted an employment contract, if he/she is a family member of a lawful and ordinary resident person of that Member State, or if he/she intends to follow a study or training in that Member State (lit 14)

... in which the sentenced person is lawfully and ordinarily residing

... where the person has returned

... where the person wants to return.

### Step 3: Formal requirements

Art 6(2): Complete certificate corresponding to judgment.

Art 21: Certificate in correct language

Art 6(6): Transmitted to competent authority

If certificate not complete grounds for refusal Art 6(2). Reasonable deadline for corrections.

DE: German  
BE: Dutch, English, French, German  
NL: Dutch, English

If wrong authority obligation to forward to competent authority (Art 6(7))

#### Competent Authorities

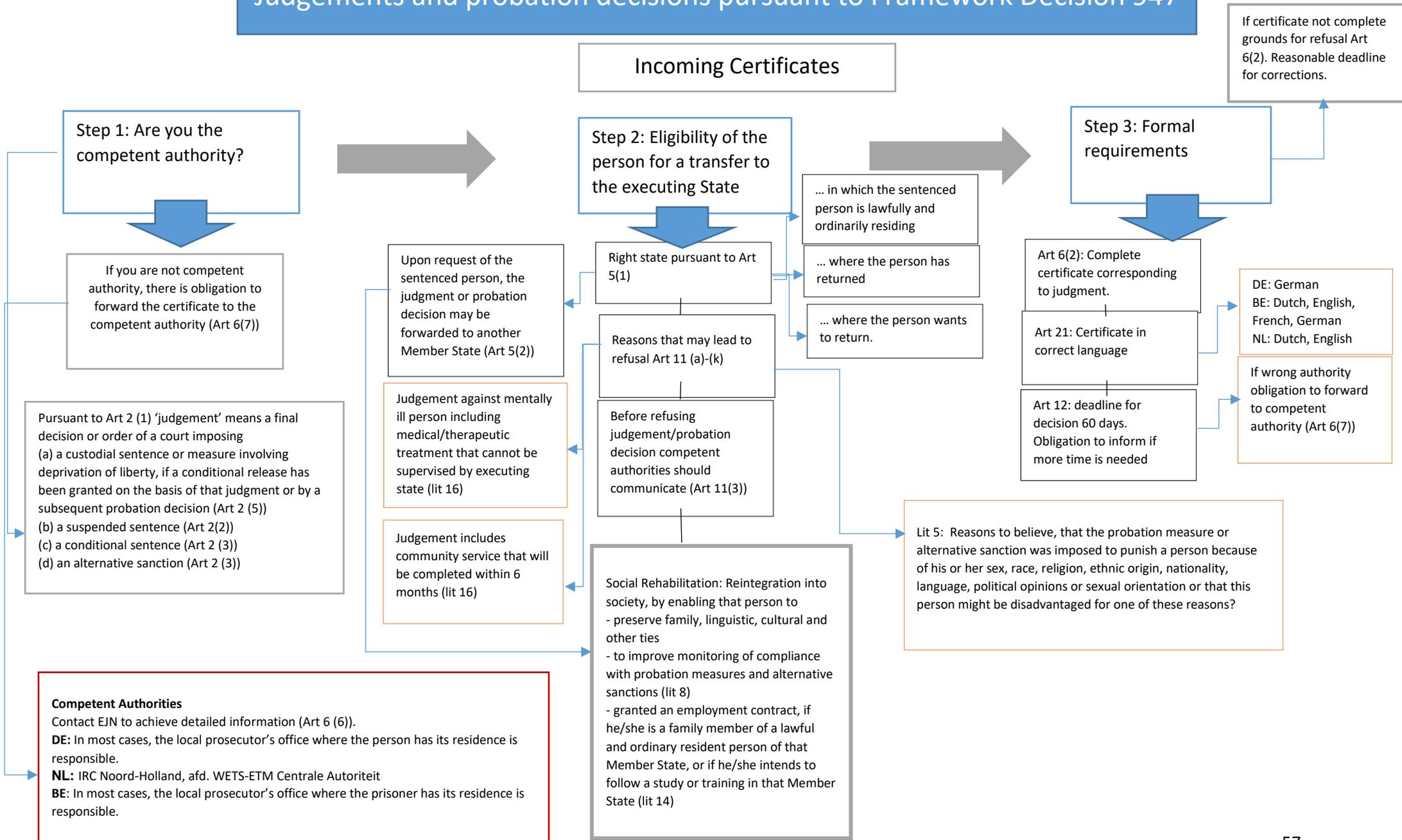
Contact EJN to achieve detailed information (Art 6 (6)).

**DE:** In most cases, the local prosecutor's office where the person has its residence is responsible.

**NL:** IRC Noord-Holland, afd. WETS-ETM Centrale Autoriteit

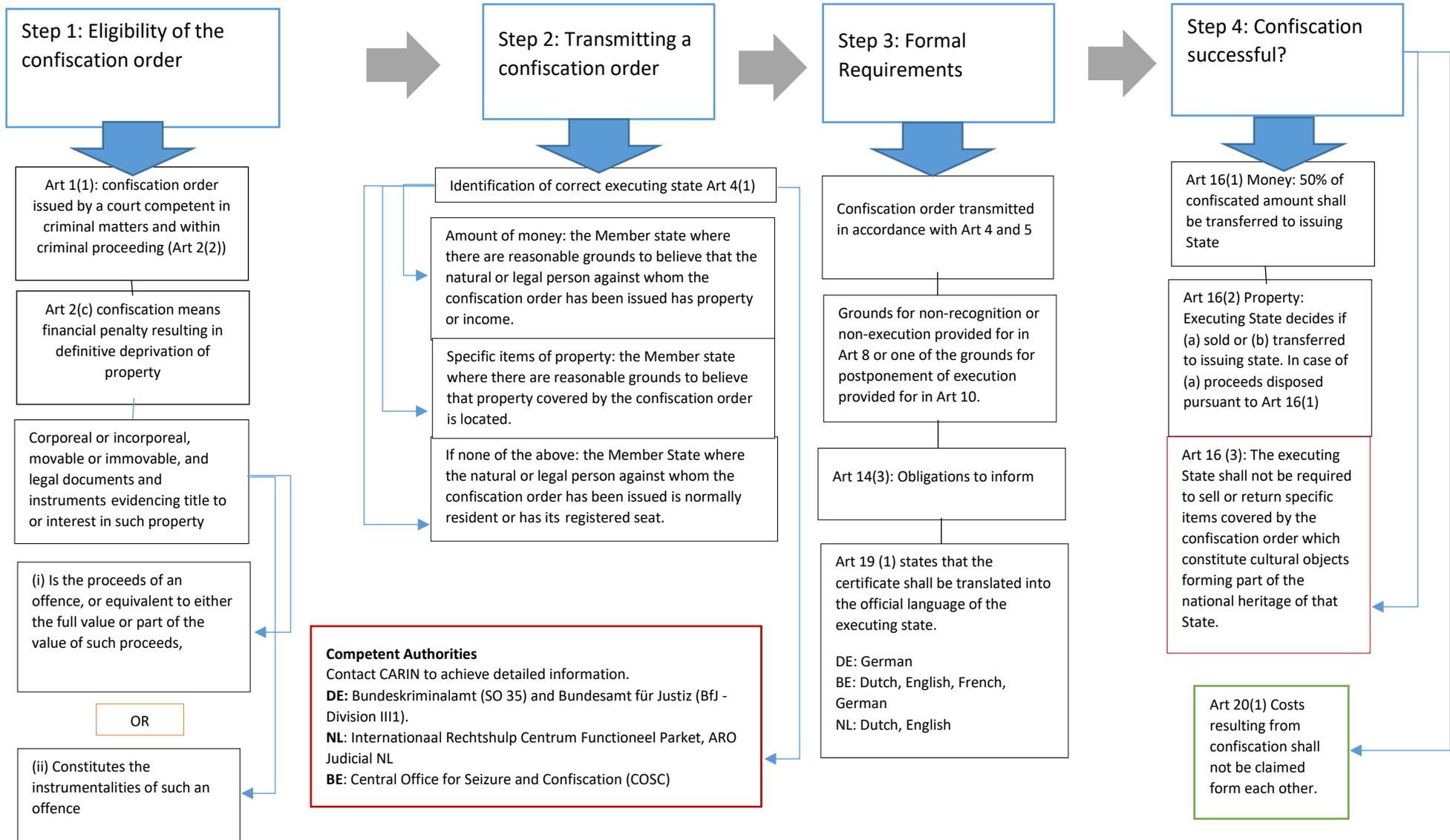
**BE:** In most cases, the local prosecutor's office where the prisoner has its residence is responsible.

# Judgements and probation decisions pursuant to Framework Decision 947



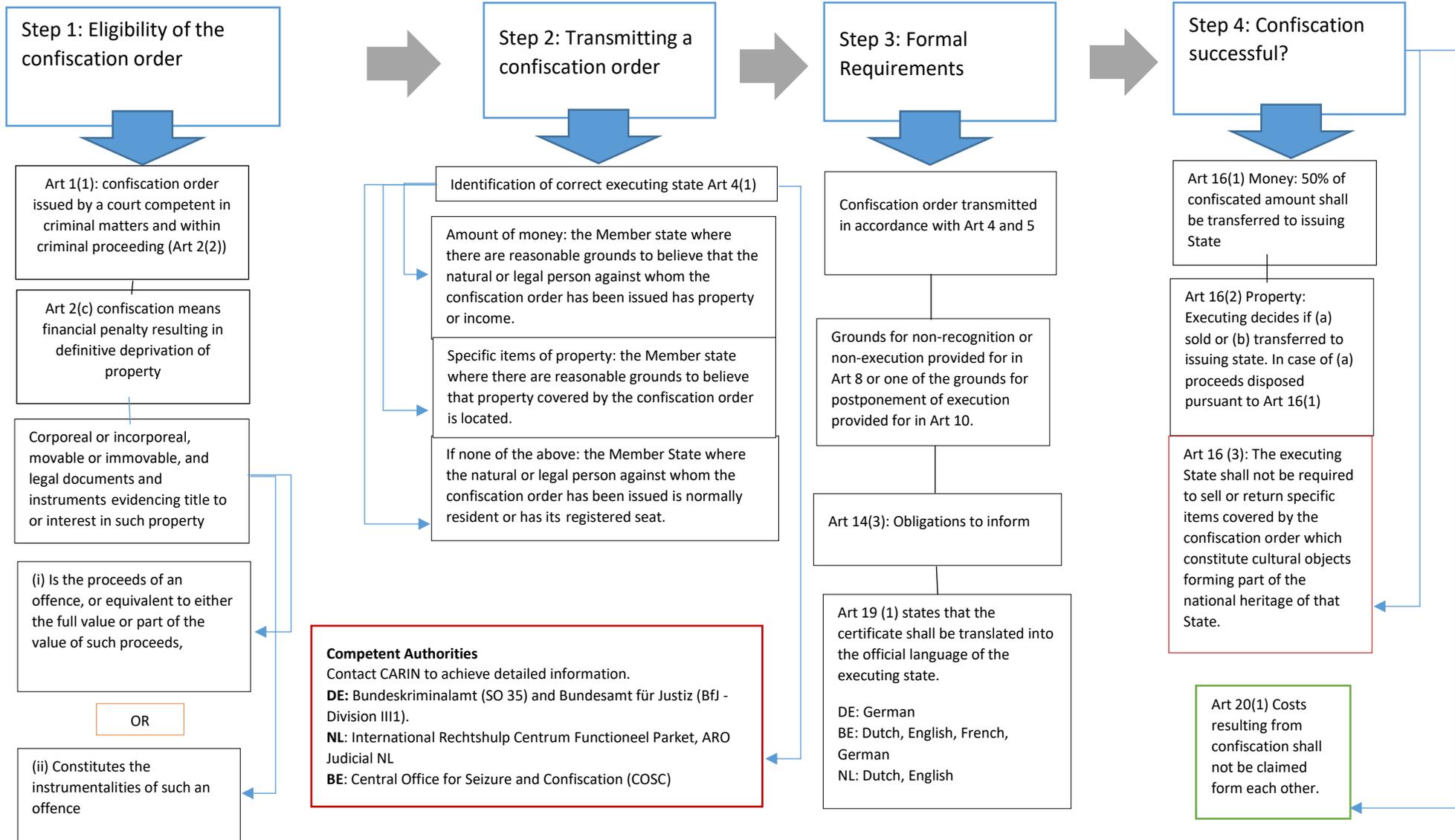
# Applying the principle of mutual recognition to confiscation orders pursuant to Framework Decision 2006/783/JHA

## Outgoing Orders



# Applying the principle of mutual recognition to confiscation orders pursuant to Framework Decision 2006/783/JHA

## Incoming Orders



# Applying the principle of mutual recognition to financial penalties pursuant to EU Framework Decision 2005/214/JHA

## Outgoing Financial Penalties

### Step 1: Eligibility financial penalty (Art 1 (b))

(i) a sum of money on conviction of an offence imposed in a decision.

(ii) compensation imposed in the same decision for the benefit of victims, where the victim may not be a civil party to the proceedings and the court is acting in the exercise

(iii) a sum of money in respect of the costs of court or administrative proceedings leading to the decision;

(iv) a sum of money to a public fund or a victim support organisation, imposed in the same decision.

NOT

- orders for the confiscation of instrumentalities or proceeds of crime
- orders that have a civil nature and arise out of a claim for damages and restitution and which are enforceable in accordance with Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

### Step 2: Issued by competent authority

(i) a court of the issuing State in respect of a criminal offence under the law of the issuing State;

(ii) an authority of the issuing State other than a court in respect of a criminal offence under the law of the issuing State, provided that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters;

(iii) an authority of the issuing State other than a court in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law, provided that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters;

(iv) a court having jurisdiction in particular in criminal matters, where the decision was made regarding a decision as referred to in point (iii);

### Step 3: Execution of financial penalty

Right State? Member State in which the natural or legal person against whom a decision has been passed has property or income, is normally resident or, in the case of a legal person, has its registered seat.(Art 4 (1))

Competent authorities pursuant to Art 4(5)

NL: Ministry of Justice and Security, Centraal Justitiele Incassobureau (CJIB) T.a.v. Europese Juridische Zaken  
Postbus 185NL -8900 AD Leeuwarden  
Email: centralauthority@cjib.minvenj.nl

DE: Bundesamt für Justiz (BfJ - Division III1).  
Adenauerallee 99-103  
53113 Bonn  
Germany

BE: Federale Overheidsdienst (FOD)  
Koning Albert II laan 33  
PO box 22  
1030 Brussels Belgium  
international.coordination@minfin.fed.be

### Step 4: Further obligations

Art 12 (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 decision ceases to be enforceable or is withdrawn from the executing State for any other reason

Art 15 (3): if, after transmission of a certificate, an authority of the issuing State receives any sum of money which the sentenced person has paid voluntarily in respect of the decision, that authority shall inform the competent authority in the executing State without delay.

# Applying the principle of mutual recognition to financial penalties pursuant to EU Framework Decision 2005/214/JHA

## Incoming Financial Penalties

**Step 1: Eligibility financial penalty (Art 1 (b))**

(i) a sum of money on conviction of an offence imposed in a decision.

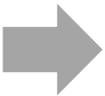
(ii) compensation imposed in the same decision for the benefit of victims, where the victim may not be a civil party to the proceedings and the court is acting in the exercise

(iii) a sum of money in respect of the costs of court or administrative proceedings leading to the decision;

(iv) a sum of money to a public fund or a victim support organisation, imposed in the same decision.

NOT

- orders for the confiscation of instrumentalities or proceeds of crime
- orders that have a civil nature and arise out of a claim for damages and restitution and which are enforceable in accordance with Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.



**Step 2: Issued by competent authority**

(i) a court of the issuing State in respect of a criminal offence under the law of the issuing State;

(ii) an authority of the issuing State other than a court in respect of a criminal offence under the law of the issuing State, provided that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters;

(iii) an authority of the issuing State other than a court in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law, provided that the person concerned has had an opportunity to have the case tried by a court having jurisdiction in particular in criminal matters;



**Step 3: Execution of financial penalty**

Are you the competent authority of the right State? Member State in which the natural or legal person against whom a decision has been passed has property or income, is normally resident or, in the case of a legal person, has its registered seat. (Art 4 (1))

Grounds for refusal to recognize or to postpone the execution of a financial penalty:  
 Certificate provided for in Article 4 is not produced, is incomplete or manifestly does not correspond to the decision (Art. 7 (1))  
 Most relevant grounds for refusal (Art 7)  
 (a) decision against the sentenced person in respect of the same acts has been delivered in the executing State or in any State other than the issuing or the executing State, and, in the latter case, that decision has been executed;  
 (b) in one of the cases referred to in Article 5(3), the decision relates to acts which would not constitute an offence under the law of the executing State;  
 g) according to the certificate provided for in Article 4, the person concerned  
 (i) in case of a written procedure was not, in accordance with the law of the issuing State, informed personally or via a representative, competent according to national law, of his right to contest the case and of time limits of such a legal remedy, or  
 (ii) did not appear personally, unless the certificate states:  
 — that the person was informed personally, or via a representative, competent according to national law, of the proceedings in accordance with the law of the issuing State, or  
 — that the person has indicated that he or she does not contest the case;  
 (h) the financial penalty is below EUR 70 or the equivalent to that amount.



**Step 4: Grounds for refusal and further obligations**

Art 12 (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 decision ceases to be enforceable or is withdrawn from the executing State for any other reason

Art 15 (3): if, after transmission of a certificate, an authority of the issuing State receives any sum of money which the sentenced person has paid voluntarily in respect of the decision, that authority shall inform the competent authority in the executing State without delay.

