

YX

(Request for a preliminary ruling  
brought by the Tribunal Judicial da Comarca do Porto – Juízo Local Criminal de Vila Nova de Gaia)

Judgment of the Court (Fourth Chamber) of 11 September 2025

(Reference for a preliminary ruling – Area of freedom, security and justice – Judicial cooperation in criminal matters – Framework Decision 2002/584/JHA – European arrest warrant issued for the purpose of executing a custodial sentence – Article 4(6) – Ground for optional non-execution of the European arrest warrant – Objective of social rehabilitation – Residence of the convicted person – Enforcement of that sentence by the executing State in accordance with its domestic law – Framework Decision 2008/909/JHA – Mutual recognition of judgments in criminal matters for the purpose of their enforcement in another Member State – Suspension of the enforcement of a custodial sentence ordered by a court of the executing Member State – Article 8 – Obligation, for the executing State, to recognise the judgment and enforce the sentence – Article 17 – Option, for the executing State, to determine the procedures for enforcement)

Judicial cooperation in criminal matters – Council Framework Decision 2008/909 on the application of the principle of mutual recognition to judgments in criminal matters – Refusal by the executing Member State to execute a European arrest warrant issued for the purposes of enforcing a custodial sentence or detention order – That Member State’s undertaking to enforce the sentence – Subsequent suspension of the enforcement of the sentence by a judicial authority of that Member State – Not permissible

*(Council Framework Decision 2008/909, as amended by Framework Decision 2009/299, Arts 8(1) and 17(1))*

(see paragraphs 66, 71-78, 83-85, operative part)

### Résumé

In proceedings relating to the execution of a European arrest warrant issued for the purposes of enforcing a custodial sentence, the Court states that the competent judicial authority of a Member State, after refusing to give effect to that arrest warrant and undertaking to enforce that sentence, cannot suspend enforcement of that sentence.

YX received a custodial sentence of six months from the Tribunal Judicial da Comarca do Porto – Juízo Local Criminal de Vila Nova de Gaia (District Court, Oporto – Local Criminal Court, Vila Nova de Gaia, Portugal), which is the referring court. Since the person concerned transferred his residence to Spain, that court issued a European arrest warrant for his surrender for the purposes of enforcing that custodial sentence.

The competent Spanish judicial authority, while refusing, pursuant to Article 4(6) of Framework Decision 2002/58, ([1](#)) to surrender YX to the referring court, declared that it recognised the judgment issued by that court for the purposes of its enforcement in Spain.

Pursuant to the Spanish Criminal Code, the Juzgado Central de lo Penal nº 1 de Madrid (Central Criminal Court No 1, Madrid, Spain) subsequently suspended execution of the custodial sentence at issue in the main proceedings for a period of two years.

Taking the view that such a suspension decision might call into question the objectives pursued by Framework Decision 2008/909 ([2](#)) and the principle of mutual recognition, the referring court made a reference to the Court of Justice for a preliminary ruling. The referring court notes that the competent authority of the executing State is required, in principle, to recognise the sentencing judgment of the competent authority of the issuing State and to enforce the sentence imposed, which is to correspond in its length and nature to the sentence imposed in that judgment. Therefore, the court of the executing

State cannot, without infringing Article 8 of Framework Decision 2008/909, alter the substance of the sentence imposed by the court of the issuing State and cannot suspend the enforcement of the sentence imposed on the person in question in the issuing State.

Moreover, according to the referring court, Article 17 of Framework Decision 2008/909, under which enforcement of a sentence is governed by the law of the executing State, refers only to measures intended to ensure the physical enforcement of the custodial sentence and therefore does not include, contrary to the view taken by the Central Criminal Court No 1, Madrid, a decision suspending the enforcement of such a sentence.

The Court thus finds that it is necessary to determine whether a decision to suspend the enforcement of a custodial sentence must be regarded as altering the sentencing judgment, in which case Article 8(1) of Framework Decision 2008/909 precludes the competent authority of the executing State from ordering such a suspension, or as falling within the scope of the enforcement of that judgment, in which case Article 17(1) of that framework decision allows that authority to order such a suspension.

## ***Findings of the Court***

At the outset, the Court points out that neither Article 8(1) nor Article 17(1) of Framework Decision 2008/909 expressly refer to the situation in which the competent authority of the executing State suspends the enforcement of a custodial sentence imposed by the competent authority of the issuing State. In particular, there is no textual element that makes it possible to determine whether such a suspension measure falls within the concept of ‘procedures for enforcement’ of the sentence, within the meaning of Article 17(1) of Framework Decision 2008/909.

However, while Article 17(1) of that framework decision provides that the competent authorities of the executing State are to exercise exclusive competence in respect of all the procedures for enforcing a sentence and all the measures relating thereto, which include early or conditional release, paragraphs 3 and 4 of that article provide, for the benefit of the competent authority of the issuing State, first of all, for the right to be informed, upon request, of the applicable provisions of the executing State on early or conditional release, then, for the right to withdraw the certificate ( [3](#) ) which expresses the consent of the issuing State to the enforcement of the sentence in the executing State and, lastly, for the possibility of communicating the conditions for early or conditional release in the issuing State, with a view to their being taken into account by the competent authority of the executing State.

Thus, even if the prerogatives conferred by Article 17(3) and (4) of that framework decision on the competent authority of the issuing Member State should, a fortiori, apply to the suspension of the enforcement of a custodial sentence, given that such a measure takes place before any actual enforcement of that sentence and therefore entails, unlike early or conditional release, a suspension of that sentence in its entirety, the Court finds that they were provided for by the EU legislature only as regards the conditions for early or conditional release.

Therefore, the Court considers that such a measure suspending enforcement of a custodial sentence does not fall within the concept of ‘procedures for enforcement’ in Article 17(1) of Framework Decision 2008/909.

That assessment is supported by the fact that Framework Decision 2008/947, ( [4](#) ) the scope of which excludes that of Framework Decision 2008/909, ( [5](#) ) applies specifically to judgments which themselves entail suspension of a custodial sentence or are accompanied by separate probation decisions, which are delivered in both cases by a competent authority of the issuing State. ( [6](#) ) Framework Decision 2008/947 thus confirms that the suspension of the enforcement of a custodial sentence falls within the jurisdiction of the competent authority of the issuing State and, accordingly, the judgment to be recognised, and not the enforcement of that judgment and the jurisdiction of the competent authority of the executing State.

Furthermore, the possibility for the executing State to adapt, beyond the cases expressly provided for in Articles 8 and 17 of Framework Decision 2008/909, the sentence imposed in the issuing State or the arrangements for its enforcement could undermine the special mutual confidence of the Member States in their respective legal systems and would therefore run counter to the objective of further developing cooperation between Member States concerning the enforcement of judgments in criminal matters. Articles 8 and 17 thus play a central role in the pursuit of that objective when they specify, for the recognition and enforcement of judgments in criminal matters, the extent and the limits of the jurisdiction conferred on the competent authorities of the executing State.

For those reasons, the Court concludes that the suspension of the enforcement of a custodial sentence falls within the scope of Article 8 of Framework Decision 2008/909 and consequently cannot be granted by the competent authority of the executing State pursuant to Article 17 of that framework decision.

Lastly, the Court states that the fact that the revocation of the suspension of a custodial sentence, on account of the breach by the person concerned of an objective condition attached to that suspension, does not constitute a decision within the meaning of Article 4a of Framework Decision 2002/584, ( [1](#) ) and may therefore fall within the scope of the enforcement of the sentence imposed, does not necessarily mean that the decision whether or not to grant the suspension of a custodial sentence is of the same nature.

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( [1](#) ) The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

( [1](#) ) Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States ( [OJ 2002 L 190, p. 1](#), ‘Framework Decision 2002/584’). Under Article 4(6) of that framework decision, the executing judicial authority may refuse to execute the European arrest warrant if it has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a resident of the executing Member State and that State undertakes to execute the sentence or detention order in accordance with its domestic law.

( [2](#) ) Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union ( [OJ 2008 L 327, p. 27](#) ), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 ( [OJ 2009 L 81, p. 24](#) ) (‘Framework Decision 2008/909’).

( [3](#) ) This concerns the certificate referred to in Article 4 of Framework Decision 2008/909, the forwarding of which is one of the formalities which must be complied with when the executing State takes charge of the enforcement of a custodial sentence imposed in the issuing State.

( [4](#) ) Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions ( [OJ 2008 L 337, p. 102](#) ).

( [5](#) ) Article 1(3)(a) of Framework Decision 2008/947.

( [6](#) ) Article 2(1), (2) and (5) of Framework Decision 2008/947.

( [7](#) ) See, to that effect, judgments of 22 December 2017, Ardic ( [C-571/17 PPU](#), [EU:C:2017:1026](#), paragraphs [77](#) and [78](#) ), and of 23 March 2023, Minister for Justice and Equality (Lifting of the suspension) ( [C-514/21 and C-515/21](#), [EU:C:2023:235](#), paragraphs [53](#) and [54](#) ).